

THIRD DIVISION

G.R. No. 175433, March 11, 2015

ATTY. JACINTO C. GONZALES, *Petitioner*, v. **MAILA CLEMEN F. SERRANO**, *Respondent*.

D E C I S I O N

PERALTA, J.:

Before the Court is a Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court filed by Atty. Jacinto C. Gonzales,² assailing the Decision³ of the Court of Appeals (CA), dated August 16, 2006, and its Resolution⁴ dated October 4, 2006, in CA G.R. SP No. 76959. The CA reversed and set aside the Memorandum-Order dated January 3, 2003 and the Order dated February 11, 2003 approved by then Overall Deputy Ombudsman Margarito P. Gervacio Jr. in OMB-ADM-0-01-0162, and reinstated the Decision dated March 19, 2002 of the Ombudsman Administrative Adjudication Bureau approved by then Ombudsman Aniano A. Desierto in OMB-ADM-01-0162 (RAS-2001-0156).

The factual and procedural antecedents are as follows:

This case arose from an administrative complaint filed by Atty. Maila Clemen F. Serrano (*respondent*) against her direct superior, Atty. Jacinto C. Gonzales (*petitioner*), Chief, Legal Division of the Philippine Racing Commission (PHILRACOM), for grave misconduct, sexual harassment and acts of lasciviousness.

In her Complaint-Affidavit⁵ dated January 12, 2001, respondent alleged that on November 23, 2000, petitioner invited her, along with her officemates, Administrative Officer V Eva Bataller, Atty. III Eugene Juanson, and Stenographer II Roman Vidal, to eat lunch at Buddy's Restaurant, at J.P. Rizal St., Makati City. While seated at the table waiting for their food to be served, petitioner suddenly took hold of respondent's face and forcefully kissed her lips in the presence of Eva, Eugene, Roman and other customers. Respondent tried to ward off petitioner by pulling her head away from him, but he persisted on kissing her against her will. She was so shocked, terrified, and humiliated that she could hardly talk and move. She wanted to cry, but held her tears for fear of further embarrassment. After releasing her, petitioner said: "*Ang sarap pala ng labi ni Maila...*" Then, he held her hand and said "*Maila sige na...*" But, she took away her hand from him. Thereafter, she immediately reported the incident to PHILRACOM Executive Director Juan Lozano.

Respondent also alleged that prior to that "kissing" incident, petitioner had already degraded her person on four (4) separate occasions, namely: (1) on the very first day she met him in the office, he offered to purchase her a cell phone so that he can text her, which offer she straightforwardly refused; (2) on that same day, he wanted her to join him in his car in going home, which she likewise refused; (3) a week later, he asked her to eat out for lunch; again, she refused; and (4) on August 23, 2000, after her sick leave from office, petitioner called her in his office and scolded her and uttered the following unsavory remarks:

Eh ayoko na sa iyo. Hindi mo sinabi sa akin na may anak ka! Nasaan na ang tatay ng anak mo? Wala na? Ano pang hindi mo sinasabi sa akin, may boyfriend ka? Akala ko pa naman ok ka, kaya nga sinabihan kita dati na sumabay ka sa akin! Ang daming nagrereklamo sa iyo dito. Hindi ka marunong makisama. Makisama ka naman! Paano na kung alisin ka dito, makakabalik ka pa ba sa dati mong opisina? Eh ayoko talaga sa iyo dito. Ano? Do you have a choice? Alam mo ba na ako ang nagrekomenda kay Eva diyan sa Admin. kay Chairman. Kaya ka nakapasok dito dahil pakiusap ka lang [ni] Eva sa akin. Alam mo bang nakasalalay dito and posisyon mo dito? Alam mo bang kung ano mo ako dito? Ha? Ano mo ako dito? xxx Ano ngayon ang gagawin natin eh ayoko nga sa iyo? Anong gagawin natin ngayon?

Respondent further alleged that she was constrained to elevate her complaint before the Office of the Ombudsman because the PHILRACOM Grievance Committee had not taken any concrete action on her administrative case which had been pending for over a month, and also because of petitioner's relatively high position in the office.

To support her complaint-affidavit and to corroborate her account, respondent submitted the Joint Affidavit⁶ of her officemates Eva, Eugene and Roman, who witnessed the entire "kissing" incident on November 23, 2000.

