

CESAR S. DUMDUMA, PETITIONER, VS. CIVIL SERVICE COMMISSION, RESPONDENT.*G.R. No. 182606. October 04, 2011*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-182606/>**PER CURIAM:**

Before the Court is a Petition for Review on Certiorari^[1] assailing the January 31, 2008 Decision,^[2] as well as the April 10, 2008 Resolution,^[3] of the Court of Appeals (CA) in CA-G.R. SP No. 98207, which affirmed the order of the respondent Civil Service Commission (CSC) dismissing petitioner Cesar S. Dumduma (Dumduma) from government service.

Factual Antecedents

Dumduma entered public service in 1979 as a patrolman in the then Integrated National Police.^[4] He steadfastly rose through the ranks until he was promoted in 1991 as Senior Police Officer 4 (SPO4) of the Philippine National Police (PNP). He was then designated as officer-in-charge of San Miguel Police Station in San Miguel, Leyte.^[5] On December 15, 1998, he took the Career Service Professional Examination in Quezon City.^[6]

On March 7, 1999, Dumduma filled out a Personal Data Sheet (PDS) pursuant to his promotional appointment as Police Inspector. On Item No. 18 of the PDS, Dumduma stated that he passed the Career Service Professional Examination Computer-Assisted Test in Quezon City on December 15, 1998 with a rating of 81%.^[7] His appointment was then forwarded to the PNP-CSC Field Office on April 16, 1999 for verification and approval.^[8] It was then discovered that Dumduma did not have the proper civil service eligibility, contrary to what he disclosed in his PDS. His name was not included in the CSC-National Capital Region (CSC-NCR) Regional Register of Eligibles for the Career Service Professional Examination conducted on December 15, 1998; instead, his name appeared in the Regional List of Passing/Failing Examinees with a rating of 25.82%. Accordingly, the director of the CSC-NCR, Adoracion F. Arenas disapproved Dumduma's appointment on the ground of spurious eligibility.^[9] On June 6, 2002, the CSC-NCR formally charged Dumduma with Dishonesty.^[10]

Dumduma denied the charge.^[11] His version of the circumstances surrounding his alleged eligibility is as follows: Prior to the date of the examination, Dumduma met a certain Salome Dilodilo (Dilodilo), who was allegedly a retired CSC director. Dilodilo promised Dumduma her "total support in [Dumduma's] x x x examination [but] (i)n return, she asked [Dumduma] to convince [his] close friend x x x to sell x x x a property x x x [to her]."^[12] On the day before the examination,^[13] Dumduma and Dilodilo went to the CSC Office located at Kaliraya Street, Quezon City in order to facilitate an early examination schedule^[14] for Dumduma. The following day, December 15, 1998, Dumduma took the Career Service Professional Examination.^[15] A week later, he received his Certificate of Eligibility^[16] from an unnamed person, who claimed to be Dilodilo's emissary.^[17] The Certificate of Eligibility stated that Dumduma passed the examination with a rating of 81%.^[18] Dumduma then wrote the said information in his PDS, allegedly in good faith that the Certificate of Eligibility was authentic.

Dumduma waived the formal investigation and submitted the case for resolution based on the available

documents.[19]

Decision of Civil Service Commission-National Capital Region[20]

The CSC-NCR held that the Certificate of Eligibility relied upon by Dumduma in making his PDS entry was spurious because it was contrary to the CSC's Regional List of Eligibles. The Regional List prevails over the Certificate of Eligibility because the former is the primary official record of eligibles hence is presumed genuine and accurate, unless proven otherwise. Since Dumduma failed to satisfactorily explain the discrepancy posed by his Certificate of Eligibility, the presumption is that the same was falsified for his benefit.[21] Based on CSC Memorandum Circular No. 15, series of 1991, Dumduma's procurement and use of a spurious Certificate of Eligibility constituted the offense of Dishonesty,[22] which merited dismissal from government service with all the accessory penalties.[23]

Ruling of the Civil Service Commission

Dumduma appealed the adverse CSC-NCR Decision to the CSC. Dumduma maintained his good faith in relying on the Certificate of Eligibility that was delivered to his residence. Any defect in his Certificate of Eligibility must be blamed on some unnamed and unknown CSC personnel, who most probably authored the falsification. Without any proof that he colluded with these CSC personnel, Dumduma contended that he cannot be found guilty of dishonesty.[24]

In its Resolution No. 060098[25] dated January 23, 2006, the CSC found Dumduma's version of how he obtained his certificate of eligibility implausible. The CSC noted that the standard operating procedure for the Career Service Professional Examination Computer-Assisted Test is to hand-over the certificates of eligibility of the passers immediately after the examination. Since Dumduma did not get his certificate in the standard manner, he had the burden of explaining what merited the unorthodox procedure. This he failed to do.[26]

The CSC further held that Dumduma failed to rebut the presumption that he, as possessor of a falsified document, was the author thereof. His bare assertion of good faith could not stand against the presumption.[27] The CSC thus affirmed the CSC-NCR's Decision. The dispositive portion of the CSC's January 23, 2006

Resolution reads as follows:

WHEREFORE, the appeal of Cesar S. Dumduma is hereby

DISMISSED. Accordingly, the Decision dated March 19, 2004 of the CSC-NCR, finding him guilty of Dishonesty and imposing on him the penalty of dismissal from the service, forfeiture of retirement benefits and perpetual disqualification from reemployment in the government service is hereby AFFIRMED. Further, since this involves disbursements of funds for the salaries and benefits of Dumduma after his appointment was disapproved, let a copy of this decision be furnished the Commission on Audit for its appropriate action. The CSC-NCR is hereby ordered to monitor the implementation of this Resolution.

