

PETER G. RAÑA, REVENUE COLLECTION CLERK I, MUNICIPAL TREASURER'S OFFICE, JAGNA, BOHOL, PETITIONER, VS. COMMISSION ON AUDIT – VII, RESPONDENT, OFFICE OF THE OMBUDSMAN, INTERVENOR.

Ponente: INGLES, G. T., J.

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INGLES, G. T., J.:

THE CASE

This is a petition filed under Rule 43 of the 1997 Rules of Civil Procedure, as amended, seeking the review of the Decision[2] dated 25 November 2005 of the Office of the Ombudsman (Visayas) and its Order[3] dated 1 March 2006 denying reconsideration[4] in OMB-V-A-05-0274-F.

The petitioner prayed for the issuance of a Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction to stay the assailed decision on the premise that this court would spare him from being dismissed from work. He continued that he is the sole breadwinner in his family and that his children are still young and in school.

The rollo shows that on 4 June 2003 until 12 December 2003, state auditors from the Commission on Audit (COA) conducted an examination on the cash and accounts of the petitioner and discovered during the said examination that the petitioner incurred cash shortage in his collections totaling to P235,983.00. That, instead of producing the official receipts demanded by the state auditors, the petitioner presented evidence showing that as of March 14, 2005, he already made partial payments amounting to P99,231.893 leaving a balance of P136,769.07. Again, the petitioner made partial payments[5] specifically on these dates: November 23, 2007, December 19, 2007, March 5, 2008, May 2, 2008, April 28, 2008, March 27, 2008, December 18, 2008, November 18, 2008, June 27, 2008, November 6, 2009, May 4, 2009, April 15, 2009, November 18, 2010, May 4, 2010, and December 22, 2009, leaving a balance of P98,569.07.

THE ANTECEDENTS

The facts culled from the assailed decision are as follow:

“Complainant alleged that on 4 June 2003, State Auditor II Pablita C. Abellana and State Auditor I Florabel N. Pasamba conducted an examination on the cash and accounts of respondent. In establishing the total money accountability of respondents, said State Auditors availed and made use of all available financial records in respondent's office. Due to certain verifications made on the official receipts issued to respondent, the audit was extended up to 12 December 2003. Resultantly, complainant found that respondent was short in his cash collections by Two Hundred Thirty-Five Thousand Nine Hundred Eighty-Three Pesos (P235,983.00). Thereafter, demand letters were sent to respondent directing him to immediately produce the missing official receipts, remittance of collections and explain in writing how the shortage came about. In reply, respondent presented evidences showing partial payments. The total amount restituted as of 14 March 2005 as certified by the Municipal Accountant is Ninety-Nine Thousand Two Hundred Thirteen Pesos and Ninety-Three Centavos

(P99,213.93), thereby leaving a balance of One Hundred Thirty-Six Thousand Seven Hundred Sixty-Nine Pesos and Seven Centavos (P136,769.07). To date, respondent failed to fully reconstitute the missing amount and submit any explanation on how the shortage came about.

In support of the complaint, the Joint Affidavit of the examining auditors, Audit Observation Memorandum and other documents or papers showing respondent's shortage are submitted.

On 24 June 2005, this Office issued an Order directing respondent to file his Counter-Affidavit. As per Registry Return Card (Ref. No. 3042), respondent indeed received a copy of said Order. However, despite receipt of said Order, respondent failed to submit one to date. Thereafter, both parties were further directed to file their respective Position Papers per Order dated 27 September 2005. In the same Order, the parties were already apprised that their failure to submit said Position Paper within the prescribed period of ten (10) days from receipt thereof shall be deemed a waiver of their right to submit one and this case shall thereafter be deemed submitted for resolution on the basis of the evidence on record. Nonetheless, only complainant submitted its Position Paper on 19 October 2005. Respondent, despite receipt of the Order directing him [to] submit his Position Paper as per Registry Return Card Reference No. 1558 failed to submit one to date.

