

JOCELYN C. TALENS-DABON, COMPLAINANT, VS. JUDGE HERMIN E. ARCEO, REGIONAL TRIAL COURT, BRANCH 43, SAN FERNANDO, PAMPANGA, RESPONDENT.

A.M. No. RTJ-96-1336. June 02, 2020

Ponente: PERLAS-BERNABE, J.

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PERLAS-BERNABE, J.:

For the Court's resolution is the Petition for Payment of Retirement Benefits[1] filed by respondent Judge Hermin E. Arceo (Arceo), former Presiding Judge of the Regional Trial Court of San Fernando, Pampanga, Branch 43, seeking to claim the retirement benefits for his services rendered in the Judiciary.

In 1996, Arceo was dismissed from the service after being found to have committed lewd and lustful acts against complainant Atty. Jocelyn C. Talens-Dabon (complainant). The dispositive portion of the Decision[2] dated July 25, 1996 reads:

WHEREFORE, Judge Hermin E. Arceo is hereby DISMISSED from the service for gross misconduct and immorality prejudicial to the best [interest] of the service, with forfeiture of all retirement benefits and with prejudice to re-employment in any branch of the government, including government-owned and controlled corporations.

SO ORDERED.[3]

Arceo filed a Petition for Judicial Clemency[4] in 2012 seeking to lift the ban against his re-employment in the government service and to be allowed to receive his accrued leave credits. The Court granted the petition in a Resolution[5] dated November 20, 2012 (2012 Resolution) pursuant to the guidelines[6] for resolving requests for judicial clemency. It added that based on paragraph 1, Section 11, Rule 140 of the Rules of Court, accrued leave credits are exempt from the forfeiture of benefits.[7]

In 2018, Arceo filed the instant petition requesting the release of his retirement benefits for humanitarian consideration. He stated that he is in dire need of funds for his medical expenses and other basic necessities of life, considering that he had already reached the age of 77.[8] In claiming benefits, he cited Section 3 of Republic Act No. (RA) 6683,[9] the last portion of which reads: "any appointive official or employee who has previously been found guilty in an administrative proceeding and whose rank or salary has been reduced shall be paid on the basis of his last salary."

The Court notes that Arceo is not qualified to claim the benefits under Section 3 of RA 6683 because he was not administratively sanctioned with a mere reduction of his salary or rank but was, in fact, dismissed from the service.[10]

Notably, RA 6683 applies only in cases of early retirement, voluntary separation, and involuntary separation due to government reorganization. In particular, Section 11 thereof states that the law applies to "[o]fficials and employees who were previously separated from the government service not for cause but as a result of the

reorganization[.]” As correctly pointed out by the Office of the Chief Attorney in its Report[11] dated March 14, 2019 (OCA Report), Arceo was separated for cause, having been dismissed from the service due to gross misconduct and immorality prejudicial to the best interest of service.[12] Hence, RA 6683 finds no application in Arceo's case as to justify the release of his retirement benefits. The petition may be dismissed on this ground alone.

The Court nevertheless proceeds to examine whether it should release Arceo's retirement benefits pursuant to its power to grant clemency.

Judicial clemency is an act of mercy removing any disqualification from the erring judge.[13] Its grant rests on the sound discretion of the Court.[14] In the 2012 Resolution, Arceo was granted judicial clemency after sufficiently showing his remorse and reformation after his dismissal from the service,[15] but the clemency extended to him back then was limited only to the lifting of his disqualification from re-employment in any branch of the government[16] because he then did not pray for the release of his retirement benefits. He now comes before the Court asking for such release of benefits.

Forfeiture of retirement benefits is one of the sanctions that may be imposed on judges who are found guilty of a serious charge. Pursuant to Section 11, Rule 140 of the Rules of Court, the Court may forfeit a judge's retirement benefits in whole or in part, depending on the circumstances of each case. The provision reads:

Section 11. Sanctions. — A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed:

1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. Provided, however,

That the forfeiture of benefits shall in 110 case include accrued leave credits;

x x x x (Underscoring supplied)

This sanction for a serious administrative charge is consistent with the accessory penalty provided under Section 57[17] of the 2017 Rules on Administrative Cases in the Civil Service (2017 RACCS),[18] to wit: "[t]he penalty of dismissal shall carry with it cancellation of eligibility, perpetual disqualification from holding public office, bar from taking civil service examinations, and forfeiture of retirement benefits."

To recall, Arceo was found administratively liable in 1996 for committing lewd and lustful acts, the last and most severe of which was summarized by the investigating justice as follows:

Although outraged [by respondent's poem], complainant respectfully asked permission to leave while putting the poem in the pocket of her blazer. She then proceeded towards the outer room where she was surprised to find the door closed and the chair holding it open now barricaded it. The knob's button was now in a vertical position signifying that door was locked.