Quezon City, January 23, 2006.[28]

Dumduma filed a Motion for Reconsideration but the same was denied in CSC Resolution No. 070306[29] dated February 19, 2007.

Ruling of the Court of Appeals

Dumduma reiterated his defense of good faith in his appeal to the CA,[30] but the appellate court was unconvinced. The CA found substantial evidence supporting the conclusion that Dumduma's Certificate of Eligibility was spurious. It was contrary to the entries in the Regional List of Passing/Failing Examinees and those in the Regional Register of Eligibles. Moreover, it was delivered to Dumduma contrary to the standard operating

procedures of CSC.[31]

The CA held that Dumduma's possession and use of the falsified certificate for his own benefit created the presumption that he was the author of such falsification. It was incumbent upon Dumduma to overcome the said presumption with controverting evidence. His bare assertion of good faith did not suffice as a rebuttal.[32]

The CA disposed in this wise:

WHEREFORE, premises considered, the instant petition is DISMISSED. The assailed CSC Resolutions STAND.

SO ORDERED.[33]

Dumduma moved for a reconsideration but the CA denied the same in its Resolution dated April 10, 2008.[34]

Our Ruling

Petitioner Dumduma is now before us questioning the sufficiency of the evidence against him. He is of the impression that he was found guilty of dishonesty on a mere presumption - that the holder of a forged document is the forger - despite the presence of contrary evidence.[35] His alleged contrary evidence consist of the apparent authenticity of his Certificate of Eligibility (which did not alert him to any irregularity therein)[36] and the absence of evidence that he colluded with CSC personnel to falsify the certificate.[37]

The question raised by Dumduma regarding the CA's appreciation of the evidence against him is ineluctably one of fact, which is beyond the ambit of this Court's jurisdiction in a petition for review on certiorari. It is not this Court's task to go over the proofs presented below to ascertain if they were appreciated and weighed correctly, most especially when the CA and the CSC speak as one in their findings and conclusions.[38] While it is widely held that this rule of limited jurisdiction admits of exceptions, none exists, or is even alleged as existing, in the instant case.

The Court agrees with the CSC and the CA that the undisputed facts, as revealed by the evidence, make out a clear case of dishonesty against Dumduma. When Dumduma's claim of eligibility was contradicted by the CSC Register of Eligibles and the List of Passing/Failing Examinees, it became incumbent upon Dumduma to explain why he made the incorrect entry in his PDS. Unlike his PDS entry, the CSC records are presumed correct and made in the regular course of official business.[39] In explaining his action, however, Dumduma dug a deeper hole from which he could not extricate himself.

He admitted in his Counter-Affidavit that Dilodilo, a retired CSC official, promised to help him with his CSC examination in exchange for a personal favor. They then proceeded to the CSC Office together and Dilodilo was welcomed by her former colleagues. After Dumduma took the exam, he went home without knowing the result thereof (a procedure that is contrary to CSC practice). Several days later, Dumduma professed that he received his Certificate of Eligibility from a man sent by Dilodilo, who is a retiree hence without official ties with the CSC. Instead of exculpating him, Dumduma's explanation completed the evidence against him. He not only failed to explain the discrepancy, he even explained how he obtained a spurious Certificate of Eligibility.

Dumduma asserts that, despite the questionable circumstances, he is in good faith and that the blame is with the CSC personnel who gave him a Certificate of Eligibility. Their actions should not be attributable to him, unless there is evidence that he colluded with them.

Dumduma's contention is in stark contrast to his admissions and does not merit belief. The concept of good faith in administrative cases such as this one is explained in a recent case in this wise:

Good faith is ordinarily used to describe that state of mind denoting honesty of intention and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render [a] transaction unconscientious. In short, good faith is actually a question of intention. Although this is something internal, we can ascertain a person's intention not from his own protestation of good faith, which is self-serving, but from evidence of his conduct and outward acts.[40]

In the instant case, the facts and circumstances surrounding Dumduma's acquisition of the Certificate of Eligibility cast serious doubts on his good faith. He made a deal with a retired CSC official and accepted the Certificate of Eligibility from her representative. These circumstances reveal Dumduma's knowledge that Dilodilo could have pulled strings in order to obtain his Certificate of Eligibility and have it delivered to his residence. How else would a retired employee obtain the said certificate? Dumduma cannot feign innocence given his unquestioning cooperation with Dilodilo.

Besides, whether some CSC personnel should be held administratively liable for falsifying Dumduma's Certificate of Eligibility is beside the point. The fact that someone else falsified the certificate will not excuse Dumduma for knowingly using the same for his career advancement.

