



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

JOSE ROMEO C. ESCANDOR,
Petitioner,

G.R. No. 223743

Present:

versus -

CAGUIOA, *Chairperson*,
INTING,
GAERLAN,
DIMAAMPAO, and
SINGH, *JJ.*

**HON. CONCHITA CARPIO
MORALES, SEC. EMMANUEL
F. ESGUERRA and CINDY
SHEILA C. GAMALLO,**
Respondents.

Promulgated:

August 17, 2022
Mi sPDCBatt

x-----x

DECISION

DIMAAMPAO, J.:

This Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court impugns the *Decision*² dated 23 December 2014 of the Court of Appeals in CA-G.R. CEB-SP. No. 03304, which affirmed the 21 March 2007 *Decision*³ of the Office of the Ombudsman-Visayas (OMB-Visayas) in the administrative case dismissing Jose Romeo C. Escandor (petitioner) from government service for grave misconduct. The Petition likewise assails the *Resolution*⁴ dated 22 February 2016 denying petitioner's Motion for Reconsideration.⁵

¹ *Rollo*, Vol. I at pp. 12- 90.

² *Id.* at 104-121. Penned by Associate Justice Marilyn B. Lagura-Yap, with the concurrence of Associate Justices Gabriel T. Ingles and Pamela Ann Abella Maxino.

³ *Id.* at 130-148. Docketed as OMB-V-A-04-0492-I, penned by Graft Investigation & Prosecution Officer II Cynthia C. Maturan-Sibi.

⁴ *Id.* at 99-102. Penned by Associate Justice Marilyn B. Lagura-Yap, with the concurrence of Associate Justices Gabriel T. Ingles and Pamela Ann Abella Maxino.

⁵ *Id.* at 202-217.

d

This case has its precursor in a complaint for violation of Republic Act No. 7877⁶ filed on 23 September 2004⁷ before the OMB-Visayas by private respondent Cindy Sheila Gamallo (Gamallo) against petitioner, then the Regional Director of the National Economic and Development Authority, Regional Office No. 7 (NEDA 7).

Gamallo asseverated⁸ that in March 1995 when she was 22 years old, she was hired as a contractual employee by NEDA 7 for the United Nations International Children's Emergency Fund (UNICEF) – assisted Fifth Country Program for Children (CPC V), a social development project under the Social Development Division (SDD) of NEDA 7. She reported directly to SDD Chief Sandra Manuel (Manuel) and later on to Officer-in-Charge (OIC) Rafael Tagalog (Tagalog), when Manuel was promoted in 1999 as Assistant Regional Director (ARD) of NEDA 7. Gamallo did not experience any problem working in the National Economic and Development Authority and got along very well with her direct supervisor in the division, as well as with the NEDA 7 staff.

As it happened, sometime in July 1999, petitioner's secretary told Gamallo that he wanted to see her about her contract. When she was in his office, she sensed that he was in a bad mood. Afterwards, he asked her angrily who in the Accounting Office was to blame for the delay in her salary which she had not received for several months. She hesitantly replied that she was not blaming anyone and that perhaps it was her own fault since it took her a long time to submit her accomplishment report. Upon hearing her answer, petitioner became furious and told her to read her contract aloud. Though confused and afraid, she did as she was told. When she finished reading the contract, he yelled at her "*Nakasabot ka ba sa imong gibasa? Basin kamao lang ka mobasa pero dili ka kasabot,*"⁹ He asked her if it was in her contract that she should first submit her accomplishment report before she could be paid. She did not answer him as she was already trembling. She wanted to cry aloud but she held back her tears. When he told her to leave, she went straight to the comfort room and wept.

The following morning, petitioner called Gamallo again to his office. She was frightened because of what happened the previous day. When she entered his office, he was standing near his computer which was located against the side wall such that it could not be seen from outside. He told her to approach him. To her great consternation, he grabbed her hand; hugged and kissed her on the forehead; asked pardon for his temper; and explained that he was not really irritated at her but at the accounting staff. Struggling to free

⁶ ANTI-SEXUAL HARASSMENT ACT OF 1995. Approved on 14 February 1995.

⁷ Rollo, Vol. 1, pp. 218-253.

⁸ Id. at 219-237.

⁹ Translated as, "*Did you understand what you just read? Maybe you only know how to read but don't understand what you are reading.*"; id. at 220.



herself from his embrace, she merely nodded to everything that he said so that she could depart at once. She did not tell anybody about the incident because she was embarrassed. Moreover, she was afraid what his wife, Madelyn Escandor (Mrs. Escandor) would say. Mrs. Escandor was the Division Chief of the Macro Intersectoral Coordination and Assistance Division (MICAD) of NEDA 7. Thus, Gamallo tried to oblivate the incident.

Sometime in 2000, petitioner summoned Gamallo to his office. Initially, he asked about the CPC V monitoring report. Then, he inquired how she was getting along with her in-laws and if she was happy living with them. Since he sounded solicitous and friendly, she told him that she was still adjusting to her in-laws and that if she had her way, she would live separately from them. He then said that she deserved to be happy, that she was beautiful and smart, and that many men admired her. Much to her dismay, he told her that he had been captivated by her for a long time and if it was possible, he would have prevented her from marrying Mark, also an employee at NEDA 7. After a while, petitioner recited the things he liked about her such as the way she walks and eats with her bare hands. He divulged that she was the kind of woman he wanted. He later on asked her for a date "just to talk." However, she turned down his invitation and excused herself. She felt affronted and could not believe that he was capable of saying such things to her.