The sole issue for resolution is whether or not the respondent is administratively liable for Dishonesty for having incurred a shortage in his cash and accounts in the amount of Two Hundred Thirty-Five Thousand Nine Hundred Eighty-Three Pesos (P235,983.00) per audit examination conducted within the period from 3 June 2003 to 12 December 2003."

THE RULING of the OMBUDSMAN

The respondent Ombudsman disposed the administrative complaint in this wise:

"WHEREFORE, finding substantial evidence to hold respondent PETER G. RAÑA administratively liable for Dishonesty, he is hereby meted the penalty of DISMISSAL from the service with forfeiture of benefits and disqualification from holding public office.

SO ORDERED."[6]

In ruling for the dismissal of the Peter G. Raña, the respondent Ombudsman reasoned, that,

"At the outset, it needs be stressed that, by respondent's failure to submit his Counter-Affidavit and Position Paper, the complaint stands uncontroverted. Records clearly showed that indeed an examination on the cash and accounts of respondent had been conducted within the period from 3 June 2003 to 12 December 2003. Resultantly, it was found out that respondent incurred a shortage in his cash and accounts in the amount of Two Hundred Thirty-Five Thousand Nine Hundred Eighty-Three Pesos (P235,983.00). Complainant's findings are substantiated by the Cash Examination Report with supporting documents and Joint Affidavit of the examining auditors, State Auditor II Pablita C. Abellana and State Auditor I Florabel N. Pasamba. The evidences on record thus clearly show respondent's culpability for the present charge. Moreover, it is also borne out in the records that respondent was sent Demand Letters dated 12 December 2003, 6 June 2003 and 16 June 2003, for him to settle his accounts. Nevertheless, respondent failed to make good his shortage and, instead, merely submitted evidences/receipts of partial payments in the amount of Ninety-Nine Thousand Two Hundred Thirteen Pesos and Ninety-Three Centavos (P99,213.93)). It should be pointed out, however, that the partial restitution/payment made by respondent does not, in any way affect or diminish liability. Law and jurisprudence are clear on this point: 'not even the restitution of the whole amount x x x can erase her administrative culpability, not to speak of her criminal liability (emphasis supplied). Hence, irrespective of whether there really was a restitution or not, the same does not exculpate respondent from his liability. There is thus sufficient evidence to show that, for failure to have duly forthcoming, upon demand, the amount of which he is chargeable, respondent has put the missing funds to his personal use and benefit.

Simply put, respondent as an accountable officer being the Revenue Collection Clerk I of the Municipal

Treasurer's Office, Jagna, Bohol, and who, in line with his duty, has the custody and control of the money, which he collected, is liable for Dishonesty for having expropriated the sum of Two Hundred Thirty-Five Thousand Nine Hundred Eighty-Three Pesos (P235,983.00) for his own personal use and benefit.”[7]

Dissatisfied, Peter G. Raña sought the reconsideration of the afore-quoted ruling, but the respondent Ombudsman denied his motion.

“It should be noted, however, that aside from requiring respondent to submit a Counter-Affidavit per Order dated 24 June 2005, another Order dated 27 September 2005 was issued for him to submit his Position Paper. At that point in time, as intimidated in the latest Order, respondent could have another chance of presenting his 'defenses and other claims' and any 'additional relevant affidavits, and/or documentary evidence' could have also been attached to his Position Paper. Nonetheless, respondent once more chose to be quiet about the charges hurled against him. What is more, respondent, in the present Motion, could have already adduced evidence for his defense, if there is any, instead of letting this case hang again for another long period of time that he is given within which to file his Counter-Affidavit. Anyhow, respondent's reasoning, as above-intimated, does not appear justifiable and convincing for this Office to overturn its findings. We don't find it reasonable, after all the opportunities given to him to explain his side, to extend another period of time to file for him to his Counter-Affidavit at this juncture. Besides, the records show that when respondent was sent Demand Letters by complainant asking him to produce the missing funds and submit a written explanation on how the deficiency was incurred, he (respondent) simply presented evidences of partial payments. Additionally, respondent could have earlier informed this Office of his predicament which he could have easily done even without the assistance of a counsel especially if he indeed has valid, real and justifiable defenses.