Complainant was removing the chair when respondent walked to her in big strides asking her for a kiss. Seconds later[,] he was embracing her and trying to kiss her. Complainant evaded and struggled and pushed respondent away. Then panicking, she ran in the direction of the filing cabinets. Respondent caught up with her, embraced her again, pinned her against the filing cabinets and pressed the lower part of his body against hers. Complainant screamed for help while resisting and pushing respondent. Then she ran for the open windows of the inner room. But before she could reach it[,] respondent again caught her. In the ensuing struggle, complainant slipped and fell on the floor, her elbows supporting the upper part of her body while her legs were outstretched between respondent's feet. Respondent then bent his knees in a somewhat sitting

(squatting) position, placed his palms on either side of her head and kissed her on the mouth with his mouth open and his tongue sticking out. As complainant continued to struggle, respondent suddenly stopped and sat on the chair nearest the door of the inner room with his face red and breathing heavily. Complainant angrily shouted "maniac, demonyo, bastos, napakawalanghiya ninyo". Respondent kept muttering "I love you" and was very apologetic offering for his driver to take her home. Complainant headed for the Maple Room where, when she entered, she was observed by Bernardo Taruc and Yolanda Valencia to be flushed in the face and with her hair disheveled.[19]

This happened in October 1995, a few months after the Anti-Sexual Harassment Act of 1995[20] came into effect. In recognition of the gravity of the offense, the framework on administrative cases involving sexual harassment charges has been strengthened both within and outside the judiciary. Notably, a few years after the decision against Arceo, the Civil Service Commission (CSC) released Administrative Disciplinary Rules on Sexual Harassment Cases,[21] which was eventually integrated in the 2017 RACCS. Thereafter, the Court released the Rule on Administrative Procedure in Sexual Harassment Cases and Guidelines on Proper Work Decorum in the Judiciary.[22]

With these developments in mind, and weighing all attendant factors, the Court resolves to deny the present petition. While the Court has allowed dismissed judges to enjoy a portion of their retirement benefits pursuant to a plea for judicial clemency,[23] its grant depends on the unique circumstances of each case. After all, the grant of judicial clemency, which most certainly, includes its parameters and extent, rests exclusively within the sound discretion of the Court pursuant to its authority under the Constitution.[24] It should be noted that, in this case, Arceo was already extended judicial clemency eight (8) years ago, i.e., lifting of the disqualification from re-employment in the government service, which enabled him to earn and save enough for his retirement. As the Court sees it, releasing the forfeited benefits would be too much leniency considering the severity of the infraction committed. The Court has, in numerous cases, wielded the rod of discipline against members of the judiciary who have fallen short of the exacting standards of judicial conduct.[25] Judicial clemency, as an act of mercy, should be balanced with the preservation of public confidence in the courts.[26]

WHEREFORE, the Court resolves to DENY the Petition for Payment of Retirement Benefits filed by respondent Judge Hermin E. Arceo.

SO ORDERED.

Peralta, C.J., Caguioa, Gesmundo, J. Reyes, Jr., Carandang, Lazaro-Javier, Inting, Zalameda, Lopez, and Gaerlan, JJ., concur.

Leonen and Hernando, JJ., see separate concurring opinion.

Delos Santos, J., on leave.

[1] Rollo (Vol. 1), pp. 452-455.

[2] Talens-Dabon v. Arceo, 328 Phil. 692 (1996).

[3] Talens-Dabon v. Arceo, id. at 709; emphasis supplied.

[4] Rollo (Vol. 1), pp. 403-415.

[5] Talens-Dabon v. Arceo, 699 Phil. 1, 8 (2012).

[6] See Re: Letter of Judge Augustus C. Diaz, Metropolitan Trial Court of Quezon City, Branch 37, Appealing for Clemency, 560 Phil. 1, 5-6 (2007).

[7] See *Talens-Dabon v. Arceo*, supra note 5, at 5-8.

[8] *Rollo* (Vol. 1), p. 453.

[9] Entitled "AN ACT PROVIDING BENEFITS FOR EARLY RETIREMENT AND VOLUNTARY SEPARATION FROM THE GOVERNMENT SERVICE, AS WELL AS INVOLUNTARY SEPARATION OF CIVIL SERVICE OFFICERS AND EMPLOYEES PURSUANT TO VARIOUS EXECUTIVE ORDERS AUTHORIZING GOVERNMENT REORGANIZATION AFTER THE RATIFICATION OF THE 1987 CONSTITUTION APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on December 2, 1998. See also Supreme Court Administrative Circular No. 07-89 entitled "IMPLEMENTING GUIDELINES OF REPUBLIC ACT NO. 6683, DATED DECEMBER 2, 1988," approved on January 13, 1989.

[10] *Talens-Dabon v. Arceo*, supra note 2, at 709.

[11] *Rollo* (Vol. 1), pp. 472-480.

[12] *Id.* at 475.

[13] *Concerned Lawyers of Bulacan v. Judge Villalon-Pornillos*, 805 Phil. 688, 691 (2017).

[14] See *Que v. Atty. Revilla*, 746 Phil. 406, 413 (2014).

[15] *Talens-Dabon v. Arceo*, supra note 5, at 6.

[16] *Talens-Dabon v. Arceo*, supra note 5, at 8.

