

MARCELO G. PASCO, COMPLAINANT, VS. LORETO PERFECTO AND JOSEFINA MACALINCAG, RESPONDENTS.

A.M. No. P-322. August 09, 1977

Ponente: BARREDO, J.

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BARREDO, J.:

Verified complaint of Mr. Marcelo G. Pasco charging Josefina A. Macalincag, temporary stenographer in the Municipal Court of Valenzuela, Bulacan, with:

"(1) Intentionally misleading not only the Municipal Court Judge but also an officer of the court into believing that the accused in Crim. Case No. 12028 were actually reporting to the court, strictly in accordance with the provisions of the Laurel Law, when in truth and in fact, said accused were not so reporting; intentionally not informing the court and the private prosecutor despite the fact that the Presiding Judge told counsel in open court that the accused were re-ported in accordance with law, that the excerpts she prepared did not reflect the fact that the accused had not strictly complied with the law;

"(2) Intentionally delaying the transcription of the stenographic notes in Crim. Case No. 12028, although the same is about to be terminated." (p. 2, Memo.)

After respondent filed her answer, the matter was referred to Judge Eduardo P. Caguioa of the Court of First Instance of Bulacan, Branch VIII in Valenzuela, who submitted the following report and recommendation:

"For purposes of expediency and clarity, the undersigned Investigator will take up first the charges against respondent Josefina Macalincag, Court Stenographer of the Municipal Court of Valenzuela, Bulacan.

"The first charge is as follows:

'(a) Intentionally misleading not only the Mun. Court Judge but also an officer of the Court into believing that the accused in Crim. Case No. 12028 were actually reporting with the court strictly in accordance with the provisions of the Laurel Law, when in truth and in fact said accused were not so reporting. That despite the fact that the Presiding Judge informed the counsel in open court that the accused were reporting in accordance with law, respondent stenographer who prepared the excerpts, intentionally did not inform the court and the private prosecutor that the excerpts she prepared did not reflect that the accused had not strictly complied with the law.'

"The charge in this case is that, Mrs. Macalincag prepared an excerpt (Exhs. B and B-1) in Criminal Case No. 12028 of the Municipal Court of Valenzuela of whether the various accused in said case reported every two (2) weeks to the Clerk of Court. There is no accusation that the excerpt is falsified or that it is incorrect. The charge is, that the contents of the excerpt were not brought to the attention of Judge Manzano by Mrs. Macalincag when she submitted the excerpt to the Judge in open court, and during the time the question of whether the accused were reporting to the Clerk of Court was being ventilated. It is to be noted, however, that there is no duty imposed by law on the Municipal Court Stenographer to make this excerpt. The undisputed testimony of Mrs. Macalincag is that, she prepared this excerpt upon express order of Judge Manzano. That being the case there was no duty on her part to call the attention of Judge Manzano as to the contents of the

excerpt. That was up to Judge Manzano and to the proper officer entrusted by law to report to Judge Manzano. It is not pretended that it is the duty of the Municipal Court Stenographer to make this report. The fact therefore that the Judge may have been misled by the excerpt is not to be attributed to the Court Stenographer whose only duty was purely mechanical, and that was to obey the order of the Judge by preparing an excerpt of the report.

"It is submitted therefore that this accusation was not proven.

"The second charge against Mrs. Macalincag, is that:

'(b) Intentionally delayed the preparation of the stenographic notes in Crim. Case No. 12028, as a matter of fact up to the present there is still pending transcription of proceedings in aforesaid case, despite the fact that the said case is about to be terminated.'

"The respondent in this case admitted having failed to give a transcript of the testimony of complainant as requested by him although she furnished complainant with a copy of the transcript of the testimonies of the other witnesses (Exhs. 1-A to 1-K and 2 to 2-J). There is no doubt likewise that complainant demanded a copy of said transcript. However, the failure of said stenographer to furnish the copy must be seen in the light of the following circumstances: First, Mrs. Macalincag is the sole stenographer in the Municipal Court of Valenzuela, Bulacan. The number of cases that are filed and calendared in the Municipal Court of Valenzuela, Bulacan are very numerous. As a matter of fact more than ten (10) cases a day are calendared and Mrs. Macalincag attends hearings of the Municipal Court everyday, Monday through Saturday. In the morning, Stenographer Macalincag takes down the proceedings of the hearings and in the afternoon she takes down the orders of the Judge as well as takes down his decisions. Second, that when witness Marcelo Pasco in Crim. Case No. 12028 testified, Judge Manzano allowed counsel Atty. Viola to take down the testimony through a tape recorder. Stenographer Macalincag explained that her failure to submit the transcript was due to the fact that she could not find any time to transcribe the same because of the load of her work and, because of the fact that counsel Viola was given the privilege of taking down the testimony of complainant through a tape recorder. The last reason given by Stenographer Macalincag is of course not tenable, as only her transcribed notes are the official report of the proceedings. However, the load of work of the single stenographer of the Municipal Court of Valenzuela, Bulacan is such that really delay in the transcription of the testimony of a witness in a case is not only the foreseeable result but the inevitable result. Stenographer Macalincag has too much work for her to bear alone. It is not her fault then that she cannot immediately give transcription of notes inasmuch as she must give preference to the work of the Court as well as the orders of the Judge and his decisions.

