ROBERTO M. VILLANUEVA, PETITIONER, VS. QUISUMBING, COURT OF APPEALS AND HOUSE OF REPRESENTATIVES, REPRESENTED BY ROBERTO P. NAZARENO, IN HIS CAPACITY AS SECRETARY GENERAL, RESPO...

G.R. NO. 167726. July 20, 2006

Ponente: TINGA, J.

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TINGA, J.:

Assailed in this Rule 45 Petition for Review[1] is the Decision[2] dated 27 August 2003 of the Court of Appeals in C.A.-G.R. SP No. 75002, and its Resolution[3] dated 29 March 2005 denying herein petitioner Roberto M. Villanueva's (Villanueva) Motion for Reconsideration.[4] The dispositive portion of the challenged Decision reads as follows:

> WHEREFORE, the writ of certiorari is GRANTED. The questioned resolutions of the Civil Service Commission is (sic) hereby REVERSED and SET ASIDE, and the said respondent ORDERED to CEASE AND DESIST from implementing the same. The Decision of the House of Representatives Disciplinary Board dated 07 June 2000 is hereby REINSTATED, and respondent Villanueva is ORDERED DISMISSED from the service with forfeiture of all benefits.
>
> No Costs.
>
> SO ORDERED.[5]

The antecedents are as follows:

On 24 November 1997, Villanueva, married man and the Legislative Assistant II of the Cashiering and Administrative Records Division of the House of Representatives (the House), was charged with Grave Misconduct, Disgraceful and Immoral Conduct Prejudicial to the Best Interest of the Service before the House Disciplinary Board. The charges were based on an entry in the Official Log Book as well as a Spot Inspection Report accomplished, respectively, by Frederick Maramba (Maramba) and Orencio Castillo (Castillo), both security officers of the House who were on regular roving patrol duty on the night of 16 October 1997. Their routine inspection tour included Room 305, Northwing Building, Office of Representative Constantino H. Navarro, Jr., of the First District of Surigao Del Norte.[6]

Maramba and Castillo narrated that when they came upon said office at around 9:30 of that night, they saw Villanueva, a married man[7] and a female asleep on the couch, both naked, with the woman's arm resting on Villanueva's body. The female was later identified as Elizabeth Navarro-Arguelles (Navarro-Arguelles), Representative Navarro's daughter and confidential assistant, herself a married woman.[8]

Villanueva's immediate supervisor, Jose Ma. Antonio B. Tuano, Chief of the Cashiering and Administrative Records Division, lodged the complaint against the former.[9] Incidentally, no charges were filed against Navarro-Arguelles as the House Disciplinary Board has no jurisdiction over confidential assistants of

Representatives.[10]

The House Disciplinary Board, after hearing, found Villanueva guilty as charged and suspended him for one (1) year without pay with a stern warning that any infraction in the future will be dealt with more severely.[11] However, acting on Villanueva's motion for reconsideration, the House Disciplinary Board increased the penalty to dismissal with forfeiture of all benefits.[12]

Speaker Manuel B. Villar, Jr. affirmed the latter Decision of the House Disciplinary Board in a Resolution[13] dated 5 October 2000. Villanueva moved for a reconsideration of the Decision but this was denied by Speaker Feliciano Belmonte, Jr., in a Resolution[14] dated 28 May 2001.[15]

Villanueva then interposed an appeal before the Civil Service Commission (the Commission) which, on 12 April 2002, modified the penalty to suspension. The dispositive portion of the Commission's Resolution No. 020536[16] reads as follows:

> WHEREFORE, the appeal of Robert[o] M. Villanueva is hereby partly GRANTED. The Commission holds that Villanueva is guilty of Disgraceful and Immoral Conduct for which he is meted the penalty of one (1) year suspension. In all other respects, the decisions appealed from are affirmed.
>
> Considering that Villanueva has been out of the service for more than the imposed suspension, he should now be reinstated to his former position. It is understood that this reinstatement shall not carry with it the payment of back salaries and other entitlements, for he is not totally exonerated.[17]

In its motion for reconsideration, the House prayed for the re-imposition of the penalty of dismissal on Villanueva. For his part, Villanueva moved for partial reconsideration, seeking that he be awarded his benefits for the period of January 1999 to February 2001. The Commission denied both motions in Resolution No. 021492[18] dated 18 November 2002, a copy of which the House received on 21 November 2002.[19]

In a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure filed on 20 January 2003 before the Court of Appeals, the House ascribed grave abuse of discretion to the Commission for reducing the penalty to a mere suspension.