Later on that day, petitioner again invited Gamallo to his office. With heart pounding, she entered the room where she saw him seated in front of his computer. He told her to sit on the chair beside him. In a bit, he told her that he loved her and that he could no longer hold back his feelings for her. All of a sudden, she felt his hand on her thigh. Reflexively, she moved her legs away from him causing the pencil and paper she was holding to drop to the floor. At that moment, Mrs. Escandor entered the room but left at once after giving him his snacks. Meanwhile, Gamallo moved very near the door and was about to leave when he called and told her to calm down before allowing her to leave.

Albeit feeling degraded, she tried not to cry by returning to her work. All the same, she received on the computer a Winpop¹⁰ message from petitioner telling her to relax. Thence, she broke down, went to the comfort room, and cried. Much later in that afternoon, she confided all the things that petitioner had done to her closest friend, Lina Villamor (Villamor), SDD's Senior Economic Development Specialist. Upon Villamor's advice, she also told Tagalog about petitioner's sexual advances.

In the succeeding days, petitioner often summoned Gamallo to his office. During those times, he would start by asking her questions about CPC V project. Later on, however, he would inquire how she spent her days, how

¹⁰ Winpop is the Windows instant messaging which pops up on one's computer monitor.



her moods were, and how her family was. Though he was acting in a friendly manner, she did not feel comfortable in his presence and was always vigilant on what he might do.

In September 2000, petitioner gave Gamallo a special assignment under his direct supervision that entailed frequent meetings with him in his office. At first, he spoke of her assignment. However, during the succeeding meetings, he again began to ask personal questions like family matters. He would repeat how beautiful she was and how he was very sure that what he was feeling for her was love. She would then notice his eyes on her chest which made her feel very uneasy. When she completed her assignment and submitted her report, he invited her out, but she again declined.

Nevertheless, petitioner utilized other ways to pester her like sending her text messages to her cellphone and Winpop messages on her computer such as “Hello”; “How are you today”; “I miss you”; “You look beautiful”; “You look nice in your dress”; “I love you more everyday”; and “I dreamed of you last night.”¹¹ She did not reply to these messages, instead, she deleted them. Since he would not stop sending the same, she changed her sim card and disabled her instant messenger.

On the occasion of the 2000 NEDA 7 Christmas party, Gamallo saw petitioner greeting the staff “Merry Christmas.” At that time, she was about to leave and there was no other way but to pass by him. When he saw her, he pulled her towards him and tried to kiss her on her lips. She felt violated but at the same time afraid that she might lose her job if such incident would reach the ears of Mrs. Escandor.

Several days after the said Christmas party, Gamallo disclosed to Manuel what petitioner did to her. Manuel already knew her traumatic experience with petitioner since Villamor and Tagalog had already told her about it. She asked Manuel if it was best for her to resign but the latter advised her against it as it was not her fault that he acted that way towards her. Manuel assured her that she would protect her from him.

As it happened, petitioner persisted in pursuing Gamallo through various means.

Consequently, in February 2001, petitioner told Tagalog to send Gamallo to his office because he would turn over some documents which he brought from a CPC V meeting in Manila. He gave her a thick brown envelope,

¹¹ *Rollo*, Vol. I, pp. 223 and 225.



which surprisingly contained a bracelet attached to one of the documents. She showed the bracelet to Villamor, who told her to return it, and which she did.

During the three-day live-in seminar conducted by the CPC V, petitioner tirelessly trailed Gamallo. This was noticed by Mrs. Escandor who she overheard saying to petitioner: “*Ganahan lang gyud ka magtan-aw tan-aw ana niya. Ngano magkuyog man gyud mo?*”¹² Gamallo heard him retorting that there was no other vehicle available and that he would just drop her off at the hotel. At that moment, she became terrified not only of petitioner but of his wife as well.

In 2002, petitioner continued to show his interest to Gamallo by, *inter alia*, asking her to go out with him when Mrs. Escandor was out of town. In March 2003, Julita Cabigon (Cabigon), NEDA 7 Human Resource Management Officer II, disclosed that petitioner instructed her to include Gamallo’s name in the list of qualified candidates for the Secretary II position although she was merely a contractual employee. Cabigon asked her to sign a document signifying that she was interested in the said position. Before signing, she consulted Rosa Edna Hubahib (Hubahib), a member of the Regional Committee on Personnel Matters (RCPM) in NEDA 7. Hubahib, knowledgeable of the fact that she was afraid of losing her job if she did not abide by petitioner’s instruction, suggested that she apply for the position since she (Hubahib) was confident that she would never be hired because Mrs. Escandor would not allow it. Nonetheless, Gamallo signified her intention to apply for the position.

Consequentially, Gamallo found it difficult to perform her work as a result of her continued refusal to succumb to the sexual advances of petitioner. He disapproved her trips to the CPC V areas she was monitoring. Thus, she could not accompany UNICEF visitors who asked for her assistance.

In November 2003, she decided to resign when her situation became complicated as petitioner had filed three administrative cases against her husband with the Civil Service Commission.

Inveighing against Gamallo’s asseverations, petitioner averred¹³ in the main—

- a. That the complaint was filed in retaliation to the filing of administrative cases against her husband.

¹² Translated as, “*You really like to look at her. Why do you have to be together?*” Id. at 226.

¹³ Id., Vol. II, pp. 521-571.



