



Republic of the Philippines
Supreme Court
 Manila

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 WILFREDO V. LADITAN
 Division Clerk of Court
 Third Division

JUN 14 2019

THIRD DIVISION

PHILIP JOHN B. MORENO,
ACCOUNTANT III/DIVISION
CHIEF II, PHILIPPINE
RETIREMENT AUTHORITY,
 Petitioner,

G.R. No. 238566

Present:

PERALTA, J.,
 Chairperson,
 LEONEN,
 A. REYES, JR.,
 HERNANDO, and
 CARANDANG,* JJ.

- versus -

Promulgated:

COURT OF APPEALS (Special
Former Tenth Division) and OFFICE
OF THE OMBUDSMAN,
 Respondents.

February 20, 2019

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DECISION

A. REYES, JR., J.:

Section 1, Article XI of the 1987 Constitution declares in no uncertain terms that public office is a public trust. The provision was designed for a sole rudimentary purpose—to exact accountability from public officers.¹ And so that public accountability is more than just a phrase written on parchment, public servants who fail to observe the stringent requirements of the law must meet the appropriate consequences, with the most severe being dismissal from the service. To be sure, such consequences are meant not to punish the erring public officer, but rather to preserve the People’s faith and confidence in the government.²

* Designated additional Member per Special Order No. 2624, dated November 28, 2019.

¹ BERNAS, JOAQUIN G., THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY, 2009 Ed., p. 1148.

² *Fajardo v. Alvarez*, 785 Phil. 303, 322 (2016).

Accordingly, administrative penalties must be meted out with utmost prudence, taking due consideration of the particular circumstances of each case. This is especially true when the charge warrants the penalty of dismissal, which affects not only the public servant, but also those who depend on him or her for support. With these precepts in mind, the Court must tread lightly in treating of the instant petition, which may spell the difference between the possibility of continuation in public office and the loss of all that accompanies nearly two decades of exemplary service.

This petition for review on *certiorari*³ challenges the February 22, 2017 Decision⁴ and March 14, 2018 Resolution⁵ rendered by the Court of Appeals (CA) in CA-G.R. SP No. 145445, through which the dismissal of the petitioner, Philip John B. Moreno (Moreno), as ordered by the Office of the Ombudsman in OMB-C-A-11-0477-H, was affirmed.

The Factual Antecedents

On February 1, 2001, the Philippine Retirement Authority (PRA) hired Moreno as Accountant III. He was subsequently promoted to Finance Division Chief and, later, to Department Manager.⁶

On March 5, 2010, the Ombudsman's Field Investigation Office charged Moreno with Gross Neglect of Duty and Conduct Prejudicial to the Best Interest of the Service. The charge was later amended to include Grave Misconduct and Dishonesty.⁷

The complaint stemmed from Moreno's act of signing Disbursement Vouchers (DVs) pertaining to the foreign travel cash advances of the PRA Chairman, Jose Antonio Leviste (Leviste), for the year 2003. In the relevant DVs, Moreno certified that Leviste's previous cash advances had been liquidated or accounted for, when in fact the contrary was true. This, in effect, allowed Leviste to secure subsequent advances without first settling his prior outstanding obligations, in violation of Presidential Decree (P.D.) No. 1445, or the Government Auditing Code.⁸

The anomaly was discovered by State Auditor Marissa Fajardo-Pariñas, who, in a Narrative Report on Unliquidated Cash Advances dated October 15, 2009, found that Leviste had failed to account for ₱151,358.42

³ *Rollo*, pp. 3-11.

⁴ *Id.* at 30-40.

⁵ *Id.* at 41-43.

⁶ *Id.* at 97.

⁷ *Id.* at 32.

⁸ *Id.* at 31.

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in government funds. Relevantly, the report revealed that Moreno was responsible for the certification of the following DVs:⁹

Foreign Travel	DV No.	Amount of Advance	Amount Unliquidated
USA (May 29-Jun 5)	0305848	₱182,022.00	₱13,190.00
China (Sept 4-17)	03091472	₱247,320.00	₱208,848.00
Japan (Sept 28-Oct 2)	03091647	₱27,575.00	₱27,575.00
Japan (Oct 24-29)	03101835 & 03101840	₱113,252.25	₱58,007.25
Taiwan (Nov 16-23)	03111942	₱149,485.50	₱110,730.00
Hong Kong & China (Dec 5-11)	03122129	₱149,526.00	₱27,690.00
TOTAL		₱869,180.75	₱446,040.25
LESS: Liquidations		Application of amount for Hong Kong trip (Dec 7-12) to outstanding cash advance balance	₱294,654.83
UNLIQUIDATED CASH ADVANCES AS OF DEC 31, 2007			₱151,385.42

Essentially, the charge against Moreno was that his recurrent false certification of DVs caused the loss of ₱151,358.42 in public funds, which to this day remains unaccounted for.