[17] Section 57. Administrative Disabilities Inherent in Certain Penalties. — The following rules shall govern in the imposition of accessory penalties:

- The penalty of dismissal shall carry with it cancellation of eligibility, perpetual disqualification from holding public office, bar from taking civil service examinations, and forfeiture of retirement benefits. x x x x
(Underscoring supplied)

[18] Civil Service Commission (CSC) Resolution No. 1701077, approved on July 3, 2017.

[19] *Talens-Dabon v. Arceo*, supra note 2, at 700-701.

[20] RA 7877 entitled "AN ACT DECLARING SEXUAL HARASSMENT UNLAWFUL IN THE EMPLOYMENT, EDUCATION OR TRAINING ENVIRONMENT, AND FOR OTHER PURPOSES," approved on February 14, 1995.

[21] CSC Resolution No. 01-0940, approved on May 21, 2001.

[22] A.M. No. 03-03-13-SC (January 3, 2005.)

[23] See the Court's Resolution in Re: "Expose" of A Concerned Mediaman on the Alleged Illegal Acts of Judge Julian C. Ocampo & Clerk of Court Renato C. San Juan, MTCC-Naga City, A.M. No. 00-10-230-MTCC, September 23, 2008, citing the Court's Resolution in Re: An Undated Letter with the Heading "Expose" of A Concerned Mediaman on the Alleged Illegal Acts of Judge Julian C. Ocampo III of the Municipal Trial Court in Cities, Branch 1 (MTCC), Naga City and Clerk of Court Renato C. San Juan, MTCC, Naga City, A.M. No. 00-10-230-MTCC, December 9, 2003; *Atty. Men's v. Judge Ofilada*, 419 Phil. 603, 608 (2001); and *Guerrero v. Villamor*, 357 Phil. 90, 93 (1998), citing the Court's Resolution in *Sabitsana, Jr. v. Judge Villamor*, A.M. Nos. RTJ-90-474 and RTJ-90-606, April 12, 1994.

[24] The pertinent provision in this case is Section 6, Article VIII of the 1987 CONSTITUTION, which states:

Section 6. The Supreme Court shall have administrative supervision over all courts and the personnel thereof.

[25] see *Concerned Lawyers of Bulacan v. presiding Judge Victoria Villalon-Pornillos*, supra note 23, at 693.

[26] See id.

CONCURRING OPINION

LEONEN, J.:

Sexual harassment is not a simple, ordinary offense. It is not victimless. Its perpetrators manifest a clear disregard for the human dignity of their victims while conveniently taking succor in the long miscredited cultural concept of patriarchy. Their actions reveal an utter, gross ignorance of an important part of our Constitution and laws.

I agree with the ponencia's denial of Hermin E. Arceo's (Arceo) Petition for Payment of Retirement Benefits.

This Court had already extended him leniency eight (8) years ago when it granted judicial clemency and allowed him to seek reemployment in government.[1] Despite this benevolence, he now comes before this Court for a second act of mercy, citing an inapplicable provision of law no less.[2] In doing so, Arceo fails to understand the severity of the crime he committed, and the value of seeking atonement from those he wronged.

I

This Court's grant of clemency to a judge dismissed from service is discretionary.[3] An errant judge requesting clemency must show that he or she deserves it.[4] With clemency being an act of mercy, its exercise "should be balanced with the preservation of public confidence in the courts.[5]

In Re: Letter of Judge Augustus C. Diaz, Metropolitan Trial Court of Quezon City, Branch 37,[6] guidelines in resolving petitions for judicial clemency were set:

Clemency, as an act of mercy removing any disqualification, should be balanced with the preservation of public confidence in the courts. The Court will grant it only if there is a showing that it is merited. Proof of reformation and a showing of potential and promise are indispensable.

In the exercise of its constitutional power of administrative supervision over all courts and all personnel thereof, the Court lays down the following guidelines in resolving requests for judicial clemency:

1. There must be proof of remorse and reformation. These shall include but should not be limited to certifications or testimonials of the officer(s) or chapter(s) of the Integrated Bar of the Philippines, judges or judges associations and prominent members of the community with proven integrity and probity. A subsequent finding of guilt in an administrative case for the same or similar misconduct will give rise to a strong presumption of non-reformation.
2. Sufficient time must have lapsed from the imposition of the penalty to ensure a period of reformation.
3. The age of the person asking for clemency must show that he still has productive years ahead of him that can be put to good use by giving him a chance to redeem himself.
4. There must be a showing of promise (such as intellectual aptitude, learning or legal acumen or contribution to legal scholarship and the development of the legal system or administrative and other relevant skills), as well as potential for public service.
5. There must be other relevant factors and circumstances that may justify clemency.[7] (Emphasis supplied, citations omitted)

While this Court recognized Arceo's remorse in its 2012 ruling, Arceo has never really shown that he had sought forgiveness from the ones he wronged most—his victims, Atty. Jocelyn C. Talens-Dabon, and the rest of his staff whom he subjected to great distress. To grant Arceo further leniency now would only tip the scales in favor of an unremorseful abuser, neglect the interests of the victims of the offense, and be inconsistent with the principle of restorative justice.