Dumduma maintains that it is entirely possible that his Certificate of Eligibility is correct and that the CSC's Register of Eligibles and the List of Passing/Failing Examinees are the ones with incorrect entries. In light of the circumstances, the Court cannot accept this theory. As Dumduma himself admitted, he did not obtain the Certificate of Eligibility from the CSC but from a representative of his facilitator, Dilodilo. The official records kept by the CSC deserve credence compared to a certificate that admittedly originated from a dubious source.

This is not the first time that a government employee had been dismissed from service for falsification of his eligibility for appointment purposes.

Maniebo v. Court of Appeals[41] is analogous to the instant case. Maniebo denied any participation in the preparation of her spurious Certificate of Eligibility. She maintained that she only received the same through the mails and was in good faith in submitting the same for her appointment. The Court held that the presumption of good faith does not apply when the employee's Certificate of Eligibility conflicts with the CSC's Masterlist of Eligibles. Moreover, the Court did not accept Maniebo's long and satisfactory government service in order to mitigate the penalty of dismissal. The Court noted that Maniebo was undeserving of the mitigation given her refusal to own up to, and her lack of remorse for, her dishonesty.

In Bacsasar v. Civil Service Commission,[42] Bacsasar obtained her Certificate of Eligibility from a private individual and not from the CSC. The CSC verified the spurious nature of her eligibility because Bacsasar was not included in the CSC Masterlist of Passing/Failing Examinees. The Court rejected Bacsasar's defense of good faith given that she did not even take the civil service exam.

In Civil Service Commission v. Cayobit,[43] Cayobit received her Certificate of Eligibility through mail and maintained that she believed the same to be genuine. The Court found her guilty of dishonesty given that she failed to explain the discrepancy in her passing grade in the certificate and the failing grade reflected in the CSC masterlist.

Like Dumduma, the dismissed employee in Re: Tessie G. Quires[44] also maintained that she was merely a victim of fixers operating within the CSC Office. The Court did not accede to her pleas and meted the prescribed penalty for dishonesty.

Disapproved Appointment of Limgas[45] also involved an employee who maintained that she acted in complete

reliance that the Certificate of Eligibility she received after taking the CSC examination was authentic. Limgas claimed that "she was a victim of an injustice perpetrated by fixers, insiders and syndicates operating in the Regional Offices of the CSC." [46] In rejecting her plea, the Court expressed its disbelief that a fixer would act for Limgas' benefit, without the latter having any knowledge of the anomalous transaction.

Guided by the foregoing cited authorities, the Court holds that the CA did not err in affirming the penalty of dismissal and all its accessory penalties imposed by the CSC. Only those who can live up to the constitutional exhortation that public office is a public trust deserve the honor of continuing in public service.

Dumduma makes a final plea for leniency but the law and the prevailing jurisprudence binds the hands of this Court. We cannot change the imposable penalties for a clear case of dishonesty without at the same time, visiting injustice against all the other government employees that were similarly placed but received the full force of the law.

Nevertheless, the Court recognizes that petitioner was once an outstanding member of the police force. He risked life and limb serving the citizenry of Region 8 with total dedication and hard work. His service record shows that, since his original appointment in 1979, he patiently rose through the ranks until he was promoted to SPO4 in 1991. While justice exhorts that petitioner suffer the full penalties imposed by law, temperance cries out that he be recognized for whatever good he has done prior to his mistake. Thus, the Court deems proper, on a pro hac vice basis, to extend financial assistance of P50,000.00 to petitioner, which amount shall be taken from his forfeited retirement benefits. This award in no sense mitigates his offense but is made solely out of equity and humanitarian considerations.

WHEREFORE, the petition is DENIED. The assailed January 31, 2008 Decision and April 10, 2008 Resolution of the Court of Appeals in CA-G.R. SP No. 98207 are AFFIRMED with MODIFICATION. Petitioner is extended a FINANCIAL ASSISTANCE of P50,000.00, to be taken from his forfeited retirement benefits on a pro hac vice basis.

SO ORDERED.

Corona, C.J. Velasco, Jr., Leonardo-De Castro, Peralta, Del Castillo, Abad, Villarama, Jr., Perez, Reyes, and Perlas-Bernabe, JJ., concur.

Carpio, J., joins J. Brion in his concurring & dissenting opinion.

Brion, J., pls. see concurring & dissenting opinion.

Bersamin and Sereno, JJ., join the concurring and dissenting opinion of J., Brion.

Mendoza, J., no part.

[1] Rollo, pp. 3-24.

[2] Id. at 26-35; penned by Associate Justice Myrna Dimaranan Vidal and concurred in by Associate Justices Jose Catral Mendoza and Jose C. Reyes, Jr.

[3] Id. at 37.

[4] Id. at 76.

[5] Id. at 85.

[6] Id. at 149.

[7] Id. at 51.

