

**ATTY. EMMANUEL R. SISON, ANTONIO FERNANDO, and DR.
ARELLANO T. SO, Petitioners, vs. DR. EVANGELINE P.
MORALES-MALACA, Respondent.**

G.R. No. 169931. March 12, 2008

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This petition for review[1] assails the 19 November 2004 Decision[2] and the 27 September 2005 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 69895. The Court of Appeals modified Resolution No. 02-0307 of the Civil Service Commission by finding Atty. Emmanuel R. Sison, Dr. Arellano T. So, and Antonio Fernando guilty of simple misconduct and discourtesy in the course of official duties. The resolution denied petitioners' motion for reconsideration.

The Facts

The present controversy stemmed from a complaint filed by Dr. Evangeline P. Morales-Malaca (Malaca) against Atty. Emmanuel R. Sison (Sison) and Antonio Fernando (Fernando) for grave misconduct and abuse of authority and against Dr. Arellano T. So (So) for oppression, conduct prejudicial to the interest of the service, and gross discourtesy.

In her complaint filed before the Civil Service Commission-National Capital Region (CSC-NCR), Malaca alleged that on 1 September 1998, Manila Mayor Jose Atienza, Jr. issued a Special Order designating her as Special Consultant to the Mayor on Hospital Affairs. Believing that her designation was merely an addition to her duties and responsibilities as Assistant Director of the Ospital ng Maynila, Malaca continued occupying her office in the hospital. Malaca claimed that "by taking advantage of the situation and his position as Secretary to the Mayor, Sison issued Special Order dated 14 September 1998, designating Dr. Roberto M. Zaide as Officer-in-Charge (OIC) of the Office of the Assistant Hospital Director." Sison did not furnish her a copy of the Special Order although she was already reporting for work at the Office of the Chief of Staff of the City Mayor of Manila.

Malaca further alleged that aside from depriving her of subsistence allowance, So, without informing her, hired a locksmith to forcibly open the door of her office in the hospital. When Malaca confronted So, the latter allegedly shouted at her, claiming that he opened the office following Fernando's order. Malaca claimed that So and Fernando conspired in fabricating an ante-dated Memorandum dated 5 April 1999, by making it appear that Fernando, as Manila City Administrator, had directed So (1) to take over her office; (2) to employ a locksmith to open the door; (3) to conduct an inventory of properties inside the office; and (4) to solicit the help of two policemen to witness the same.

So countered that (1) Malaca's subsistence allowances were all released; (2) Malaca had no right to occupy her former office since she was relieved as Assistant Hospital Director; (3) the opening of Malaca's office was done

in the presence of two policemen; (4) they had to use force in opening Malaca's office because she refused to voluntarily surrender its possession despite repeated demands; and (5) Malaca's allegation that petitioners clandestinely and constructively removed her from her permanent position was misleading because it was Mayor Atienza who relieved Malaca from her post.

On the other hand, Sison and Fernando jointly alleged that on 26 August 1998, Mayor Atienza issued a Special Order relieving Malaca of her duties and responsibilities as the Assistant Director of the Ospital ng Maynila. Sison justified his designation of Dr. Zaide as OIC of the Office of the Assistant Director as having been done in the regular performance of official duty.

Fernando further alleged that the Memorandum dated 5 April 1999 was done pursuant to Section 480, Article X of Republic Act No. 7160 or the Local Government Code.[4] Therefore, it was issued in the regular performance of his duty as City Administrator of Manila.

The CSC-NCR dismissed Malaca's complaint, ruling as follows:

x x x this office finds no evidence to substantiate the complaint of Dr. Malaca against Sison, So and Fernando for alleged Grave Misconduct, Abuse of Authority, Oppression, Conduct Prejudicial to the Best Interest of the Service and Gross Discourtesy in the Course of Official Duties.

x x x Absence of sufficient evidence to prove that the Orders were issued in excess of his authority, the presumption of regularity in the performance of his duties as a public officer may not be disturbed.

x x x x

Complainant also failed to submit prima facie evidence to prove that damage was sustained due to the directive of the City Administrator for So to take-over the office intended for the Assistant Director and to employ a locksmith to open the door of the said office and conduct an inventory of both personal and government property found inside the same. On the other hand, considering that the office in question is a city property it is within the authority of the City Administrator to manage, maintain, and protect the same.

x x x x

WHEREFORE, the complaint against Atty. Emmanuel R. Sison, Dr. Antonio T. So, and Antonio Fernando is hereby dismissed for lack of prima facie evidence. However, Sison, So and Fernando are admonished to be more circumspect in the exercise of their official duties. Moreover, Dr. Malaca should be given all the benefits to which she is entitled as Assistant Hospital Director of Ospital ng Maynila regardless of the working station where she may be reassigned or detailed.[5] (Emphasis supplied)

On appeal, the CSC affirmed the CSC-NCR's ruling, to wit:

WHEREFORE, the appeal of Evangeline P. Morales-Malaca is hereby DISMISSED. Accordingly, the Orders dated December 14, 1999 and August 2, 2000 of the CSC-NCR dismissing the complaint against Emmanuel R. Sison, Arellano T. So, and Antonio Fernando for Grave Misconduct, Abuse of Authority, Oppression, Conduct Prejudicial to the Best Interest of the Service and Gross Discourtesy in the Course of Official Duties, and denying the Motion for reconsideration of said dismissal, respectively, are affirmed.[6]

Malaca elevated the matter to the Court of Appeals by filing a petition under Rule 43 of the Rules of Court.

