

SANTIAGO B. BURGOS, COMPLAINANT, VS. VICKY A. BAES, CLERK OF COURT II, MUNICIPAL CIRCUIT TRIAL COURT IN CITIES, PRESIDENT ROXAS-PILAR, PRESIDENT ROXAS, CAPIZ, RESPONDENT.

A.M. No. 05-2002 (Formerly OCA IPI No. 01-1245-P). December 17, 2008

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PER CURIAM:

In a letter dated March 7, 2001 addressed to then Acting Court Administrator Zenaida N. Elepaño,[1] Santiago B. Burgos (complainant), in his capacity as representative of the "Balikatan at Aksyon Para sa Bayan, Inc.," reported the "notorious habitual absenteeism" of Vicky A. Baes (respondent), Clerk of Court II, Municipal Circuit Trial Court in Cities (MCTC), President Roxas-Pilar, President Roxas, Capiz. Attached to the complainant's letter was a copy of his letter addressed to Judge Geomer C. Delfin of the same court, showing the respondent's absences and tardiness which he monitored during the months of September and October, 2001. The attachment also showed that there were times when the respondent stayed only for a few hours in her office.

The complainant also asked for the investigation of the financial collections of the court, alleging that the respondent had brought home the used and unused Official Receipts so that only temporary receipts were issued to those who transacted business with the court. The complainant further claimed that a P40,000.00 cash bond posted by an accused in a criminal case was not deposited in the Fiduciary Fund account of the court.

In another letter dated April 10, 2001, also addressed to then Acting Court Administrator Elepaño, the respondent's co-employees made similar accusations against her. In support of their allegations, they submitted a certification issued by Rolly A. Balani, the court's "custodian of logbook." The certification stated that aside from being absent most of the time, the respondent usually came to the office late and would stay only for one (1) or two (2) hours. They claimed that the respondent's habitual absences and tardiness had made her notoriously undesirable, and was already prejudicial to the service because the nature of her work required her presence in the court most of the time.[2]

The records also show that in a letter addressed to Executive Judge Julius L. Abela of the Regional Trial Court (RTC), Roxas City, the respondent's co-employees, together with municipal employees, municipal and barangay officials, litigants and other concerned residents of Roxas City, asked for her removal from office for "being an undesirable employee, undeservingly receiving Sixteen Thousand Four Hundred Sixty Four (P16,464.00) Pesos a month without rendering due services required of her x x x." [3]

The respondent resigned from the service effective April 2, 2001. Her resignation, however, did not render the complaints against her moot and academic[4] pursuant to our ruling in *Gallo v. Cordero*[5] where we held that:

This jurisdiction that was ours at the time of the filing of the administrative complaint was not lost by the mere fact that the respondent public official had ceased in office during the pendency of his case. The Court retains its jurisdiction either to pronounce the respondent public official innocent of the charges or declare him guilty thereof. A contrary rule would be fraught with injustice and pregnant with dreadful and dangerous implications. . . If innocent, respondent public official merits vindication of his name and integrity as he leaves

the government which he has served well and faithfully; if guilty, he deserves to receive the corresponding censure and a penalty proper and imposable under the situation.

Thus, on September 18, 2001, we directed the respondent to comment on the complaint. After several extensions, the respondent filed her comment on November 29, 2002. She alleged that the charges of tardiness and absenteeism against her were baseless, malicious and intended merely to harass her. She explained the complainant's action as the result of a grudge against her because he was an accused in a robbery case in their court. She belied the complainant's accusation that the P40,000.00 posted by an accused in a criminal case was not deposited in the Fiduciary Fund account of the court, claiming that the deposit was reflected in the court's Land Bank passbook.

The respondent also claimed that her co-employees' complaints were in retaliation for the series of memoranda she issued requiring them to explain why complainant was allowed to look into the court's Daily Time Record logbook and other restricted court records. She further averred that some of her co-employees were in fact interested in her position as clerk of court.

On recommendation of the Office of the Court Administrator (OCA), we referred the complaint to Executive Judge Charlito F. Fantilanan of the RTC, Branch 18, Roxas City for investigation, report and recommendation. On November 10, 2004, Executive Judge Fantilanan submitted his report recommending the dismissal of the complaint because the respondent's resignation had already been accepted[6] and because the complainant failed to overcome the presumption that the respondent regularly performed her duties.

In a resolution dated December 15, 2004, we referred Executive Judge Fantilanan's report to the OCA for further evaluation, report and recommendation.