- b. That the complaint was filed to destroy the career, family, and reputation of the (petitioner).
- c. That the complaint was filed to pre-empt discovery of the immoral activities of (private respondent Gamallo).
- d. That the alleged immoral acts of the (petitioner) were not true and pure inventions of (private respondent Gamallo).
- e. That the witnesses of (private respondent Gamallo) were biased against the (petitioner) and thus were not credible.
- f. That the alleged immoral acts have all prescribed and were no longer actionable by this Honorable Office.
- g. That (private respondent Gamallo) did not exhaust administrative remedies before filing the complaint.¹⁴

Ensuingly, the OMB-Visayas rendered a Decision¹⁵ on 21 March 2007 declaring petitioner guilty of grave misconduct, thus—

Wherefore, there being substantial evidence that (petitioner) Jose Romeo C. Escandor, Regional Director, National Economic and Development Authority, Regional Office No. 7, Sudlon, Lahug, Cebu City, is GUILTY of the administrative offense of GRAVE MISCONDUCT, he is hereby meted the penalty of DISMISSAL FROM SERVICE. WITH ALL THE ACCESSORY PENALTIES ATTACHED THERETO BY LAW.

SO DECIDED.¹⁶

In finding petitioner guilty of grave misconduct, OMB-Visayas ratiocinated in this wise:

As we have stated at the outset of our discussion of (private respondent Gamallo's) reply to (petitioner's) counter-affidavit, the (private respondent Gamallo) controverted point by point (petitioner's) denials and evasions of the acts of sexual harassment that were imputed upon him by (private respondent Gamallo). In her controversion of (petitioner's) denials and evasions, the (private respondent Gamallo) appealed to logical reasoning and the corroborating testimonies of her co-employees with regard to factual matters.

(Private respondent Gamallo's) reply makes for a morally and legally convincing case against the (petitioner) for the offense charged. It has taken the case out of the “she says, he says” category. (Private respondent Gamallo's) allegations in her complaint-affidavit have been substantiated by the elucidations and details supplied by her reply as well as the corroborating testimony of her witnesses.

¹⁴ Id. Vol. I, p. 525.

¹⁵ Id. Vol. I, pp. 130-148.

¹⁶ Id. at 147.

In their corroboration and confirmation of (private respondent Gamallo's) allegations of sexual harassment against the (petitioner), (private respondent Gamallo's) witnesses cannot be easily dismissed or discounted as being impelled by an ulterior motive of plotting the removal of the (petitioner) (and his wife) from NEDA 7. These witnesses are public officers holding positions or responsibility as Division Chiefs and Assistant Regional Director. It would strain one's credulity to go along with (petitioner's) theory that they would perjure themselves just to support the allegations of sexual harassment of a relatively minor employee against the Head of Office.

(Petitioner's) portrayal of (private respondent Gamallo) as a woman of loose morals, if not totally amoral person, capable of promiscuous sexual relations that she would not bother to hide and of such wantonness as to insistently invite to sex an unwilling office superior is also downright incredible. If (private respondent Gamallo) were even only half as lewd as (petitioner) pictures her to be, such a reputation would not have remained a secret to her co-employees, the members of the opposite sex particularly. It would have gotten around. It is strange, therefore, why, of almost half a hundred permanent employees, only the office utility worker had an inkling of this vice of (private respondent Gamallo). Indeed, with this scurrilous and clearly baseless attack on complainant's virtue, (petitioner) has only succeeded in laying bare his own cunning malice and perversity.

On (petitioner's) defense of prescription of the crime of sexual harassment, we find merit in (private respondent Gamallo's) contention that (petitioner's) actuations subject of this complaint constituted a series of acts that continued until (private respondent Gamallo's) resignation from office in November 2003, and, thus would not have prescribed yet on the filing of this complaint on September 23, 2004.

It is clear from the evidence on record that the (petitioner), Jose Romeo C. Escandor, Regional Director, National Economic and Development Authority, Regional Office No. 7, Sudlon, Lahug, Cebu City, having authority, supervision, influence and moral ascendancy over the (private respondent), Cindy Sheila C. Gamallo, a contractual employee of the aforementioned NEDA Regional Office, solicited and demanded sexual favors from the latter under circumstances wherein the refusal to grant the requested sexual favors resulted in the discrimination against and prejudice to the said (respondent), an intimidating, hostile and offensive work environment for her, and the impairment of the said employee's rights and privileges.¹⁷

Aggrieved, petitioner moved for the reconsideration¹⁸ of the foregoing Decision. In a Supplemental Motion for Reconsideration,¹⁹ he maintained, *inter alia*, that the Office of the Ombudsman had no jurisdiction over the instant complaint. Still and all, the OMB-Visayas denied the same in the Order²⁰ dated 17 September 2007.

¹⁷ Id. at 144-147.

¹⁸ Id. Vol. II, pp. 572- 615.

¹⁹ Id. at 629-661.

²⁰ Id. Vol. I, p. 111.

Disgruntled, petitioner interposed a petition²¹ under Rule 43 of the 1997 Rules of Civil Procedure before the Court of Appeals.

In the interstice, the OMB-Visayas issued its Order²² directing the immediate implementation of the 21 March 2007 Decision, particularly petitioner's dismissal from service.

In due course, the Court of Appeals rendered the impugned 23 December 2014 *Decision*, dismissing the petition for want of merit and affirming the Decision and Order dated 21 March 2007 and 17 September 2007, respectively, of the OMB-Visayas.

Undaunted, petitioner moved for a reconsideration,²³ which, however, did not warrant the approbation of the Court of Appeals and was consequently denied in the challenged 22 February 2016 *Resolution*.

