

CITY MAYOR OF ZAMBOANGA, PETITIONER, VS. COURT OF APPEALS AND EUSTAQUIO C. ARGANA, RESPONDENTS.*G.R. No. 80270. February 27, 1990*

Ponente: GANCAYCO, J.

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Public office is a public trust. All government officials and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice, and lead modest lives.[1] This constitutional mandate should always be in the minds of all public servants to guide them in their actions during their entire tenure in the government service.

Upon appointment to a public office, an officer or employee is required to take his oath of office whereby he solemnly swears to support and defend the Constitution, bear true faith and allegiance to the same; obey the laws, legal orders and decrees promulgated by the duly constituted authorities; and faithfully discharge to the best of his ability the duties of the position he will hold.

Yet, time and again, We hear of public servants acting in utter defiance of the principles enshrined in the Constitution and in complete disregard of what they swore in the name of God before assuming their posts in the public service. Consequently, the people's trust and faith in the government has slowly eroded. There is very little respect and confidence left.

This in turn has resulted in a widespread feeling of disappointment and dissatisfaction in the government machinery. Gone are the days when one of the shining ambitions of a college graduate was to have a career in the civil service: when working in the government meant self-fulfillment. Now, young and talented graduates shy away from the public service which is unfortunately perceived to be unattractive and totally lacking in luster. It is only when those in the government sector serve with the highest degree of responsibility, integrity, loyalty and efficiency and act in accordance with the tenets of the Constitution can such lost respect and confidence be regained. This case is typical of what a public servant should not be.

The Chief Veterinarian of Zamboanga City, a civil servant, is the private respondent herein. Three female employees of the Office of the City Veterinarian of Zamboanga City headed by private respondent, filed an administrative complaint against him for Dishonesty, Oppression and Disgraceful and Immoral Conduct for the following acts he allegedly committed —

"Against Mrs. Pilar N. de los Santos —

for inviting and/or insisting, on several occasions, that she go with respondent to the Zamboanga Plaza Hotel, Zamboanga City, and by deliberately suggesting that her husband should not have any knowledge of his proposals and suggesting further that she should not report for work any more but for her to wait in the premises of the Macatangay Drug Store, Zamboanga City, so that both of them can later proceed to the Zamboanga Plaza Hotel; for contriving and/or maneuvering to assign her husband, Expedito de los Santos, to remote districts in the East Coast of the City an order that he (Argana) can conveniently pursue his amorous

intentions and solicitations towards her; and for persisting to bother her and trying to convince her to establish an illicit relation with him, promising that her husband will never know about it anyway.

Against Mrs. Ma. Carmen G. Alpichi —

For his persistent act of inviting her on several occasions to go with him to discreet eateries, and on one occasion, to dine and drink with him at the Happy Landing Restaurant at the Zamboanga City Airport during office hours in order to persuade her to accept his amorous advances and even offered her money as capital for a sari-sari store; and in taking her to dine and drink with him in a certain store owned by Olegario Barrios at Ayala, Zamboanga City, during office hours, which lasted until 6:00 o'clock in the evening and made several amorous passes at her.

Against Mrs. Rosa Santa Guevarra —

For inviting her to accompany him in his jeep to go out on official missions but instead taking her to a canteen inside the Edwin Andrews Air Base, Zamboanga City, to be with him privately and then subsequently inviting her to go and play bowling with him and to have a date with him at the Sultana Hotel the next day; and for offering her the amount of P50.00 to convince her to submit to his amorous intentions."[2]

On November 31, 1986, in due course, the then Mayor of Zamboanga City, Hon. Cesar Climaco, rendered a Decision, finding private respondent guilty of Disgraceful and Immoral Conduct and penalizing him with "forced resignation from service with prejudice to reinstatement." Private respondent appealed to the Civil Service Regional Director who referred the case to the Merit Systems Board of the Civil Service Commission. The latter found private respondent guilty only of Improper Conduct with a penalty of "reprimand and warning."

On appeal to the Civil Service Commission, the Decision of the Merit Systems Board dated January 4, 1985 was set aside and the Decision of Mayor Climaco finding private respondent guilty of Disgraceful and Immoral Conduct was sustained. The penalty of "considered resigned from service with prejudice to reinstatement" was reimposed on private respondent.

Again, private respondent filed an appeal — this time with the Court of Appeals. On August 10, 1987, the Court of Appeals rendered its Decision, setting aside the Decision of the Civil Service Commission and reinstating that of the Merit Systems Board modifying the penalty thereof to "six-months suspension without pay with a stern warning that repetition of the same or similar offense will be dealt with more severely." The Court of Appeals further ordered the reinstatement of private respondent with full backwages after having served the penalty.

Not satisfied with the above-mentioned Decision of the Court of Appeals, the City Mayor of Zamboanga filed this petition for review praying that the said Decision be set aside and that the Decision of the Civil Service Commission penalizing respondent with forced resignation, be reinstated.