- [8] Id.
- [9] Id. at 61.
- [10] Id. at 50.
- [11] Id. at 72-73.
- [12] Dumduma's Counter-Affidavit, id. at 73.
- [13] Id. at 72.
- [14] Affidavit of Ester B. Pablico, id. at 74.
- [15] Counter-Affidavit, id. at 72.
- [16] Id.
- [17] Affidavit of Bernardita D. Balderian, id. at 49.
- [18] Id. at 71.
- [19] Order dated March 19, 2004, id. at 53.
- [20] Decision in Adm. Case No. 02-06-020, id. at 50-57; penned by CSC Director IV Agnes D. Padilla.
- [21] Id. at 55-56.
- [22] Id. at 55.
- [23] The dispositive portion reads:
- WHEREFORE, this Office hereby finds CESAR S. DUMDUMA guilty of DISHONESTY. Accordingly, he is meted out the penalty of dismissal from the service with all its accessory penalties of perpetual disqualification from holding public office and from taking civil service examination in the future. (Id. at 57.)
- [24] Id. at 59.
- [25] Id. at 58-64; decided by CSC Chairman Karina Constantino-David and Commissioners J. Waldemar V. Valmores and Cesar D. Buenaflor.
- [26] Id. at 63.
- [27] Id.
- [28] Id. at 64.
- [29] Id. at 65-70.
- [30] CA Decision, pp. 6-7; id. at 31-32.
- [31] Id. at 7-8; id. at 32-33.
- [32] Id. at 8; id. at 33.
- [33] Id. at 9; id. at 34.
- [34] Id. at 37.
- [35] Petitioner's Memorandum, id. at 151.

[36] Id. at 151-152.

[37] Id. at 152.

[38] *Bacsasar v. Civil Service Commission*, G.R. No. 180853, January 20, 2009, 576 SCRA 787, 794.

[39] *Civil Service Commission v. Cayobit*, 457 Phil. 452, 459 (2003).

[40] *Bacsasar v. Civil Service Commission*, supra note 38 at 795, citing *Civil Service Commission v. Maala*, 504 Phil. 646 (2005).

[41] G.R. No. 158708, August 10, 2010, 627 SCRA 569.

[42] Supra note 38.

[43] Supra note 39.

[44] A.M. No. 05-5-268-RTC, May 4, 2006, 489 SCRA 349.

[45] 491 Phil. 160 (2005).

[46] Id. at 167.

CONCURRING AND DISSENTING OPINION

BRION, J.:

I agree with the majority's conclusion that Cesar S. Dumduma is administratively liable for dishonesty and should be dismissed from the service. I disagree, however, with the Court's ruling that he should be awarded financial assistance of P50,000.00 on the basis of temperance or whatever equitable consideration this basis stands for. The majority opined on this point that:

Nevertheless, the Court recognizes that petitioner was once an outstanding member of the police force. He risked life and limb serving the citizenry of Region 8 with total dedication and hard work. His service record shows that, since his original appointment in 1979, he patiently rose through the ranks until he was promoted to SPO4 in 1991. While justice exhorts that petitioner suffer the full penalties imposed by law, temperance cries out that he be recognized for whatever good he has done prior to his mistake. Thus, the Court deems proper, on a pro hac vice basis, to extend financial assistance of P50,000.00 to petitioner, which amount shall be taken from his forfeited retirement benefits. This award in no sense mitigates his offense but is made solely out of equity and humanitarian considerations.[1] (emphasis ours)

It is unfortunate that so short a paragraph in an 11-page Decision may unwittingly open the door to a new practice as yet unknown in Philippine jurisprudence on the grant of financial assistance to employees validly dismissed from the public service. For this reason and for the award's lack of basis in fact, in law and in reason, I strongly object to the grant of this award.

Financial assistance in the context of termination of employment is the award given to a validly dismissed employee, based on the principles of social justice.[2] In the private sector, jurisprudence is fairly well developed on the social justice roots of the award and the conditions for its grant.[3] In the public sector where every item of expenditure is required to be based on a specific provision of law, justification for financial assistance to employees dismissed without their fault may be found in specific laws covering their termination of employment (such as laws providing for reorganization or for retrenchment or redundancy),[4] but no such specific laws exist providing for financial assistance for employees dismissed due to their own fault or misdeeds.

Conceivably, legal basis may be found for a grant to validly dismissed public sector employees in the social justice provisions of the Constitution as has been done in the private sector. While "compassion,"[5] "humanitarian considerations"[6] and "equity"[7] have been used and cited as reasons in Civil Service and administrative cases involving court employees, their use has been for the purpose of mitigating the impossible penalty,[8] not for the award of financial assistance. Thus, even jurisprudence has so far been silent on whether a public servant, validly dismissed for dishonesty, can be awarded financial assistance.

Dumduma was dismissed from the service for dishonesty for falsifying his Personal Data Sheet to justify his promotion. Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service (Uniform Rules) classifies dishonesty as a grave offense punishable with dismissal from the service even for the first offense. A companion provision - Section 58, Rule IV - provides for the "administrative disabilities" that a dismissal from the service inherently carries. These are "cancellation of eligibility, forfeiture of retirement benefits, and the perpetual disqualification for reemployment in the government service, unless otherwise provided in the decision." Section 53, Rule IV of these same rules provides for the "Extenuating, Mitigating, Aggravating, or Alternative Circumstances" that may be considered "[i]n the determination of the penalties to be imposed[.]" Among these circumstances are "[l]ength of service in the government" and "[o]ther analogous circumstances" which the Civil Service Commission may consider even if not pleaded "in the interest of substantial justice[.]"[9]