"It is submitted therefore that there was no intentional failure on the part of Stenographer Macalincag to furnish complainant Pasco with a copy of the transcribed notes of his testimony but rather that the pressure of work prevented the said stenographer from doing so.

RECOMMENDATION

"The undersigned recommends that Stenographer Macalincag be exonerated from the two (2) charges that were lodged against her. x x x x" (pp. 48-51, Rec.)

We have reviewed the record and We find the foregoing report and recommendation to be fully supported by the evidence We therefore approve the same in toto.

On the other hand, Loreto Perfecto, clerk of court of the same court is charged with:

"(1) Violating the provisions of the Laurel Law, commonly known as R.A. No. 6036, as follows:

a. Section 1(c): That despite knowledge that accused in Crim. Case 12028 had previously failed to appear during the scheduled hearings, and could therefore be considered as having jumped bail, respondent had failed to so

inform the municipal court Judge; hence, accused continued to enjoy provisional liberty;

b. Section 1(d): That despite knowledge that accused in Crim. Case No. 12028 had violated the Laurel Law, respondent did not so inform the municipal court Judge, and the accused were allowed to enjoy temporary liberty;

c. Section 1(e): That despite knowledge that accused Rolando Domingo y Santorfina had been formerly convicted and had served sentence as per certification submitted to said respondent, and despite knowledge that said accused was actually detained at the Caloocan City Jail, respondent failed to so inform the municipal court Judge;

d. Section 2: That respondent failed to report to the municipal judge that accused in Crim. Case No. 12028 do not report every two weeks as provided by law;

e. That respondent exacted money from persons or relatives and friends of persons who avail of the benefits of the Laurel Law, contrary to the spirit and intent of the said law;

"(2) Failing to follow the Order dated February 5, 1975, of Hon. Conrado Manzano, Presiding Judge of the municipal court.

"(3) Violating the provisions of the Civil Service Rules and provisions of Pres. Decree No. 6, paragraphs d, 1, and aa, in that respondent plays tennis during office hours, to the prejudice of the service.

"(4) Violating the provisions of the Administrative Code, Department of Justice Circular, and the provisions of Pres. Decree No. 6, more particularly par. x, in that despite knowledge of the prohibition against engaging in private business, vocation or profession, respondent has solicited bail bonds, for consideration, to be posted in the Court wherein he is employed as Clerk of Court, or in other courts in and around Valenzuela, Bulacan, without the permission required by rules and regulations.

"(5) Violating the Rules of Court, in that he had failed to verify, before receiving pleadings, such as Motions to Lift Orders of Arrest, whether the counsel of record, particularly in Crim. Case No. 12028, had been furnished with copies of said pleadings. (pp. 1-2, Memo.)

These charges were denied by respondent in his answer, hence the case was also referred to Judge Caguioa for investigation, report and recommendation. Hearings were thereafter conducted wherein all the parties were duly heard.

In his report, the Investigator submits that the first, second, third and fifth specifications under the first charge have not been proven, as also the fourth charge, and with respect to the second charge, the same is already covered by the fourth specification under the first charge, which together with the third and fifth, he submits have been substantiated.

We have also gone over the records on which the portion of the report of the Investigator pertinent to the above matters is based, and We find no reason to alter his findings. In other words, putting aside the charges and specifications which, as recommended by him should be deemed as not proved, We further approve the Investigator's conclusions as follows:

"Fourth violation:

'(d) Sec. 2: Failure to report to Municipal Judge that accused in Crim. Case No. 12028 does not report every 2 weeks as provided for by law.'

"In support of this violation complainant submitted the excerpt prepared by Stenographer Macalincag and marked as Exhs. 'B' and 'B-1', as well as the originals from which the excerpt was taken and marked as Exhs. 'D', 'D-1' to 'D-10'. These documentary evidences clearly show that the accused in Crim. Case No. 12028 were not reporting regularly every two (2) weeks as required by the Laurel Law. This fact was not made known by

respondent to Judge Manzano and as a matter of fact the latter had to order respondent Macalincag to make an excerpt of Exhs. 'D', 'D-1' to 'D-10', indicating the lack of knowledge of Judge Manzano of the irregular reporting by the accused to respondent Clerk of Court Perfecto. It is submitted that this violation is sufficiently proved by the evidence submitted." (p. 54, Record.)

x x x x x x

"The third charge is:

'(3) Provisions of the Civil Service Rules and provisions of Presidential Decree No. 6, par. d, 1, and aa:- In that despite knowledge of prohibition, respondent plays tennis even during office hours, to the prejudice of the service.'

"In support of this charge complainant testified that on June 13, 1974 after his case was postponed, he saw respondent Perfecto changing into tennis clothes in his room and then left the court presumably to play tennis. However, complainant did not actually see respondent Perfecto playing tennis. However, on two (2) occasions, the dates of which he cannot specify, complainant testified that he saw respondent Perfecto playing tennis doubles at the municipal tennis court of Valenzuela, Bulacan. The reason why complainant could not particularize the date was that he did not pay attention to respondent playing tennis because he thought that the situation will not reach this far. However, complainant categorically stated that he saw respondent Perfecto playing tennis between 9:00 and 10:00 in the morning.