I advocated in *Anonymous Complaint v. Dagala*[8] that the punishment on a judge's immoral acts should be calibrated with the interests of the victims, such that their genuine forgiveness should be considered:

The vulnerability of having committed mistakes in the past even assists the human incumbents of our judicial offices. Past mistakes properly acknowledged, addressed, and atoned broaden the understanding of a judge of human frailty and the possibility of forgiveness from those he or she has wronged. Properly addressed, human sins inscribe compassion for our judges. Within the limits of the law, he or she will be able to calculate the proper reliefs of penalties appropriate to the action.

Implicit in this understanding is the view that our judiciary is not simply a mechanical cog that dispenses specific penalties without full regard for the context of the facts proven. If this were so, current technology could simply be harnessed to substitute judges and justices, even for this Court, with robots. The legal system composed of the branches that promulgate, execute, and interpellate the law should not be seen as less than human institutions.

Justices should be able to see the general norms that would apply given the set of facts that can be reasonably inferred from the evidence. However, in interpreting the facts, we should always examine the premises we have that are articulated by our conception of our realities that provide us with the basis for our inferences.

....

It is time that we show more sensitivity to the reality of many families. Immorality is not to be wielded high-handedly and in the process cause shame on many of its victims. It should be invoked in a calibrated manner, always keeping in mind the interests of those who have to suffer its consequences on a daily basis. There is a time when the law should exact accountability; there is also a time when the law should understand the humane act of genuine forgiveness.[9] (Emphasis supplied)

In *Macarubbo v. Atty. Macarubbo*,[10] this Court lifted the disbarment of an errant lawyer who had been disciplined for gross immoral conduct in light of his bigamous marriage and a third marriage during the subsistence of a valid marriage. This Court appreciated the lawyer's acknowledgment of his faults and the steps he had taken to make amends to his children. For these acts, this Court was satisfied that he had sufficiently shown remorse.

On the other hand, in *Que v. Atty. Revilla*,[11] this Court denied a disbarred lawyer's plea for clemency for not demonstrating moral reformation and rehabilitation, after he had failed to submit sufficient proof of contrition. This Court held:

Furthermore, we are not persuaded by the respondent's sincerity in acknowledging his guilt. While he expressly stated in his appeal that he had taken full responsibility of his misdemeanor, his previous inclination to pass the blame to other individuals, to invoke self-denial, and to make alibis for his wrongdoings, contradicted his assertion. The respondent also failed to submit proof satisfactorily showing his contrition. He failed to establish by clear and convincing evidence that he is again worthy of membership in the legal profession. We thus entertain serious doubts that the respondent had completely reformed.

As a final word, while the Court sympathizes with the respondent's unfortunate physical condition, we stress that in considering his application for reinstatement to the practice of law, the duty of the Court is to determine whether he has established moral reformation and rehabilitation, disregarding its feeling of sympathy or pity.

Surely at this point, this requirement was not met. Until such time when the respondent can demonstrate to the Court that he has completely rehabilitated himself and deserves to resume his membership in the Bar, Our decision to disbar him from the practice of law stands.[12] (Emphasis supplied)

In *Narag v. Atty. Narag*,^[13] I opined in my dissent that this Court should have exercised mercy in lifting the lawyer's disbarment, as he has sufficiently shown that he has suffered enough after having been disbarred for 15 years. He has shown true reformation after having been forgiven by his family, and thus, deserved clemency from this Court:

In this case, 80-year-old Dominador M. Narag filed his petition for readmission to the practice of law 15 years after his disbarment. In his petition for readmission, he expressed remorse and asked for complainant Julieta's and their children's forgiveness. He annexed to his petition a copy of an affidavit executed by his son, Dominador, Jr., attesting that complainant Julieta and their children had forgiven him. He also executed a holographic will in favor of complainant Julieta and their children.

....

I disagree with the majority that these manifestations are hollow. I also disagree that the affidavit of Dominador M. Narag's son and the holographic will he presents are not sufficient to prove the forgiveness that has been bestowed upon him by his family. They are the parties that have been wronged and in so far as the State is concerned, he has already suffered enough.

This case does not deal with the question of whether we can impose disciplinary action on acts of immorality by members of the profession. Had it been at issue, I would think that the forgiveness given by the parties that have been wronged should have great bearing on our determination. After all, there are limits to the government's interference into arrangements of intimacies among couples. I fail to grasp the alleged continuing gross immorality and [reprehensible behavior] committed by a remorseful 80-year-old man who has been forgiven by those he has emotionally wronged. I do not believe that the law should be read as being too callous and inflexible so as to be unable to accommodate the unique realities in this case.

What is at issue in this case is whether Dominador M. Narag has suffered enough from his acts. This court showed them compassion and reinstated them as members of the legal profession in many instances where those disbarred are of old age who suffered "the ignominy of disbarment" long enough, showed remorse, and conducted themselves beyond reproach after their disbarment.