Inevitably, petitioner filed the present petition asseverating that—

A. THE OMBUDSMAN HAS NO JURISDICTION OVER THE SEXUAL HARASSMENT COMPLAINT[.]

B. THE PETITIONER WAS DENIED DUE PROCESS BY THE OMBUDSMAN[.]

C. THE PRIVATE RESPONDENT DID NOT PRESENT SUBSTANTIAL EVIDENCE[.]

D. THE OMBUDSMAN DID NOT CONSIDER THE EVIDENCE PRESENTED BY PETITIONER[.]

E. THE COMPLAINT IS PART OF EFFORTS TO OUST PETITIONER FROM NEDA REGION 7[.]

F. THE DECISIONS VIOLATE THE RIGHT OF THE PETITIONER TO EMPLOYMENT[.]²⁴

The Petition is devoid of merit.

First off, it bears stressing that jurisdiction is the power and authority to hear, try, and decide a case. In order for the court or an adjudicative body to have authority to dispose of the case on the merits, it must acquire jurisdiction over the subject matter. It is axiomatic that jurisdiction over the subject matter is conferred by law and not by the consent or acquiescence of any or all of the

²¹ Id. at 151-201.

²² Id. at 149-150. The last page of the Order is unpaginated.

²³ Id. at 202-217.

²⁴ Id. at 25.



parties or by erroneous belief of the court that it exists. Thus, when a court or tribunal has no jurisdiction over the subject matter, the only power it has is to dismiss the action.²⁵

In the case at bench, petitioner intransigently asserts²⁶ that the sexual harassment complaint filed by private respondent Gamallo against him should be dismissed. The Decision finding him guilty of grave misconduct is void given that the Office of the Ombudsman has no jurisdiction over the administrative aspect of the sexual harassment complaint. It should have been lodged before the proper administrative agency pursuant to Section 12(a) of Civil Service Commission Resolution No. 01-0940²⁷ dated 21 May 2001, which reads:

Section 12. Complaint.

(a) The complaint may be filed at any time with the disciplining authority of the office or agency, or with the Committee on Decorum and Investigation. Upon receipt of the complaint by the disciplining authority of the office or agency, the same shall be transmitted to the Committee on Decorum and Investigation, if there is any. In the absence of a Committee on Decorum and Investigation, the head office or agency shall immediately cause the creation of Committee on Decorum and Investigation in accordance with the law and rules, and transmit the complaint to the Committee.

Thus, petitioner maintains that private respondent Gamallo's sexual harassment complaint should have been filed with the disciplining authority of the National Economic and Development Authority and not with the Office of the Ombudsman. In actual fact, the Office of the Ombudsman committed a grave procedural error and violated its own internal rules when it failed to refer the subject complaint to the proper disciplining authority, *viz.*:

RULE III
PROCEDURE IN ADMINISTRATIVE CASES

....

Section 4. Evaluation. – Upon receipt of the complaint, the same shall be evaluated to determine whether the same may be:

....

c) referred to other disciplinary authorities under paragraph 2, Section 23, RA 6770 for the taking of appropriate administrative proceedings; xxx²⁸

²⁵ See *Velasquez, Jr. v. Lisondra Land, Inc.*, G.R. No. 231290, 27 August 2020.

²⁶ Rollo, Vol. I, pp. 27-32.

²⁷ ADMINISTRATIVE DISCIPLINARY RULES ON SEXUAL HARASSMENT CASES.

²⁸ As amended by Administrative Order No. 17 dated 15 September 2003.

Petitioner's thesis is out on a limb.

The power and authority of the Office of the Ombudsman emanate from the 1987 Constitution and Republic Act No. 6770 or The Ombudsman Act of 1989.²⁹ Under Article XI, Section 13 of the 1987 Constitution, the Office of the Ombudsman, an independent and fiscally autonomous body, has, among its powers, functions, and duties to—

- (1) Investigate on its own, or on complaint by any person, **any act or omission** of any public official, employee, office or agency, **when such act or omission appears to be illegal, unjust, improper, or inefficient.** (Emphasis supplied)

As the people's protector, the Office of the Ombudsman is mandated to act promptly on **all complaints** filed against government employees and initiate prosecution against them if warranted by the evidence to promote efficient government service to the people.³⁰ The jurisdiction of the Office of the Ombudsman encompasses **all kinds of malfeasance, misfeasance, and non-feasance committed by public officers or employees during their tenure.**³¹ In fact, even if the complaint concerns an act of the public official or employee which is not service-connected, the case is within the jurisdiction of the Ombudsman. The law does not qualify the nature of the illegal act or omission of the public official or employee that the Ombudsman may investigate. It does not require that the act or omission be related to or be connected with or arise from the performance of official duty.³²

This being so, there is no gainsaying that the Office of the Ombudsman has jurisdiction as well over the administrative complaint filed by private respondent Gamallo against petitioner, a public officer who committed acts of sexual harassment amounting to grave misconduct.

It cannot be stressed enough that CSC Resolution No. 01-0940,³³ which directs the filing of the complaint for sexual harassment with the disciplining authority of the office or agency, or with the Committee on Decorum and Investigation **does not divest the Office of the Ombudsman of jurisdiction of its power to investigate sexual harassment cases.**

²⁹ Approved on 17 November 1989.

³⁰ See *Republic v. Sundiganbayan (Special Second Division)*, G.R. Nos. 207340 & 207349, 16 September 2020.

³¹ See *id.*: see also Section 16 of the Ombudsman Act of 1989.