As regards the allegation on the harshness of the penalty imposed upon respondent, it needs be impressed that the degree of the corresponding penalty for the present charge is not within the discretion of this Office to determine. The imposition of the penalty of Dismissal from the service which corresponds to the charge of Dishonesty is one expressly provided for by law and which this Office does not have the authority to alter.

In fine, the present Motion is not anchored on any of the grounds set forth under Section 27, RA 6770 (Rules of Procedure of the Office of the Ombudsman) which could warrant a reversal of the subject Resolution.”[8]

Hence, this petition anchored on the ground that the penalty of dismissal meted against him is too harsh under the circumstances. Herein, the Office of the Ombudsman was not impleaded as respondent only the Commission on Audit.

In a communication[9] dated 9 June 2011, Justice Ramon Paul L. Hernando inhibited from the instant case as he has close relations with Deputy Ombudsman for Luzon whose Order is being assailed herein.

Subsequently, the Office of the Ombudsman filed a Motion to Intervene and to Admit Attached Comment[10] with leave of court.

By this Court's Resolution[11] dated 28 March 2014, the Office of the Ombudsman's Motion to Intervene and to Admit Attached Comment was noted and granted; simultaneously, the Office of Ombudsman's Comment on the Petition was noted and admitted. In the same Resolution, the instant petition was declared submitted for decision.

THE ARGUMENTS

The petitioner's

The petitioner avers that he was designated as tax collector of the Municipality of Jagna, Bohol, on April 16, 1990. That, shortly after his designation as such, he experienced severe pain in his body which was not immediately diagnosed.

The petitioner asserts that the penalties imposed on him by the respondent Ombudsman are harsh considering that he is the sole breadwinner in the family and that he is afflicted with the dreaded disease of leprosy which requires daily maintenance of medicine for life.

That, he is not a bad person. That, he has always strived to be a good father to his very young children and a good husband to his wife. That, he supported his own family and his parents and siblings with the meager income he earned as government employee. Under these circumstance, he was forced to do something as incorrigible as getting money from his collection.

That, lesions grew on several parts of his body which he thought, at first, was just ordinary allergy. Pain accompanied these lesions. Later on, the lesions and the accompanying pain became worse. That, with his desire to live because of his family, he used up all his meager savings to seek medical diagnosis and treatment.

That, after he was finally diagnosed with leprosy, he felt the world as if the world came down crushing on him. With the realization of the stigma that attaches to this type of ailment, he immediately sought extensive medical treatment, which was not only expensive and which treatment involves a long period of time.

That, it was during that time that he started to get money from his collections to augment his meager income. And to cover shortages during audit he would borrow from loan sharks operating in their neighborhood. That, he, again, had to get money from his collections to pay these loan sharks. That, he reached the point wherein he could no longer cover up the shortages in his collections.

True, there is no excuse for his acts. He, however, is hoping that he would be allowed to continue with his work as he has a young family to support. While he has already been healed of the leprosy, his family still needs him to support them.

That, to be meted the penalty of DISMISSAL from service with forfeiture of benefits and disqualification from holding public office, would be catastrophic to him and his family.

He stresses that he had already restituted a substantial part of the shortage and is still continuing to retribute the rest of the amount. That, he is poor and has no properties to sell to pay it at one time. To prove this, he is attaching a copy of the Certification from the Office of the Municipal Treasurer and the corresponding Official Receipts which are attached as Annex "E".

That, he has devoted his life to the service of his family and the community; and is serving the church as lay minister.