The first assigned error is that the Court of Appeals erred in directing the payment of private respondent's backwages to which the Solicitor General agrees. A review of the records of this case and the applicable laws and jurisprudence reveal that the order of payment of back salaries to private respondent is not valid.

Section 78 of the B.P. Blg. 337, otherwise known as the Local Government Code, provides for the conditions under which a public servant who was suspended or dismissed by reason of an administrative charge, may be entitled to full backwages, thus:

"Sec. 78. Disciplinary Jurisdiction. — (1) Except as otherwise provided by law, the head of a local government unit shall have authority to remove, separate, suspend and otherwise discipline officials and employees under his jurisdiction. If the penalty imposed is suspension without pay for not more than thirty days, his decision shall be final. If the penalty imposed is heavier, the decision shall be appealable to the Civil Service

Commission which has final authority upon all matters relating to the conduct, discipline and efficiency of local government officials and employees. If the respondent is in the career executive service, appeal shall be made to the Career Service Board.

(2) An appeal shall not prevent a decision from becoming executory, and in case the penalty is suspension or removal, the respondent shall be considered as having been under preventive suspension during the pendency of an appeal in the event he wins such appeal. However, the respondent shall be paid his salary corresponding to the period during which the appeal is pending in the event he is completely exonerated." (Italics supplied.)

Under the above-quoted provision, it is required that private respondent must be exonerated of the charges in order that he may be paid his back salaries. In the case at bar, it is quite apparent from the facts that private respondent was not cleared of the charges. The Court of Appeals affirmed the decision of the Merit and Systems Board which on the other hand found private respondent guilty of "Improper Conduct." It is because of this finding of guilt that the Court of Appeals imposed a penalty of six-months suspension on private respondent. Also, the stern warning handed down by the Court of Appeals on private respondent that a "repetition of the same or similar offense will be dealt with more severely" only shows that the said Court did not exonerate him of the offense.

In a long line of cases,[3] this Court reiterated the principle that back salaries may be ordered paid to an officer or employee only if he is exonerated of the charge against him and his suspension or dismissal is found and declared to be illegal. In *Sales vs. Mathay, Sr.*,[4] this Court held that a postal clerk suspended for six months for gross neglect of duty is not entitled to back salary if he cannot show that his suspension was unjustified or that he is innocent of the charge.

Thus, the order of payment of full backwages in this case is without lawful basis. Indeed, to allow private respondent to receive full back salaries would amount to rewarding him for his misdeeds and compensating him for services that were never rendered.

As to the specific offense/s committed and the proper penalty to be imposed, the Court finds that private respondent is guilty of "Disgraceful and Immoral Conduct" as well as "Grave Misconduct" and must be meted the penalty of dismissal.

Under Memorandum Circular No. 30, series of 1989 issued by the Civil Service Commission, "Disgraceful and Immoral Conduct" and "Grave Misconduct" are classified as grave offenses punishable by dismissal. The acts of private respondent constituting the aforementioned administrative offenses were duly established as shown in the following testimonies of his three female subordinates:

"From Mrs. Pilar de los Santos —

That in connection with the respondent's invitation to her to dine with him at the Zamboanga Plaza Hotel, when she suggested to him that she bring her husband along with her, respondent refused saying that he will not enjoy while her husband is around (TSN. p. 12); that suspicious of the respondent's motive, she turned down the invitation (TSN, p. 14); that the incident prompted her to tender her letter of resignation from the office; that she told the incident to Mr. Vicente Lacandalo, another employee in the Office of the City Veterinarian; that Mr. Lacandalo talked to respondent regarding the matter, then respondent came out later of his room and he was very mad at her; that she did not let her husband know about the incident knowing that he has a bad temper; that because of her repeated refusal to accept respondent harassed her by refusing to sign her clearance for transfer to the Sangguniang Pampook; and that the respondent forced her to sign a promissory note in connection with the lost typewriter as a condition to approving her transfer to the Sangguniang Pampook (TSN. pp. 17-26).

