

PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR), PETITIONER, VS. CARLOS P. RILLORAZA, RESPONDENT.

G.R. No. 141141. June 25, 2001

Ponente: DE LEON, JR., J.

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DE LEON, JR., J.:

Before us is a petition for review on certiorari praying for the reversal of the Decision dated August 31, 1999[1] as well as the Resolution dated November 29, 1999, rendered by the Court of Appeals in CA-G.R. SP No. 51803.

The facts are undisputed:

On November 5, 1997, administrative charges for dishonesty, grave misconduct, conduct prejudicial to the best interest of the service, and loss of confidence, were brought against respondent Carlos P. Rilloraza, a casino operations manager of petitioner PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR). Respondent allegedly committed the following acts:

Summary description of charge(s):

Failure to prevent an irregularity and violations of casino and regulations committed by co-officers during his shift on October 9, 1997.

- During his shift of 6:00 a.m.-2:00 p.m. on October 9, 1997, four (4) personal checks with a total value of Pesos: Five Million (P5,000,000) were issued by a small-time financier/player and were facilitated by a COM with the Treasury Division which enabled the small-time financier/player to withdraw and receive said amount. The facilitation of the checks was not authorized by the Senior Branch Manager (SBM) or the Branch Manager for Operations (BMO) and the COM who facilitated the checks was not on duty then.

- He even facilitated one (1) of the personal checks with a value of Pesos: Five Hundred Thousand (P500,000.00).

- He failed to stop a top-ranking officer from placing bets over and above the allowable limit of P5,000.00 per deal, he failed to stop the same officer from playing in the big tables and lastly, he allowed the same officer to play beyond the allowable time limit of 6:00 a.m.

Respondent duly filed his answer during an investigation conducted by petitioner's Corporate Investigation Unit. He narrated the events that transpired:

"When I reported for my 6:00 a.m. to 2:00 p.m. shift, on October 9, that morning I saw BM RICHARD SYHONGPAN beside TABLE #22 (BB) sitting at a coffee table inside Area 3. While inside the Area 3, GAM RENE QUITO approached me with a check worth P500,000.00 requested by a customer for endorsement to the Treasury. Since I've been out of Manila branch for 2 years and I've just been recalled to this branch for only more than 3 weeks, I'm not quite familiar with the systems and I don't know this customer. I immediately approached COM CARLOS GONZALES, who at that time was still around, to verify regarding the said check and his immediate reply was "IT'S OKAY AND GOOD AND IT WAS GUARANTEED BY BM

SYHONGPAN'. In fact, I reconfirmed it again with COM GONZALES since he is more familiar with the systems and customers, he answered me the same. So I gave the approval to GAM QUITO for endorsement. When I went in the office, I instructed OOS GILBERT CABANA to beep SBM VIC ADVINCULA and BMO DARIO CORDERO to call office "ASAP" because I wanted to relay this matter to them and there were no reply from both of them. I instructed OOS CABANA to send messages again to SBM & BMO, but still I received no reply. It was until after noontime that BMO CORDERO returned my call and I reported the incident to him. When I was at home at around 3:30 p.m. SBM ADVINCULA returned my call and I reported the incident. I also relayed the incident to SBM REYES.

While during my rounds, I went down to the New VIP area and there I saw BM SYHONGPAN sitting at TABLE #3(BB) and he was holding house cards at that time. I approached and stopped him but he reacted that the bet was not his but to a CUSTOMER'S. I took his words because as a subordinate, I respected him as one of our superior who very well know all our company's policy esp. that an officer is not allowed to play at BIG table and are only allowed to bet with a maximum of P5,000.00 only. So I believe it was not his bet but the said customer. At that time there was no way for me to stop the game because I saw the said customer, named MS. CORAZON CASTILLO, whom I don't know her [sic] since I was out of Manila Branch 2 years, and whom BM SYHONGPAN was referring to as the player, has a lot of chips worth about P7 Million in front of her and was betting P1.5M on the banker side which was over the maximum table limit by P500,000.00. I know we are allowed to authorize approval by raising the betting limits as per request of the playing customers.