³² See *Samson v. Restrivera*, 662 Phil. 45, 53 (2011).

³³ Presently governed by CSC MEMORANDUM CIRCULAR NO. 11, s. 2021 (*Revised Administrative Disciplinary Rules on Sexual Harassment Cases (Amendment to the Sexual Harassment Provisions in the 2017 Revised Rules on Administrative Cases in the Civil Service)*). Pursuant to CSC Resolution No. 2100064 dated 20 January 2021, the Commission resolved to promulgate said rules in accordance with R.A No. 11313 (Safe Spaces Act).

To be sure, the rules and regulations contained in the aforesaid resolution were promulgated by the Civil Service Commission **primarily** to define the administrative offense of sexual harassment and **to prescribe the standard procedure for the administrative investigation and resolution of sexual harassment cases in the public sector.**³⁴ True it is that the rules therein instruct that “A Committee on Decorum and Investigation shall be created in all national or local agencies of the government, state colleges and universities, including government-owned or controlled corporations with original charter”³⁵ which shall have the duty to investigate the complaint for sexual harassment in accordance with the prescribed procedure. Regrettably, however, there was no Committee on Decorum and Investigation established at National Economic and Development Authority at the time private respondent Gamallo filed her complaint.

In retrospect, the sexual harassment case was initially brought to the attention of the National Economic and Development Authority management. Records evince that in a letter³⁶ dated 28 November 2003, the “concerned NEDA REGION 7 Staff” wrote Director General Romulo L. Neri (Director General Neri) of the National Economic and Development Authority, relaying to him the plight of the National Economic and Development Authority employees, which included the sexual harassment committed by petitioner. However, in a letter³⁷ dated 20 February 2004, Director General Neri informed the NEDA 7 officers and employees that—

....

Pending approval of the Modified NEDA Implementing Rules and Regulations on Sexual Harassment, the Committee on Decorum and Investigation that **will be created** pursuant to Section 8, Rule VI of CSC Resolution No. 01-0940 s. 2001 shall be constituted as soon as possible....³⁸
(Emphasis supplied)

Subsequently, private respondent Gamallo, together with Ruth Paul-Cruz, wrote a letter³⁹ dated 24 February 2004 addressed to Director General Neri, withdrawing their complaint for sexual harassment due to personal reasons.

Almost five months thereafter, Hubahib and the Concerned NEDA 7 Employees wrote their respective letters dated 15 July 2004⁴⁰ and 20 July

³⁴ See Administrative Disciplinary Rules on Sexual Harassment Cases (CSC Resolution No. 01-0940) dated 21 May 2001.

³⁵ Section 7, Rule VI of CSC Resolution No. 01-0940.

³⁶ *Rollo*, Vol. I, pp. 313-314.

³⁷ *Id.* at 316.

³⁸ *Id.*

³⁹ *Id.* at 317.

⁴⁰ *Id.* at p. 318.

2004,⁴¹ respectively, to then President Gloria Macapagal-Arroyo, which state, *inter alia*, that they were denouncing petitioner's "sexual harassment and disgraceful and immoral conduct towards two female officemates, which (they) are bringing to the attention of the Civil Service Commission since the management of NEDA has not acted on (their) complaint."⁴²

On 23 September 2004, private respondent Gamallo filed the instant complaint before the OMB-Visayas. Given this factual milieu, it is but judicious for the Office of the Ombudsman to take cognizance thereof after its evaluation and docket it as an administrative case for its administrative adjudication⁴³ pursuant to its rules of procedure.

Moreover, the record reflects that petitioner actively participated in the proceedings before the Office of the Ombudsman where he was given ample opportunity to answer the charge against him. In point of fact, he filed various pleadings such as his 1) Counter Affidavit⁴⁴ dated 26 November 2004, Rejoinder⁴⁵ dated 28 February 2005, and 3) Position Paper⁴⁶ dated 18 April 2006. He even sought reconsideration of the decision finding him guilty of grave misconduct and dismissing him from service. Petitioner questioned as well the Order of the Office of the Ombudsman directing the immediate implementation of the 21 March 2007 Decision, particularly his dismissal from service, before the Court of Appeals and even up to this Court.⁴⁷ It was only in a Supplemental Motion for Reconsideration⁴⁸ filed before the Office of the Ombudsman that he took issue with its jurisdiction over the case. Plain as day, this should not be countenanced. Under the principle of estoppel, petitioner is now barred from challenging the proceedings before the OMB-Visayas⁴⁹ and at the same time, assert that it should have referred the case to the proper disciplining authority. If there was indeed a procedural blunder committed by the OMB-Visayas, petitioner has unarguably waived it. To iterate, the Office of the Ombudsman has jurisdiction over the instant case and petitioner, by his involvement in the proceedings, clearly submitted himself to its authority. Quite discernibly, his avowal that he was deprived of due process is belied by his very own actuations.

⁴¹ Id. at 320.

⁴² Id.

⁴³ See Section 4, Rule III, RULES OF PROCEDURE OF THE OFFICE OF THE OMBUDSMAN.

⁴⁴ *Rollo*, Vol. I, pp. 256-299.

⁴⁵ Id. at 441-446.

⁴⁶ Id., Vol. II, pp. 521-571.