In its challenged Decision, the Court of Appeals granted the petition for certiorari and sustained the Decision of the House Disciplinary Board dismissing Villanueva. In arriving at this conclusion, the Court of Appeals emphasized the similarity of the factual circumstances of the case at bar with Dicdican v. Fernan, Jr.,[20] wherein the Court dismissed the court personnel found guilty of disgraceful and immoral conduct.[21] The appellate court stated that adherence to case law dictates the imposition of a similar penalty for the similar offense in the case at bar. Otherwise, the Court would be imposing on judicial employees more stringent standards than employees of the Legislature or the Executive.[22]

The appellate court likewise pointed out that the Commission gravely erred in failing to recognize the gravity of Villanueva's misconduct, stressing that Villanueva not only disregarded his marriage vows but also exhibited total disrespect of the marital status of Elizabeth Navarro-Arguelles.[23]

Moreover, the Court of Appeals held that Villanueva's offense relates to his official functions as it was made possible precisely by his official functions. By virtue of his position, Villanueva had free rein inside the building even after office hours. Clearly, therefore, Villanueva used his office to commit the misconduct for which he was charged,[24] it concluded.

Finally, the appellate court disclosed its desire to improve the public regard of the government sector by safeguarding morality in the ranks.[25]

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The Court of Appeals likewise denied Villanueva's Motion for Reconsideration.[26] Thus, Villanueva filed the instant petition.

In the instant petition, Villanueva insists that the appellate court did not have jurisdiction over the House's petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure as it was a substitute for lost appeal.[27] Villanueva also maintains that the Commission acted well within the confines of its jurisdiction when it imposed the penalty prescribed by law for disgraceful and immoral conduct.[28] Villanueva likewise contends that the Dicdican adjudication finds no application in the instant case as it was arrived at in the Court's exercise of its administrative jurisdiction over its personnel.[29] Further, Villanueva points out that his misconduct is in no way connected with his official functions and it cannot thus be equated with grave misconduct as defined by law.[30]

In its Comment,[31] the House contends that an appeal from the decision of the Commission would not constitute a speedy and adequate remedy thus necessitating the resort to the remedy of certiorari under Rule 65. The House reasons that the decision of the Commission was immediately executory and its execution would not have been stayed by an ordinary appeal.[32] The House also maintains that the ruling of the appellate court is in accordance with law and jurisprudence, particularly the Dicdican case. The House argues that employees of the legislature, just like employees of the judiciary, should be subject to the same exacting standards of morality and decency in their professional and private conduct.[33]

Lastly, the House posits that since Villanueva was found guilty of Grave Misconduct, Disgraceful and Immoral Conduct and Conduct Prejudicial to the Best Interest of the Service, dismissal indeed is the appropriate penalty.[34]

In his Reply,[35] Villanueva maintains, among other things, that even if an appeal before the Court of Appeals does not stop the execution of the Commission's Decision the House could have applied for a restraining order or injunction to stay it,[36] noting that Section 82, Rule VI of the Uniform Rules on Administrative Cases in the Civil Service[37] provides, thus:

> Section 82. Effect of Pendency of Petition for Review/Certiorari with the Court.-The filing and pendency of a petition for review with the Court of Appeals or certiorari with the Supreme Court shall not stop the execution of the final decision of the Commission unless the Court issues a restraining order or an injunction.

Moreover, Villanueva points out that the House could have easily availed of the remedy of appeal under Rule 43 of the 1997 Rules of Civil Procedure. The House received a copy of the assailed

resolution of the Commission on 21 November 2002. According to the Rules, the House had fifteen (15) days, or until 6 December 2002, to perfect an appeal which apparently, it did not do. Instead, it filed a petition for certiorari under Rule 65 to make up for the lost remedy of appeal.[38]

The Court finds merit in the petition.

At the outset, we find that the Court of Appeals erred in giving due course to the House's petition for certiorari as it was filed in lieu of an appeal which is the prescribed remedy. Section 5, Rule 43 of the 1997 Rules of Civil Procedure states that final orders or resolutions of the Commission are appealable to the Court of Appeals through a petition for review. However, instead of availing of the remedy of appeal, the House resorted to the wrong remedy of certiorari.