Significantly, the Uniform Rules does not provide for specific norms or standards in imposing penalties, except for the recognition that the minimum, medium, or maximum of the penalty may be imposed depending on the mitigating or aggravating circumstances present (Section 53, Rule IV). By analogy with criminal law, no graduation within the range of a penalty is however possible where a single indivisible penalty, like dismissal, is imposed.[10] The order of presentation of the provisions of Rule IV of the Uniform Rules (with Section 52 providing for the classification of offenses and their penalties; Section 53 providing for the recognition and application of mitigating and aggravating circumstances; Section 54 providing for the manner of imposition of penalties; and Section 58 providing for administrative disabilities inherent in certain penalties) strongly suggests - by considering their logical presentation of the different sections and the relationship of these sections with one another - that the qualifying circumstances under Section 53 apply to the impossible penalties under Section 52, not to the "disabilities" under Section 58 that the administrative penalties carry.

This conclusion is strengthened by the terms of Sections 55 and 56, Rule IV of the Uniform Rules which all refer to the administrative penalties, not to the Section 58 accessory disabilities, and to the separate treatment of Sections 57 (entitled "Administrative Disabilities/Accessories to Administrative Penalties") and 58 ("Administrative Disabilities Inherent in Certain Penalties") from the preceding Sections 52 to 56. In fact, the title itself of Section 58, Rule IV (specifically using the terms "Administrative Disabilities") also strongly suggests that the forfeiture of retirement benefits that a dismissal carries is not in fact a penalty (although usually referred to as accessory penalties in the decided cases), but a "disability" that must necessarily be carried when a dismissal from the service is imposed. Even as an accessory penalty, however, the Section 53 qualifying circumstances cannot apply as they refer and apply to administrative penalties, not to the accessory penalties that are separately treated under Section 58, Rule IV. Understood as a "disability" in the way Section 58, Rule IV expressly provides, the legal significance is of course enormous as a disability is conceptually different from a penalty, whether main or accessory; specifically, the Section 53 qualifying circumstances apply to administrative penalties, not to disabilities.

Likewise, the Uniform Rules does not provide for any standard for classifying dishonesty, although acts that may generally be classified as dishonest may be more specifically punished as another offense with the same[11] or

lower^[12] penal consequence. Unless, therefore, another specific offense is defined and a corresponding penalty provided, any act attended by the "disposition to lie, cheat, steal or defraud"^[13] falls under the rubric of "dishonesty" that is classified as a grave offense.

The Uniform Rules does not also contain any saving proviso that allows the grant of financial assistance as an alternative or substitute that may be decreed when forfeiture of retirement benefits takes place, or as a benefit that can be awarded in place of forfeiture of retirement benefits. A proviso on the grant of a benefit takes on special significance in the public sector as no money may be paid out from the Treasury unless the payment is based on a specific authorizing provision of law.^[14]

From the jurisprudential end, the Court has consistently ruled that a finding of dishonesty carries the indivisible penalty of dismissal. In *Remolona v. Civil Service Commission*,^[15] we said:

It cannot be denied that dishonesty is considered a grave offense punishable by dismissal for the first offense under Section 23, Rule XIV of the Rules Implementing Book V of Executive Order No. 292. And the rule is that dishonesty, in order to warrant dismissal, need not be committed in the course of the performance of duty by the person charged. The rationale for the rule is that if a government officer or employee is dishonest or is guilty of oppression or grave misconduct, even if said defects of character are not connected with his office, they affect his right to continue in office. The Government cannot tolerate in its service a dishonest official, even if he performs his duties correctly and well, because by reason of his government position, he is given more and ample opportunity to commit acts of dishonesty against his fellow men, even against offices and entities of the government other than the office where he is employed; and by reason of his office, he enjoys and possesses a certain influence and power which renders the victims of his grave misconduct, oppression and dishonesty less disposed and prepared to resist and to counteract his evil acts and actuations. The private life of an employee cannot be segregated from his public life. Dishonesty inevitably reflects on the fitness of the officer or employee to continue in office and the discipline and morale of the service.

In *Civil Service Commission v. Macud*,^[16] we imposed the penalty of dismissal with accessory penalties against the respondent for her false declaration in her Personal Data Sheet that she successfully passed the Professional Board Examination for Teachers. We arrived at the same conclusion in *Civil Service Commission v. Perocho, Jr.*^[17] and *Bacsasar v. Civil Service Commission*^[18] -- involving dishonesty for using spurious certificates of eligibility.

In *Bacsasar*, we even reiterated that dishonesty alone, because it is a grave offense, carries the extreme penalty of dismissal from the service with forfeiture of retirement benefits, except accrued leave credits, and perpetual disqualification from re-employment in the government. We did the same in the more recent case of *Retired Employee, Municipal Trial Court, Sibonga, Cebu v. Merlyn G. Manubag*,^[19] where we held:

Indeed, being in the nature of a grave offense, dishonesty carries the extreme penalty of dismissal from the service with forfeiture of retirement benefits except accrued leave credits and perpetual disqualification for re-employment in the government service.