After the game, the chips were encashed and I instructed GAM J. EUGENIO to accompany BM SYHONGPAN to his room because he was too drunk. When I was doing my rounds again, that's how I found out from rumors within the gaming areas that this MS. CASTILLO was used by BM SYHONGPAN and COM GONZALES to played [sic] in behalf of them the whole time. And I also learned that there were four checks endorsed during my shift which I facilitated only one check worth P500,000.00 after I verified and confirmed it with COM GONZALES. With regards to the other 3 checks, I have no knowledge about it since they, BM SYHONGPAN and COM GONZALES, kept it a secret from me. When GAM EUGENIO returned from the room of BM SYHONGPAN he handed me some cash, which according to him, was given by BM SYHONGPAN as 'BALATO'. I did not accept the money because at that moment I was so mad that they involved me beyond my innocence since I am new in the branch. I then instructed GAM EUGENIO to return the money to BM SYHONGPAN. (sic)

Finding Rilloraza's explanation unsatisfactory, the PAGCOR Board handed down a Resolution on December 2, 1997 dismissing respondent and several others from PAGCOR, on the grounds of dishonesty, grave misconduct and/or conduct prejudicial to the best interest of the service and loss of confidence, effective December 5, 1997. The Board also denied respondent's motion for reconsideration in a Resolution dated December 16, 1997.

Respondent appealed to the Civil Service Commission. On November 20, 1998, the Commission issued Resolution No. 983033,[2] the dispositive portion of which provides, to wit:

WHEREFORE, the appeal of Carlos P. Rilloraza is hereby dismissed. However, the Commission finds appellant guilty only of Simple Neglect of Duty and metes out upon him the penalty of one month and one day suspension. The assailed Resolution of PAGCOR Board of Directors is thus modified.

The Commission denied petitioner's motion for reconsideration in Resolution No. 990465 dated February 16, 1999.[3]

On appeal, the Court of Appeals affirmed the resolution of the Commission.[4] The appellate court ordered petitioner to reinstate private respondent with payment of full backwages plus all tips, bonuses and other benefits accruing to his position and those received by other casino operations managers for the period starting January 5, 1998 until his actual reinstatement. Petitioner filed a motion for reconsideration,[5] which was denied by the

appellate court in the assailed resolution of November 29, 1999.[6]

Hence, the instant petition.

PAGCOR avers that:

I

THE COURT OF APPEALS GRAVELY ERRED WHEN IT FAILED AND REFUSED TO CONSIDER THAT RESPONDENT WAS A CONFIDENTIAL APPOINTEE OR EMPLOYEE WHOSE TERM HAD EXPIRED BY REASON OF LOSS OF CONFIDENCE.

II

THE COURT OF APPEALS GRAVELY ERRED WHEN IT AFFIRMED THE CSC RESOLUTIONS MODIFYING THE PENALTY METED OUT ON RESPONDENT FROM DISMISSAL TO SUSPENSION, DESPITE THE GRAVITY OR SERIOUSNESS OF THE OFFENSES COMMITTED BY THE LATTER ON ACCOUNT OF THE EXTRAORDINARY RESPONSIBILITIES AND DUTIES REPOSED IN THE RESPONDENT BY VIRTUE OF HIS POSITION.

The wellspring of stability in government service is the constitutional guarantee of entrance according to merit and fitness and security of tenure, viz:

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(2) Appointments in the civil service shall be made only according to merit and fitness to be determined, as far as practicable, and, except to positions which are policy-determining, primarily confidential, or highly technical, by competitive examination.

(3) No officer or employee of the civil service shall be removed or suspended except for cause provided by law.[7]

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In the case at bar, we are basically asked to determine if there is sufficient cause to warrant the dismissal, not merely the suspension, of respondent who, petitioner maintains, occupies a primarily confidential position. In this connection, Section 16 of Presidential Decree No. 1869[8] provides:

Exemption.--All positions in the Corporation, whether technical, administrative, professional or managerial are exempt from the provisions of the Civil Service Law, rules and regulations, and shall be governed only by the personnel management policies set by the Board of Directors. All employees of the casinos and related services shall be classified as "Confidential" appointee.