Notably, the House received the assailed resolution of the Commission on 21 November 2002, and thus it had until 6 December 2002 or fifteen (15) days after, to file an appeal. Despite the sufficient time, the House allowed the period to elapse and instead filed a petition for certiorari under Rule 65 on 20 January 2003, close to two (2) months after its receipt of the resolution. Failing to undertake an appeal, the House interposed a special civil

action of certiorari. Evidently, the House intended to make up for the lost remedy of appeal and substituted it with a petition for certiorari under Rule 65.

Settled is the rule that a special civil action of certiorari is not a substitute for a lost or lapsed remedy of appeal.[39] As the Court aptly held in David v. Cordova,[40] to wit:

> x x x x Where appeal is available to the aggrieved party, the action for certiorari will not be entertained. The remedies of appeal (including petitions for review) and certiorari are mutually exclusive, not alternative or successive. Hence, certiorari is not and cannot be a substitute for an appeal, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse. One of the requisites of certiorari is that there be no available appeal or any plain, speedy and adequate remedy. Where an appeal is available, certiorari will not prosper, even if the ground therefor[e] is grave abuse of discretion.[41]

That appeals to the Court of Appeals do not stop the execution of decisions of the Commission is not sufficient justification for resorting to the remedy of certiorari. As correctly pointed out by Villanueva, the execution of the decision of the Commission may be stayed if the House applies for and the appellate court so issues a restraining order or an injunction.[42] This thus enunciates the reality that, under the circumstances, an appeal from the decision of the Commission was an adequate and speedy remedy foreclosing the need for a Rule 65 petition for certiorari.

As the House failed to file a timely appeal, the Court of Appeals should have denied outright its petition for certiorari. Moreover, even if such petition was not procedurally flawed, still and all, it was bereft of merit and the appellate court erred in granting it.

First, the appellate court erred when it concurred with the House's contention that Villanueva's offense should be classified as grave misconduct.

Following a string of precedents, Amosco v. Magro[43] defines misconduct in this wise:

> 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.... 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.[44]

Misconduct means 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. In grave misconduct as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law or flagrant disregard of established rule, must be manifest. Corruption as an element of grave misconduct consists in 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. [45]

In the present case, Villanueva's offense was in no way connected with the performance of his functions and duties as a public officer. Sure, his office was used as a venue for the commission of the offense and definitely, his offense speaks despicably of his character as a man but it in no way evinced any failure on his part to discharge his duties as a public officer. Yes, Villanueva's offense is gravely immoral and reprehensible but it falls short of grave misconduct as defined by law.

To determine whether a public officer committed misconduct, it is necessary to separate the character of the man

from the character of the officer.[46] Here, Villanueva's transgression laid bare the values of his inner being but did not expose any of his shortcoming as a public officer. Who Villanueva is and what he believes in are inconsequential in concluding whether his misdemeanor amounts to misconduct. Rather, what is material is whether Villanueva properly discharged his public functions which we believe in no way was compromised or affected by the commission of his offense.

However, as correctly found by the Commission, we believe that Villanueva is guilty of Disgraceful and Immoral Conduct for having engaged in an illicit affair. In a catena of cases, the Court has ruled that government employees engaged in illicit relations are guilty of "disgraceful and immoral conduct" for which he/she may be held administratively liable.[47]

According to Section 22 (o), Rule XVI of the Omnibus Rules Implementing Book V of the Administrative Code of 1987 and Section 52 A (15) of the Uniform Rules on Administrative Cases in the Civil Service,[48] the first offense of Disgraceful and Immoral Conduct is punishable by suspension of six (6) months and one (1) day to one (1) year. A second offense is punishable by dismissal.

As Villanueva is a first-time offender, the proper penalty is suspension. The Commission therefore correctly meted out said penalty. It clearly acted in accordance with law and no grave abuse of discretion can be ascribed to it contrary to the appellate court's finding.

Moreover, we do not agree with the appellate court's ruling that Dicdican should be the controlling precedent such that the penalty of dismissal should be imposed in the instant case.