In his Counter-Affidavit/Answer dated March 22, 2001, petitioner alleged that at the prodding of his staff, he agreed to treat them for lunch, as it was respondent's birthday, and she had no money for a "blowout".⁷ While their group were talking in the restaurant, he greeted respondent and planted an innocent birthday greeting kiss on her left cheek, near her lips. He also alleged that he first met respondent when she applied for Attorney III; that on July 1, 2000, he summoned her to explain the complaints forwarded by the Personnel and Administrative Division as to her frequent absence and tardiness; and that his act of reviewing her official functions was in accordance with his duties and responsibilities as a legal counsel of PHILRACOM.

In her Reply-Affidavit,⁸ respondent stated that she never solicited any favor from petitioner, let alone obliged him to spend money for her birthday "blowout"; that his birthday lunch treat was part of a premeditated evil plan to have her submit to his sexual desire; that she never allowed him to kiss her on the cheek, much less on the lips; that in the course of her employment with petitioner as her supervisor, he had often made sexual advances and gestures towards her, but she still tried to keep their relationship on a strictly professional level; that the alleged work-related incidents of tardiness, inefficiency and laziness were all intended to harass her; and that because of the administrative case she filed against him, she lost her job.

Meanwhile, records show that in an Order of Termination dated January 18, 2001, Executive Director Lozano ordered the termination of respondent at the close of business hours of January 19, 2001.⁹ Records also show that the Commission on Human Rights issued a Resolution dated May 8, 2001 in CHR Case No. 2001-037 which found petitioner to have committed acts of sexual harassment, abuse of authority, and illegal dismissal against respondent.¹⁰

In an Order dated June 27, 2001, the parties were directed to appear for the

preliminary conference of the administrative case. Both parties appeared as directed and agreed to submit the case for decision based on the evidence on record and pleadings filed.

A Resolution dated July 17, 2001 was approved by then Overall Deputy Ombudsman Margarito P. Gervacio, Jr. (*Overall Deputy Ombudsman*) in OMB-0-01-0039, the dispositive portion of which reads:

WHEREFORE, premises considered, this Office finds sufficient evidence that supports the conclusion that the crime of violation of Section 3(a), Republic Act No. 7877, otherwise known as "An Act Declaring Sexual Harassment Unlawful in the Employment, Education, or Training Environment, and for other purposes," was committed probably by the herein respondent. Let therefore, the appropriate information be filed against Jacinto C. Gonzales before the Metropolitan Trial Court of Makati City.

SO RESOLVED.¹¹

On March 19, 2002, the Office of the Ombudsman Administrative Adjudication Bureau, through Graft Investigation Officer Marlon T. Molina, issued a Decision finding petitioner guilty of grave misconduct. Approved by Ombudsman Aniano A. Desierto, among other officers, the Decision has the following dispositive portion:

FOREGOING PREMISES CONSIDERED, this Office finds substantial evidence that respondent JACINTO G. GONZALES is guilty of Grave Misconduct.

Accordingly, the penalty of DISMISSAL from the service is hereby imposed upon him pursuant to Section 52 (A), par. 3, Rule IV of Resolution No. 991936 otherwise known as the Uniform Rules on Administrative Cases in the Civil Service.

The Honorable Chairman of the Philippine Racing Commission, Electra House Building, Esteban Street, Legaspi Village, Makati City is hereby directed to implement this Decision in accordance with law and promptly report to this Office compliance thereof.

SO ORDERED.¹²

Petitioner moved for reconsideration which the Ombudsman Administrative Adjudication Bureau denied in the Order dated September 9, 2002.¹³

However, on January 3, 2003, the Overall Deputy Ombudsman approved the Memorandum issued by Graft Investigation Officer II Julita M. Calderon, with a decretal portion that states:

WHEREFORE, foregoing premises considered, we most respectfully recommend that the herein **ORDER** dated September 9, 2002 prepared by GIO Molina be **MODIFIED** insofar as the infraction and the penalty to be imposed upon the herein respondent is concerned, i.e., from **GRAVE MISCONDUCT** to **SIMPLE MISCONDUCT** and from **DISMISSAL** from the Service to a mere **ONE (1) MONTH SUSPENSION**, without pay, pursuant to Section 52B (2) of Rule IV of the "Uniform Rules on Administrative Cases in the Civil Service."¹⁴