Petitioner argues that pursuant to the aforequoted provision, respondent is a primarily confidential employee. Hence, he holds office at the pleasure of the appointing power and may be removed upon the cessation of confidence in him by the latter. Such would not amount to a removal but only the expiration of his term. However, there should be no lingering doubt as to the true import of said Section 16 of P.D. No. 1869. We have already definitively settled the same issue in *Civil Service Commission v. Salas*,[9] to wit:

In reversing the decision of the CSC, the Court of Appeals opined that the provisions of Section 16 of Presidential Decree No. 1869 may no longer be applied in the case at bar because the same is deemed to have been repealed in its entirety by Section 2(1), Article IX-B of the 1987 Constitution. This is not completely correct. On this point, we approve the more logical interpretation advanced by the CSC to the effect that "Section 16 of PD 1869 insofar as it exempts PAGCOR positions from the provisions of Civil Service Law and Rules has been amended, modified or deemed repealed by the 1987 Constitution and Executive Order No. 292

(Administrative Code of 1987).

However, the same cannot be said with respect to the last portion of Section 16 which provides that "all employees of the casino and related services shall be classified as 'confidential' appointees." While such executive declaration emanated merely from the provisions of Section 2, Rule XX of the Implementing Rules of the Civil Service Act of 1959, the power to declare a position as policy-determining, primarily confidential or highly technical as defined therein has subsequently been codified and incorporated in Section 12(9), Book V of Executive Order No. 292 or the Administrative Code of 1987. This later enactment only serves to bolster the validity of the categorization made under Section 16 of Presidential Decree No. 1869. Be that as it may, such classification is not absolute and all-encompassing.

Prior to the passage of the aforesaid Civil Service Act of 1959, there were two recognized instances when a position may be considered primarily confidential: Firstly, when the President, upon recommendation of the Commissioner of Civil Service, has declared the position to be primarily confidential; and, secondly, in the absence of such declaration, when by the nature of the functions of the office there exists "close intimacy" between the appointee and appointing power which insures freedom of intercourse without embarrassment or freedom from misgivings of betrayals of personal trust or confidential matters of state.

At first glance, it would seem that the instant case falls under the first category by virtue of the express mandate under Section 16 of Presidential Decree No. 1869. An in-depth analysis, however, of the second category evinces otherwise.

When Republic Act No. 2260 was enacted on June 19, 1959, Section 5 thereof provided that "the non-competitive or unclassified service shall be composed of positions expressly declared by law to be in the non-competitive or unclassified service or those which are policy-determining, primarily confidential, or highly technical in nature." In the case of Piñero, et al. vs. Hechanova, et al., the Court obliged with a short discourse there on how the phrase "in nature" came to find its way into the law, thus:

"The change from the original wording of the bill (expressly declared by law x x x to be policy-determining, etc.) to that finally approved and enacted ('or which are policy determining, etc. in nature') came about because of the observations of Senator Tañada, that as originally worded the proposed bill gave Congress power to declare by fiat of law a certain position as primarily confidential or policy-determining, which should not be the case. The Senator urged that since the Constitution speaks of positions which are 'primarily confidential, policy-determining or highly technical in nature,' it is not within the power of Congress to declare what positions are primarily confidential or policy-determining. 'It is the nature alone of the position that determines whether it is policy-determining or primarily confidential.' Hence, the Senator further observed, the matter should be left to the 'proper implementation of the laws, depending upon the nature of the position to be filled,' and if the position is 'highly confidential' then the President and the Civil Service Commissioner must implement the law.

To a question of Senator Tolentino, 'But in positions that involved both confidential matters and matters which are routine, x x x who is going to determine whether it is primarily confidential?' Senator Tañada replied:

'SENATOR TAÑADA: Well, at the first instance, it is the appointing power that determines that: the nature of the position. In case of conflict then it is the Court that determines whether the position is primarily confidential or not.' xxx

Hence the dictum that, at least since the enactment of the Civil Service Act of 1959, it is the nature of the position which finally determines whether a position is primarily confidential, policy-determining or highly technical. And the Court in the aforesaid case explicitly decreed that executive pronouncements, such as Presidential Decree No. 1869, can be no more than initial determinations that are not conclusive in case of conflict. It must be so, or else it would then lie within the discretion of the Chief Executive to deny to any officer, by executive fiat, the protection

of Section 4, Article XII (now Section 2[3], Article IX-B) of the Constitution. In other words, Section 16 of Presidential Decree No. 1869 cannot be given a literally stringent application without compromising the constitutionally protected right of an employee to security of tenure. [italics supplied]