As correctly pointed out by Villanueva, when the Supreme Court acts on complaints against judges or any of the personnel under its supervision and control, it acts as personnel administrator imposing discipline and not as a court judging justiciable controversies.[49]

In Dicdican, the Court sanctioned its errant personnel according to what it believed to be the commensurate punishment. We deemed it wise to impose more stringent standards primarily to show that we are serious in policing our ranks. We imposed punishment in Dicdican as we deemed it proper, according to our own policies, but not without the guidance of the rules in the civil service. In this case, however, we are not acting as a personnel administrator but rather as the adjudicative appellate tribunal of last resort reviewing the decisions of lower courts. It is our responsibility to confirm whether the lower courts upheld the law. The law in this case clearly states that the proper penalty is suspension and not dismissal as held by the appellate court, hence, suspension it must be.

WHEREFORE, the petition is GRANTED. The Decision dated 27 August 2003 of the Court of Appeals in C.A.-G.R. SP No. 75002 and its Resolution dated 29 March 2005 denying petitioner's motion for reconsideration are REVERSED and SET ASIDE. Resolution No.

020536 dated 12 April 2002 and Resolution No. 021492 dated 18 November 2002 of the Civil Service Commission are AFFIRMED and REINSTATED.

SO ORDERED.

Panganiban, C.J., Puno, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Azcuna, Chico-Nazario, Garcia, and Velasco, Jr., JJ., concur.
Carpio, J., on official leave.

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[1] Rollo, pp. 10-25; Dated 11 May 2005.

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[2]Id. at 26-36; Penned by Associate Justice Romeo A. Brawner with the concurrence of Associate Justices Josefina Guevara-Salonga and Arturo D. Brion.

[3]Id. at 44-47.

[4]Id. at 37-43; 23 September 2003.

[5]Id. at 35.

[6]CA rollo, pp. 39-40.

[7]Id. at 123.

[8]Rollo, pp. 27-28; CA Rollo, p. 40; See also Rollo, p. 33.

[9]CA rollo, p. 92.

[10]Id. at 40.

[11] Rollo, p. 29; In a Decision dated 10 September 1999; CA rollo, pp. 39- 68.

[12] Id. at 29; In a Resolution dated 7 June 2000; CA rollo, p. 70-74.

[13] CA rollo, pp. 80-85.

[14] Id. at 86-88.

[15] Rollo, p. 29-30.

[16] CA rollo, pp. 90-125.

[17] Id. at 125.

[18]CA rollo, pp. 24-32.

[19] Rollo, p. 30; CA rollo, p. 11.

[20] 335 Phil. 532 (1997).

[21] Rollo, pp. 31-32.

[22] Id. at 34.

[23] Id. at 32-33.

[24] Id. at 33-34.

[25] Id. at 35.

[26]Id. at 37-43; Dated 23 September 2003.

[27] Id. at 17.

[28]Id. at 18.

[29] Id. at 19.

[30]Id. at 20.

[31] Id. at 54-64; Dated 1 September 2005.

[32] Id. at 56-57.

[33]Id. at 60.

[34]Id. at 61.

[35] Id. at 72-82; Dated 2 December 2005.

[36] Id. at 74.

[37]Effective 27 September 1999.

[38] Rollo, p. 75.

[39]David v. Cordova, G.R. No. 152992, 28 July 2005, 464 SCRA 384, 395; Tuazon, Jr. v. Godoy, G.R. No. 146927, 10 December 2002, 393 SCRA 631, 635-636.

[40] David v. Cordova, G.R. No. 152992, 28 July 2005, 464 SCRA 384.

[41]David v. Cordova, supra note 39 at 394-395.

[42]Rollo, p. 74; Uniform Rules on Administrative Cases in the Civil Service, Rule VI, Section 82.

[43] Adm. Matter No. 439-MJ, 30 September 1976, 73 SCRA 107.

[44] Id. at 108-109.

[45] Civil Service Commission v. Belagan, G.R. No. 132164, 19 October 2004, 440 SCRA 578, 599-600.

[46] Supra note 43, at 109.

[47] Maguad v. de Guzman, 365 Phil. 12, 19 (1999).

[48] Which repealed or modified accordingly Rule XVI of the Omnibus Rules Implementing Book V of Administrative Code of 1987.

[49]Icasiano, Jr. v. Sandiganbayan, G.R. No. 95642, 28 May 1992, 209 SCRA 377, 383.

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