

SHEILA G. DEL ROSARIO, COURT STENOGRAPHER III, REGIONAL TRIAL COURT, BRANCH 36, SANTIAGO CITY, ISABELA, COMPLAINANT, VS. MARY ANNE C. PASCUA, COURT STENOGRAPHER III, SAME COURT,...

A.M. No. P-11-2999 [formerly OCA IPI No. 10-3517-P]. February 27, 2012

Ponente: BRION, J.

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BRION, J.:

In her complaint-affidavit,[1] complainant Sheila G. del Rosario charges Mary Anne C. Pascua (respondent), Court Stenographer III of the Regional Trial Court, Branch 36, Santiago City, Isabela, with Dishonesty (1) for traveling to Hong Kong from June 1 to 6, 2008 without securing a travel authority from the Supreme Court and for not stating in her leave application her foreign travel; and (2) for misrepresenting in her official documents in the Supreme Court her date of birth as June 27, 1974, when her registered date of birth in the National Statistics Office (NSO) is August 7, 1974.

The Office of the Court Administrator (OCA) directed the respondent to comment on the complaint.[2]

The respondent admitted that she failed to secure a travel authority from the Supreme Court, but explained that it was due to mere inadvertence. She alleged that her true date of birth, as reflected in her baptismal certificate and her marriage contract, is June 27, 1974, and she was in the process of correcting with the NSO her registered date of birth to reflect her true date of birth. She insisted that she did not commit any act of dishonesty.[3]

The OCA recommended that the present matter be redocketed as a regular administrative matter. It found the respondent guilty of violation of reasonable office rules and regulations for traveling abroad without the required travel authority. It recommended that the respondent be reprimanded for her first offense.[4]

The OCA also found the respondent guilty of simple dishonesty for failing to disclose in her leave application her foreign travel. It recommended the penalty of suspension for one (1) month. It noted that the respondent did not commit any dishonesty regarding the discrepancy in her date of birth since she wanted to reflect her true date of birth as June 27, 1974, though her registered date of birth has not yet been corrected.[5]

We adopt the OCA's findings, but modify the recommended penalties.

OCA Circular No. 49-2003[6] provides that "court personnel who wish to travel abroad must secure a travel authority from the Office of the Court Administrator." Section 67 of the Omnibus Rules on Leave[7] provides that "[a]ny violation of the leave laws, rules or regulations, or any misrepresentation or deception in connection with an application for leave shall be a ground for disciplinary action." Under the Uniform Rules on Administrative Cases in the Civil Service,[8] violation of reasonable office rules and regulations is a light offense punishable with the penalty of reprimand for the first offense, suspension of one (1) day to thirty (30) days for the second offense, and dismissal from the service for the third offense.

In this case, since the respondent traveled without securing a travel authority and did not state her foreign travel in her leave application, she is guilty of violating at least two (2) office rules and regulations. These twin violations should be reflected in her penalties, particularly in the second offense – failure to state in her leave application her travel abroad – which, to our mind, strongly suggests deception on her part amounting to dishonesty. She should be suspended without pay for three (3) months for her twin infractions. Let this be a warning to all who might be minded to risk a one-month suspension if only to avoid disclosing to the Court that they shall be traveling abroad.

We find that the discrepancy in the respondent's date of birth in her records does not amount to dishonesty, as she made no false statement. No deliberate intent to mislead, deceive or defraud appears from the cited circumstances of this case. Dishonesty means "the concealment of truth in a matter of fact relevant to one's office or connected with the performance of his duties. It is an absence of integrity, a disposition to betray, cheat, deceive or defraud, bad faith." [9] The respondent's date of birth is not a fact directly relevant to her functions or qualification to office or connected with the performance of her duties. Besides, her other records, i.e., baptismal certificate and marriage contract, reflected June 27, 1974 as her true date of birth; she simply wanted to reflect this fact in her records.

WHEREFORE, respondent Mary Anne C. Pascua, Court Stenographer III of the Regional Trial Court, Branch 36, Santiago City, Isabela, is found GUILTY of violation of the rules requiring court permission for travel abroad and for failing to disclose her intended foreign trip in her leave application. For her twin violations, she is hereby SUSPENDED for three (3) months without pay, and WARNED that a repetition of the same or similar offense will be penalized more severely.

SO ORDERED.

Perez, and Reyes, JJ., concur.

Carpio, (Chairperson), J., see dissenting opinion.