The doctrinal ruling enunciated in Piñero finds support in the 1935 Constitution and was reaffirmed in the 1973 Constitution, as well as in the implementing rules of Presidential Decree No. 807, or the Civil Service Decree of the Philippines. It may well be observed that both the 1935 and 1973 Constitutions contain the provision, in Section 2, Article XII-B thereof, that "appointments in the Civil Service, except as to those which are policy-determining, primarily confidential, or highly technical in nature, shall be made only according to merit and fitness, to be determined as far as practicable by competitive examination." Corollarily, Section 5 of Republic Act No. 2260 states that "the non-competitive or unclassified service shall be composed of positions expressly declared by law to be in the non-competitive or unclassified service or those which are policy-determining, primarily confidential, or highly technical in nature." Likewise, Section 1 of the General Rules in the implementing rules of Presidential Decree No. 807 states that "appointments in the Civil Service, except as to those which are policy-determining, primarily confidential, or highly technical in nature, shall be made only according to merit and fitness to be determined as far as practicable by competitive examination." Let it be here emphasized, as we have accordingly italicized them, that these fundamental laws and legislative or executive enactments all utilized the phrase "in nature" to describe the character of the positions being classified.

The question that may now be asked is whether the Piñero doctrine--to the effect that notwithstanding any statutory classification to the contrary, it is still the nature of the position, as may be ascertained by the court in case of conflict, which finally determines whether a position is primarily confidential, policy-determining or highly technical--is still controlling with the advent of the 1987 Constitution and the Administrative Code of 1987, Book V of which deals specifically with the Civil Service Commission, considering that from these later enactments, in defining positions which are policy-determining, primarily confidential or highly technical, the phrase "in nature" was deleted.

We rule in the affirmative. The matter was clarified and extensively discussed during the deliberations in the plenary session of the 1986 Constitutional Commission on the Civil Service provisions, to wit:

"MR. FOZ:

Which department of government has the power or authority to determine whether a position is policy-determining or primarily confidential or highly technical?

FR. BERNAS:

The initial decision is made by the legislative body or by the executive department, but the final decision is done by the court. The Supreme Court has constantly held that whether or not a position is policy-determining, primarily confidential or highly technical, it is determined not by the title but by the nature of the task that is entrusted to it. For instance, we might have a case where a position is created requiring that the holder of that position should be a member of the Bar and the law classifies this position as highly technical. However, the Supreme Court has said before that a position which requires mere membership in the Bar is not a highly technical position. Since the term 'highly technical' means something beyond the ordinary requirements of the profession, it is always a question of fact.

MR. FOZ:

Does not Commissioner Bernas agree that the general rule should be that the merit system or the competitive system should be upheld?

FR. BERNAS:

I agree that that should be the general rule; that is why we are putting this as an exception.

MR. FOZ:

The declaration that certain positions are policy-determining, primarily confidential or highly technical has been the source of practices which amount to the spoils system.

FR. BERNAS:

The Supreme Court has always said that, but if the law of the administrative agency says that a position is primarily confidential when in fact it is not, we can always challenge that in court. It is not enough that the law calls it primarily confidential to make it such; it is the nature of the duties which makes a position primarily confidential.

MR. FOZ:

The effect of a declaration that a position is policy-determining, primarily confidential or highly technical--as an exception--is to take it away from the usual rules and provisions of the Civil Service Law and to place it in a class by itself so that it can avail itself of certain privileges not available to the ordinary run of government employees and officers.

FR. BERNAS:

As I have already said, this classification does not do away with the requirement of merit and fitness. All it says is that there are certain positions which should not be determined by competitive examination.

For instance, I have just mentioned a position in the Atomic Energy Commission. Shall we require a physicist to undergo a competitive examination before appointment? Or a confidential secretary or any position in policy-determining administrative bodies, for that matter? There are other ways of determining merit and fitness than competitive examination. This is not a denial of the requirement of merit and fitness."