The Court has been explicit. In the case of *Ramos v. Mayor*:

Under Section 52 (A)(1) and (A)(6), Rule IV of the "Uniform Rules on Administrative Cases in the Civil Service" (Resolution No. 99-1936 dated August 31, 1999), respondent's act of making untruthful declarations in his PDS renders him administratively liable for falsification of public document and dishonesty which are classified as grave offenses and, thus, warrant the corresponding penalty of dismissal from the service even if either of them is respondent's first offense. Section 58 of Rule IV thereof states that the penalty of dismissal shall carry with it the cancellation of eligibility, forfeiture of retirement benefits, and the perpetual disqualification for reemployment in the government service, unless otherwise provided in the decision.

What appears clear from all the above is that the applicable Civil Service Rules themselves do not provide for the award of financial assistance either as an administrative penalty, as an accessory disability, or as an independent benefit that can be granted when retirement pay is declared or deemed to be forfeited. To its credit, the majority recognizes the existing legal reality as the Decision in fact states:

Dumduma makes a final plea for leniency but the law and the prevailing jurisprudence binds [sic] the hands of this Court. We cannot change the impossible penalties for a clear case of dishonesty without at the same time, visiting injustice against all the other government employees that were similarly placed but received the full force of the law.[20]

Yet, incongruously, the majority came to the conclusion (now objected to and which is first quoted in this Opinion) justifying and awarding on a pro hac vice basis the grant of financial assistance of P50,000.00 to Dumduma. Uniquely, the majority does not do this by citing "justice" as justification; instead, it vaguely invokes "temperance...for what whatever good he (Dumduma) has done prior to his mistake" to support the grant. This justification, in my view, is an unacceptable position that should not be allowed to pass without objection or comment, as the resulting conclusion may henceforth be cited as basis for the grant of financial assistance in valid dismissal situations. Labeling the Court's conclusion as pro hac vice will not make it any less legally unpalatable.

Aside from the complete lack of basis in the Civil Service Rules as shown in the above analysis, I submit the following reasons for my objection to the imposition of financial assistance:

First, the policy of the law is clear: dishonesty is an offense that the law cannot and should not tolerate; hence, dismissal is imposed as the penalty even for the first offense. Dismissal also inherently carries the forfeiture of retirement benefits as a disability.

To be sure, the Court would be sending the worst possible signal regarding the honesty and integrity that the public service requires by allowing the grant of the financial assistance decreed by the present Decision; the Court thereby unmistakably dilutes the law's policy by imposing the penalty of dismissal and at the same time awarding financial assistance to the offender. In effect, the Court imposes the legal policy expressed in the law with its right hand, and, with the left hand, partially takes it back through the grant of a benefit to the offender that the law does not even expressly provide for. The Court shall in fact be treading on dangerous constitutional waters with this kind of conclusion, as it can be accused of judicial legislation that violates the constitutional rule on separation of powers. Quite possibly, the Court may even be accused of disregarding the law by ordering the payment of money out of the public treasury without any specific legal basis.

Second, the Court "temperance" as used in the Decision is a moral rather than a legal standard and should be applied only with utmost care in adjudication. It may be far more acceptable to use "justice" or "social justice" as driving motivations, as these are concepts that underlie the task of adjudication. Temperance, on the other hand, as a moral standard is necessarily a subjective one. Judicial prudence, at the very least, requires that the Court avoid identifying itself with the use of subjective standards, as it is guided by the rule of law, not by the peculiar dictates of individual Justices' conscience. Following the analogy used above, the Court, in its Decision, may be said to have administered justice with its right hand, and diluted this application of the rule of law with its left hand through the use of a highly subjective standard.

Third, our labor laws and established jurisprudence applicable to the private sector have recognized the grant of financial assistance based on social justice as the guiding force.[21] The Court, however, clearly recognized limitations in invoking social justice when it held:

The policy of social justice is not intended to countenance wrongdoing simply because it is committed by the underprivileged. At best it may mitigate the penalty but it certainly will not condone the offense. Compassion

for the poor is an imperative of every humane society but only when the recipient is not a rascal claiming an undeserved privilege. Social justice cannot be permitted to be refuge of scoundrels any more than can equity be an impediment to the punishment of the guilty. Those who invoke social justice may do so only if their hands are clean and their motives blameless and not simply because they happen to be poor. This great policy of our Constitution is not meant for the protection of those who have proved they are not worthy of it, like the workers who have tainted the cause of labor with the blemishes of their own character.[22] [emphasis supplied]

As further parameters in invoking social justice, the Court likewise ruled in the same case:

We hold that henceforth separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. Where the reason for the valid dismissal is, for example, habitual intoxication or an offense involving moral turpitude, like theft or illicit sexual relations with a fellow worker, the employer may not be required to give the dismissed employee separation pay, or financial assistance, or whatever other name it is called, on the ground of social justice.

A contrary rule would, as the petitioner correctly argues, have the effect, of rewarding rather than punishing the erring employee for his offense. And we do not agree that the punishment is his dismissal only and that the separation pay has nothing to do with the wrong he has committed. Of course it has. Indeed, if the employee who steals from the company is granted separation pay even as he is validly dismissed, it is not unlikely that he will commit a similar offense in his next employment because he thinks he can expect a like leniency if he is again found out. This kind of misplaced compassion is not going to do labor in general any good as it will encourage the infiltration of its ranks by those who do not deserve the protection and concern of the Constitution.[23] [emphasis supplied]

If these are the parameters in the private sector, the parameters applicable to the public sector cannot and should not be any less; public office is a public trust, not simply an ordinary office where the employment tie is almost purely based on contract. Thus, the private sector parameters, at the very least, should apply if social justice were to be cited as basis for the grant of financial assistance.

