

**LEONARDO B. BABATIO, MUNICIPAL MAYOR, MOTIONG, SAMAR,
COMPLAINANT, VS. JOSE Z. TAN, FORMER MUNICIPAL CIRCUIT
TRIAL COURT JUDGE OF MOTIONG-JIABONG-SAN JOSE DE BUAN,
SAMAR, RESPON...**

A.M. No. 265-MJ. January 22, 1988

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FERNAN, J.:

For consideration of the Court are: [1] the letter-application for executive clemency of respondent Judge addressed to President Corazon C Aquino, indorsed to this Court on June 8, 1987 for comment and recommendation; and, [2] the “Motion for resolution on Court Administrator's Recommendation to Modify the Dismissal to a Lesser Penalty” filed by said respondent judge.

In the decision promulgated in this case on November 26, 1981, respondent Judge Jose Z. Tan was ordered separated from the service for serious misconduct with forfeiture of all retirement benefits and pay and with prejudice to reinstatement to any position in the national or local government including government-owned or controlled corporations, agencies or instrumentalities.[1]

The penalty of dismissal was imposed upon the recommendation of then Deputy Court Administrator Arturo Buena who disagreed with the recommendation submitted by the investigating Judge that respondent Judge be merely reprimanded and admonished that a repetition of the same offense would be dealt with more severely considering that his transfer to the Municipal Court of Sta. Rita, Samar, a far-distant town not always accessible by road and sometimes saturated by the NPA's, may already be regarded as sufficient punishment to him.

Upon a motion for reconsideration filed on January 14, 1982 by respondent Judge and a re-study of the case, Deputy Court Administrator Buena took a modified stand as regards the penalty imposed upon respondent judge, and accordingly submitted a recommendation to this effect to the court. No copy of said recommendation can be found in the records of the case, but such recommendation is reflected in the internal resolution of this Court dated January 13, 1983, which reads: “Respondent filed a Motion of Reconsideration for the decision and the Office of the Court Administrator submitted its recommendation to modify the dismissal to a lesser penalty but no vote was taken thereon for lack of material time for the Court to deliberate thereon.”.

Subsequently, without any reference to the recommendation of Deputy Court Administrator Buena, the motion for reconsideration filed by respondent judge was denied on May 31, 1983.

On April 30, 1986, long after the finality of the resolution of May 31, 1983, respondent Judge filed a “Motion for the lifting of disqualification and forfeiture of benefits clauses in the decision.” This was denied in the Court's Resolution dated May 27, 1986. Thereafter, in a letter addressed to President Corazon C. Aquino dated November 5, 1986, respondent judge applied for executive clemency. The Office of the President indorsed this letter to us on June 8, 1987. Pending action on the aforesaid Indorsement from the Office of the President, respondent judge filed a “Motion for Resolution on Court Administrator's Recommendation to Modify the Dismissal to a Lesser Penalty.”

A re-examination of the actions taken in this case by the Court subsequent to the promulgation of the November 26, 1981 decision shows that, indeed, there remains an incident, and a crucial one at that, which the Court has not squarely passed upon, i.e., the recommendation of then Deputy Court Administrator Buena to modify the penalty of dismissal imposed on respondent judge to a lesser one. This is indicated in no uncertain terms in the internal resolution of the Court dated January 13, 1983, stating that “no vote was taken thereon [referring to said recommendation] for lack of material time for the Court to deliberate thereon.” Due perhaps to the disappearance of copies of said recommendation, explained by the Office of the Court Administrator as having occurred during the transfer of its offices, no further reference to such recommendation was made in the subsequent resolutions of May 31, 1983 and May 27, 1986. Thus, while it may appear at first blush that the decision of November 26, 1981 has long become final and executory, this is not so factually and legally. Consequently, the case has not been removed from the ambit of this Court’s constitutionally-vested power of supervision over all courts and their personnel[2] as well as its inherent power to amend and control its processes and orders to make them conformable to law and justice.[3]

Respondent judge was dismissed for serious misconduct. In the case of *In Re Horilleno*, 43 Phil. 212, this Court defined and dissected the offense of “serious misconduct” in this wise:

“The adjective is ‘serious’, that is, important, weighty, momentous and not trifling. The noun is ‘misconduct’; that is, a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. The word ‘misconduct’ implies a wrongful intention and not mere error of judgment. For serious misconduct to exist, there must be reliable evidence showing that the judicial acts complained of were corrupt or inspired by an intention to violate the law, or were in persistent disregard of well known legal rules.”

Moreover, in *Salcedo v. Inting*, 91 SCRA 19, We said:

“To warrant disciplinary action, the act of the judge must have a direct relation to the performance of his official duties. It is necessary to separate the character of the man from the character of the officer.”

Upon a re-evaluation of the evidence adduced in support of the charges against respondent judge, vis-a-vis the judicial yardsticks set forth in the above-cited cases as well as the recommendation of then Deputy Court Administrator Buena, We are convinced that the acts complained of did not have such a direct relation to the performance of respondent judge's official duties as to justify the extreme penalty of dismissal with all the painful stigma and consequences attaching thereto. On the contrary, the charges, as correctly labeled by respondent judge were politically-motivated. Thus, the administrative complaint was instituted by the Municipal Mayor of Motiong, Samar, instead of the aggrieved parties; one of the charges [Charge No. 3] had to do with alleged partisan politics engaged in by respondent judge in the election of barangay heads, and still another charge [Charge No. 4] involved his act of calling the municipal janitor a "tuta" of the mayor and the mayor as an animal like his master Marcos [referring to ex-president Marcos].

ACCORDINGLY, the Court Resolved to GRANT respondent judge’s motion for resolution of Court Administrator’s Recommendation to modify the dismissal to a lesser penalty.” The penalty of dismissal imposed on respondent judge under the decision dated November 26, 1981 in the instant administrative case is hereby reconsidered and modified to suspension from November 26, 1981 up to January 25, 1983 when his successor in office was appointed under the Judiciary Reorganization Act of 1981. Let respondent's petition for reappointment to the Bench be referred to the Judicial and Bar Council.

Let copies of this resolution be spread over respondent judge’s personal records and transmitted to the Office of the President and the Judicial and Bar Council for their information.

Teehankee, C.J., Yap, Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, and Cortes, JJ., concur.

[1] 109 SCRA 417.

[2] Sec. 6, Art. VII of the Constitution.

[3] Sec. 5[g], Rule 135, Rules of Court.

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