The legal order has had its pound of flesh from Dominador M. Narag. He has committed a transgression, but we have exacted enough retribution. The purpose of the penalty has already been achieved. He is in the twilight of his years when he is at his best to reflect on what his life has been. He is armed by the forgiveness of his family, and he is visited by remorse. In my view, not granting him the mitigation he asks for is a failure of human compassion.[14] (Citations omitted)

In this case, Arceo failed to prove that he is entitled to this Court's additional clemency. He did not show evidence of his remorse. Not submitting manifestations of forgiveness from those he wronged shows how he misunderstands the nature of all legal prohibitions against sexual harassment. He shows no grasp of the consequences of sexual harassment not only to his direct victim, but also to his indirect victims: the rest of his staff who had to survive the hostile environment he had created in his sala, where he abused the power he wielded.

II

In *Re: Deceitful Conduct of Ignacio S. Del Rosario*,^[15] this Court held that the integrity of the Judiciary prevails over pleas for compassion. Judicial clemency should not be granted if it will not preserve public confidence in the

Judiciary:

While petitioner claims that he has been remorseful for his actions, there is no strong indication that he has creditably reformed himself. It is incumbent upon petitioner to prove in sufficient terms how he has effectively reformed himself, given his past transgressions which tarnished the Court's image and reputation. Moreover, petitioner likewise failed to present any evidence to demonstrate his promise and potential for public service. To emphasize, proof of reformation and a showing of potential and promise are considered as indispensable requirements to the grant of judicial clemency.

Time and time again, the Court has repeatedly held that the image of a court of justice is mirrored in the conduct, official or otherwise, of its personnel. All court personnel are mandated to adhere to the strictest standards of honesty, integrity, morality, and decency in both their professional and personal conduct. In order to preserve the good name and integrity of the courts of justice, they must exemplify the highest sense of honesty and integrity not only in the performance of their official duties but also in their private dealings with other people.

It cannot be gainsaid that, as an OCA employee, it was expected from petitioner to set a good example for other court employees in the standards of propriety, honesty, and fairness. It was incumbent upon petitioner to practice a high degree of work ethic and to abide by the exacting principles of ethical conduct and decorum in both his professional and private dealings. Clearly, petitioner failed to meet the aforesaid standards, having placed his personal interest over the interest of Primo, who trusted him wholeheartedly as a friend and confidant.

Blatantly overlooking the Court's interest in the preservation and promotion of the integrity of the Judiciary, petitioner misappropriated the money that was entrusted to him by Primo and made misrepresentations to cover up his misappropriation of the entrusted sum. Petitioner did not even immediately return the money he misappropriated, despite Primo's demands. Petitioner's proffered reason for the misappropriation of the money that was entrusted to him by Primo hardly warrants any showing of mercy and compassion from the Court. In addition, while petitioner eventually paid Primo's financial liability with the Court, it was pointed out by the OAS that such restitution was only borne from petitioner's fear of possible administrative sanction.

Considering the abovementioned circumstances, the Court believes that its compassion has to yield to the higher demand of upholding the integrity of the Judiciary. In the case at bar, what is being considered is the preservation and promotion of the public's confidence in the integrity of the Judiciary. It cannot be denied that petitioner took advantage of the trust and confidence ascribed to him as a court employee. Petitioner's infractions tainted the public perception of the image of the Court, casting serious doubt as to the ability of the Court to effectively exercise its power of administrative supervision over its employees. In an array of cases, the Court has come down hard and wielded the rod of discipline against members of the Judiciary who have failed to meet the exacting standards of judicial conduct. Judicial clemency is not a privilege or a right that can be availed of at anytime. It will only be granted by the Court if there is a showing that it is merited. A plea for judicial clemency will not be heeded when to grant such a request would put the good name and integrity of the courts of justice in peril.[16] (Emphasis supplied, citations omitted)

Since the Petition is essentially a second request for judicial clemency in the form of the release of retirement benefits, a stringent determination is required as to whether Arceo is entitled further compassion and liberality from this Court. The severity of his infraction is not only administrative in nature; it is criminal. In November 2004, the Sandiganbayan convicted Arceo for violating Republic Act No. 7877, or the Anti-Sexual Harassment Law.[17]

In defining sexual harassment, Section 3 of the law states in part:

SECTION 3. Work, Education or Training-related Sexual Harassment Defined. — Work, education or

training-related sexual harassment is committed by an employer, employee, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, trainor, or any other person who, having authority, influence or moral ascendancy over another in a work or training or education environment, demands, requests or otherwise requires any sexual favor from the other, regardless of whether the demand, request or requirement for submission is accepted by the object of said act.

(a) In a work-related or employment environment, sexual harassment is committed when:

(1) The sexual favor is made as a condition in the hiring or in the employment, re-employment or continued employment of said individual, or in granting said individual favorable compensation, terms, conditions, promotions, or privileges; or the refusal to grant the sexual favor results in limiting, segregating or classifying the employee which in any way would discriminate, deprive or diminish employment opportunities or otherwise adversely affect said employee;

(2) The above acts would impair the employee's rights or privileges under existing labor laws; or

(3) The above acts would result in an intimidating, hostile, or offensive environment for the employee.