It is thus clearly deducible, if not altogether apparent, that the primary purpose of the framers of the 1987 Constitution in providing for the declaration of a position as policy-determining, primarily confidential or highly technical is to exempt these categories from competitive examination as a means for determining merit and fitness. It must be stressed further that these positions are covered by security of tenure, although they are considered non-competitive only in the sense that appointees thereto do not have to undergo competitive examinations for purposes of determining merit and fitness. [italics supplied]

In fact, the CSC itself ascribes to this view as may be gleaned from its questioned resolution wherein it stated that "the declaration of a position as primarily confidential if at all, merely exempts the position from the civil service eligibility requirement." Accordingly, the Piñero doctrine continues to be applicable up to the present and is hereby maintained. Such being the case, the submission that PAGCOR employees have been declared confidential appointees by operation of law under the bare authority of CSC Resolution No. 91-830 must be rejected.

Justice Regalado's incisive discourse yields three (3) important points: first, the classification of a particular position as primarily confidential, policy-determining or highly technical amounts to no more than an executive or legislative declaration that is not conclusive upon the courts, the true test being the nature of the position. Second, whether primarily confidential, policy-determining or highly technical, the exemption provided in the Charter pertains to exemption from competitive examination to determine merit and fitness to enter the civil service. Such employees are still protected by the mantle of security of tenure. Last, and more to the point, Section 16 of P.D. 1869, insofar as it declares all positions within PAGCOR as primarily confidential, is not absolutely binding on

the courts.

Considerations vary so as to make a position primarily confidential. Private secretaries are indisputably primarily confidential employees.[10] Those tasked to provide personal security to certain public officials have also been deemed to hold primarily confidential positions[11] for obvious reasons: the former literally are responsible for the life and well-being of the latter. Similar treatment was accorded to those occupying the posts of city legal officer[12] and provincial attorney,[13] inasmuch as the highly privileged nature of the lawyer-client relationship mandates that complete trust and confidence must exist betwixt them. National interest has also been adjudged a factor, such that the country's permanent representative to the United Nations was deemed to hold her post at the pleasure of the Chief Executive.[14]

As casino operations manager, Rilloraza's duties and responsibilities are:

JOB SUMMARY: The Casino Operations Manager directs, controls and supervises the Operations Division of the branch. He reports directly to the Branch Manager or to the Branch Manager for Operations in Metro Manila branches.

DUTIES AND RESPONSIBILITIES:

- Formulates marketing programs and plans of action for branch gaming operations in order to optimize revenue.
- Institutes and maintains a healthy, organized, mentally alert, and highly motivated human resource for effective and efficient branch gaming operations performance.
- Takes measures to maintain and uphold the integrity of the casino games.
- Reviews, analyzes, and evaluates gaming table and slot machine operations reports, including income performance.
- Submits periodic reports to the Branch Manager.
- Directs the opening and closing of gaming table and slot machine areas.
- Directs the setting-up, closure or suspension of operations of gaming tables and slot machine units when deemed necessary.
- Controls the requisition, storage, and issuance of playing cards, gaming equipment and paraphernalia, operations keys, and accountable receipts and slips.
- Ensures that gaming operations personnel adhere to the established House Rules, company policies and procedures.
- Ensures that quality and efficient service is extended to casino patrons in accordance with the established House Rules, company policies and procedures.
- Directs and controls all activities of the Card Shuffling Center and the Card Distribution Room.
- Issues directives, memoranda, and other official communications on branch gaming operations matters.
- Directs the daily and periodic performance evaluation of operations personnel.
- Requires written statements from operations personnel regarding disputes, reported irregularities and violations of House Rules, company policies and procedures.
- Issues or recommends disciplinary sanctions against delinquent operations personnel, as well as commendations to deserving ones.