⁴⁷ See *Cobarde-Gamallo v. Escandor*, 811 Phil 378, 386 (2017). The Court ruled that the CA erred when it enjoined the implementation of the OMB Decision and Order on the ground that the same were not yet final and executory as petitioner's motion for reconsideration before the OMB was not yet then resolved. It decreed that the OMB's Order of dismissal is immediately executory even pending petitioner's motion for reconsideration before the OMB as that is the clear mandate of Section 7, Rule III of the OMB Rules of Procedure, as amended, as well as the OMB's MC No. 01, Series of 2006.

⁴⁸ *Rollo*, Vol. II, pp. 629-661.

⁴⁹ See *Office of the Ombudsman v. Delijero, Jr.*, 648 Phil. 354, 367 (2010).

Having resolved the issue on jurisdiction, the next query comes down the pike — Was the finding of grave misconduct through sexual harassment established by substantial evidence?

The Court finds and so holds that the Court of Appeals infallibly affirmed the OMB-Visayas' findings that private respondent Gamallo ably substantiated her assertions. At this juncture, the Court hews to the rule that the factual findings of the Office of the Ombudsman are generally accorded great weight and respect, if not finality, by the courts because of their special knowledge and expertise over matters falling under their jurisdiction. When supported by substantial evidence, their findings of fact are deemed conclusive. The Court, thus, cannot analyze or weigh all over again evidence already passed upon in the proceedings below, since its function under Rule 45 is limited only to the resolution of matters involving questions of law. While there are recognized exceptions to this rule, none of them are present in this case.⁵⁰

Forthwith, the Court hearkens to its own pronouncements in *Escandor v. People*,⁵¹ the criminal case which sprung forth from the administrative case filed by private respondent Gamallo finding petitioner guilty of violation of Republic Act No. 7877—

All the elements of sexual harassment, as penalized by Republic Act No. 7877, are present in this case.

Gamallo had earlier filed an administrative complaint with the National Economic Development Authority Central. The present case, however, is exclusively concerned with Escandor's criminal liability and will be decided exclusively of and without prejudice to his administrative liability. On this, we find all the requisites for criminal liability present, and sustain Escandor's conviction.

On the first requisite, it is clear that Escandor had authority over Gamallo. He was the Regional Director of the National Economic and Development Authority Region 7, while Gamallo was a contractual employee in that office. Escandor's authority also existed in a work-related environment; thereby satisfying the second requisite for sexual harassment.

While the third requisite calls for a "demand, request, or requirement of a sexual favor," this Court has held in *Domingo v. Rayala* that it is not necessary that these be articulated in a categorical oral or written statement. It may be discerned from the acts of the offender. Thus, the Court found in that case that the accused's acts of "holding and squeezing Domingo's shoulders, running his fingers across her neck and tickling her ear, having inappropriate conversations with her, giving her money allegedly for school expenses with a promise of future privileges, and making statements with unmistakable sexual overtones" satisfy the third requisite.

⁵⁰ See *Diaz v. Office of the Ombudsman*, 834 Phil. 735, 742 (2018).

⁵¹ G.R. No. 211962, 6 July 2020.



Here, Gamallo testified to several acts of sexual harassment committed by Escandor. Among these were grabbing her hand, kissing, engaging in improper conversations, touching her thigh, giving her gifts, telling her that "she was the kind of girl he really wants," asking her out on dates, and sending her text and Winpop messages telling her that he missed her, that she looked beautiful, and that he loved her. All these acts undoubtedly amount to a request for sexual favors.

At the core of sexual harassment in the workplace is power exercised by a superior over a subordinate. The power emanates from how the superior can remove or disadvantage the subordinate should the latter refuse the superior's sexual advances. Thus, sexual harassment is committed when the sexual favor is made as a condition in the hiring of the victim or the grant of benefits thereto; or when the sexual act results in an intimidating, hostile, or offensive environment for the employee.

In this case, Gamallo stated that the acts of Escandor made her feel "disrespected," "humiliated and cheap," "uneasy," and "frightened." She could also not concentrate on work, could not sleep and found herself "staring into empty space." When she disabled her Winpop messaging because of Escandor's inappropriate messages, she was threatened that she will be deleted from the National Economic and Development Authority meeting list. Villamor, Tagalog and Manuel, who all testified for Gamallo, tried to protect her from Escandor. Villamor and Tagalog made sure that whenever Escandor called for Gamallo, either of them would go with her. Manuel even had to relay the incidents to the National Economic and Development Authority Deputy Director General. Undoubtedly, Escandor's acts resulted in an intimidating, hostile, and offensive environment for Gamallo.

I (C)

Escandor counters that, "[t]he evidence proffered ...is totally repugnant to human standard[s], common experience and observation." He claims that the credibility of Gamallo is "zero not only because of unreasonable delay, but also because of the inherent improbability of her story, her propensity to resort to falsehood and her strong motive to falsely accuse and get back at the accused."

Contrary to Escandor's assertions, the Sandiganbayan found Gamallo's testimony credible. We sustain this conclusion.

Factual findings of the trial court on the credibility of witnesses and their testimonies are entitled to great respect. These findings will not be disturbed in the absence of any clear showing that the trial court overlooked, misunderstood, or misapplied some facts or circumstances. This is because trial provides judges with the "opportunity to detect, consciously or unconsciously, observable cues and micro expressions that could, more than the words said and taken as a whole, suggest sincerity or betray lies and ill will."

The matters raised by Escandor have been more than adequately addressed by the Sandiganbayan:

In the present case, there is nothing in the records that would indicate



that Gamallo is dishonest or untruthful. She was able to give her testimony in Court and answer the questions put to her on cross-examination. Her former supervisor, Tagalog, attests that he had never heard of any act of immorality committed by Gamallo.