On March 21, 2005, the OCA, through then Court Administrator, now Associate Justice Presbitero J. Velasco, Jr., submitted its evaluation report which states:

x x x

After a thorough study of the records, including the transcript of stenographic notes taken during the investigation hearing on the evidence of the parties, we cannot simply concur with Executive Judge Fantilanan's recommendation to dismiss the instant administrative case partly because of the resignation being proffered by the respondent. In *Judge Jose C. Reyes, Jr., etc. v. Ricardo Cristi, etc.*, the Court categorically states that "the fact that the respondent had already resigned from his position does not render the complaint against him moot and academic. x x x The jurisdiction over the respondent has already attached at the time of the filing of the letter-complaint, and was not lost by the mere fact that he resigned from his office during the pendency of the case against him."

Moreover, the Notice of Acceptance of Resignation dated 23 May 2002 by the Office of the Court Administrator succinctly states that it was subject to the usual clearance requirements. To date, as per verification from HRM Officer III Marylyn Falculan of the OCA-OAS, respondent still had not secured her clearance, hence, she is not considered resigned. Resignation should not be used either as an escape or as an easy way out to evade administrative liability by a court personnel facing administrative sanction. To deprive this Court of authority to pronounce her innocence or guilt in the charges against her is undoubtedly fraught with injustice and pregnant with dreadful and dangerous implications.

The records reveal that no less than the respondent filed on 19 April 2001 with the OCA-Leave Division two (2) separate DTRs for the months of January and February 2001. In her own handwriting, respondent took the liberty of supplying entries of her time of arrival and departure in court. The DTRs prove that she was unable to observe the eight (8) hours work requirement per day. Interestingly, she did file another set of DTRs covering the same months reflecting that she was on sick leave. This was the gravamen of her offense.

During clarificatory hearing conducted by the investigating Judge Fantilanan, respondent explained that she did file two different DTRs for said months because she was apprehensive of being declared absent without official leave (AWOL) since neither her Presiding Judge Delfin nor Executive Judge Gubaton signed her DTRs or Applications for Leave. This we find unavailing as respondent's act itself constitutes GROSS DISHONESTY if not FALSIFICATION of ATTENDANCE RECORDS which is a public document.

One need not emphasize that respondent had just filed her Application for Sick Leave for the period 28 October to 29 December 2000 on 02 January 2001, duly approved by Presiding Judge Geomer Delfin. If indeed she still needs to recuperate from her illness and go on extended sick leave, the matter should have been communicated to her judge or to her officemates. Nothing of this sort happened as she started to assume her work although intermittently. If at all, her filing of another set of DTRs for the months of January and February 2001 was a mere ploy to cover up her inadequacy to meet the demands of her job. Noteworthy at this instance is the fact that the time-in and out voluntarily supplied by the respondent on subject DTRs more or less tallies with the records of arrival and departure certified by Mr. Rolly Balani, custodian of the court's logbook, who had been tasked by their judge to monitor such. Said authority when impugned by the respondent had been put to rest by the letter of Judge Delfin dated 08 October 2001 addressed to OCA Administrator Justice Presbitero J. Velasco, Jr., which states, to wit:

But when her attention was called and there was already a mounting clamor about her habitual absenteeism, I personally directed her co-worker to record her arrival and departure in the log book and in the calendar of the court. True enough that her other co-employees in court were able to record her attendance as evidenced by the record they attached in their complaint filed in your office dated 10 April 2001.

Respondent even included in her DTR for February 20-21, 2001 that she attended a seminar in Iloilo. Likewise, she was present in court on 15 March 2001 as evidenced by the Transcript of Stenographer Notes taken during the Staff Conference of the 1[st] MCTC President Roxas-Pilar, called by Presiding Judge Delfin. Incidentally, nothing on record shows that respondent submitted her DTR for March 2001 but she did file an application for sick leave for the period March 20-30, 2001. Foregoing considered, respondent's act of filing an application for sick leave for the month of January to February 2001 was highly irregular as this does not reflect her true attendance in court. Obviously, she cannot be sick as attested by the medical certificates attached on her application when in fact she reported for work mostly at her own pleasurable time.

To date, all the applications for sick leave filed by the respondent for the months of January-March 2001 remained unapproved. What has been approved by Executive Judge Salvador S. Gubaton was the Leave Application for the period "April 2, 2001 up to approval of resignation," which was done with reservation as indicated in her Comment dated 31 August 2001, in answer to Mrs. Molo's Letter dated 21 August 2001.