Moreno, in his counter-affidavit, admitted that he, in fact, signed the above-cited DVs, but averred that he did so unwillingly due to pressure from PRA top management. According to him, his superiors, namely: Finance Division Chief Virgilia Guerrero and Department Manager for Administration and Finance Erlina Lozana, were reluctant to hold the cash advance transactions, as doing so would effectively hinder Leviste's official activities as PRA Chairman. Moreno insisted that he was merely influenced to conform to such practices, propagated as acceptable by PRA's higher officials.¹⁰

⁹ Id.

¹⁰ Id. at 32.

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The Ombudsman's Ruling

On December 29, 2015, the Ombudsman rendered a decision finding Moreno administratively guilty of Grave Misconduct and ordering his dismissal from the service. In the Ombudsman's decision, it was noted that Moreno: (1) never disputed the fact that Leviste's cash advances had yet to be fully liquidated; (2) still signed the subject DVs despite knowing that such amounts were unliquidated; and (3) failed to make written report about such unliquidated advances, as required by Section 106 of P.D. No. 1445.¹¹ The *fallo* of the Ombudsman's decision reads:

WHEREFORE, Accountant III and Division Chief II, Financial Planning and Control Division, Philip John B. Moreno is found administratively guilty of Grave Misconduct and is imposed the penalty of Dismissal from the Service, together with all its accessory penalties.

In the event that the penalty of Dismissal can no longer be enforced to his separation from public service, the same shall be converted into a Fine in the amount equivalent to his last salary for one (1) year payable to the Office of the Ombudsman, which may be deductible from his retirement benefits, accrued leave credits or any receivable from his office, with all the penalties accessory to Dismissal.

x x x x

SO ORDERED.¹²

Upset with the foregoing disquisition, Moreno elevated the case to the CA, arguing, first, that the Ombudsman's findings were not supported by substantial evidence and, second, that the penalty of dismissal was inappropriate considering the circumstances of the case.¹³

The CA's Ruling

On February 22, 2017, the CA affirmed the Ombudsman's ruling through the herein challenged decision. The appellate court refused to exonerate Moreno, holding that his act of repeatedly falsely certifying the pertinent DVs enabled Leviste to obtain illicit cash advances.¹⁴ In addition, the CA ruled that the penalty of dismissal was appropriate considering the serious or grave nature of Moreno's offense.¹⁵ The *fallo* of the appellate court's decision reads:

¹¹ Id. at 33-34.

¹² Id. at 22.

¹³ Id. at 34.

¹⁴ Id. at 36.

¹⁵ Id. at 38-40.



WHEREFORE, in light of the foregoing, the instant petition for review is *DENIED*.

SO ORDERED.¹⁶

Moreno, after his motion for reconsideration was denied through the assailed March 14, 2018 Resolution, sought the present recourse before the Court. In the instant petition, Moreno never denied signing the pertinent DVs. Instead, his arguments were premised on the excessiveness of the penalty meted out by the Ombudsman and affirmed by the CA. He stressed that dismissal is too harsh considering the surrounding circumstances. He pointed to his (1) good faith; (2) admission of guilt; (3) length of service; (4) cooperation in the administrative investigation; and (5) dismissal of the Criminal Case by the Sandiganbayan, contending that these factors should be taken into account in lowering the penalty.¹⁷

The Issue

WHETHER OR NOT THE OFFICE OF THE OMBUDSMAN AND THE COURT OF APPEALS ERRED IN RULING THAT THE PENALTY OF DISMISSAL IS APPROPRIATE CONSIDERING THE CIRCUMSTANCES OF THIS CASE¹⁸

The Court's Ruling

The petition is meritorious.