One (1) of the policies in criminalizing sexual harassment is upholding the dignity of workers in their place of work:

SECTION 2. Declaration of Policy. — The State shall value the dignity of every individual, enhance the development of its human resources, guarantee full respect for human rights, and uphold the dignity of workers, employees, applicants for employment, students or those undergoing training, instruction or education. Towards this end, all forms of sexual harassment in the employment, education or training environment are hereby declared unlawful. (Emphasis supplied)

Sexual harassment is not a trivial offense. Its essence lies not in the- simple violation of a victim's sexuality, but in a superior's undue exertion of power over the victim.[18] Inherent in this predatory act is the assailant's perverted use of power to dominate his or her subordinate for sexual favors:

Sexual harassment in the workplace is not about a [person] taking advantage of [another person] by reason of sexual desire; it is about power being exercised by a superior officer over [his or her] subordinates. The power emanates from the fact that the superior can remove the subordinate from his [or her] workplace if the latter would refuse his [or her] amorous advances.[19]

This vile act violates the inherent dignity of a person recognized under the Constitution.[20] If we are to give effect to the State's declaration of how it values every person's dignity, no instance of sexual harassment can be condoned, especially those perpetrated in the Judiciary. Apropos is this Court's condemnation of sexual harassment:

In the community of nations, there was a time when discrimination was institutionalized through the legalization of now prohibited practices. Indeed, even within this century, persons were discriminated against merely because of gender, creed or the color of their skin, to the extent that the validity of human beings being treated as mere chattel was judicially upheld in other jurisdictions. But in humanity's march towards a more refined sense of civilization, the law has stepped in and seen it fit to condemn this type of conduct for, at bottom, history reveals that the moving force of civilization has been to realize and secure a more humane existence. Ultimately, this is what humanity as a whole seeks to attain as we strive for a better quality of life or higher standard of living. Thus, in our nation's very recent history, the people have spoken, through Congress, to deem conduct constitutive of sexual harassment or hazing, acts previously considered harmless by custom, as criminal. In disciplining erring judges and personnel of the Judiciary then, this Court can do no less.[21] (Citation omitted)

As a former judge, Arceo showed greater perversity in the sexual harassment of his staff. In *Sabitsana, Jr. v. Judge*

Villamor,[22] it was held that one (1) of the duties of a judge is to be "an effective manager of the court and its personnel." [23] Sexual harassment anywhere, let alone within the judge's chambers, is a gross violation of this duty. It shows not only a total disregard of the dignity of the employee directly violated, but also the indirect victims, staff members who are forced to work in an intimidating and hostile environment.

As a former judge, Arceo must pay a higher price for having sullied the Judiciary's image, for cultivating a harrowing place of work, and for violating the dignity of his employees:

We have repeatedly held that, while every office in the government service is a public trust, no position exacts greater moral righteousness than a seat in the judiciary. Performing as he does an exalted role in the administration of justice, a judge must pay a high price for the honor bestowed upon him. Thus, a judge must comport himself at all times in such a manner that his conduct, official or otherwise, can weather the most exacting scrutiny of the public that looks up to him as the epitome of integrity and justice.[24] (Emphasis supplied, citations omitted)

It is significant to remember the words of this Court when it imposed the highest and most severe penalty of dismissal to Arceo for gross misconduct and immorality prejudicial to the best interests of the service:

The integrity of the Judiciary rests not only upon the fact that it is able to administer justice but also upon the perception and confidence of the community that the people who run the system have done justice. At times, the strict manner by which we apply the law may, in fact, do justice but may not necessarily create confidence among the people that justice, indeed, is served. Hence, in order to create such confidence, the people who run the judiciary, particularly judges and justices, must not only be proficient in both the substantive and procedural aspects of the law, but more importantly, they must possess the highest integrity, probity, and unquestionable moral uprightness, both in their public and private lives. Only then can the people be reassured that the wheels of justice in this country run with fairness and equity, thus creating confidence in the judicial system.[25]

Thus, I concur with the ponencia that the Petition for Payment of Retirement Benefits cannot be granted to Arceo, in order to preserve public confidence in this Court. Wielding the rod of discipline against errant members of the Bench increases the confidence of all court personnel in our ability to protect the dignity of the Judiciary's employees. It is time that this Court strongly show disapproval of all gendered inequities and take on the policy of no quarters for judges who sexually harass or abuse another court employee. Our compassion should not be mistaken for connivance.

It is up to this Court to finally stand against sexual harassment, a menace that should be eradicated from all courts. It is time that this Court set a zero-tolerance policy against judges who abuse power and thereafter seek recourse to this Court, invoking a humanitarian reason when they themselves failed to exercise basic human decency.

ACCORDINGLY, I vote to DENY the Petition for Payment of Retirement Benefits of Hermin E. Arceo.

[1] Ponencia, p. 3. See also *Talens-Dabon v. Arceo*, 699 Phil. 1 (2012) [Per J. Perlas-Bernabe, En Banc],

[2] *Id.* at 2-3.

[3] *Re: Deceitful Conduct of Ignacio S. Del Rosario, Cash Clerk III, Records and Miscellaneous Matter Section, Checks Disbursement Division, FMO-OCA Ignacio S. Del Rosario*, A.M. No. 2011-05-SC, June 19, 2018, 866 SCRA 425 [J. Carpio, En Banc].