Under Sec. 63, Rule XVI, of the Omnibus Civil Service Rules and Regulations:

Sec. 63 – Effect of absences without approved leave – An official or an employee who is continuously absent without approved leave for at least thirty (30) working days shall be considered on absence without official leave (AWOL) and shall be separated from the service or dropped from the rolls without prior notice. He shall, however, be informed at his address appearing on his 201 files, or at his last known written address, of his separation from the service, not later than five (5) days from its effectivity.

Still, under Memorandum Circular No. 4, Series of 1991, of the Civil Service Commission, an officer or employee in the civil service shall be considered habitually absent if he incurs unauthorized absences exceeding the allowable 2.5 days monthly leave credits under the leave law for at least three (3) months in a semester or at least three (3) consecutive months during the year. Such a violation renders the erring employee administratively liable for the grave offense of Frequent Unauthorized Absences or Tardiness in Reporting for Duty and for Gross Neglect of Duty under Section 22 (q) and (a), respectively, of the Omnibus Rules Implementing Book V of

Executive Order No. 292.

Along the same vein, Section II of Administrative Circular 2-99, entitled "Strict Observance of Working Hours and Disciplinary Action foar Absenteeism and Tardiness" lays down the degree of stringency which must be adopted in the determination of the proper sanctions to be imposed, viz:

II. Absenteeism and tardiness, even if such do not qualify as "habitual" or "frequent" under Civil Service Commission Memorandum Circular No. 04, Series of 1991, shall be dealt with severely, and any falsification of daily time records to cover up for such absenteeism and/or tardiness shall constitute gross dishonesty or serious misconduct. (emphasis supplied)

Anent the charge of unaccounted cash bail bond amounting to Forty Thousand Pesos (P40,000.00), respondent presented during the course of investigation the court's fiduciary account with the Land Bank of the Philippines reflecting that she did deposit the amount in two (2) equal installments on 06 April 2000 and 29 September 2000. However, said deposit is not conclusive as referring to the questioned cash bond since respondent had not been subjected to any financial audit as of date. Explicit under the 2002 Revised Manual for Clerks of Court that "all collections from bail bonds, x x x shall be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with an authorized government depository bank, the Land Bank of the Philippines."

Respondent testified that she did not deposit the whole amount of the questioned cash bond so that it would form part of the cash on hand answerable for court litigant's withdrawals from time to time, and this practice was allegedly ordered verbally by her presiding judge. It is significant to note was the testimony of respondent as reflected in the TSN dated 10 August 2004, which reads:

x x x x x

"Atty. Bellones:

My next question is, there are times when since you answer that sometimes it takes several days for you to remit the amount with the bank because the depository bank was quite far. Madam witness you would agree with me that there are times that there is huge amount of cash kept within the premises of the Court?

A.

No. It is personally...When it is for deposit and be given to me, I personally since the office has no vault there's no safety in the office that is why there was a time when our office was ransacked, our petty cash was taken by an outsider.

Q.

So, in short, Madam Witness there were times when you bring it with you?

A.

Yes Sir. Because personally I am liable to whatever happened to the money."

It can be inferred that respondent had to bring with her the amount of Twenty Thousand Pesos (P20,000.00) every time she goes in or out of court in anticipation of future withdrawals of bail bonds for the period 06 April 2001 to 29 September 2001. As she previously claimed, she had difficulty in arriving to court because of the considerable distance she had to travel from her residence, hence exposing herself to more danger by having on her possession

money that she should have been deposited in the first place. More importantly, the Manual of Clerks of Court also provides the procedure to be followed in case of withdrawal from the fiduciary account. Ergo, the shortcut resorted to by the respondent in handling the court's fiduciary account is uncalled for under the premises.

On the charge that respondent had on her possession at home the court's used and unused Official Receipts as well as other court documents, records also show that her attention was repeatedly called on this matter by her presiding judge. Though there is an undated document tending to show that respondent turned over same court documents to Process Server Rolly Balani, it does not discount the fact that in a letter dated March 20 and 26, 2001, Presiding Judge Delfin noted that the court had failed to issue receipts for filing, subscription and clearance fees starting January 2001, hence she was ordered to immediately return said ORs as well as the court's fiduciary passbook and other documents. Additionally, in another letter dated 08 October 2001, Judge Delfin noted that from the time of respondent's filing of resignation, the documents in question have not been turned-over to the court. Hence, on 24 October 2001, Felix Relano, OIC/Clerk of Court, had to execute an affidavit in order that a replacement passbook on the court's fiduciary account would be issued by the Land Bank of the Philippines.