- Upon the Branch Manager's approval, issues preventive suspension to erring employees pending investigation.
- Effects immediate changes in House Rules when deemed necessary, subject to management review.
- Approves table refill, chip yield, and dropbox yield transactions, as well as the payment for progressive link super jackpot awards.
- Directs the cancellation of progressive link super jackpot combinations.
- Signs chip checks in behalf of the Branch Manager.
- Approves complimentary food and beverages to deserving players and evaluates the same for the possible extension of other amenities.
- Settles disputes arising from gaming operations that have not been effectively settled by gaming managers and supervisors, and enforces decisions on the interpretation of House Rules, company policies, and procedures.
- Recommends to the Branch Manager the banning of undesirable players.
- Orders the removal of customers or employees from the table gaming (sic) and slot machine area for justifiable reasons.
- Implements contingency plans in case of emergencies to ensure the security and safety of customers and staff.
- 26. Acts on customer complaints, suggestions, and observations.
- Chairs the Branch Infractions Committee, the Variance Committee, and other ad hoc committees of the Operations Division.
- Represents the Operations Division in Branch Management panel meetings.
- Apprises the Branch Manager of any incident of doubtful nature and of developments that require his immediate attention.
- Performs other duties as may be designated by the Branch Manager.

Undoubtedly, respondent's duties and responsibilities call for a great measure of both ability and dependability. They can hardly be characterized as routinary, for he is required to exercise supervisory, recommendatory and disciplinary powers with a wide latitude of authority. His duties differ markedly from those we previously ruled as not primarily confidential: for instance, PAGCOR's Internal Security Staff;^[15] Management and Audit Analyst I of the Economic Intelligence and Investigation Bureau;^[16] a Special Assistant to the Governor of the Central Bank;^[17] the Legal Staff of the Provincial Attorney;^[18] members of the Customs Police;^[19] the Senior Executive Assistant, Clerk I, Supervising Clerk I and Stenographer;^[20] and a Provincial Administrator.^[21] In this sense, he is a tier above the ordinary rank-and-file in that his appointment to the position entails faith and confidence in his competence to perform his assigned tasks. Lacking, therefore, is that amplitude of confidence reposed in him by the appointing power so as to qualify his position as primarily confidential. Verily, we have observed that:

[i]ndeed, physicians handle confidential matters. Judges, fiscals and court stenographers generally handle matters of similar nature. The Presiding and Associate Justices of the Court of Appeals sometimes investigate, by designation of the Supreme Court, administrative complaints against judges of first instance, which are confidential in nature. Officers of the Department of Justice, likewise, investigate charges against municipal judges. Assistant Solicitors in the Office of the Solicitor General often investigate malpractice charges against

members of the Bar. All of these are "confidential" matters, but such fact does not warrant the conclusion that the office or position of all government physicians and all Judges, as well as the aforementioned assistant solicitors and officers of the Department of Justice are primarily confidential in character.[22]

We further note that a casino operations manager reports directly to the Branch Manager or, in Metro Manila branches, to the Branch Manager for Operations. It does not appear from the record to whom the Branch Manager (or the Branch Manager for Operations, as the case may be) reports. It becomes unmistakable, though, that the stratum separating the casino operations manager from reporting directly to the higher echelons renders remote the proposition of proximity between respondent and the appointing power. There is no showing of that element of trust indicative of a primarily confidential position, as we defined it in *De los Santos v. Mallare*,[23] to wit:

Every appointment implies confidence, but much more than ordinary confidence is reposed in the occupant of a position that is primarily confidential. The latter phrase denotes not only confidence in the aptitude of the appointee for the duties of the office but primarily close intimacy which insures freedom of intercourse without embarrassment or freedom from misgivings of betrayals of personal trust or confidential matters of state.

Necessarily, the point of contention now is whether there was cause for the respondent's separation from the service. On this point, having analyzed both parties' arguments, we find that the Civil Service Commission did not err in declaring that Rilloraza was liable only for simple neglect of duty. In the first place, there is no evidence to sustain a charge of dishonesty. As the latter term is understood, it implies a:

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.[24]

In the case at bar, respondent's explanation fails to evince an inclination to lie or deceive, or that he is entirely lacking the trait of straightforwardness. We concur with the appellate court's finding, thus:

Available proof unmistakably demonstrate that upon seeing BM Syhongpan playing at Table No. 3BB, respondent Rilloraza at once, told him to stop. However, Syhongpan explained that he was merely playing for a customer, Ms. Corazon Castillo who was seated also at the table. After observing the large number of chips in front of Ms. Castillo estimated at around P7M, respondent became convinced of the clarification given by Branch Manager Syhongpan and he must have relied also on the word of said top ranking PAGCOR official whose representation must ordinarily be accepted and accorded respect and credence by a subordinate like him. xxx

More importantly, the PAGCOR Adjudication Committee concluded that respondent actually attempted to stop the game where Syhongpan was playing which was even utilized as basis by the PAGCOR Board in dismissing respondent. xxx

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The allegation that respondent Rilloraza allowed Syhongpan to place bets over and above the allowable limit of P5,000.00 per deal is not anchored on a correct premise. Respondent Rilloraza has steadfastly maintained that he is of the belief that BM Syhongpan is not playing for himself but for Ms. Castillo. Thus, if Syhongpan is merely acting for the real casino player, then the policy of not allowing any PAGCOR official to bet beyond P5,000.00 has no application. Respondent Rilloraza believed in good faith that the bet was not BM Syhongpan's but of Ms. Castillo and should not be unduly punished for his honest belief. The same reason exists for the claim that respondent allowed BM Syhongpan to play beyond 6:00 a.m. This is non sequitur since Rilloraza never entertained the idea that Syhongpan was the gambler.

Lastly, if only to consummate respondent's alleged dishonesty and grave misconduct by corruptly profiting from said incident, he could have easily pocketed the 'balato' given by Syhongpan, but he never did, and in fact, returned the money. xxx

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On the facilitation of the swap of a P500,000.00 personal check for chips, this Court, after considering the parties involved and the circumstances of the case, believes that respondent Rilloraza has judiciously performed all the acts necessary to protect the interests of PAGCOR and has acted as a prudent and reasonable man. It is evident that respondent had the authority to approve the exchange of checks for gambling chips. In the exercise of such discretion, We find that the approval by Rilloraza of the exchange was done with caution and circumspect [sic]. When he was approached by GAM Quito for endorsement of said personal checks per request of a customer, he immediately approached COM Gonzales to verify the check who assured him that the check was good and in fact guaranteed by Mr. Syhongpan, Davao City Branch Manager of PAGCOR. To be sure, he even reconfirmed the same with Gonzales as he is more familiar with the systems and the customers since he has been recalled to the branch for only three (3) weeks. After approving the endorsement, he immediately tried to contact SBM Advincula and BMO Cordero, to notify them of his action but none of them called back. In the afternoon, both returned the call and were informed by respondent of the exchange of the chips for the check and presumably, the former ratified or acquiesced to the action of respondent since there was no objection or complaint about the matter. xxx

These same findings negate the conclusion that respondent is guilty of misconduct or conduct prejudicial to the best interest of the service. In *Manuel v. Calimag, Jr.*,^[25] we defined misconduct, thus:

Misconduct in office has been authoritatively defined by Justice Tuazon in *Lacson v. Lopez* in these words: "Misconduct in office has a definite and well-understood legal meaning. By uniform legal definition, it is a misconduct such as affects his performance of his duties as an officer and not such only as affects his character as a private individual. In such cases, it has been said at all times, it is necessary to separate the character of the man from the character of the officer x x x. It is settled that misconduct, misfeasance, or malfeasance warranting removal from office of an officer, must have direct relation to and be connected with the performance of official duties amounting either to maladministration or willful, intentional neglect and failure to discharge the duties of the office x x x.

Differently propounded in *Canson v. Garchitorena, et al.*,^[26] misconduct is "any unlawful conduct on the part of a person concerned in the administration of justice prejudicial to the rights of parties or to the right determination of the cause. It generally means wrongful, improper or unlawful conduct motivated by a premeditated, obstinate or intentional purpose. The term, however, does not necessarily imply corruption or criminal intent. On the other hand, the term 'gross' connotes something 'out of all measure; beyond allowance; not to be excused; flagrant; shameful'." From the facts given, absent is that element of intent to do wrong against petitioner.