The Ruling of the Court of Appeals

In modifying the ruling of the CSC, the Court of Appeals held that while the 14 September 1998 Special Order is valid, its implementation was irregular.

The Court of Appeals ruled that there was no justification for petitioners' failure to furnish Malaca a copy of the Special Order designating Dr. Zaide as OIC of the Office of the Assistant Hospital Director. The Court of Appeals further held that there was no reason for Fernando's issuance of the 5 April 1999 Memorandum instructing So to enlist the aid of two policemen in breaking open the door of and taking over the office formerly occupied by Malaca. Such instruction was drastic and uncalled for considering that there was no showing of Malaca's defiance of a prior memorandum directing the surrender of her office. That Malaca was not furnished again with a copy of such memorandum shows a disregard by petitioners of her rights. The Court of Appeals also found evidence that there was an attempt to deprive Malaca of her subsistence allowance for the months of September, October, and November 1998 despite the fact that the papers had already been prepared.

The Court of Appeals sustained the CSC's finding that petitioners failed to act with circumspection in the exercise of their official duties. However, instead of affirming the CSC's admonition, the Court of Appeals penalized petitioners for simple misconduct and discourtesy in the course of official duties, thus:

WHEREFORE, the petition is PARTIALLY GRANTED and Resolution No. 02-0307 of the Civil Service Commission is, MODIFIED to declare respondents guilty of the less grave offense of simple misconduct and the light offense of discourtesy in the course of official duties. Accordingly, respondents are each meted the penalty of fine equivalent to two months' salary and reprimand.

SO ORDERED.[7]

Petitioners sought reconsideration, which was denied by the Court of Appeals in its Resolution of 27 September 2005.

Hence, this petition.

The Issues

Petitioners raise the following issues:

- Whether the Court of Appeals erred in holding petitioners administratively liable for simple misconduct and discourtesy in the course of official duties; and
- Whether the Court of Appeals has jurisdiction to entertain the appeal from a CSC decision exonerating or absolving petitioners.

The Ruling of the Court

The petition is partly meritorious.

The Court notes that Malaca charged Sison and Fernando with grave misconduct and abuse of authority, while only So was charged with oppression, conduct prejudicial to the interest of the service, and gross discourtesy in the course of official duties.[8] A civil servant charged with misconduct only cannot be punished for both misconduct and discourtesy. Likewise, a government employee charged with discourtesy alone cannot be penalized for both misconduct and discourtesy. In one case, the Court ruled that even in an administrative proceeding, a government employee has the right to be informed of the charges against him, as well as the right not to be convicted of an offense for which he is not charged.[9] Accordingly, the Court shall determine whether Sison and Fernando are guilty of misconduct and whether So is liable for discourtesy.

As the Court of Appeals found, the 14 September 1998 Special Order issued by Sison is valid. Such exercise of discretion on the part of Sison was done within the lawful bounds of his authority as the Secretary to the Mayor.[10] While Sison issued such Special Order, there is no evidence that Sison participated in the

implementation of his Special Order. Consequently, there is no basis for finding Sison liable for misconduct. Misconduct is defined as a transgression of some established and definite rule of action, more particularly, unlawful behavior, or gross negligence by a public officer.[11] Further, there is nothing in the records showing that petitioners Sison, Fernando, and So conspired to oust Malaca from her permanent position. In fact, it was Mayor Atienza who stripped Malaca of her duties and responsibilities as Assistant Hospital Director.

On the misconduct charge against Fernando, the Court finds insufficient evidence to sustain such charge. Fernando's issuance of the Memorandum for the forcible opening of Malaca's former office was within his powers as City Administrator. Moreover, Fernando issued the Memorandum to implement the Special Order of Sison. Admittedly, Fernando failed to serve a copy of his Memorandum to Malaca. However, such failure to serve does not necessarily translate to misconduct which is a term denoting an improper conduct, or a dereliction of duty, willful in character, that implies wrongful intent.[12] There would have been no need at all for such Memorandum if only Malaca had turned over the keys to her office from the moment she was relieved from her post as Assistant Hospital Director. Nevertheless, the Court admonishes Fernando to be more circumspect in the exercise of his official duties.