Aggrieved, respondent brought the case to the CA *via* a Petition for *Certiorari* under Rule 65 of the Rules of Court, attributing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Overall Deputy Ombudsman. On August 16, 2006, the CA sustained respondent and rendered the herein assailed decision. Thus:

WHEREFORE, premises considered, the instant Petition is GRANTED. The memorandum-order dated 03 January 2003 and the Order dated 11 February 2003 approved by then Overall Deputy Ombudsman Margarito P. Gervacio, Jr. in OMB-ADM-0-01-0162 are REVERSED and SET ASIDE. The Decision dated 19 March 2002 approved by then Ombudsman Aniano A. Desierto in OMB-ADM-0-01-0162 (RAS-2001-0156) is hereby REINSTATED. Costs against private respondent.

SO ORDERED.¹⁵

Thereafter, petitioner filed an Urgent Motion for Extension of Time to File Motion for Reconsideration,¹⁶ but the CA denied it in a Resolution¹⁷ dated October 4, 2006 for being a prohibited motion.

Hence, petitioner filed the instant Petition for Review.

Petitioner raises the following issues:

THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERROR IN SETTING ASIDE THE MEMORANDUM-ORDER DATED 03 JANUARY 2003 AND THE ORDER DATED 11 FEBRUARY 2003 APPROVED BY THE THEN OVERALL DEPUTY OMBUDSMAN MARGARITO P. GERVACIO, JR. IN OMB-ADM-0-01-0162, IT APPEARING THAT THE DEPUTY OMBUDSMAN, IN FINDING THAT THERE WAS ONLY SIMPLE MISCONDUCT, HAS NOT BEEN SHOWN TO HAVE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK, OR IN EXCESS OF DISCRETION [sic], UPON WHICH THE INSTANT PETITION IS BASED, IN GROSS CONTRAVENTION OF THE RULES AND ESTABLISHED JURISPRUDENCE ON THE MATTER.

THE HONORABLE COURT OF APPEALS LIKewise GROSSLY ERRED IN DENYING PETITIONER'S URGENT MOTION FOR RECONSIDERATION, THE GROUNDS INVOKED THEREIN NOT BEING APPLICABLE TO THE CASE AT BAR AND MOREOVER, THE DENIAL THEREOF HAS SACRIF[I]CED THE BASIC PRINCIPLES OF JUSTICE AND FAIR PLAY TO TECHNICALITIES OF PROCEDURE.¹⁸

On the first issue, petitioner asserts that it is only in an appealed case, not in a petition for certiorari under Rule 65, that the CA has authority to substitute its own findings and conclusions with that of the disciplining authority. He points out that what is claimed as "grave abuse of discretion" on the part of the Overall Deputy Ombudsman was his alleged erroneous approval of the Memorandum-Order dated January 3, 2003 which modified the infraction and the penalty from grave misconduct to simple misconduct, and from dismissal to a mere one (1) month suspension without pay. But, he argues that such was merely an error in the exercise of judgment or discretion which is not correctible by a writ of certiorari. He also argues that the mere fact that the Overall Deputy Ombudsman made findings and conclusions contrary to or inconsistent with

those of the Ombudsman Administrative Adjudication Bureau cannot, by itself, be considered grave abuse of discretion, as the findings of the disciplining authority is always subject to amendment, corrections or reconsideration. He concedes that the Overall Deputy Ombudsman found him to have committed misconduct amounting to sexual harassment. However, he points out that such finding of simple misconduct, instead of grave misconduct, is supported by facts and circumstances, and such finding is within sole discretion of the Overall Deputy Ombudsman over which the courts have no authority to interfere. At any rate, he submits that his misconduct was not motivated by a premeditated, obstinate or intentional purpose; hence, the extreme penalty of dismissal is not warranted. Finally, he maintains that the issue of sexual harassment is better addressed and resolved in the criminal case for violation of Section 3(a) of R.A. No. 7877¹⁹ (docketed as Crim. Case No. 311165) pending before the Metropolitan Trial Court of Makati, Branch 64, for to do so in an administrative proceedings would be unfair, unjust and extremely unreasonable.