To belabor the obvious, Dumduma's dishonesty is an offense that transgresses even the private sector parameters on the application of social justice. He was a Senior Police Officer (SPO4) and was the officer-in-charge of the San Miguel Police Station in San Miguel, Leyte; he was thus not a poor or underprivileged laborer but a public official occupying a highly visible position entrusted by law with the maintenance of peace and order. He was dismissed from office for dishonesty - an offense that cannot but be classified as a serious misconduct and one that, by its nature, reflects the degraded moral character of the offender. These circumstances certainly do not characterize Dumduma as a public official entitled to receive a treatment different from what other dishonest public servants receive from the law and from this Court.

In justifying the award of financial assistance, the majority implies that length of service and exemplary performance should be recognized. Length of service, however, cannot be used to automatically mitigate Dumduma's penalty, as it is not a magic word that, once invoked, would cloak the penalty with a mitigating circumstance.[24] Length of service is two-faced; it can either be a mitigating or aggravating circumstance depending on the facts of each case.[25]

A review of jurisprudence shows that while in most cases, length of service operates as a mitigating circumstance favoring the offender, the contrary is true when the offense committed is serious[26] or if length of service is a factor that facilitated the commission of the offense.[27]

In this case, the severity of the offense cannot be disputed, as the Uniform Rules expressly classify dishonesty as a

grave offense punishable by the capital administrative penalty of dismissal even for the first offense. The facts also show that Dumduma's length of time in the police force was a major contributory factor that led him to commit the offense; Dumduma aspired for a promotional appointment to the position of Police Inspector because his length of service had brought him in line for the higher post; his senior police position undoubtedly worked in his favor and facilitated access to the means to falsify his Civil Service certificate.

Considered from these perspectives, the conclusion that length of service can be invoked as a mitigating circumstance can be very alarming. Mindlessly invoked in the future, our ruling may give length of service a dominance in dismissal cases whose practical effect is to insulate long-staying employees from the penalty of dismissal; in blunter terms, at some point in a public servant's long term, his length of service alone can ensure that he can no longer be dismissed from the service. This consequence, to be sure, is far from the intent of the Civil Service Rules and farther still from the intent of the framers of the Constitution when they provided for security of tenure in the civil service.

I also strongly believe that any recognition, based on the facts of the case, of Dumduma's alleged "outstanding" performance and the life he risks daily in serving the citizenry is misplaced, and can only result in a bad legal precedent if it prevails. Police work, as well as military service, necessary entails daily risks to life and limb, and cannot be cited by the police or by the military as a mitigating circumstance except in the truly exceptional circumstances where risks are taken above and beyond the call of duty. Dedication to work to the level of exemplary service, too, should not be considered as a mitigating circumstance as this is the level of service that should be expected from every public servant. Public service is a public trust^[28]; to do justice to this trust, exemplary service, at the very least, should be delivered.

From all indications, exemplary service was what Dumduma's awards and commendations represented. These are not recognitions that place him way above the rest to the point that his service would be labeled as outstanding or exemplary. A spotless service record, free of any administrative charges, is expected of all public servants and is not a distinction that should merit special mention, however lengthy a public servant's spotless term has been. The majority opinion, by disregarding this basic character of public service, may be setting a new, but lower, standard of integrity and performance.

It should not also be lost on us that the offense Dumduma committed carries not only the supreme administrative penalty of dismissal, but criminal consequences (i.e., falsification of an official document punishable under the Revised Penal Code) as well. As a veteran police officer who has been given awards and commendations for services rendered, Dumduma should serve as an example to be followed in uplifting the morale and the standard of service of his fellow policemen. To be sure, he cannot serve this purpose given the nature of the offense he committed and its potential penal consequences. Thus, to accord him mitigation for his kind of public service cannot but be a bad precedent in highlighting disciplinary cases as warnings to public employees minded to follow the same path.

Lastly, I do not believe that the characterization of the Court's Decision as a *pro hac vice* ruling will ever suffice as an excuse for a ruling that obviously lacks legal and factual basis and one that runs against a declared government policy on dishonesty. The case carries no known and meritorious distinguishing feature to justify the special and selective treatment accorded it by this Court. The characterization only reveals what it truly is - a ruling with shaky foundations that should not be followed as a precedent because it was only meant for a specific individual. I can only hope that the Court's ruling today, because it is *pro hac vice*, shall not open the door leading away from the settled rulings and standards on how to treat dishonesty in the government service. Misplaced compassion is the worst signal that the Court can give in a situation where the law itself, that the Court applies, has given clear, express and categorical signs that the public service cannot, and should not, tolerate

dishonesty.[29]

[1] Decision, p. 10.

[2] Philippine Long Distance Telephone Co. v. NLRC, 247 Phil. 641 (1988).

