G.R. No. 244828 – Ernesto L. Ching, *Petitioner*, **v. Carmelita S. Bonachita-Ricablanca,** *Respondent.*

Promulgated:

OCT 12 2020

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CONCURRING OPINION

PERLAS-BERNABE, *J.*:

I concur. Having been re-elected by the same body politic prior to the abandonment of the condonation doctrine on April 12, 2016,[1] respondent Carmelita S. Bonachita-Ricablanca (Ricablanca) may validly invoke the same to absolve her of any administrative liability arising from the alleged infractions committed during her previous term.

To recount, in *Carpio Morales v. Court of Appeals*[2] (*Carpio Morales*), the Court traced the origin of the condonation doctrine and found that it was **merely a "jurisprudential creation"**[3] without any constitutional or statutory anchor. The doctrine was simply lifted from select United States of America (US) cases and was adopted hook, line, and sinker in the 1959 case of *Pascual v. Provincial Board of Nueva Ecija*[4] (*Pascual*), and thereafter, applied in our jurisprudence. As it appears, the propriety of the condonation doctrine was never seriously questioned before the Court up until the institution of the *Carpio Morales* case on March 25, 2015. Met with the opportunity to revisit said doctrine, the Court abandoned the doctrine of condonation after finding that it is not only **bereft of any constitutional or statntory basis** in this jurisdiction but is also "**out of touch from – and rendered obsolete by – the current legal regime.**"[5] *In particular, the Court had pertinently ruled that the*

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1 See *Crebello v. Ombudsman*, G.R. No. 232325, April 10, 2019.

2 772 Phil. 672 (2015).

3 See id. at 755; emphasis supplied.

4 106 Phil. 466 (1959). See also *Carpio Morales v. Court of Appeals*, id. at 755-756, to wit:

> [T]he controversy [in *Pascual*] posed a novel issue - that is, whether or not an elective official may be disciplined for a wrongful act committed by him during his immediately preceding term of office.
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> **As there was no legal precedent on the issue at that time,** the Court, in *Pascual*, resorted to American authorities and "found that cases on the matter are conflicting due in part, probably, to differences in statutes and constitutional provisions, and also, in part, to a divergence of views with respect to the question of whether the subsequent election or appointment condones the prior misconduct." Without going into the variables of these conflicting views and cases, it proceeded to state that:
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> > The weight of authorities x x x seems to incline toward the rule denying the right to remove one from office because of misconduct during a prior term, to which we fully subscribe. (Emphasis supplied)

5 *Carpio Morales v. Court of Appeals*, id. at 775.

existence of the condonation doctrine runs counter to the public accountability provisions of our present Constitution,[6] *viz.*:

> **The foundation of our entire legal system is the Constitution. It is the supreme law of the land**; thus, the unbending rule is that every statute should be read in light of the Constitution. Likewise, the Constitution is a framework of a workable government; hence, its interpretation must take into account the complexities, realities, and politics attendant to the operation of the political branches of government.
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> As earlier intimated, *Pascual* was a decision promulgated in 1959. **Therefore, it was decided within the context of the 1935 Constitution which was silent with respect to public accountability, or of the nature of public office being a public trust.** x x x Perhaps owing to the 1935 Constitution's silence on public accountability, and considering the dearth of jurisprudential rulings on the matter, as well as the variance in the policy considerations, there was no glaring objection confronting the *Pascual* Court in adopting the condonation doctrine that originated from select US cases existing at that time.
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> With the advent of the 1973 Constitution, the approach in dealing with public officers underwent a significant change. The new charter introduced an entire article on accountability of public officers, found in Article XIII. Section 1 thereof positively recognized, acknowledged, and declared that "[p]ublic office is a public trust." Accordingly, "[p]ublic officers and employees shall serve with the highest degree of responsibility, integrity, loyalty and efficiency, and shall remain accountable to the people."
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> After the turbulent decades of Martial Law rule, the Filipino People have framed and adopted the 1987 Constitution, which sets forth in the Declaration of Principles and State Policies in Article II that "[t]he State shall maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption." Learning how unbridled power could corrupt public servants under the regime of a dictator, the Framers put primacy on the integrity of the public service by declaring it as a constitutional principle and a State policy. **More significantly, the 1987 Constitution strengthened and solidified what has been first proclaimed in the 1973 Constitution by commanding public officers to be accountable to the people at all times**:
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> > Section 1. Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency and act with patriotism and justice, and lead modest lives.
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> x x x **[T]he concept of public office is a public trust and the corollary requirement of accountability to the people at all times, as mandated under the 1987 Constitution, is plainly inconsistent with the idea that an elective local official's administrative liability for a misconduct committed during a prior term can be wiped off by the fact**

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[6] See id at 772.