On the second issue, petitioner contends that the CA grossly erred in applying the two prohibitions laid down in *Habaluyas Enterprises, Inc. et al. v. Court of Appeals*,²⁰ which was reiterated in *Ma. Imelda Argel, et al. v. Court of Appeals, et al.*,²¹ i.e., the doctrine that the 15-day period for filing an appeal is non-extendible, and the prohibition against the filing of a motion for extension of time to file a motion for reconsideration in all courts, except the Supreme Court. He insists that the denial of such motion for extension should be based on the court's assessment of the grounds relied upon and not on purely procedural technicality. He seeks to justify his urgent motion for extension on the fact that, as Presiding Judge and Pairing Judge of the Metropolitan Trial Court of Olongapo City, he was beset with pressures of work attending to numerous court trials, preparation of court orders and decisions, and large volume of case load. He prays for a liberal construction of procedural rules in order to assist the parties in obtaining a just, speedy and inexpensive determination of every action or proceeding.

There is no merit in the petition

The Court shall first delve on the procedural issue of the case. In *Imperial v. Court of Appeals*,²² the Court ruled:

In a long line of cases starting with *Habaluyas Enterprises v. Japzon*, we have laid down the following guideline:

Beginning one month after the promulgation of this Resolution, the rule shall be strictly enforced that no motion for extension of time to file a motion for new trial or reconsideration may be filed with the Metropolitan or Municipal Trial Courts, the Regional Trial Courts, and the Intermediate Appellate Court. Such a motion may be filed only in cases pending with the Supreme Court as the court of last resort, which may in its sound discretion either grant or deny the extension requested.

Thus, the general rule is that no motion for extension of time to file a motion for reconsideration is allowed. This rule is consistent with the rule in the 2002 Internal Rules of the Court of Appeals that unless an appeal or a motion for reconsideration or new trial is filed within the 15-day reglementary period, the CA's decision becomes final. Thus, a motion for extension of time to file a motion for reconsideration does not stop the running of the 15-day period for the computation of a decision's finality. At the

end of the period, a CA judgment becomes final, immutable and beyond our power to review.²³

This rule, however, admits of exceptions based on a liberal reading of the rule,²⁴ so long as the petitioner is able to prove the existence of cogent reasons to excuse its non-observance.²⁵ No such reasons were shown to obtain in this case. Petitioner's reasons of pressures of work attending to numerous court trials, preparation of court orders and decisions, and large volume of case load, are foreseeable and perennial problems of most trial court judges. Such reasons are inexcusable, as ordinary prudence should have prompted him to secure the services of an independent counsel to defend his administrative case.

While the CA was correct in denying his Urgent Motion for Extension to File Motion for Reconsideration for being a prohibited motion, the Court, in the interest of justice, looked into the merits of the case, and opted to suspend the prohibition against such motion for extension after it found that a modification of the CA Decision is warranted by the law and the jurisprudence on administrative cases involving sexual harassment. The emerging trend of jurisprudence, after all, is more inclined to the liberal and flexible application of procedural rules.²⁶ Rules of procedure exist to ensure the orderly, just and speedy dispensation of cases; to this end, inflexibility or liberality must be weighed. Thus, the relaxation or suspension of procedural rules, or exemption of a case from their operation is warranted only by compelling reasons or when the purpose of justice requires it.²⁷

The Court shall now delve on the substantive issue of whether the CA gravely erred in reversing the Memorandum-Order of the Overall Deputy Ombudsman which downgraded petitioner's infraction from grave misconduct to simple misconduct, and the penalty imposed on him from dismissal to a mere one (1) month suspension without pay.

In *Office of the Ombudsman v. Amalio A. Mallari*,²⁸ the Court explained the difference between simple and grave misconduct, as follows:

Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. The misconduct is considered as grave if it involves additional elements such as corruption or willful intent to violate the law or to disregard established rules, which must be proven by substantial evidence; otherwise, the misconduct is only simple. Corruption, as an element of grave misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others. In other words, in grave misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of an established rule must be evident.