Grave misconduct, with which Moreno stands charged, is defined as wrongful, improper, or unlawful conduct committed in connection with the performance of official functions, motivated by a premeditated, obstinate, or intentional purpose, and coupled with the elements of corruption, clear intent to violate the law, or flagrant disregard of an established rule.¹⁹ It is an odious offense that has always been and will continue to be anathema in the civil service.²⁰ As such, pursuant to Rule IV, Section 52 (A) No. 3 of the Uniform Rules on Administrative Cases in the Civil Service (Uniform Rules),²¹ the offense carries with it the ultimate penalty of dismissal even for the first infraction. This breathes life into the constitutional principle that public office is a public trust, guaranteeing that the concept is not a mere

¹⁶ Id. at 40.

¹⁷ Id. at 10-11.

¹⁸ Id. at 10.

¹⁹ *Ombudsman v. De Guzman*, G.R. No. 197886, October 4, 2017, 841 SCRA 616, 641.

²⁰ *Civil Service Commission v. Cortez*, 474 Phil. 670, 690 (2004).

²¹ Civil Service Commission Memorandum Circular No. 9, s. 1999.

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toothless iteration, and ultimately ensuring that only those who can live up to the most exacting standards are worthy of being part of the civil service.²²

Nevertheless, jurisprudence is replete with cases in which the Court, after due consideration of all the prevalent conditions, refused to arbitrarily impose the extreme penalty. In these cases, the facts were evaluated in light of Section 53 of the Uniform Rules, which allows the disciplining authority to mitigate or aggravate the erring public officer's liability depending on the attendant circumstances. Relevantly, in *Duque III v. Veloso*,²³ the Court held:

In appreciating the presence of mitigating, aggravating, or alternative circumstances to a given case, two constitutional principles come into play which the Court is tasked to balance. The first is **public accountability**, which requires the Court to consider the improvement of public service and the preservation of the public's faith and confidence in the government by ensuring that only individuals who possess good moral character, integrity, and competence are employed in the government service. The second relates to **social justice**, which gives the Court the discretionary leeway to lessen the harsh effects of the wrongdoing committed by an offender for equitable and humanitarian considerations.²⁴ (Emphasis and underscoring supplied, citations omitted)

Thus, in a plethora of cases, the Court, taking these principles into account, downgraded the penalty of dismissal despite a clear finding that the offense committed amounted to grave misconduct.

In *Lirios v. Oliveros*,²⁵ the clerk of a Municipal Trial Court was found guilty of keeping inside his own vault amounts collected in connection with two civil cases, contrary to a Supreme Court circular requiring that such amounts be immediately deposited with an authorized government bank. He was eventually able to account for the funds and prove that, after audit, he deposited his connections with the Land Bank. Considering the relatively mild nature of his offense, he was merely reprimanded and made to pay a fine of ₱10,000.00.

Likewise, in *Re: Delayed Remittance of Collections of Teresita Lydia R. Odtuhan*,²⁶ a branch clerk of court failed to immediately remit her collections. Despite of notice of her infractions, it took her over three years to make the proper deposit. Nevertheless, since she eventually remitted the subject funds and considering the fact that she was battling ovarian cancer,

²² *Duque III v. Veloso*, 688 Phil. 318, 328 (2012).

²³ *Id.*

²⁴ *Id.* at 323-324.

²⁵ 323 Phil. 318 (1996).

²⁶ 445 Phil. 220 (2003).

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she was only fined ₱10,000.00 and warned that her next offense would be dealt with more severely.

In *Civil Service Commission v. Belagan*,²⁷ the superintendent of the Department of Education, Culture, and Sports, Baguio City, was charged with and found guilty of sexual harassment for making indecent advances in consideration for the issuance of a permit to operate a pre-school. It was held, however, that dismissal was too harsh a penalty in view of the fact that the public officer therein had devoted thirty-seven years of his life to the education department, rising within its ranks from Elementary Grade School Teacher to Schools Division Superintendent. In addition, it was noted that he had received numerous awards for his long years of service, that he had only been charged only once, and that he was on the verge of retirement. Accordingly, he was merely suspended from office for one year without pay.

The Court also dealt with sexual harassment in *Gonzales v. Serrano*,²⁸ where the Chief of the Legal Division of the Philippine Racing Commission was found to have forcibly kissed his female subordinate, uttering distasteful remarks thereafter. Considering his advanced age, the fact that the offense was committed in public, and his separation from the service, he was merely reprimanded and ordered to return an amount equivalent to six months of his salary and other benefits.

In *De Guzman, Jr. v. Mendoza*,²⁹ *Apuyan, Jr. v. Sta. Isabel*,³⁰ *Adoma v. Gatcheco*,³¹ and *Albello v. Galvez*,³² the Court uniformly held that illicit solicitation and acceptance of monetary consideration renders sheriffs liable for grave misconduct. However, in these cases, since the respondent sheriffs were first time offenders, they were simply meted out the penalty of suspension for one year without pay.