The charge of discourtesy against So was based on his behavior towards Malaca in following Fernando's instruction to employ a locksmith and to request the aid of the police in opening Malaca's office. In her complaint, Malaca claimed that "So shouted at her" when she asked So what he was doing inside her office. Malaca also alleged that when her husband went to the hospital to retrieve her personal belongings, So "with all highhandedness and in a scandalous manner" questioned his presence and even called the guards to prevent him from entering the hospital premises. As a result, her husband was unable to bring out her things. When Malaca was constrained to personally get her belongings, she failed to gain entry to her office because its door locks were changed by So without her knowledge. When Malaca chanced upon So, the latter chided her that he would prevent her from entering her office unless she secured first a clearance from Fernando.

The Court finds So guilty of discourtesy. As a public officer, So is bound, in the performance of his official duties, to observe courtesy, civility, and self-restraint in his dealings with others.[13] However, So demonstrated callousness towards Malaca. That So was merely complying with Fernando's Memorandum did not justify his arrogant gesture. Under Rule XIV, Section 23 of the Civil Service Law and Rules, a first offense of discourtesy, which is a light offense, in the course of one's official duties shall be meted the penalty of reprimand.[14] Accordingly, the Court reprimands So for his disrespectful conduct, considering that this is his first offense.

Malaca also asserts that So deprived her of subsistence allowance. The letter dated 4 November 1998 addressed to Melinda Magpao, Officer-in-Charge of the hospital's Administrative Services Department, states that Malaca was excluded from the payroll of subsistence allowance. However, the letter does not prove that So ordered Malaca's exclusion and the non-payment of such allowance. Lacking any clear and convincing evidence showing that So arranged for and directed Malaca's exclusion from the recipients of the subsistence allowance, the Court cannot accept the finding of the Court of Appeals that there was an attempt to deprive Malaca of such allowance.

The Court deems it unnecessary to resolve the second issue considering the foregoing discussion. At any rate, petitioners raise for the first time before this Court the issue of whether their exoneration by the CSC is subject to review by the Court of Appeals. Well-settled is the rule that "(a)n issue raised for the first time on appeal and not raised timely in the proceedings in the lower court is barred by estoppel." [15] Further, failure to invoke timely a procedural rule in favor of a party constitutes a waiver of such rule.[16]

WHEREFORE, the Court PARTIALLY GRANTS the petition. The Court SETS ASIDE the 19 November 2004 Decision and the 27 September 2005 Resolution of the Court of Appeals in CA-G.R. SP No. 69895. The Court

dismisses the charge of misconduct against Atty. Emmanuel Sison and Antonio Fernando for insufficient evidence. However, the Court admonishes Antonio Fernando to be more circumspect in the exercise of his official duties. The Court reprimands Dr. Arellano T. So for discourtesy.

SO ORDERED.

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

[1] Under Rule 45 of the Rules of Court.

[2] Rollo, pp. 40-56. Penned by Associate Justice Rebecca De Guia- Salvador, with Associate Justices Portia Aliño-Hormachuelos and Aurora Santiago-Lagman, concurring.

[3] Id. at 72.

[4] The pertinent provisions are:

x x x x

(b) The administrator shall take charge of the office of the administrator and shall:

(1) Develop plans and strategies and upon approval thereof by the governor or mayor, as the case may be, implement the same particularly those which have to do with the management and administration-related programs and projects which the governor or mayor is empowered to implement and which the sanggunian is empowered to provide for under this Code;

(2) In addition to the foregoing duties and functions, the administrator shall:

(i) Assist in the coordination of the work of all the officials of the local government unit, under the supervision, direction, and control of the governor or mayor, and for this purpose, he may convene the chiefs of offices and other officials of the local government unit;

(ii) Establish and maintain a sound personnel program for the local government unit designed to promote career development and uphold the merit principle in the local government service;

(iii) Conduct a continuing organizational development of the local government unit with the end in view of instituting effective administrative reforms;

(3) Be in the frontline of the delivery of administrative support services, particularly those related to the situations during and in the aftermath of man-made and natural disasters and calamities;

(4) Recommend to the sanggunian and advise the governor and mayor, as the case may be, on all other matters relative to the management and administration of the local government unit; and

(5) Exercise such other powers and perform such other duties and functions as may be prescribed by law or by ordinance.

[5] Rollo, pp. 44-46.

[6] Id. at 47.

[7] Id. at 55.

[8] Id. at 139.

[9] See *Civil Service Commission v. Ledesma*, G.R. No. 154521, 30 September 2005, 471 SCRA 589, 603, citing *Civil Service Commission v. Lucas*, 361 Phil. 486 (1999).

[10] Rollo, p. 50.

[11] See *Civil Service Commission v. Ledesma*, supra note 9. See also *Camus v. Civil Service Board of Appeals*, No. L-13685, 31 May 1961, 2 SCRA 370, 375.

[12] See *Alcuizar v. Carpio*, A.M.-RTJ-07-2068, 7 August 2007, 529 SCRA 216, 229.

[13] *Perez v. Cunting*, 436 Phil. 618, 625 (2002).

[14] Id. at 626.

[15] *Sanchez v. Court of Appeals*, 345 Phil. 155, 186 (1997).

[16] See Concurring Opinion of Justice Melo in *Floralde v. Court of Appeals*, 392 Phil. 146, 156 (2000).

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