That, in the case of *In Re: Report of COA on the shortage of accountabilities of Clerk of Court Lilia S. Buena, MTCC, Naga City, et. al. Vina v. Lilia S. Buena, etc., A.M. No. 95-1-01-MTCC, January 5, 1998*, the Supreme Court, citing *Apiag v. Judge Cantero*, held that:

"With Mrs. Buena's demonstrated repentance, immediate full restitution and sincere effort to reform her life, we believe that the extreme penalty of dismissal with its accessory penalties it too harsh. The concurrence of these three factors should serve to mitigate the penalty of respondent. In the exercise of this court's discretion, we consider it just unfair to deem respondent resigned from her post effective immediately. We allow her however to claim leave credits and retirement benefits in order to provide her and her family a new lease on life, so that she may not succumb again to dark temptations caused by financial troubles. In the same vein, the court's action is without prejudice to her reemployment in any branch, agency or instrumentality of the government where she may be qualified."

The Intervenor's

Here, the petitioner does not assail or refute the factual findings made by the intervenor-Ombudsman since he already admitted using his collections for his own personal use and benefit. What the petitioner wants is to lower the penalty imposed on him on the consideration that the money was used to treat his leprosy and that he has already made a substantial restitution of the missing account to cover up the shortage in his collections. As of 15 April 2011, the petitioner still left an existing balance of Ninety-Eight Thousand Five Hundred Sixty-Nine and Seven Centavos (P98,569.07) as certified by the Assistant Municipal Treasurer of the Municipality of Jagna, Bohol.

It bears to stress that the petitioner, by reason of his position being the Revenue Collection Clerk I, is accountable for public funds. Taking advantage thereof, by his own admission, he took or misappropriated public funds for his personal use in his custody in the amount of P235,983.00. Clearly, this act constitutes dishonesty which is the “disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray.”

What is more, the grounds advance by the petitioner to support his plea for the issuance of a temporary restraining order and/or writ of preliminary injunction are not substantial to support such issuance. At point is Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman, as amended by Administrative Order No. 17 dated September 15, 2003. Pursuant to this rule, an appeal does not stay the execution of the decision of the Office of the Ombudsman. This rule was explained in the case of *Ombudsman v. Court of Appeals and Barriga* (G.R. No. 172224, February 26, 2011). In light of this pronouncement, the Court of Appeals has no discretion to stay the immediately executory character of the assailed Ombudsman decision. To do so would be an encroachment on the rule-making powers of the Ombudsman granted under Section 13(8), Article XI of the Constitution and Sections 18 and 27 of RA No. 6770.

THE ISSUE

The sole issue in this controversy is the determination of the proper administrative penalty to be imposed on the private respondent.

OUR RULING

The petition must fail.

In this instance, the petitioner admitted taking public funds in his custody for his personal use and benefit. He, however, implores for leniency. He asks us to adopt a liberal and understanding attitude towards him. He avers that he was forced to take public funds because he could not afford the medical treatment for leprosy which afflicted him. Moreover, the fact that he has already restituted a substantial amount to cover the shortages he incurred, the same should be taken to mitigate his culpability. He wants us to consider his ailment and his being the sole breadwinner in the family as mitigating circumstances, and accordingly, lessen the penalty imposed on him by the intervenor-Ombudsman. The petitioner invokes *Marasigan v. Buena*[12] as basis for his plea for leniency.

In *Marasigan*, supra, the Supreme Court agreed in part with the Office of the Court Administrator's recommendation finding respondent Buena administratively liable for dishonesty. Instead, however, of dismissing respondent Buena as recommended by the OCA, the Supreme Court only considered said respondent resigned from service and accordingly, allowed her to claim leave credits and retirement benefits. This ruling of the Supreme Court was without prejudice to respondent Buena's re-employment in any branch, agency or instrumentality of the government where she may be qualified. Quoted hereunder is the pertinent portion of that ruling, viz -

With Mrs. Buena's demonstrated repentance, immediate full restitution and sincere effort to reform her life, we believe that the extreme penalty of dismissal with its accessory penalties is too harsh. The concurrence of these three factors should serve to mitigate the penalty of respondent. In the exercise of this Court's discretion, we consider it just and fair to deem respondent resigned from her post effective immediately. We allow her however, to claim leave credits and retirement benefits in order to provide her and her family a new lease on life, so that she may not succumb again to dark temptations caused by financial troubles. In the same vein, the Court's action is without prejudice to her re-employment in any branch, agency or instrumentality of the government where she may be qualified. (Underscoring ours)

For its part, the intervenor-Ombudsman reasoned that "the principle of social justice and compassion conveniently invoked by the petitioner cannot be applied to work in his favor."