[4] *Concerned Lawyers of Bulacan v. Villalon-Pornillos*, 805 Phil. 688 (2017) [Per Curiam, En Banc].

[5] *In Re: Letter of Judge Augustus C. Diaz, Metropolitan Trial Court of Quezon City, Branch 37, Appealing for*

- Clemency, 560 Phil. 1, 5 (2007) [Per J. Corona, En Banc],
- [6] 560 Phil. 1 (2007) [Per J. Corona, En Banc],
- [7] Id. at 5-6.
- [8] 814 Phil. 103 (2017) [Per Curiam, En Banc],
- [9] J. Leonen, Concurring and Dissenting Opinion in Anonymous Complaint v. Presiding Judge Exequil L. Dagala, Municipal Circuit Trial Court, Dapa-Socorro, Dapa, Surigao Del Norte, 814 Phil. 103, 149-156 (2017) [Per Curiam, En Banc],
- [10] 702 Phil. 1 (2013) [Per J. Perlas-Bernabe, En Banc].
- [11] 746 Phil. 406 (2014) [Per Curiam, En Banc],
- [12] Id. at 416-417.
- [13] 730 Phil. 1 (2014) [Per Curiam, En Banc].
- [14] J. Leonen, Dissenting Opinion in Narag v. Atty. Narag, 730 Phil. 1, 10-12 (2014) [Per Curiam, En Banc],
- [15] A.M. No. 2011-05-SC, June 19, 2018, 866 SCRA 425 [J. Carpio, En Banc],
- [16] Id. at 435-437.
- [17] Talens-Dabon v. Arceo, 699 Phil. I (2012) [Per J. Perlas-Bernabe, En Banc].
- [18] J. Leonen, Concurring Opinion in Re: Anonymous Complaint Against Atty. Cresencio P. Co Unlian, Jr., A.C. No. 5900, April 10, 2019, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65162>> [Per J. J. Reyes, Jr. En Banc] citing Philippine Aeolus Auto-Motive Corporation v. National Labor Relations Commission, 387 Phil. 250, 264 (2000) [Per J. Bellosillo, Second Division],
- [19] Floralde v. Court of Appeals, 392 Phil. 146, 150 (2000) [Per J. Pardo, En Banc].
- [20] CONST., Art. II, Sec. 11 states:
- SECTION 11. The State values the dignity of every human person and guarantees full respect for human rights.
- [21] Vedaña v. Valencia, 356 Phil. 317, 332 (1998) [Per J. Davide, First Division],
- [22] 279 Phil. 483 (1991) [Per Curiam, En Banc],
- [23] Id. at 487-488.
- [24] Veloso v. Caminade, 478 Phil. 1, 7 (2004) [Per J. Corona, Third Division],
- [25] Talens-Dabon v. Judge Hermin E. Arceo, 328 Phil. 692, 705-706 (1996) [Per Curiam, En Banc],

SEPARATE OPINION

HERNANDO, J.:

I concur with the ponencia.

The Court had occasion to allow the release of 25% of retirement benefits of an administratively dismissed judge in the following cases:

In *Sabitsana, Jr. v. Judge Villamor*[1] the Court explicitly declared that the allowance of 25% of former Judge Villamor's retirement benefits was merely *pro hac vice* and will not serve as a precedent for other cases.[2]

In *Atty. Meris v. Ofilada*,[3] former Judge Ofilada had served the government for 37 years when he was dismissed on the grounds of grave abuse of authority, evident partiality, gross incompetence, and ignorance of the law. It was his wife who requested the release of Judge Ofilada's retirement benefits in her A Plea for Mercy before the Court, since Judge Ofilada was old, incapacitated, and in dire need of funds to cover his medical expenses. As former Judge Ofilada passed away pending consideration of his wife's letter, the Court allowed the release of 25% of his retirement benefits, among other gratuities to his heirs, albeit citing its supposedly *pro hac vice* ruling in *Sabitsana, Jr.*

In *In Re: An Undated Letter with the Heading "Expose" Of A Concerned Mediaman on the Alleged Illegal Acts of Judge Julian C. Ocampo III of the Municipal Trial Court in Cities, Branch 1 (MTCC), Naga City and Clerk of Court Renato C. San Juan, MTCC Naga City*, the Court granted the release of 25% of his retirement benefits only upon former Judge Ocampo's third plea.[4]

I also take the opportunity to mention *Junio v. Judge Rivera, Jr.*,[5] a case more factually similar to that of respondent herein.