In this case, the Court finds the element of corruption present. As correctly pointed out by the CA, petitioner used his position and authority as Head of the Legal Division of PHILRACOM, as well as his moral ascendancy, to elicit sexual favors and to indulge in sexually malicious acts from his respondent, his female subordinate.²⁹ As to petitioner's sole defense that he merely gave respondent an innocent birthday greeting kiss, the

Court is unconvinced in view of the Joint Affidavit of their officemates attesting that he forcibly kissed her on the lips and said: "*Ang sarap pala ng labi ni Maila. x x x*"

In *Narvasa v. Sanchez, Jr.*,³⁰ the Court found the respondent public officer, who merely attempted to forcibly kiss the complainant, guilty of grave misconduct through sexual harassment, thus:

Respondent's acts of grabbing petitioner and attempting to kiss her were, no doubt, intentional. Worse, the incident occurred months after he had made similar but subtler overtures to [complainant] De la Cruz, who made it clear that his sexual advances were not welcome. Considering that the acts respondent committed against petitioner were much more aggressive, it was impossible that the offensive nature of his actions could have escaped him. It does not appear that petitioner and respondent were carrying on an amorous relationship that might have justified his attempt to kiss petitioner while they were separated from their companions. Worse, as petitioner and respondent were both married (to other persons), respondent not only took his marital status lightly, he also ignored petitioner's married state, and good character and reputation.

We disagree with the CA that neither corruption, clear intent to violate the law or flagrant disregard of an established rule attended the incident in question.

RA 7877, the Anti-Sexual Harassment Act of 1995, took effect on March 5, 1995. Respondent was charged with knowledge of the existence of this law and its contents, more so because he was a public servant. **His act of grabbing petitioner and attempting to kiss her without her consent was an unmistakable manifestation of his intention to violate laws that specifically prohibited sexual harassment in the work environment. Assuming *arguendo* that respondent never intended to violate RA 7877, his attempt to kiss petitioner was a flagrant disregard of a customary rule that had existed since time immemorial – that intimate physical contact between individuals must be consensual.** Respondent's defiance of custom and lack of respect for the opposite sex were more appalling because he was a married man. Respondent's act showed a low regard for women and disrespect for petitioner's honor and dignity.³¹ (Emphasis added)

However, it bears emphasis that in *Narvasa v. Sanchez, Jr.*,³² the Court ordered the respondent public officer's dismissal from service with forfeiture of retirement benefits and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned and controlled corporations, because it was the third time that he was penalized for acts of sexual harassment. In determining such penalty, moreover, the Court considered the length of his service as an aggravating circumstance.

Apropos to this case is *Civil Service Commission v. Nierras*³³ where the Court upheld the CA's decision finding the respondent public officer guilty of grave misconduct through sexual harassment with a reduced sentence of six (6) months suspension without pay, thus:

Petitioner alleged that the Court of Appeals erred in applying the case of *Veloso v. Caminade* in imposing the proper penalty on Nierras since the facts of the case are different. Indeed, it should be noted that in the instant case, Oña and Nierras are not co-employees while in the *Caminade* case, the complainants were the subordinates of

the offender. Also, in the *Caminade* case, there were several incidents of sexual harassment by a judge from whom the expected standard of morality was more exacting. But here, there was only one incident of sexual harassment. If a six-month suspension can be meted to a judge from whom the expected standard of morality is more exacting, a *fortiori*, the same or lesser penalty should be meted to Nierras. Moreover, in the *Caminade* case, the offender actually forcefully kissed and grabbed the complainants. However, in this case, Oña was able to flee from the arms of Nierras even before he could cause more harm to her. Under the circumstances of the present case, we agree with the Court of Appeals that suspension of the offender for a period of six (6) months without pay is sufficient penalty.³⁴

Guided by the foregoing jurisprudence, the Court agrees with the CA that petitioner should be held liable for grave misconduct, but holds that a reduction of the penalty from dismissal from service to a mere suspension of six (6) months without pay, is in order. Like in *Veloso v. Caminade*,³⁵ there is only one incident of sexual harassment in this case where petitioner forcibly kissed respondent who was his subordinate. If a six (6)-month suspension can be meted to a judge from whom the expected standard of morality is more exacting, it is logical that a similar penalty should be meted to petitioner.