Even respondent's claim that she submitted these documents for possible audit by COA State Auditor Rodulfo Arce does not justify her indifference to the court orders. When Mr. Arce testified during the investigation, he acknowledged that respondent had submitted some records to his office sometime in January 2001 but also pulled out the same in March 2001. The supposed audit could not be started as they lack other necessary documents that respondent has to submit.

Verily, we find respondent to be arrogantly indifferent to the demands of her employment in a manner that is notoriously undesirable and prejudicial to public service. We have repeatedly held that the conduct and behavior of a person connected with an office charged with the dispensation of justice, from the presiding judge to the lowliest clerk, should be circumscribed with the heavy burden of responsibility. His or her conduct should at all times be characterized by propriety and decorum and be beyond suspicion. The Court cannot countenance any act or omission of any person involved in the administration of justice which violates the norm of public accountability and undermines or tends to undermine the faith of the people in the Judiciary.

The OCA recommended that: (1) the case be redocketed as a regular administrative case and that respondent be found guilty of absence without official leave, aggravated by gross misconduct and conduct prejudicial to the best interest of justice; and (2) that the respondent be dismissed from the service with forfeiture of retirement benefits, except earned leave credits, if any, and with prejudice to reemployment in any branch of the government or any of its agencies or instrumentalities, including government-owned and controlled corporations.

The Court fully agrees with the OCA Report and finds that the respondent failed to live up to the standards of honesty and integrity required in the public service. In the words of the Constitution, public office is a public trust. Inherent in this mandate of trust is the observance of prescribed office hours and the efficient use of official working time, if only to recompense the government and, ultimately, the people, who shoulder the cost of maintaining the Judiciary. Time and again, this Court has reminded court officials and employees to observe strict official hours at all times. We have always stressed that punctuality is a virtue, and absenteeism and tardiness are impermissible.[7] We take this occasion to issue another reminder of this aspect of the duty we owe the government and the people.

As recommended, we find the respondent guilty of grave misconduct which would have warranted her dismissal from the service had she not resigned during the pendency of this case. In lieu of the dismissal that we can no longer impose, we are imposing on the respondent the penalty we can still effectively mete out -- the forfeiture of her retirement benefits except her accrued leave credits, if any, and her disqualification from further employment

opportunities in the public service.[8]

WHEREFORE, the Court finds respondent Vicky A. Baes, former Clerk of Court, MCTC, President Roxas-Pilar, President Roxas, Capiz, GUILTY of Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service. In lieu of the DISMISSAL that this offense carries but which we can no longer effectively impose because of her earlier resignation, we hereby ORDER the FORFEITURE of whatever benefits are still due her from the government, except for the accrued leave credits, if any, that she had earned. The respondent is further BARRED from reemployment in any branch or instrumentality of the government, including government-owned and controlled corporations.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Nachura, Reyes, Leonardo-De Castro, and Brion, JJ., concur.

Corona, J., On leave.

Velasco, Jr., J., No part due to prior action in oca.

[1] Now retired Court Administrator.

[2] Rollo, p. 8.

[3] Id., p. 25.

[4] Concerned Trial Lawyers of Manila v. Veneracion, A.M. No. RTJ-05-1920, April 26, 2006, 488 SCRA 285, citing Office of the Court Administrator v. Fernandez, 437 SCRA 81 (2004).

[5] A.M. No. MTJ-95-1035, June 21, 1995, 245 SCRA 219, citing Zarate v. Judge Romanillos, 242 SCRA 593 (1995).

[6] Per letter dated May 23, 2003 of then Court Administrator, now Associate Justice Presbitero J. Velasco, Jr., rollo, p. 63.

[7] A Very Concerned Employee and Citizen v. De Mateo, A.M. No. P-05-2100, December 27, 2007, 541 SCRA 362, citing Re: Administrative Case for Dishonesty against Elizabeth Ting, Court Secretary I & Angelita C. Esmerio, Clerk III, Office of the Clerk of Court, 464 SCRA 1 (2005).

[8] Paclibar v. Pamposa, etc., A.M. No. P-03-1737, November 16, 2006, 507 SCRA 30; Zarate v. Judge Romanillos, supra note 5; Re: Non-disclosure Before the Judicial and Bar Council of the Administrative Case Filed Against Judge Jaime V. Quitain, JBC No. 013, August 22, 2007, 530 SCRA 729.

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