

CIVIL SERVICE COMMISSION, Petitioner, vs. PETER E. NIERRAS, Respondent.*G.R. No. 165121. February 14, 2008*

Ponente: QUISUMBING, J.

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This is a petition for review on certiorari seeking to annul and set aside the partially amended Decision[1] dated July 27, 2004 rendered by the Court of Appeals in CA-G.R. SP No. 64122, which reduced to six months without pay the penalty of dismissal imposed on Nierras by the Civil Service Commission (CSC).

The dramatis personae in this case are complainant Olga C. Oña, a secretary of the Local Water Utilities Administration (LWUA), and respondent Peter E. Nierras, the Acting General Manager of the Metro Carigara Water District, Leyte.

The antecedent facts of the case are as follows:

On July 17, 1994, Oña left for Leyte upon orders from her Department Manager, Hector Dayrit, to assist in the formation of the San Isidro Water District. Upon arrival in Tacloban City, Oña was endorsed by the LWUA management adviser to Nierras.

On July 18, 1994, Oña and Nierras proceeded to San Isidro, Leyte, where she held a briefing for the local officials. After the official briefing, Oña asked Nierras where the municipal mayor would accommodate her. Nierras replied that he would accommodate her in his farm in Calubian. They then took a motorcycle to Calubian where, according to Oña, Nierras already made passes at her.

In Calubian, they first deposited their personal belongings in the house of Nierras' cousin where he said they would stay for the night. Thereafter, they proceeded to Nierras' farm. Upon their arrival, Nierras asked a tenant to purchase liquor and invited the other tenants to a drinking spree. Around 10:30 p.m., Oña, already tired and sleepy, reminded Nierras that they should go back to his cousin's house to retire for the night. However, instead of going back, Nierras gave her a sleeping mat, a blanket and a pillow and was told to rest. She then left and chose a corner in the balcony of the house in the farm to sleep.

Around midnight, Oña was awakened when Nierras lay down beside her and crept underneath her blanket. To her surprise, she saw that Nierras was half-naked with his pants already unzipped. She tried to run away but Nierras pulled her and ordered her to go back to sleep. It was only when she screamed "Ayoko, Ayoko, Ayoko!" that Nierras stopped grabbing and pulling her.

For his part, Nierras denied the charge and averred that when they were about to go back to the house of Nierras' cousin, Oña insisted that it would just be better if they slept at the farm. Nierras then managed to borrow one blanket, one pillow and one mat. Thereafter, they lay down on the same mat and started conversing. During their conversation, Oña said that she badly needed P5,000 at the moment. Oña asked Nierras if he could lend her the money. Shocked by what Oña said, Nierras just laughed and expressed his amazement through a sarcastic smile.

Thereafter, Oña never talked anymore to Nierras.

After about an hour, Nierras said he saw that a part of the blanket was not being used by Oña. Because of the weather and the swarm of mosquitoes, Nierras asked if he could use a part of the blanket. Oña kept mum so he managed to use the unused part of the blanket to cover part of himself to lessen mosquito bites. When Oña felt that Nierras was using a part of the blanket, she immediately stood up, bringing with her the pillow. She never came back to the place where she slept.

On August 11, 1994, Oña filed an incident report[2] addressed to the Administrator of the LWUA, charging Nierras with sexual harassment. She also implicated her immediate supervisors, Hector Dayrit and Francisco Bula, Jr., in the charge for possible collusion and conspiracy for failure to act on her complaint despite being informed of what Nierras did to her.

On October 28, 1994, Oña filed with the CSC an affidavit[3] for sexual harassment, grave misconduct and conduct unbecoming a public officer. After a prior investigation, the CSC formally charged Nierras with grave misconduct after finding a prima facie case against him. But finding no evidence of collusion with him, the CSC dismissed the complaint against Dayrit and Bula.

On September 29, 2000, the CSC found Nierras guilty of Grave Misconduct.[4] The dispositive portion of the decision states:

WHEREFORE, Peter E. Nierras is hereby found GUILTY of Grave Misconduct and is meted the penalty of dismissal from the service with all the accessory penalties.

Let a copy of this Resolution as well as other relevant documents be furnished the Office of the Ombudsman for whatever criminal action it may take under the premises.[5]

Nieras moved for reconsideration; however, the same was denied. Hence, he appealed to the Court of Appeals.

On March 5, 2004, the Court of Appeals promulgated a decision[6] affirming the resolutions issued by the CSC finding Nierras guilty of grave misconduct through sexual harassment and upheld the penalty of dismissal imposed upon him.

Nieras filed a Motion for Reconsideration[7] dated March 30, 2004, asking the Court of Appeals to reverse its decision and reduce the penalty of dismissal. On July 27, 2004, the Court of Appeals rendered the partially amended decision reducing the penalty of dismissal to suspension of six months without pay on the basis of the Resolution dated July 8, 2004 of this Court in *Veloso v. Caminade*. [8] The dispositive portion of the said decision states:

WHEREFORE, our Decision promulgated on March 5, 2004 is hereby PARTIALLY AMENDED by reducing the penalty of dismissal imposed on the petitioner by the Civil Service Commission to SIX (6) MONTHS of SUSPENSION WITHOUT PAY.

SO ORDERED.[9]

Hence, the instant petition, wherein petitioner poses a single issue for our resolution:

WHICH IS THE APPLICABLE RULING IN THE FACTS OF THIS CASE: *VELOSO V. CAMINADE*, 434 SCRA 1 (2004) OR *SIMBAJON V. ESTEBAN*, 312 SCRA 192 (1999), *DAWA V. ASA*, 292 SCRA 701 (1998) AND ANALOGOUS DECISIONS.[10]

Simply put, the question raised could be restated as follows: Did the acts of respondent constitute grave misconduct that warrant his dismissal from the service?