We agree with the intervenor-Ombudsman.

In point is the case of *Duque v. Veloso*.^[13] In that case the private respondent was the District Supervisor of Quedan and Rural Credit Guarantee Corporation (Quedancor) in Cagayan de Oro City. He was administratively charged with three (3) counts of dishonesty in connection with his unauthorized withdrawals of money deposited by one Juanito Quino – a client of Quedancor. Upon the discovery of the unauthorized withdrawals made by the private respondent, Juanito Quino demanded the return of the money withdrawn by the private respondent. Juanito Quino informed the manager of Quedancor who, in turn, issued to the private respondent a memorandum requiring him to explain the withdrawals and to return the money. In compliance, the private respondent returned the money. The private respondent admitted to have received the P50,000.00 from the Quedancor's cashier despite knowing that it was intended for Juanito Quino's loan repayment. The private respondent was charged by Quedancor with dishonesty, and was subsequently found guilty of the charges and imposed upon him the penalty of dismissal from the service, with the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification for reemployment in the government service. The Civil Service Commission affirmed the Quedancor's ruling. On appeal, we, likewise, adjudged the private respondent guilty of dishonesty but modified the penalty of dismissal to one (1) year suspension from office without pay, finding support in *Miel v. Malindog* and relying on Section 53, Rule IV of the Uniform Rules on Administrative Cases (Uniform Rules). We took into account the following mitigating circumstances: (1) the respondent's length of service of 18 years; (2) the prompt admission of culpability; (3) the return of the money; and (4) the respondent's status as a first time offender. On review, the Supreme Court en banc reversed and set aside our ruling and reinstated the resolution of the Civil Service Commission which affirmed the decision of Quedancor, ratiocinating, viz -

Dismissal from the service is the prescribed penalty imposed by Section 52 (A) (1), Rule IV of the Uniform Rules for the commission of dishonesty even as a first offense. The aforesaid rule underscores the constitutional principle that public office is a public trust and only those who can live up to such exacting standard deserve the honor of continuing in public service. It is true that Section 53, Rule IV of the Uniform Rules provides the application of mitigating, aggravating or alternative circumstances in the imposition of administrative penalties. Section 53, Rule IV applies only when clear proof is shown, using the specific standards set by law and jurisprudence, that the facts in a given case justify the mitigation of the prescribed penalty.

In appreciating the presence of mitigating, aggravating or alternative circumstances to a given case, two constitutional principles come into play which the Court is tasked to balance. The first is public accountability which requires the Court to consider the improvement of public service, and the preservation of the public's faith and confidence in the government by ensuring that only individuals who possess good moral character, integrity and competence are employed in the government service. The second relates to social justice which gives the Court the discretionary leeway to lessen the harsh effects of the wrongdoing committed by an

offender for equitable and humanitarian considerations.

A significant aspect which the CA failed to consider under the circumstances is the inapplicability to the present case of the Court's ruling in *Vicente A. Miel v. Jesus A. Malindog*,^[14] which in turn cited *Apuyan, Jr. v. Sta. Isabel*^[15] and *Civil Service Commission v. Belagan*.^[16] The rulings in these three (3) cases were rendered under different factual circumstances involving dishonest acts, i.e., submission of false entries in the Personal Data Sheet, the solicitation of money, or the non-compliance with the prescribed court procedure, among others. In terms of seriousness and gravity, these dishonest acts differ from the dishonest acts committed by the respondent who used public funds under his responsibility for his own personal benefit. Unlike the cases cited by the CA, we also take into account the nature of Quedancor's business — it is a credit and guarantee institution where the public perception of the official's credibility and reputation is material. (Footnoting ours)

Apropos, the Supreme Court held in *OCA v. Laya, et. al.*,^[17] viz -

It is basic that the fact that respondent fully paid her shortages does not free her from the consequences of her wrongdoing. Restitution of the missing amount cannot erase administrative liability. This is because by respondent's reprehensible act of gross dishonesty, she has undermined the public's faith in the courts and ultimately, in the administration of justice.

