

IN RE: APPLICATION FOR RETIREMENT OF ATTY. MARCELO D. MENDIOLA, CLERK OF COURT, COURT OF FIRST INSTANCE OF SAN FERNANDO, PAMPANGA.

Adm. Matter No. 779-Ret. July 20, 1983

Ponente: RELOVA, J.

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RELOVA, J.:

Atty. Marcelo D. Mendiola, former Clerk of Court, Court of First Instance of Pampanga, at San Fernando, had applied for optional retirement under Republic Act No. 660, as amended by Republic Act No. 4968, effective March 31, 1978. It was approved by the Court en banc in a resolution in Administrative Matter No. 779-Ret, dated February 21, 1978, "it appearing that said applicant is sixty-three (63) years of age with more than twenty-five (25) years of service in the government."

Pending issuance of the clearance requirements of Atty. Mendiola and preparatory to the payment of his terminal pay, on February 10, 1981, the undersigned, then Court Administrator, directed Messrs. Federico F. Vergara and Rodolfo Dimabuyo, Fiscal Analysts of the Fiscal Management and Budget Office, of this Court to conduct an audit of the cash receipts and books of accounts of Atty. Marcelo D. Mendiola, to determine the status of the funds and accountabilities of the latter.

In a report, dated June 4, 1982, Messrs. Vergara and Dimabuyo confirmed the existence of the shortage reported by the Provincial Auditor of Pampanga in the total amount of P21,216.00, consisting of (a) unremitted General Funds collections, and (b) Fiduciary Funds not deposited to the Provincial Treasurer of Pampanga.

Atty. Mendiola was summoned to appear and was informed of the shortage of the Fiscal Analysts. After having shown the books and other documents which revealed a total accountability of P21,216.00, he admitted the correctness of the shortage but claimed that the Cashier, Mr. Juan Umangay, had custody and control of all the cash receipts and disbursements, books of accounts and other financial records of the Court of First Instance of San Fernando, Pampanga; that said Mr. Umangay was charged before the Sandiganbayan and was convicted of malversation of public funds and was sentenced to suffer "the indeterminate penalty ranging from Two (2) years, Four (4) months and One (1) day of prision correccional, as minimum, to Six (6) years and One (1) day of prision mayor, as maximum, to further suffer perpetual special disqualification; to pay a fine of P8,668.21; to further indemnify the Republic of the Philippines in the same amount of P8,668.21, and to pay the costs of this action."

On August 24, 1982, the Court en banc resolved "to require Atty. Mendiola to show cause within fifteen (15) days from notice why the aforesaid resolution of February 21, 1978 should not be reconsidered and why he should not be dismissed for cause."

In compliance thereto, on September 28, 1982, Atty. Mendiola submitted his explanation averring, among others, that on July 6, 1982 he certified that "although the Cashier of my office, Mr. Juan Umangay should be held responsible for this shortage (P21,216.00) in view of his personally handling said funds I promise to pay the said shortage of funds for which reason I am authorizing the officials in the Court to deduct from my retirement

gratuity to which I am entitled from the GSIS said amount. I am not in a position to pay said amount this time for lack of funds but I would like to make it of record that said P21,216.00 may be deducted from the gratuity that I may receive from the GSIS"; and that he made that certification ". . . out of dire necessity and desperation and not out of a guilty feeling," and "I voluntarily executed that certification, obsessed with my only desperate desire to facilitate the issuance of my final clearance from this Honorable Court. . . ."

Considering that Atty. Mendiola did not really touch the funds of the court which were under the custody and control of Juan Umangay who had already been convicted by the Sandiganbayan, nevertheless, he was negligent in the performance of his supervisory duties and control required of him as responsible official in said court.

ACCORDINGLY, Atty. Marcelo D. Mendiola may be allowed to receive his retirement benefits under Republic Act No. 660, as amended by Republic Act No. 4968, subject to the usual clearance requirements but a fine equivalent to one (1) month of his salary is however imposed on him, the same to be deducted from whatever retirement benefits he may receive.

SO ORDERED.

Aquino, Concepcion Jr., Guerrero, Plana, Escolin and Gutierrez, Jr., JJ., concur.

Fernando, C.J., took no part.

Teehankee, J., concurs with Justice Makasiar's dissent.

Makasiar, J., dissents in separate opinion.

Abad Santos, J., He did not profit personally from the malversation; he was merely negligent. He overstated his liability by agreeing to have the full amount deducted. He should be spared from his improvident promise. I concur entirely with Justice Relova.

De Castro, J., joins with Justices Vasquez and Melencio-Herrera.

Melencio-Herrera, J., Upon the same understanding expressed by Justice Vasquez.

Vasquez, J., Under the understanding that the shortage of P21,216.00 shall be deducted from his retirement gratuity.

DISSENTING OPINION

MAKASIAR, J.:

The application for retirement should be denied.

The cashier, Juan Umangay, was convicted by the Sandiganbayan for malversation of public funds amounting to P8,668.21 only. Upon being audited by the Provincial Auditor, Clerk of Court Atty. Marcelo D. Mendiola, of Pampanga CFI, admittedly failed to account for the total collections of P21,216.00. Such failure, whether intentional or thru abandonment or negligence, makes him guilty of malversation of public funds (Art. 217, Revised Penal Code, as amended). His claim that cashier Juan Umangay had custody and control of all the cash receipts, disbursements, books of accounts and other financial records of the court, is not credible, and will not exculpate him from such liability; because he has the primary responsibility for such collections. And it is not even corroborated by said cashier. The decision in and the records of the criminal case against the cashier before the Sandiganbayan should be scrutinized. Since malversation necessarily implies dishonesty, Atty. Mendiola's retirement should be denied, and he should be dismissed from the service.

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