The Sandiganbayan, being the court which conducted trial, "is in the best position to determine the truthfulness of witnesses." Indeed, this court must "give the highest respect to [its] of the testimony of the witnesses, considering its unique position in directly observing the demeanor of a witness on the stand."

In *Batistis v. People of the Philippine*, this Court held that only questions of law may be entertained in petitions for review on *certiorari* filed with this court from decisions of the Sandiganbayan:

The factual findings of the [trial court], its calibration of the testimonies of the witnesses, and its assessment of their probative weight are given high respect, if not conclusive effect, unless cogent facts and circumstances of substance, which if considered, would alter the outcome of the case, were ignored, misconstrued or misinterpreted.

When the victim's testimony is straightforward, convincing, consistent with human nature, and unflawed by any material or significant controversy, it passes the test of credibility and the accused may be convicted solely on the basis thereof.

Escandor's claims fail to cast such degree of doubt on the Sandiganbayan's findings as to justify absolving him of liability. On the other hand, Gamallo has adequately testified to the acts attributed to Escandor. Moreover, her account is supported by the testimonies of three colleagues: Villamor, Tagalog and Manuel. As against these, Escandor only had his own testimony and bare denials.

x x x x

III (A)

Escandor assails his conviction citing "unreasonable delay and silence" as it was only initiated five years after the alleged incidents. He argues that the belated filing of the Complaint renders Gamallo's actuations doubtful. He notes that Gamallo is a college graduate, a National Economic and Development Authority Project Staff, and has a lawyer for a husband. Citing *Digitel Communications v. Mariquit*, he argues that it was simply against the natural order of events and against human nature that she would not complain about the sexual incidents immediately.

Escandor is mistaken. There is no time period within which a victim is expected to complain about sexual harassment. The time to do so may vary depending upon the needs, circumstances, and more importantly, the emotional threshold of the employee. xxx

As aptly observed by the Sandiganbayan, Escandor is mistaken in his interpretation of *Digitel*. *Digitel* stemmed from a Complaint for constructive dismissal due to professional and sexual harassment. In that case, this Court stated that "there is, strictly speaking, no fixed period within

which an alleged victim of sexual harassment may file a complaint, [although] it does not mean that he or she is at liberty to file one anytime she or he wants to. Surely, any delay in filing a complaint must be justifiable or reasonable as not to cast doubt on its merits."

Neither has prescription set in by the time Gamallo filed her Complaint Affidavit on September 4, 2004. Escandor's acts of sexual harassment persisted until December 2003, the end of Gamallo's employment with the National Economic and Development Authority Region 7. By the time she filed her Complaint-Affidavit, only about nine (9) months had lapsed. This is well-within the three (3) years permitted by Section 7 of Republic Act No. 7877 within which an action under the same statute may be pursued.

III (B)

Escandor further imputes ill-motive to Gamallo in filing the charges. He submits that the charges were in retaliation to Escandor's administrative complaints against Gamallo's husband who also worked at the National Economic and Development Authority. He also emphasized Gamallo's act of signing the petition in support of his retention as Regional Director.

These fail to discredit Gamallo. She already explained the circumstances surrounding her participation in the petition against Escandor:

x x x x

The memorandum sought to "uphold the image of NEDA as a government institution that has resisted undue political pressures." Such image, according to the "[National Economic and Development Authority] Region 7 Staff," will be tainted "should transfers or reshuffle of regional directors be made because of political pressure." The mere happenstance of Gamallo's participation in an effort to protect the National Economic and Development Authority as an institution is not itself a disavowal of and, in no way, precludes Escandor's harassment of Gamallo.⁵²

Upon this point, the Court is not unaware that in cases where both an administrative case and a criminal case are filed against an individual *for the same act or omission*, each must be disposed of according to the facts and the law applicable to it. As there is variance in the quantum of evidence necessary for each case to prosper, there must be a showing that its own threshold of evidence required by law has been reached.⁵³

Nevertheless, the Court, in *Constantino v. Sandiganbayan*⁵⁴, made the following illuminating disquisition—

Although the instant case involves a criminal charge whereas *Constantino* involved an administrative charge, still the findings in the latter case are binding herein because the same set of facts are the subject of both

⁵² Id.

⁵³ See *Pahkiat v. Office of the Ombudsman-Mindanao*, G.R. No. 223972, 3 November 2020.

⁵⁴ 559 Phil. 622 (2007).

cases. What is decisive is that the issues already litigated in a final and executory judgment preclude — by the principle of bar by prior judgment, an aspect of the doctrine of *res judicata*, and even under the doctrine of "law of the case," — the re-litigation of the same issue in another action. It is well established that when a right or fact has been judicially tried and determined by a court of competent jurisdiction, so long as it remains unreversed, it should be conclusive upon the parties and those in privity with them. The dictum therein laid down became the law of the case and what was once irrevocably established as the controlling legal rule or decision continues to be binding between the same parties as long as the facts on which the decision was predicated continue to be the facts of the case before the court. Hence, the binding effect and enforceability of that dictum can no longer be resurrected anew since such issue had already been resolved and finally laid to rest, if not by the principle of *res judicata*, at least by conclusiveness of judgment.

It may be true that the basis of administrative liability differs from criminal liability as the purpose of administrative proceedings on the one hand is mainly to protect the public service, based on the time-honored principle that a public office is a public trust. On the other hand, the purpose of the criminal prosecution is the punishment of crime. However, the dismissal by the Court of the administrative case against Constantino based on the same subject matter and after examining the same crucial evidence operates to dismiss the criminal case because of the precise finding that the act from which liability is anchored does not exist.