In *Fact-Finding and Intelligence Bureau v. Campaña*,³³ the Ombudsman found the Senior Vice-President of the Government Service Insurance System guilty of representing to third persons that a bond between the system and a private party was valid and binding when, in fact, no premium therefor was paid. The public officer charged was also held to have accepted late payments on said bond without the proper clearance from his superiors. In mitigating the penalty of dismissal to suspension for one year without pay, the Court took into account the public officer's thirty-four

²⁷ 483 Phil. 601 (2004).

²⁸ 755 Phil. 513 (2015).

²⁹ 493 Phil. 690, 696 (2005).

³⁰ 474 Phil. 1, 19 (2004).

³¹ 489 Phil. 273, 282 (2005).

³² 443 Phil. 323, 328 (2003).

³³ 584 Phil. 654 (2008).

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unblemished years of service and the fact that he was never charged in the past.

Finally, in *Araganosa-Maniego v. Salinas*,³⁴ a court utility worker was found guilty of stealing and encashing a check representing the special allowance of his superior judge. It was held that the court employee, who had appropriated the funds for his own personal use, deserved a mitigated penalty because he acknowledged his infraction, felt remorse, and returned the amount involved. The fact that it was his first offense in more than ten years of government service was also taken into consideration. Moreover, it was held that a penalty less punitive than dismissal would suffice since unemployment brings untold hardships not only to the laborer, but to his or her family as well. Accordingly, he was suspended for one year without pay and warned that repetition of the act would be dealt with more severely.

As culled from the foregoing, a finding of grave misconduct should not straightjacket the Court. While there is no doubt that misfeasance and malfeasance in office are not to be countenanced, each case must be decided with due consideration of all the attendant circumstances. In other words, compassion will be extended in favor of the deserving, but those who are not must meet the full force of the law. Equitable justice, after all, demands that erring public officers, regardless of rank and stature, be meted out penalties commensurate to the offenses they commit.

In this case, there is no doubt that the irregularities committed by Moreno amounted to grave misconduct. By repeatedly and falsely certifying the subject DVs as liquidated, he effectively attempted to unlawfully conceal Leviste's unliquidated cash advances. This clearly meets the jurisprudential definition of misconduct—that is, “an intentional wrongdoing or a deliberate violation of a rule of law or standard of behavior, especially by a government official.”³⁵ Further, Moreno's act was properly qualified as grave, as it was done in flagrant disregard of Section 89 of P.D. No. 1445, viz.:

Section 89. Limitations on cash advance. No cash advance shall be given unless for a legally authorized specific purpose. A cash advance shall be reported on and liquidated as soon as the purpose for which it was given has been served. **No additional cash advance shall be allowed to any official or employee unless the previous cash advance given to him is first settled or a proper accounting thereof is made.**³⁶ (Emphasis and underscoring supplied)

³⁴ 608 Phil. 334 (2009).

³⁵ *Imperial, Jr. v. Government Service Insurance System*, 674 Phil. 286, 296 (2011).

³⁶ GOVERNMENT AUDITING CODE, Section 89.

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Certainly, Leviste would not have been able to secure subsequent cash advances, in violation of the foregoing provision, were it not for the false certification of the DVs pertinent to this case. As an accountant, Moreno was charged with ensuring that PRA officials, particularly Leviste, had liquidated their previous cash advances before securing subsequent ones.³⁷ Moreover, the frequency with which Moreno falsely certified DVs only served to highlight his flagrant disregard for government auditing rules. Thus, the Ombudsman and the CA correctly ruled that Moreno's offense amounted to Grave Misconduct.

However, the Court finds dismissal too severe a penalty.

For one, Moreno's participation in the act complained of was equivalent to that of a mere accessory. To be sure, it was never shown that Moreno derived any financial gain from the false certification of said DVs. Verily, this lends credence to his defense that the PRA upper management compelled him to conform to the practice of certifying DVs as liquidated, regardless of whether Leviste still had outstanding obligations with the government. Since Moreno knew that what he was doing was highly irregular, the Court is hard-pressed to believe that his acts were free from external influence. After all, what reasonable person would deliberately put his or her career at risk without anything to gain in return?