Petitioner prays that we sustain the original decision of the Court of Appeals penalizing Nierras with dismissal, and not merely a six-month suspension without salary for immoral conduct.

For his part, respondent Nierras contends that the penalty to be meted to him should be equivalent to or even less than what has been meted by this Court on Judge Caminade in the case of *Veloso v. Caminade*, because in the said case more complaints of sexual harassments were filed against the judge and the standard of morality expected of a judge is more exacting than that expected of an ordinary officer of the government.

Misconduct refers to intentional wrongdoing or deliberate violation of a rule of law or standard of behavior, especially by a government official. To constitute an administrative offense, misconduct should relate to, or be connected with, the performance of the official functions and duties of a public officer. Grave misconduct is distinguished from simple misconduct in that the elements of corruption, clear intent to violate the law or flagrant disregard of established rule must be manifest in grave misconduct.[11]

Otherwise stated, the misconduct is grave if it involves the additional element of corruption.[12] Corruption as an element of grave misconduct consists of the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others.[13]

In this case, we find that the element of corruption is absent. Nierras did not use his position as Acting General Manager of the Metro Carigara Water District in the act of sexually harassing Oña. In fact, it is established that Nierras and Oña are not employed or connected with the same agency or instrumentality of the government. While this fact would not negate the possibility that sexual harassment could be committed by one against the other, the same would not warrant the dismissal of the offender because he did not use his position to procure sexual favors from Oña.

Under CSC Memorandum Circular No. 19, Series of 1994,[14] sexual harassment does not necessarily or automatically constitute “grave misconduct.” Besides, under paragraph 2 of Section 1 thereof, sexual harassment constitutes a ground for disciplinary action under the offense of “Grave Misconduct, Conduct Prejudicial to the Best Interest of the Service, or Simple Misconduct.”

Petitioner alleged that the Court of Appeals erred in applying the case of *Veloso v. Caminade* in imposing the proper penalty on Nierras since the facts of the case are different. Indeed, it should be noted that in the instant case, Oña and Nierras are not co-employees while in the *Caminade* case, the complainants were the subordinates of the offender. Also, in the *Caminade* case, there were several incidents of sexual harassment by a judge from whom the expected standard of morality was more exacting. But here, there was only one incident of sexual harassment. If a six-month suspension can be meted to a judge from whom the expected standard of morality is more exacting, a fortiori, the same or lesser penalty should be meted to Nierras. Moreover, in the *Caminade* case, the offender actually forcefully kissed and grabbed the complainants. However, in this case, Oña was able to flee from the arms of Nierras even before he could cause more harm to her. Under the circumstances of the present case, we agree with the Court of Appeals that suspension of the offender for a period of six (6) months without pay is sufficient penalty.

Clearly, there is no doubt that the act of Nierras constituted misconduct. However, it would be inappropriate to impose on him the penalty of dismissal from the service. Section 16, Rule XIV of the Rules Implementing Book V of Executive Order No. 292 provides that in the determination of penalties to be imposed, mitigating and aggravating circumstances may be considered.[15] Considering the fact that this is the first time that Nierras is being administratively charged, it would be too harsh to impose on him the penalty of dismissal outright. Worth noting, in the case of *Civil Service Commission v. Belagan*,[16] although the Court found that the act of the

offending public official constituted grave misconduct, still it did not impose the penalty of dismissal on him, considering the fact that it was his first offense.[17]

The law does not tolerate misconduct by a civil servant. It should be sanctioned. Public service is a public trust and whoever breaks that trust is subject to penalty. The issue, however, concerns the appropriate penalty. Dismissal with forfeiture of benefits, in our view, should not be imposed for all infractions involving misconduct, particularly when it is a first offense as in the instant case.[18] To conclude, given the circumstances of this case and of the precedents cited, we are in agreement that suspension of respondent for six (6) months without pay is sufficient penalty.

WHEREFORE, the petition is hereby DISMISSED. The assailed Decision dated July 27, 2004 of the Court of Appeals is AFFIRMED.

SO ORDERED.

Puno, C.J., Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Reyes, and Leonardo-De Castro, JJ., concur.

Nachura, J., no part. filed pleading as Sol. gen.

[1] Rollo, pp. 35-38. Penned by Associate Justice Salvador J. Valdez, Jr., with Associate Justices Rodrigo V. Cosico and Juan Q. Enriquez, Jr. concurring.

[2] CA rollo, pp. 93-94.

[3] Id. at 74-76.

[4] Rollo, pp. 116-124.

[5] Id. at 124.

[6] Id. at 39-53.

[7] CA rollo, pp. 353-367.

[8] A.M. No. RTJ-01-1655 (Formerly OCA IPI 91-1174-RTJ), July 8, 2004, 434 SCRA 1.

[9] Rollo, p. 37.

[10] Id. at 289.

[11] Villanueva v. Court of Appeals, G.R. No. 167726, July 20, 2006, 495 SCRA 824, 834-835.

[12] Civil Service Commission v. Ledesma, G.R. No. 154521, September 30, 2005, 471 SCRA 589, 603.

[13] H. BLACK, BLACK'S LAW DICTIONARY 311 (5th ed., 1979).

[14] POLICY ON SEXUAL HARASSMENT IN THE WORKPLACE, dated June 3, 1994, issued by the Civil Service Commission.

[15] Civil Service Commission v. Belagan, G.R. No. 132164, October 19, 2004, 440 SCRA 578, 600.

[16] Id.

[17] Id. at 599-600.

[18] Civil Service Commission v. Ledesma, supra note 12, at 611.

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