It is likewise clear from the decision of the Court in *Constantino* that the level of proof required in administrative cases which is substantial evidence was not mustered therein. The same evidence is again before the Court in connection with the appeal in the criminal case. Ineluctably, the same evidence cannot with greater reason satisfy the higher standard in criminal cases such as the present case which is evidence beyond reasonable doubt.⁵⁵

By parity of reasoning, as petitioner was found guilty beyond reasonable doubt of the crime of Sexual Harassment punished under Republic Act No. 7877 in the criminal case, then all the more that he is guilty thereof in the present case, which is anchored on the same operative facts and evidence, since it requires merely substantial evidence. Substantial evidence is such relevant evidence as a reasonable mind may accept as adequate to support a conclusion that is satisfied when there is reasonable ground to believe that the respondent is guilty of the act complained of even if the evidence is not overwhelming.⁵⁶

In light of the foregoing, the Court holds that petitioner was properly adjudged liable for grave misconduct for committing the series of acts constituting sexual harassment against private respondent Gamallo. It is settled that misconduct, which is defined as a transgression of some

⁵⁵ Id. at 644-645.

⁵⁶ *Office of the Ombudsman v. Mendoza*, G.R. No. 219772, 17 July 2019.

established and definite rule of action, a forbidden act, a dereliction of duty, unlawful behavior, willful in character, improper or wrong behavior,⁵⁷ is considered grave where the requisites of corruption, clear intent to violate the law or flagrant disregard of established rule are present.⁵⁸

Evidently, petitioner, the Regional Director of NEDA 7, a lawyer, and a married man, willfully violated Republic Act No. 7877 and disregarded the established rule when he made the unwanted sexual advances to private respondent Gamallo. His years of service as head of the National Economic and Development Authority should have impelled him to set a good example to his subordinates instead of flagrantly and shamelessly violating the law and undermining the professionalism and integrity required from public servants. High standard of ethics and utmost responsibility in the public service must be promoted at all times.⁵⁹

With the foregoing discourse, the Court finds no reversible error in the Court of Appeals' affirmance of the imposition by the Office of the Ombudsman-Visayas on petitioner of the penalty of dismissal from government service. Suffice it to say that grave misconduct is punishable by dismissal even if committed for the first time.⁶⁰

WHEREFORE, the Petition for Review on *Certiorari* is hereby **DENIED**. The *Decision* dated 23 December 2014 and the *Resolution* dated 22 February 2016 of the Court of Appeals in CA-G.R. CEB-SP. No. 03304 are **AFFIRMED**.

SO ORDERED.


JAPAR B. DIMAAMPAO
Associate Justice

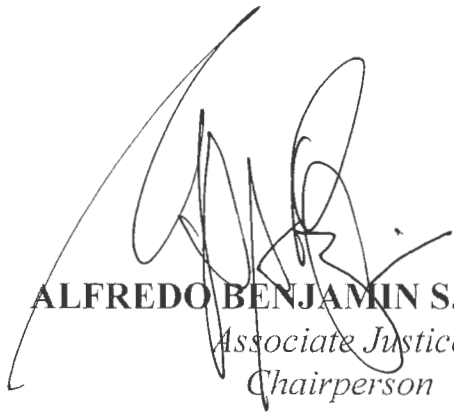
⁵⁷ See *First Great Ventures Loans, Inc. v. Mercado*, A.M. No. P-17-3773, 1 October 2019, 921 SCRA 145, 157-158.

⁵⁸ See *Re: Investigation Report on the Alleged Extortion Activities of Presiding Judge Godofredo B. Abul, Jr., Branch 4, Regional Trial Court, Butuan City, Agusan del Norte*, A.M. No. RTJ-17-2486 (formerly A.M. No. 17-02-45-RTC), 3 September 2019, 916 SCRA 634, 657.


⁵⁹ See *Presidential Broadcast Staff-Radio Television Malacañang v. Tabasa*, G.R. No. 234624, 26 February 2020.

⁶⁰ See *Saligumba v. Commission on Audit XIII*, G.R. No. 238643, 8 September 2020.

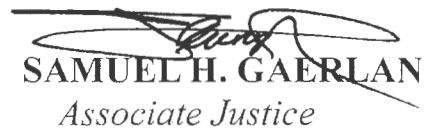
WE CONCUR:



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson



HENRI JEAN PAUL B. INTING
Associate Justice



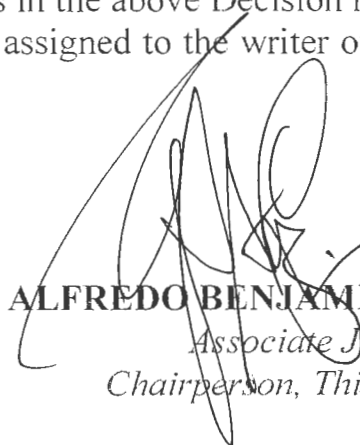
SAMUEL H. GAERLAN
Associate Justice



MARIA FILOMENA D. SINGH
Associate Justice

ATTESTATION

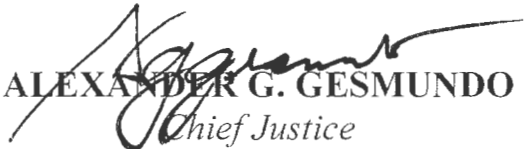
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of this Court.



ALEXANDER G. GESMUNDO
Chief Justice