CSC Resolution No. 991936 dated August 31, 1999 classifies simple neglect of duty as a less grave offense punishable as a first offense by suspension of one (1) month and one (1) day to six (6) months.^[27] In the imposition of the proper penalty, Section 54 thereof provides, as follows: (a) the minimum of the penalty shall be imposed where only mitigating and no aggravating circumstances are present; (b) the medium of the penalty shall be imposed where no mitigating and aggravating circumstances are present; and (c) the maximum of the penalty shall be imposed where only aggravating and no mitigating circumstances are present. In turn, the circumstances that may be properly considered are:

Section 53. Extenuating, Mitigating, Aggravating, or Alternative Circumstances. - In the determination of the penalties to be imposed, mitigating, aggravating and alternative circumstances attendant to the commission of the offense shall be considered.

The following circumstances shall be appreciated:

- Physical illness

- Good faith
- Taking undue advantage of official position
- Taking undue advantage of subordinate
- Undue disclosure of confidential information
- Use of government property in the commission of the offense
- Habituality
- Offense is committed during office hours and within the premises of the office or building
- Employment of fraudulent means to commit or conceal the offense
- Length of service in the government
- Education, or
- Other analogous circumstances

Nevertheless, in the appreciation thereof, the same must be invoked or pleaded by the proper party, otherwise, said circumstances shall not be considered in the imposition of the proper penalty. The Commission, however, in the interest of substantial justice may take and consider these circumstances.

We find that the Civil Service Commission, as affirmed by the Court of Appeals, correctly attributed good faith on the part of respondent. Accordingly, the modified penalty imposed by the Civil Service Commission on the respondent which was affirmed by the Court of Appeals, was proper under the premises.

WHEREFORE, the petition is hereby DENIED for lack of merit. The Decision dated August 31, 1999 as well as the Resolution dated November 29, 1999, rendered by the Court of Appeals in CA-G.R. SP No. 51803 are hereby AFFIRMED. No costs.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and Buena, JJ., concur.

[1] Justice Presbitero J. Velasco, Jr., ponente; Justice Fermin A. Martin, Jr. and Justice Bennie A. Adeguin-de la Cruz, concurring.

[2] Annex "C" of the Petition, Rollo, pp. 62-70.

[3] Annex "D" of the Petition, Rollo, pp. 71-72.

[4] Decision, Annex "A" of the Petition, Rollo, pp. 33-57.

[5] Annex "E" of the Petition, Rollo, pp. 73-80.

[6] Annex "B" of the Petition, Rollo, pp. 59-60.

[7] Constitution, Art. IX-B, Sec. 2.

[8] Entitled "Consolidating and Amending Presidential Decree Nos. 1067-A, 1067-B, 1067-C, 1399 and 1632, Relative to the Franchise and Powers of the Philippine Amusement and Gaming Corporation (PAGCOR), dated July 11, 1983."

[9] 274 SCRA 414, 420-427 (1997).

- [10] *Corpus v. Cuaderno, Sr.*, 13 SCRA 591, 596 (1965).
- [11] *Borres v. Court of Appeals*, 153 SCRA 120, 132 (1987).
- [12] *Cadiente v. Santos*, 142 SCRA 280, 284 (1986), citing *Claudio v. Subido*, 40 SCRA 481 (1971).
- [13] *Griño v. Civil Service Commission*, 194 SCRA 458, 466 (1991).
- [14] *Santos v. Macaraig*, 208 SCRA 74, 84 (1992).
- [15] *Civil Service Commission v. Salas*, *supra*.
- [16] *Tria v. Sto. Tomas*, 199 SCRA 833, 840-841 (1991).
- [17] *Corpuz v. Cuaderno*, *supra*.
- [18] *Griño v. Civil Service Commission*, *supra*.
- [19] *Piñero v. Hechanova*, 18 SCRA 417, 424 (1966).
- [20] *Ingles v. Mutuc*, 26 SCRA 171, 177 (1969).
- [21] *Laurel V v. Civil Service Commission*, 203 SCRA 195, 204 (1991).
- [22] *Ingles v. Mutuc*, *supra*.
- [23] 87 Phil. 289, 298 (1950).
- [24] *Black's Law Dictionary*, Sixth Ed., p. 468, 1990.

[25] 307 SCRA 657, 661-662 (1999).

[26] 311 SCRA 268, 285 (1999).

- [27] Sec. 52(B).

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