In *Junio*, former Judge Rivera's dismissal was grounded on gross misconduct and conduct prejudicial to the best interest of the judiciary, having kissed his boarder's daughter while drunk during his birthday party.[6] The Court lifted his ban from public service and accorded him his due monetary gratuities in view of the following circumstances:

(1)

His 35 years of government service;

(2)

His case being his first and only administrative offense;

(3)

He demonstrated sincere repentance;

(4)

He applied for judicial clemency 10 years after his dismissal and "has come to terms with reality and learned [his] lesson"; and

(5)

His regressing physical condition caused by old age and various illnesses, i.e., cataract, prostatic enlargement, postural vertigo, hypertension, and arthritis, necessitate financial support.[7]

Moreover, former Judge Rivera had never been found guilty of a criminal offense and never moved for the reconsideration of his dismissal, as he "accepted the verdict, in all humility." [8] Withal, the Court granted former Judge Rivera his prayer for judicial clemency in the following manner:

WHEREFORE, the letters dated November 17, 2004 and June 17, 2005 of respondent Judge Pedro C. Rivera, Jr. requesting judicial clemency is GRANTED. The prohibition for his "re-employment in any part of the government service including government-owned or controlled corporations" mandated in our Resolution dated August 30, 1993 is LIFTED. He is authorized (1) to be employed (if qualified) in any government office

including government-owned or controlled corporations, and (2) to receive whatever monetary benefits due him for his long service in the government, if entitled thereto.[9]

The factual circumstances of these four cases do not align with those of herein respondent. From all the foregoing citations, the release of the dismissed judges' retirement benefits was predicated by the most restrictive, compelling, and grievous circumstances. Respondent's acts of atonement, however, only pale in comparison. His 18-year government service is quite lamentably short to be considered. His basic allegations of deteriorating health and increasing medical expenses are but common and inevitable costs of aging. Moreover, respondent's expressions of remorse cannot be deemed at par with that of former Judge Rivera in Junio. Respondent's obstinate and hypocritical refusal to admit to his guilt, even in the face of his criminal conviction, grew more palpable when he had filed two motions for reconsideration of his dismissal, both of which were denied.[10]

I also note that while the Court in Junio accorded full merit to former Judge Rivera's hardships and gave him "whatever monetary benefits due him for his long service in the government, if entitled thereto[.]" there still was no express reinstatement of Judge Rivera's retirement benefits. As respondent failed to rise up to Judge Rivera's standard of acceptable penance, the former should not be allowed to enjoy more than what was accorded to the latter. In any case, respondent is already a fortunate beneficiary of the Court's clemency when it restored in the November 20, 2012 Resolution respondent's entitlement to his accrued leave benefits, and allowed his return to government service at the first formal instance that he sought judicial clemency.[11]

In addition, the gravity of respondent's criminal conviction cannot be ignored. It should bar any further grant of benevolence.

Despite the irony, judicial leniency must be exercised only upon a strict assessment of its claimant's worth. A dismissed judge's plea for the Court's compassion should pass rigid scrutiny before administrative penalties are reversed. If the Court would easily be swayed by a generic lapse of time and a sheaf of certifications of apparently-restored morals, penal clauses may lose its deterrent purpose. Errant but unapologetic judges should not be placed on equal footing with the ones who have endeavored to keep their service records pristine, or even with those who, while having strayed from the edicts of judicial moralities at first, eventually and thoroughly labored on a sincere and untrivial reformation.

In closing, I point out that the Court's tone against sexual harassment in work environments has been set and is already resounding in the Court's July 25, 1996 Resolution in this case:[12]

The integrity of the Judiciary rests not only upon the fact that it is able to administer justice but also upon the perception and confidence of the community that the people who run the system have done justice. At times, the strict manner by which we apply the law may, in fact, do justice but may not necessarily create confidence among the people that justice, indeed, is served. Hence, in order to create such confidence, the people who run the judiciary, particularly judges and justices, must not only be proficient in both the substantive and procedural aspects of the law, but more importantly, they must possess the highest integrity, probity, and unquestionable moral uprightness, both in their public and private lives. Only then can the people be reassured that the wheels of justice in this country run with fairness and equity, thus creating confidence in the judicial system.[13] (Emphasis and underscoring supplied.)

The case should have ended with this July 25, 1996 Resolution dismissing respondent from service. Even so, the Court bestowed judicial clemency upon respondent in its November 20, 2012 Resolution, an award that is evidently beyond his professional merits and moral fiber. To grant further magnanimity to respondent is to cast serious doubt upon the competence of the judiciary in promoting healthy and safe working conditions especially for women, not only in the usual workplaces but also in the Court's very own backyard. The Court should not contradict itself. Never in any case should it be the first one to evade this duty and inflict injustice.

Accordingly, I vote to DENY respondent's claim for the release of 25% of his retirement benefits.

[1] A.M. RTJ-90-474, RTJ-90-606, April 12, 1994, as cited in *Guerrero v. Villamor*, 357 Phil 90, 90-93 (1998).

[2] *Id.* at 93.

[3] 419 Phil. 603 (2001).

[4] A.M. No. 00-10-230-MTCC, December 9, 2003 and September 23, 2008, following the ponencia's Draft Resolution of this case, p. 4.

[5] A.M. No. MTJ-91-565, 509 Phil. 65 (2005).

[6] *Id.* at 66.

[7] *Id.* at 68.

[8] *Id.* at 66.

[9] *Id.* at 70.

[10] Per the Court's November 20, 2012 Resolution in this case, A.M. No. RTJ-96-1336, 699 Phil. 1 (2012).

[11] *Id.*

[12] *Supra* note 10.

[13] *Id.*

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