[3] Toyota Motor Phils. Corp. Workers Association v. NLRC, G.R. Nos. 158786 & 158789, October 19, 2007, 537 SCRA 171; Aromin v. NLRC, G.R. No. 164824, April 30, 2008, 553 SCRA 273; Reno Foods, Inc. v. NLM, G.R. No. 164016, March 15, 2010, 615 SCRA 240; Bank of the Philippine Islands v. NLRC, G.R. No. 179801, June 18, 2010, 621 SCRA 283; and Juliet G. Apacible v. Multimed Industries Incorporated, et al., G.R. No. 178903, May 30, 2011.

[4] Examples of these laws include: Presidential Decree No. 4, as amended by Presidential Decree Nos. 699 and 1485, Proclaiming the Creation of the National Grains Authority and Providing Funds Therefor(1972); Republic Act No. 6656 (An Act to Protect the Security of Tenure of Civil Service Officers and Employees in the Implementation of Government Reorganization); Republic Act No. 8041 (National Water Crisis Act of 1995), in relation to Executive Order No. 286; and Republic Act No. 9136, Electric Power Industry Reform Act (EPIRA).

[5] Re: Employees Incurring Habitual Tardiness In The Second Semester Of 2009, A.M. No. 2010-11-SC, March 15, 2011; Re: Irregularity in the Use of Bundy Clock by Sophia M. Castro and Babylin V. Tayag, Social Welfare Officers II,[1]RTC, Office of the Clerk of Court, Angeles City, A.M. No. P-10-2763, February 10, 2010, 612 SCRA 124; and Re: Failure of Various Employees to Register their Time of Arrival and/or Departure from Office in the Chronolog Machine, A.M. No. 2005-21-SC, September 28, 2010, 631 SCRA 396.

[6] Re: Employees Incurring Habitual Tardiness in the 1st Semester of 2007, A.M. No. 2007-15-SC, January 19, 2009, 576 SCRA 121; Re: Administrative Case for Dishonesty Against Elizabeth Ting, Court Secretary I, and Angelita C. Esmerio, Clerk III, Office of the Division Clerk of Court, Third Division, A.M. Nos. 2001-7-SC and 2001-8-SC, July 22, 2005, 464 SCRA 1; and Concerned Taxpayer v. Doblada, Jr., A.M. No. P-99-1342, September 20, 2005, 470 SCRA 218.

[7] Hallasgo v. Commission on Audit Regional Office No. X, G.R. No. 171340, September 11, 2009, 599 SCRA 514; Tan v. Sermonia, A.M. No. P-08-2436, August 4, 2009, 595 SCRA 1; and Arganosa-Maniego v. Salinas, A.M. No. P-07-2400, June 23, 2009, 590 SCRA 531.

8 See notes 5, 6 and 7; the imposable administrative penalties are those expressly provided under Section 52, Rule IV of the Uniform Civil Service Rules.

[9] Section 53 provides: 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:

- a. Physical illness
- b. Good faith
- c. Taking undue advantage of official position
- d. Taking undue advantage of subordinate
- e. Undue disclosure of confidential information
- f. Use of government property in the commission of the offense
- g. Habituality
- h. Offense is committed during office hours and within the premises of the office or
- i. building

- j. Employment of fraudulent means to commit or conceal the offense
- k. Length of service in the government
- l. Education, or
- m. 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. [emphasis ours]

[10] Article 61 of the Revised Penal Code (Rules of graduating penalties).

[11] *Duque v. Aspiras*, A.M. No. P-05-2036, July 15, 2005, 463 SCRA 447.

[12] *Office of the Court Administrator v. Isip*, A.M. No. P-07-2390, August 19, 2009, 596 SCRA 407.

[13] *Black's Law Dictionary*, 6[th] ed., 1990, p. 468.

[14] Section 29(1), Rule VI of the Constitution provides that "[n]o money shall be paid out of the Treasury except in pursuance of an appropriation made by law."

[15] 414 Phil. 590 (2001).

[16] G.R. No. 177531, September 10, 2009, 599 SCRA 52.

[17] A.M. No. P-05-1985, July 26, 2007, 528 SCRA 171.

[18] G.R. No. 180853, January 20, 2009, 576 SCRA 787.

[19] A.M. No. P-10-2833, December 14, 2010.

[20] *Supra* note 1.

[21] *Philippine Long Distance Telephone Co. v. NLRC*, *supra* note 2.

[22] *Id.* at 650.

[23] *Id.* at 649. The Court has consistently adhered to these rulings in the cases that followed; see note 3.

[24] *Civil Service Commission v. Cortez*, G.R. No. 155732, June 3, 2004, 430 SCRA 593.

[25] *Id.* at 604.

[26] *Id.* at 605, Citing *University of the Philippines v. CSC*, G.R. No. 89454, April 20, 1992, 208 SCRA 174; *Yuson v. Noel*, A.M. No. RTJ-91-762, October 23, 1993, 227 SCRA 1; *Concerned Employee v. Nuestro*, A.M. No. P-02-1629, September 11, 2002, 388 SCRA 568.

[27] *Civil Service Commission v. Cortez*, *supra* note 24 at 605-606.

[28] *Narvasa v. Sanchez, Jr.*, G.R. No. 169449, March 26, 2010, 616 SCRA 586.

[29] *Philippine Long Distance Telephone Co. v. NLRC*, *supra* note 2.

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