Sereno, J., I join the dissent of J. Carpio.

[1] Dated October 4, 2010; rollo, pp. 6-7.

[2] Id. at 19.

[3] Dated November 30, 2010; id. at 20-23.

[4] Memorandum dated May 2, 2011; id. at 31-35.

[5] Ibid.

[6] Dated May 20, 2003.

[7] As amended by Civil Service Commission Memorandum Circular No. 41, s. 1998; Nos. 6, 14 and 24, s. 1999.

[8] Promulgated by the Civil Service Commission through Resolution No. 99-1936 dated August 31, 1999 and implemented by Memorandum Circular No. 19, s. 1999.

[9] Basilla v. Ricafort, A.M. No. P-06-2233, September 26, 2008, 566 SCRA 425, 433.

DISSENTING OPINION

CARPIO, J.:

Complainant alleged that respondent, during her approved leave of absence, traveled to Hong Kong on 1 to 6 June 2008 without securing a travel authority from the Supreme Court and that she omitted to state her intended foreign travel in her leave application. Furthermore, complainant charged respondent of dishonesty for misrepresenting her date of birth as 27 June 1974 in her official documents, when her registered date of birth in the National Statistics Office is 7 August 1974.

Respondent maintained that she failed to secure a travel authority from the Supreme Court due to inadvertence. Respondent assumed that since she did not have custody of and is not accountable for government funds, then she is not required to secure a clearance from the Office of the Court Administrator before she can travel abroad. On the discrepancy in her date of birth, respondent claimed that she is in the process of correcting her Certificate of Live Birth to reflect her true date of birth which is 7 August 1974.

The ponente finds that "the discrepancy in the respondent's date of birth in her records does not amount to dishonesty, as she made no false statement." However, the ponente holds that respondent has violated OCA Circular No. 49-2003[1] for failure to secure permission to travel abroad and for failing to disclose her intended foreign trip in her leave application. The ponente finds respondent "guilty of violation of the rules requiring court permission for travel abroad and for failing to disclose her intended foreign trip in her leave application." Thus, respondent is imposed the penalty of three-month suspension without pay and warned that a repetition of the same or similar offense will be penalized more severely.

I disagree with the ponente on the issue of respondent's unauthorized foreign travel. This issue involves a government employee's constitutional right to travel abroad during her approved leave of absence.

My dissent in the recent case of Leave Division, OCA-OAS v. Heusdens,[2] is applicable to this case, thus:

Under Section 60 of Executive Order No. 292 (EO 292), officers and employees in the Civil Service are entitled to leave of absence, with or without pay, as may be provided by law and the rules and regulations of the Civil Service Commission.

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[A] citizen's right to travel is guaranteed by Section 6, Article III of the 1987 Constitution:

SEC. 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, as may be provided by law.

Although the constitutional right to travel is not absolute, it can only be restricted in the interest of national security, public safety, or public health, as may be provided by law. As held in *Silverio v. Court of Appeals*:

Article III, Section 6 of the 1987 Constitution should be interpreted to mean that while the liberty of travel may be impaired even without court order, the appropriate executive officers or administrative authorities are not armed with arbitrary discretion to impose limitations. They can impose limits only on the basis of "national security, public safety, or public health" and "as may be provided by law," a limitative phrase which did not appear in the 1973 text (*The Constitution*, Bernas, Joaquin G., S.J., Vol. I, First Edition, 1987, p. 263). Apparently, the phraseology in the 1987 Constitution was a reaction to the ban on international travel imposed under the previous regime when there was a Travel Processing Center, which issued certificates of eligibility to travel upon application of an interested party (See *Salonga v. Hermoso & Travel Processing Center*, No. L-53622, 25 April

1980, 97 SCRA 121).

The constitutional right to travel cannot be impaired without due process of law. Here, due process of law requires the existence of a law regulating travel abroad, in the interest of national security, public safety or public health. There is no such law applicable to the travel abroad of respondent. In the absence of such a law, the denial of respondent's right to travel abroad is a gross violation of a fundamental constitutional right. The only exception recognized so far is when a court orders the impairment of the right to travel abroad in connection with a pending criminal case. Another possible exception is if Congress, pursuant to its power of legislative inquiry, issues a subpoena or arrest order against a person. These exceptions, however, do not apply in the present case. Here, respondent was not even facing a preliminary investigation or an administrative complaint when she left the country.