Moreover, the Court's reduced penalty of six (6)-months suspension without pay is in conformity with Civil Service Commission Resolution (CSC) No. 01-0940 entitled the Administrative Disciplinary Rules on Sexual Harassment Cases. Section 53, Rule X thereof classifies acts of sexual harassment as grave, less grave and light offenses, while Sections 55 and 56, Rule XI provides the corresponding penalties therefor, *to wit*:

"RULE X

CLASSIFICATION OF ACTS OF SEXUAL HARASSMENT

Section 53. *Sexual harassment is classified as grave, less grave and light offenses.*

A. Grave Offenses shall include, but are not limited to:

1. unwanted touching of private parts of the body (genitalia, buttocks and breast);
2. sexual assault;
3. malicious touching;
4. requesting for sexual favor in exchange for employment, promotion, local or foreign travels, favorable working conditions or assignments, a passing grade, the granting of honors or scholarship, or the grant of benefits or payment of a stipend or allowance, and
5. other analogous cases.

B. **Less Grave Offenses shall include, but are not limited to:**

1. **unwanted touching or brushing against a victim's body;**
2. pinching not falling under grave offenses;
3. **derogatory or degrading remarks or innuendoes directed toward the members of one sex,** or one's sexual orientation or used to describe a person;
4. verbal abuse with sexual overtones; and
5. other analogous cases.

C. The following shall be considered Light Offenses;

1. surreptitiously looking or staring a look of a person's private part or worn undergarments;
2. telling sexist/smatty jokes or sending these through text, electronic mail or other similar means, causing embarrassment or offense and carried out after the offender has been advised that they are offensive or embarrassing or, even without such advise, when they are by their nature clearly embarrassing, offensive or vulgar;
3. malicious leering or ogling;
4. the display of sexually offensive pictures, materials or graffiti;
5. unwelcome inquiries or comments about a person's sex life;
6. unwelcome sexual flirtation, advances, propositions;
7. making offensive hand or body gestures at an employee;
8. persistent unwanted attention with sexual overtones;
9. unwelcome phone calls with sexual overtones causing discomfort, embarrassment, offense or insult to the receiver; and
10. other analogous cases.

RULE XI
ADMINISTRATIVE LIABILITIES

xxx xxx xxx

Section 55. Any person who is found guilty of sexual harassment shall, after the investigation, be meted the penalty corresponding to the gravity and seriousness of the offense.

Section 56. The penalties for light, less grave, and grave offenses are as follows:

A. For light offenses:

1st offense – Reprimand 2nd offense – Fine or suspension not exceeding thirty (30) days 3rd offense – Dismissal

B. For less grave offenses:

1st offense – Fine or suspension of not less than thirty (30) days and not exceeding six (6) months 2nd offense – Dismissal

C. For grave offenses: Dismissal" (Emphasis added)

Applying the foregoing provisions, the Court finds that the sexual harassment offense petitioner committed falls under **less grave offenses** which is analogous to "unwanted touching or brushing against a victim's body", and to "derogatory or degrading remarks or innuendoes directed toward the members of one sex", with the corresponding maximum penalty of six (6) months suspension without pay.³⁶

Section 53 of CSC Resolution No. 99-1936, or the Uniform Rules on Administrative Cases in the Civil Service (*URACCS*),³⁷ states that in the determination of the penalties to be imposed, mitigating, aggravating and alternative circumstances attendant to the commission of the offense shall be considered. The following circumstances shall be appreciated:

- a. Physical Illness
- b. Good faith

- c. Taking undue advantage of official position
- d. Taking undue advantage of subordinate
- e. Undue disclosure of confidential information
- f. Use of government property in the commission of the offense
- g. Habituality
- h. Offense is committed during office hours and within the premises of the office or building;
- i. Employment of fraudulent means to commit or conceal the offense
- j. Length of service in the government
- k. Education
- l. Other analogous circumstances.

Nevertheless, in the appreciation thereof, the same must be invoked or pleaded by the proper party, otherwise, said circumstances shall not be considered in the imposition of proper penalty. The Commission, however, in the interest of substantial justice may take and consider these circumstances.