Second, Moreno's track record reveals that he is an exemplar of public service. Notably, his meritorious tenure at the PRA earned him a scholarship funded by the Japan International Cooperation Agency. For this reason, he was sent to Japan from 2010 to 2012 to take up advanced studies on retirement and aging, thus allowing him to further contribute to the improvement of the PRA's services.³⁸ In addition, his sterling performance is evinced by the fact that he was promoted twice; first, from Accountant III to Division Chief and, second, from Division Chief to Department Manager.³⁹ Taken together, these show beyond doubt that he is an invaluable asset to the PRA and to the civil service as a whole.

Third, Moreno admitted his culpability and cooperated in the administrative investigation. As shown by the counter-affidavit⁴⁰ he filed before the Ombudsman, he never denied certifying the subject DVs, averring instead that he did so pursuant to the orders of his superiors. Considering that this was his defense from the beginning, it can be gleaned that he never intended to conceal anything from the investigating authority. His admission, clearly not an afterthought in light of the circumstances under

³⁷ *Rollo*, p. 20.

³⁸ *Id.* at 97.

³⁹ *Id.*

⁴⁰ *Id.* at 86-87.

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which it was made, saved the government precious resources and displayed the good faith that is typically deserving of the Court's sympathy.

Finally, Moreno, to this date, has nearly two decades of admirable public service to his name. As mentioned earlier, since the PRA hired him in 2001, he was promoted twice and admitted to a foreign scholarship program. Additionally, this is his first administrative offense. His long and unblemished service record must necessarily be appreciated in his favor.

Taking all of the above into account, the Court finds that Moreno should be meted out a penalty of suspension for two (2) months without pay. However, Moreno is warned that he will no longer merit any sympathy if he is again found guilty of a similar charge.

All told, equitable and humanitarian considerations dictate that the Ombudsman and the CA committed a reversible error in ordering Moreno's dismissal from the service. As elaborately put in *Duque III*,⁴¹ the Court, in resolving administrative cases, must strike a balance between public accountability, the noble spirit behind the punishment meted out to an erring civil servant, and social justice, the principle that allows for the attenuation of said punishment based on the factual milieu of a given case. Here, Moreno, through the surrounding circumstances, has merited the Court's sympathy, therefore, justifying the mitigation of his liability. It must, however, be emphasized that this decision should not be construed as indiscriminate condonation of official transgression. Public officers, so long as our Constitution prevails, will remain to be accountable to the People,⁴² and the Court, as a bastion of democracy, will not hesitate to put to the proverbial sword those who betray the trust of the public they are meant to serve.

WHEREFORE, the petition is **GRANTED**. The February 22, 2017 Decision and March 14, 2018 Resolution of the Court of Appeals in CA-G.R. SP No. 145445 are **MODIFIED** insofar as the dismissal of the petitioner, Philip John B. Moreno, is concerned. He is hereby **SUSPENDED** from government service for two (2) months without pay, after which he shall be entitled to reinstatement without loss of seniority rights. In case he was placed under preventive suspension during the pendency of this appeal, he shall not be entitled to any backwages that may have accrued during the period of his suspension.

⁴¹ *Duque III v. Veloso*, supra note 22, at 323.

⁴² 1987 CONSTITUTION, Art. XI, Sec. 1.



SO ORDERED.

Reyes
ANDRES B. REYES, JR.
Associate Justice

WE CONCUR:

Diosdado M. Peralta
DIOSDADO M. PERALTA
Associate Justice
Chairperson

Maryic M.V.F. Leonen
MARYIC M.V.F. LEONEN
Associate Justice

Ramon Paul L. Hernando
RAMON PAUL L. HERNANDO
Associate Justice

Rosmari D. Carandang
ROSMARI D. CARANDANG
Associate Justice

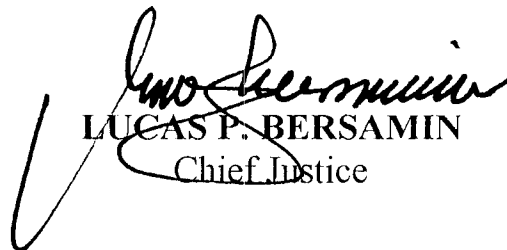
ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

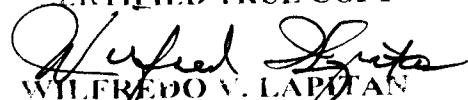
Diosdado M. Peralta
DIOSDADO M. PERALTA
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



LUCAS P. BERSAMIN
Chief Justice

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WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

JUN 14 2019