From Mrs. Ma. Carmen G. Alpichi —

That she was a Livestock Inspector in the office of the City Veterinarian; that when the respondent learned that her husband was about to leave for Manila to attend a 45-day seminar, he (respondent) assigned her at the airport as Quarantine Officer and while there, he frequented visiting her and everytime he visits her, he invites her to a snack or lunch; that respondent keeps on asking her when her husband will arrive (TSN. p. 45); that she noticed respondent's amorous intentions towards her from 1979 (TSN. p. 45); that when she informed her husband about it, he advised her to be more careful; that she can remember that Argana invited her three (3) times to dine with him, and she went with him to the Sandwich Restaurant in Atilano for about three (3) hours at about 8:30 in the morning, during office hours, on the first occasion; and for about 30 minutes on the second occasion; while lasted from 10:00 o'clock in the morning to 12:00 o'clock noon on the third occasion (TSN. pp. 49 & 50); that when she asked the respondent to recommend the renewal of her appointment he asked her what gift she is willing to give him and that in answer thereto she said that she will do her too very well and that she is interested in her work, but to which respondent replied that it is not a gift; that therefore, she asked him what gift he really wanted and to which he replied 'the gift which (1) she will give him with all (my) her heart;' that as a woman, she felt that by that statement, respondent wanted her to give herself to him (TSN. p. 57); and that one time in the store of Olegario Barrios in Ayala, Zamboanga City, while respondent and a certain Mr. Policarpio were drinking beer, respondent talked to her about sex to the effect that if a man will convince (me) her to make sex, 'ansina daw ese sir, si quire daw eyo man sex con el hente maskih casao, ya daw ansina' (that if a man will convince her to make sex, a man, though married, may have sex with another woman, (TSN. p. 61).

From Mrs. Rosa Sonia M. Guevarra —

That she was a Meat and Livestock Inspector in the Office of the City Veterinarian, Zamboanga City; that she refused respondent's invitation to her to go with him on bowling; that on September 23, 1980 when she went with respondent in his jeep he held her left hand very tightly before she could alight from the said jeep and then he offered her P50.00; that when she told her father-in-law about the incident on the same day he was very mad; that when she arrive at the office in the afternoon of the same day she related the incident to Mr. Honorato Loon, a co-employee; that when she approached the respondent later for him to sign her application for sick leave he asked her 'what gift (you) she can give to (me) him if (I) he will sign her leave,' to which she answered '(I) she can give (you) him a bottle of wine . . . and cigarettes,' but respondent replied '(I) he can buy those things' because 'what he really wanted is sexual intercourse' (TSN, p. 110)."[5]

In determining what penalty must be imposed on private respondent, the Court took into consideration the fact that there is here not only one but three complainants, all married at that. It projects the abnormality of private respondent's behavior consisting of a libidinous desire for women and the propensity to sexually harass members of the opposite sex working with him.

The manner in which he communicated his desire for the complaining ladies — proposing to meet them at hotels, tempting them with money to submit to his advances and even coaching them to avoid being caught by their husbands, depicts the private respondent's moral depravity.

What aggravates the situation is the undeniable circumstance that private respondent took advantage of his position as the superior of the three ladies involved herein.

Being the chief of office, it was incumbent upon private respondent to set an example to the others as to how they should conduct themselves in public office, to see to it that his subordinates work efficiently in accordance with Civil Service Rules and Regulations, and to provide them with a healthy working atmosphere wherein co-workers treat each other with respect, courtesy and cooperation, so that in the end the public interest will be benefited.

On the contrary, private respondent, who was supposed to be the head of their office, goaded his female

subordinates to dine and drink with him during office hours; asked for "gifts" in exchange for his official signature or favor; utilized his rank to get back at those who refused his advances and those who sympathized with the latter; and even instructed one of them not to report for work but to instead meet with him so that he could bring her to a hotel. Such acts of private respondent cannot be condoned. He should not be let loose to pursue his lewd advances towards lady employees in said office.

Indeed, to reinstate private respondent to his former position with full backwages would make a mockery of the fundamental rule that a public office is a public trust and would render futile the constitutional dictates on the promotion of morale, efficiency, integrity, responsiveness, progressiveness and courtesy in the government service.[6] Likewise, reinstatement would place private respondent in such a position where the persons whom he is supposed to lead have already lost their respect for him and where his tarnished reputation would continue to hound him.

For the sake of his former subordinates, and for his own sake, and bearing in mind that a public office must be held by a person who is both mentally and morally fit, the Court finds private respondent guilty of "Disgraceful and Immoral Conduct" and "Grave Misconduct" in office and he is hereby imposed the penalty of dismissal pursuant to the provisions of Civil Service Commission Memorandum Circular No. 30, series of 1989.

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. SP No. 06835 is REVERSED. The Decision of the Civil Service Commission in CSC Case No. 2322 dated July 10, 1985 is hereby reinstated, with the modification that the penalty to be imposed on private respondent should be that of dismissal. The Court makes no pronouncement as to costs.

SO ORDERED.

Narvasa, (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] Section 1, Article XI, Constitution.

[2] Pages 46 to 47, Rollo.

[3] *Gonzales vs. Hernandez*, 2 SCRA 228(1961); *Villamar vs. Lacson*, 12 SCRA 418(1964); *Abellera vs. City of Baguio*, 19 SCRA 601(1967); *Avila vs. Gimenez*, 27 SCRA 321(1969).

[4] 129 SCRA 180 (1984).

[5] Pages 48-50, Rollo.

[6] Section 3, Article IX B, Constitution.

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