The Court notes that the Deputy Overall Ombudsman was correct in appreciating the following mitigating circumstances in determining the imposable penalty, to wit: (1) petitioner's weak physical condition and (2) commission of the offense in a public place and in the presence of their office mates. However, the said Ombudsman gravely erred in failing to consider the following aggravating circumstances: (1) taking undue advantage of official position; (2) taking undue advantage of subordinate; and (3) education. As the Head of the Legal Department of PHILRACOM and the direct superior of respondent, petitioner's act of forcibly kissing her lips and saying "*Ang sarap pala ng labi ni Maila x x x*" in front of their office mates, smacks of bad faith, abuse of official position, flagrant disregard of the anti-sexual harassment law,³⁸ and willful violation of the Code of Professional Responsibility.³⁹ Under Section 54 (d) of the URACCS,⁴⁰ where more aggravating circumstances are present than mitigating ones, the maximum penalty shall be imposed. Hence, the Court imposes the penalty of suspension of six (6) months without pay.

Given that the Ombudsman is vested with plenary and unqualified power⁴¹ to investigate any malfeasance, misfeasance and non-feasance by a public officer or employee of the government, or any subdivision, agency or instrumentality thereof,⁴² the settled rule is that courts will not ordinarily interfere with the Ombudsman's exercise of its investigatory and prosecutory powers without good and compelling reason to indicate otherwise.⁴³ As discussed above, the Court finds such good and compelling reasons based on law and jurisprudence as would warrant the modification of the CA decision, as well as the Memorandum-Order of Overall Deputy Office of the Ombudsman.

Meanwhile, the Court disagrees on petitioner's contention that the issue of sexual harassment is better addressed in the pending criminal case for sexual harassment before the Metropolitan Trial Court of Makati, for to do so in an administrative proceedings would be unfair, unjust and extremely unreasonable. It bears to stress that administrative and criminal charges filed before the Office of the Ombudsman and the trial court, respectively, are separate and distinct from each other even if they arise from the same act or omission. This is because the quantum of proof required in

criminal cases is proof beyond reasonable doubt, while in administrative cases, only substantial evidence is required. Moreover, the purpose of the administrative proceedings 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.⁴⁴ Thus, even the dismissal of a criminal case does not necessarily foreclose the administrative action against the respondent.⁴⁵

Finally, considering that the Court is reducing the penalty imposed on him from dismissal from service to a mere 6-month suspension without pay, and that he is no longer connected with PHILRACOM, petitioner should refund the salaries and all other monetary benefits he had received equivalent to six (6) months with legal interest of six percent (6%) per annum (p.a.) from finality of this Decision until fully paid.⁴⁶ His earned leave credits for the duration of such suspension are likewise deemed forfeited.⁴⁷ The Court stresses that his appointment⁴⁸ as a trial court judge should not be viewed as a sort of exoneration from such suspension that he should have served while he was then PHILRACOM's Legal Department Head. Thus, in addition to the refund of salaries and benefits, and forfeiture of earned leave credits during such suspension, the Court sternly warns petitioner not to commit similar acts, otherwise, his conduct may be construed as tainted with impropriety which shall merit the penalty of dismissal from the service.

Moreover, in view of Section 5, Rule 4 of the Rules of the Judicial and Bar Council which disqualifies from being nominated for appointment to any judicial post those with pending criminal or regular administrative cases, the Court finds it necessary to investigate whether petitioner declared in his application for appointment his pending administrative case for grave misconduct and criminal cases for sexual harassment.

WHEREFORE, the petition is **DENIED**. The Decision of the Court of Appeals, dated August 16, 2006, and its Resolution dated October 4, 2006, in CA G.R. SP No. 76959, is **AFFIRMED** with **MODIFICATION**, reducing the penalty for grave misconduct through sexual harassment from dismissal from service to suspension of six (6) months without pay, and with a stern warning that a repetition of the same offense shall be punished with dismissal from the service. Considering, however, that petitioner Atty. Jacinto C. Gonzales is no longer connected with Philippine Racing Commission, he is **ORDERED** to **REFUND** the salaries and other monetary benefits he could have received during the period of such suspension with legal interest of six percent (6%) per annum from the finality of this Decision until fully paid. Further, his earned leave credits during such period of suspension are also deemed **FORFEITED**.

Let a copy of this Decision be furnished the Office of the Court Administrator (OCA) to form part of petitioner's service record. The OCA is hereby **DIRECTED** to investigate, report and recommend the necessary action on whether petitioner declared in his application for appointment his pending administrative and criminal cases.

SO ORDERED.