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During her approved leave of absence, respondent's time was her own personal time and she could be wherever she wanted to be. The Court cannot inquire what respondent does during her leave of absence since that would constitute unwarranted interference into her private affairs and would encroach on her right to privacy. The right to privacy is "the right of an individual to be let alone, or to be free from unwarranted publicity, or to live without unwarranted interference by the public in matters in which the public is not necessarily concerned." Under Article 26 of the Civil Code, the right to privacy is expressly protected:

Art. 26. Every person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons. The following and similar acts, though they may not constitute a criminal offense, shall produce a cause of action for damages, prevention and other relief:

- (1) Prying into the privacy of another's residence;
- (2) Meddling with or disturbing the private life or family relations of another;
- (3) Intriguing to cause another to be alienated from his friends;
- (4) Vexing or humiliating another on account of his religious beliefs, lowly station in life, place of birth, physical defect, or other personal condition.

Furthermore, respondent's travel abroad, during her approved leave, did not require approval from anyone because respondent, like any other citizen, enjoys the constitutional right to travel within the Philippines or abroad. Respondent's right to travel abroad, during her approved leave, cannot be impaired "except in the interest of national security, public safety, or public health, as may be provided by law." Not one of these grounds is present in this case.

There is no doubt that the use of leave of absence can be regulated without impairing the employees' right to privacy and to travel. In fact, the Civil Service Commission has promulgated the Omnibus Rules Implementing Book V of Executive Order No. 292, of which Rule XVI is the Omnibus Rules on Leave. Such rules and regulations are adopted to balance the well-being and benefit of the government employees and the efficiency and productivity in the government service. Thus, the requirement of securing approval for any leave of absence is a reasonable and valid regulation to insure continuity of service in the government. However, once a leave of absence is approved, any restriction during the approved leave on the right to travel of the government employee violates his or her constitutional right to travel.

This Court should be the first to protect the right to travel of its employees, a right enshrined not only in the Bill of Rights but also in the United Nations Universal Declaration of Human Rights as well as in the International Covenant on Civil and Political Rights. The Philippines is a signatory to the Declaration and a state party to the Covenant. In fact, the duty of this Court under Section 5(5), Article VIII of the Constitution is to "promulgate

rules concerning the protection and enforcement of constitutional rights," not to curtail such rights. Neither can this Court promulgate rules that "diminish" or even "modify" substantive rights like the constitutional right to travel. (Emphasis supplied)

Accordingly, I vote to DISMISS the administrative complaint against Mary Anne C. Pascua, Court Stenographer III, Regional Trial Court, Branch 36, Santiago City, Isabela.

[1] GUIDELINES ON REQUESTS FOR TRAVEL ABROAD AND EXTENSIONS FOR TRAVEL/ STAY ABROAD. The pertinent provisions of OCA Circular No. 49-2003 read:

B. VACATION LEAVE TO BE SPENT ABROAD

Pursuant to the resolution in A.M. No. 99-12-08-SC dated 06 November 2000, all foreign travels of judges and court personnel, regardless of the number of days, must be with prior permission from the Supreme Court through the Chief Justice and the Chairmen of the Divisions.

1. Judges and court personnel who wish to travel abroad must secure a travel

authority from the Office of the Court Administrator. The judge or court personnel must submit the following:

(a) For Judges:

- application or letter-request addressed to the Court Administrator stating the purpose of the travel abroad
- application for leave covering the period of the travel abroad, favorably recommended by the Executive Judge
- certification from the Statistics Division, Court Management Office, OCA as to the condition of the docket

(b) For Court Personnel:

- application or letter-request addressed to the Court Administrator stating the purpose of the travel abroad
- application for leave covering the period of the travel abroad, favorably recommended by the Presiding Judge or Executive Judge
- clearance as to money and property accountability
- clearance as to pending criminal and administrative case filed against him/her, if any
- for court stenographer, clearance as to pending stenographic notes for transcription from his/her court and from the Court of Appeals
- Supreme Court clearance

2. Complete requirements should be submitted to and received by the Office of the Court Administrator at least two weeks before the intended period. No action shall be taken on requests for travel authority with incomplete requirements. Likewise, applications for travel abroad received less than two weeks of the intended travel shall not be favorably acted upon.

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4. Judges and personnel who shall leave the country without travel authority issued by Office of the Court Administrator shall be subject to disciplinary action.

[2] A.M. No. P-11-2927, 13 December 2011. Citations omitted.

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