"Respondent Perfecto denied this charge and in support of his denial he presented as witness the caretaker of the municipal tennis court, one Francisco Nacorda, who stated that he did not see the respondent playing tennis during office hours and that the playing days of respondent Perfecto were merely after office hours, on Wednesdays at 4:30 in the afternoon and on Sundays from 7:00 in the morning. This witness stated that nobody could play in the tennis court without first fixing it with him. However, on cross-examination this witness admitted that if a person wanted to play tennis without first arranging matters with him, such person could do so and witness will not know about it because in that case witness would be arriving late at the tennis court. Respondent Perfecto likewise denied the accusation that he played tennis during office hours and admitted only playing tennis twice a week, on Wednesday after office hours and on Sunday, saying that he could not play tennis on other days because he was prohibited by his doctor.

"Fe de Gucena, the only witness of the complainant other than himself, testified that she had filed a case in the Municipal Court of Valenzuela, Bulacan and that when she went back for the first time to inquire about her criminal case (Exhs. I and I-1) respondent Perfecto was not in his office and she saw him playing tennis at the municipal tennis court and this was between 8:00 and 9:00 in the morning.

"Despite the denial by respondent Perfecto of this charge, it is submitted that the testimony of the complainant together with that of his witness, Fe de Gucena, proves this charge notwithstanding the denial by respondent's witness Nacorda." (pp. 56-57, Id.)

x x x x x x

"The fifth charge is for violation of:

'(5) Provisions of the Rules of Court: In that despite knowledge, he had failed to verify before receiving pleadings whether the counsel of records (particularly in Crim. Case No. 12028 specially Motions to Lift Orders of Arrest, etc.) had been furnished said pleadings.'

"In support of this charge complainant submitted Exhibits 'H', 'H-1' to 'H-17' showing pleadings prepared by the accused or their counsel and copies of which were not furnished to the complainant or his lawyer. Respondent Perfecto, however, explained that in a memorandum marked as Exhibit '3', dated July 13, 1973, Judge Conrado Manzano of the Municipal Court of Valenzuela, Bulacan, specified the duties of the personnel

of the Office of the Clerk of Court of the Municipal Court of Valenzuela, Bulacan. When questioned as to why no particular duties were assigned to him, respondent Perfecto testified that his duty was to supervise the whole personnel of the Office of the Clerk of Court of the Municipal Court. Respondent Perfecto likewise testified that Judge Manzano's instructions were to the effect that in case of motions to lift warrant of arrest, the same should be submitted to him right away even without copy being furnished to the other party because of the urgent nature of said motions. He likewise testified that on other pleadings there were instructions to the clerk assigned to receive motions, namely, Teresita de Jesus, not to accept the same unless copy was first furnished to the other party or his counsel. Exhibits 'H' to 'H-17' indubitably show, however, that copies of said pleadings were not furnished to the complainant or his lawyer. It is therefore clear that these exhibits were admitted by clerk Teresita de Jesus in violation of the instructions of Judge Manzano, as well as those of respondent Perfecto. However, it is likewise clear that respondent Perfecto did not see to it that clerk Teresita de Jesus complied with her instructions, because these are more than 18 pleadings wherein the copies were not furnished to the other party. It is therefore submitted that respondent Perfecto was negligent in his supervisory duty of seeing to it that his personnel followed properly instructions." (pp. 59-60, Id.)

Stated otherwise, We find respondent guilty (1) of having violated the civil service rules for having been playing tennis on two or three occasions during office hours; (2) of having failed in his duty, as clerk of court, to inform the presiding judge that the accused in Criminal Case No. 12028 had not been reporting twice a week as required by the Laurel Law; and (3) of laxity in the supervision of his subordinates resulting in several pleadings being filed with the court without being accompanied by proper proof of service upon the other party, which, under his own instructions to the clerk-in-charge, Teresita de Jesus, should not have been received for filing.

Nevertheless, We do not consider the proven charges to be so serious as to require drastic action against respondent, particularly, if it is considered that he has been in the service for more than 22 years and this is the first time that any administrative complaint has been filed against him. Accordingly, We feel that a fine of equivalent to respondent's salary for month and a strong reprimand, together with a warning that any subsequent administrative fault on his part will be dealt with more severely would suffice to serve the interests of the service.

WHEREFORE, respondent Josefina A. Macalincag is hereby exonerated of the charges against her and the case is dismissed as to her, and, with respect to respondent Loreto Perfecto, he is hereby found guilty of the charges and specifications as above indicated, and he is ordered to pay a fine equivalent to his salary for one month. He is further repri-manded severely and warned that for any subsequent administrative fault he may be found guilty of, he will be dealt with more severely.

Castro, C.J., Fernando, Teehankee, Makasiar, Antonio, Muñoz Palma, Aquino, Concepcion, Jr., Martin, Santos, Fernandez, and Guerrero, JJ., concur.

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