It may be well to remember that sometime in 2003 after its audit of the petitioner's examination on the petitioner's cash and accounts, the COA state auditors discovered that the petitioner incurred cash shortage amounting to P235,983.00. That, as of March 14, 2005, the petitioner still owed the government the amount of P136,769.07. As of October 31, 2007, the petitioner still had an outstanding balance of P124,069.07. On various dates, spread over the period of November 23, 2007 to March 30, 2011, the petitioner again made partial restitution^[18] amounting to P25,500.00, thus, leaving a balance of P98,569.07.^[19] Tellingly, unlike in *Marasigan v. Buena*, *supra*, wherein respondent Buena made immediate, full restitution of the amount involved, the herein petitioner did not do so. Thus, it was error for the herein petitioner to rely in *Marasigan v. Buena*, *supra*, to support his cause.

Thus, in view of the foregoing disquisition, we are constrained to affirm the findings and conclusion of the intervenor-Ombudsman as the same were based on evidence extant in the rollo and its conclusion on the pertinent law and jurisprudence. It is settled rule that as long as there are substantial evidence in support of the Ombudsman's decision, its decision will not be overturned. Accordingly, the petitioner's prayer for issuance of a temporary restraining order and/or writ of preliminary injunction is denied.

WHEREFORE, the instant petition is DENIED, the Decision dated 25 November 2005 and Order dated 1 March 2006 of the Office of the Ombudsman in OMB-V-A-05-0274-F are AFFIRMED in toto.

SO ORDERED.

Maxino, P.A.A., and Francisco, R.C., JJ., concur.

[1] Resolution dated March 28, 2014 granting the Office of the Ombudsman's motion to intervene. Rollo, pp. 98-99.

[2] Rollo, pp. 25-27 (photocopy). Rollo, pp. 91-93 (Certified machine copy).

[3] Rollo, pp. 9-12 (photocopy). Rollo, pp. 94-97 (Certified machine copy).

[4] Rollo, pp. 28-31.

[5] Rollo, p. 32 with official receipts.

- [6] Rollo, p. 27.
- [7] Rollo, pp. 26-27.
- [8] Rollo, pp. 10-11.
- [9] Rollo, p. 39.
- [10] Rollo, pp. 69-76.
- [11] Rollo, pp. 98-99.
- [12] En Banc. In Re: Report of COA on the Shortage of the Accountabilities of Clerk of Court Lilia S. Buena, MTCC, Naga City. Francisco L. Marasigan and Francisco T. Dela Vina v. Lilia S. Buena v. Lilia S. Buena as Clerk of Court, MTCC, Naga City, A.M. No. 95-1-01-MTCC, January 5, 1998.
- [13] En Banc. Francisco T. Duque III, in his capacity as Chairman of the Civil Service Commission v. Florentino Veloso, G.R. No. 196201, June 19, 2012.
- [14] G.R. No. 143538, February 13, 2009, 579 SCRA 11.
- [15] Adm. Matter No. P-01-1497, 430 SCRA 1.
- [16] G.R. No. 132164, October 19, 2004, 440 SCRA 578.
- [17] En Banc. Office of the Court Administrator v. Justafina Hope T. Laya, Clerk III, and Benilda M. Maddela, Clerk IV, RTC-OCC, Bayombong, Nueva Viscaya and Flaviano D. Balgos, Jr., et. al. v. Justafina Hope T. Laya, Clerk III, RTC-OCC, Bayombong, Nueva Viscaya. A.M. No. P-04-1924, April 27, 2007. (Formerly A.M. No. 04-10-593-RTC and OCA IPI No. 04-1890-P).
- [18] Rollo, pp. 33-36.
- [19] Statement from the Office of the Municipal Treasurer. Rollo, p. 32.

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