Velasco, Jr., (Chairperson), Brion, Peralta, Reyes, and Jardeleza, JJ., concur.*

Endnotes:

* Designated Acting Member, in lieu of Associate Justice Martin S. Villarama, Jr., per Raffle dated March 5, 2015.

¹*Rollo*, pp. 10-31.

² Appointed on August 23, 2005 as Presiding Judge of the Municipal Trial Court in Cities of Olongapo City, Branch 2, per Master List of Incumbent Judges as of January 20, 2015; <http://jbc.judiciary.gov.ph/index/judiciary-book/lower-court/municipal-trial-courts-in-cities>; accessed on February 26, 2015 at 9:20 a.m.

³ Penned by Associate Justice Celia C. Librea-Leagogo, with Associate Justices, now Supreme Court Associate Justices, Lucas P. Bersamin and Martin S. Villarama Jr., concurring; *rollo*, pp. 33-59.

⁴*Rollo*, pp. 62-63.

⁵ *CA rollo*, pp. 41-45.

⁶ *Id.* at 46-47.

⁷*Rollo*, pp. 41-42.

⁸ *CA rollo*, pp. 48-52.

⁹*Id.* at 53.

¹⁰*Id.* at 54-58.

¹¹ *Id.* at 81.

¹²*Rollo*, pp. 83-84.

¹³*Id.* at 46.

¹⁴ *Id.* at 87-88.

¹⁵*Id.* at 58.

¹⁶*Id.* at 110-111.

¹⁷*Id.* at 62-63.

¹⁸*Rollo*, p. 18. (Citation omitted)

¹⁹ *An Act Declaring Sexual Harassment Unlawful in the Employment, Education or Training Environment, and for other purposes.*

²⁰ 226 Phil. 144 (1986).

²¹ 374 Phil. 867 (1999).

²² *Alberto Imperial v. Hon. Court of Appeals and the Republic of the Philippines*, 606 Phil. 391 (2009). (Citations omitted)

²³ *Id.* at 396-397.

²⁴ *Id.* at 397.

²⁵ *V.C. Ponce, Company, Inc. v. Municipality of Parañaque and Sampaguita Hills Homeowner's Association, Inc.*, G.R. No. 178431, November 12, 2012, 685 SCRA 117, 130.

²⁶ *Hon. Orlando C. Casimiro, in his capacity as Acting Ombudsman; Hon. Rogelio L. Singson, in his capacity as Department of Public Works and Highways Secretary v. Josefino N. Rigor*, G.R. No. 206661, December 10, 2014.

²⁷ *Id.*

²⁸ G.R. No. 183161, December 3, 2014.

²⁹ *Rollo*, pp. 53-54.

³⁰ 630 Phil. 577 (2010).

³¹ *Narvasa v. Sanchez, Jr., supra*, at 582.

³² *Supra* note 30.

³³ 569 Phil. 37 (2008).

³⁴ *Civil Service Commission v. Nierras, supra*, at 43.

³⁵ 478 Phil. 1 (2004).

³⁶ Section 56 of the URACCS states that during the period of suspension, respondent shall not be entitled to all money benefits including leave credits. Now Section 51 (c) of the Revised Rules on Administrative Cases in the Civil Service (RRACCS).

³⁷ Now Section 48 of the RRACCS.

³⁸ R.A. No. 7877.

³⁹ Canon 7, Rule 7.03 – A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he, whether in public or private life, behave in scandalous manner to the discredit of the legal profession.

⁴⁰ Now Section 49 (d) of the RRACCS.

⁴¹ *Bureau of Internal Revenue v. Office of the Ombudsman*, 430 Phil. 223, 232 (2002).

⁴²*Laurel v. Desierto*, 430 Phil. 658, 671 (2002).

⁴³*Esquivel v. Ombudsman*, 437 Phil. 702, 711 (2002).

⁴⁴*Caña v. Gebusion*, 385 Phil. 773 (2000).

⁴⁵*Barillo v. Gervacio*, 532 Phil. 267, 279 (2006).

⁴⁶*Nacar v. Gallery Frames*, G.R. No. 189871, August 13, 2013, 703 SCRA 439, 459.

⁴⁷ Section 56 (d) of the URACCS; Now Section 51 (c) of the RRACCS.

⁴⁸ See note 2; Appointed August 23, 2005.