> **that he was elected to a second term of office, or even another elective post.** Election is **not** a mode of condoning an administrative offense, and there is simply no constitutional or statutory basis in our jurisdiction to support the notion that an official elected for a different term is fully absolved of any administrative liability arising from an offense done during a prior term. x x x
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> x x x x
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> Equally infirm is *Pascual*'s proposition that the electorate, when re-electing a local official, are assumed to have done so with knowledge of his life and character, and that they disregarded or forgave his faults or misconduct, if he had been guilty of any. Suffice it to state that no such presumption exists in any statute or procedural rule. Besides, it is contrary to human experience that the electorate would have full knowledge of a public official's misdeeds. The Ombudsman correctly points out the reality that most corrupt acts by public officers are shrouded in secrecy, and concealed from the public. Misconduct committed by an elective official is easily covered up, and is almost always unknown to the electorate when they cast their votes. At a conceptual level, condonation presupposes that the condoner has actual knowledge of what is to be condoned. Thus, there could be no condonation of an act that is unknown. x x x
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> x x x x
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> That being said, this Court simply finds no legal authority to sustain the condonation doctrine in this jurisdiction. **As can be seen from this discourse, it was a doctrine adopted from one class of US rulings way back in 1959 and thus, out of touch from - and now rendered obsolete by - the current legal regime**. In consequence, it is high time for this Court to abandon the condonation doctrine that originated from *Pascual*, and affirmed in the cases following the same, such as *Aguinaldo* [*v. Santos*, 287 Phil. 851 (1992)], *Salalima* [*v. Guingona, Jr.*, 326 Phil. 847 (1996)], *Mayor Garcia* [*v. Mojica*, 372 Phil. 892 (1999)], and *Governor Garcia, Jr.* [*v. Court of Appeals*, 604 Phil. 677 (2009)] which were all relied upon by the [Court of Appeals].[7] (Emphases and underscoring supplied; citations omitted)

Nevertheless, the Court declared the abandonment to be **prospective in application** on the basis of Article 8 of the Civil Code, which states that judicial decisions applying this doctrine became, prior to its abandonment, "part of the legal system of the Philippines" such that persons were bound to abide by it,[8] *viz.*:

> It should, however, be clarified that this Court's abandonment of the condonation doctrine should be **prospective in application** for the reason that judicial decisions applying or interpreting the laws or the Constitution, until reversed, shall form part of the legal system of the Philippines. Unto this Court devolves the sole authority to interpret what the Constitution means, and all persons are bound to follow its interpretation. As explained in *De Castro v. Judicial Bar Council* [632 Phil. 657 (2010)]:

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7 Id. at 765-775; citations omitted.

8 See id. at 775; citations omitted.

> Judicial decisions assume the same authority as a statute itself and, until authoritatively abandoned, necessarily become, to the extent that they are applicable, the criteria that must control the actuations, not only of those called upon to abide by them, but also of those duty-bound to enforce obedience to them.[9] (Emphasis supplied)

In order to afford due process to persons who relied on prevailing jurisprudence at that time in good faith, as well as recognize the practical implications of acts already done in the interim based thereon, the Court thus gave "prospective application" to the abandonment.

One of the two (2) main issues in the present case is the actual reckoning point of the Court's limited application of the condonation doctrine in light of its prospective abandonment in *Carpio Morales*, which attained finality on April 12, 2016.[10]

As the *ponencia* correctly holds, the proper point to reckon the doctrine's limited application is no other than **at that time when the elective official was re-elected to a new term** (in this case, during the May 13, 2013 elections). As consistently evinced by the jurisprudence on the doctrine of condonation, condonation of prior administrative liability by the will of people is triggered by **the fact of re-election**. Thus, the time when the alleged misconduct was committed (in this case, in 2012) as well as the time of the filing of the administrative case (in this case, on March 26, 2015) are not technically material in reckoning condonation. ***Verily, for as long as the elective official had already been re-elected prior to April 12, 2016, he/she may avail of the doctrine of condonation as a valid defense to the administrative complaint against him/her for acts committed during a prior term.***

In this regard, I deem it apt to point out that there are three (3) misguided views as to when condonation should be reckoned.

The first view, as contained in the Office of the Ombudsman's Office Circular No. 17 dated May 11, 2016, considers the condonation doctrine inapplicable to all administrative cases that are open and pending as of April 12, 2016, to wit:

> From the date of finality of the Decision on 12 April 2016 and onwards, the Office of the Ombudsman will no longer give credence to the condonation doctrine, regardless of when an administrative infraction was committed, when the disciplinary complaint was filed, or when the concerned public official was re-elected. In other words, for [as] long as the administrative case remains open and pending as of 12 April 2016 and

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[9] Id.

[10] See *Crebello v. Ombudsman*, supra note 1.

> onwards, the Office of the Ombudsman shall no longer honor the defense of condonation.

A second view suggests the date of filing of the complaint as the reckoning point. In *Ombudsman v. Vergara*[11] (*Vergara*), the condonation doctrine was applied because the case was "instituted prior to" April 12, 2016; while in *Dator v. Carpio Morales*,[12] the condonation doctrine was held to be no longer applicable because the case was instituted after such date even though the misconduct was committed in 2014.

A third view considers the date of commission of the misconduct as the reckoning point.

However, as already discussed above, the proper interpretation is that the condonation is manifested through re-election, and therefore, the defense of condonation is no longer available if the re-election happens after April 12, 2016. Black's Law Dictionary, as cited in *Carpio Morales*, defines condonation as "[a] victim's express or implied forgiveness of an offense, [especially] by treating the offender as if there had been no offense."[13] Thus, albeit by judicial fiat only, it is the act of re-election which triggers the legal effect of and, to an extent, vests the right to rely on the defense of condonation. ***Accordingly, considering that the electorate's act of forgiving a public officer for a misconduct is done through re-election, the abandonment of the condonation doctrine should mean that a re-election conducted after April 12, 2016 should no longer have the effect of condoning the public officer's misconduct for a previous term.***

Likewise, I express my concurrence with the *ponencia*'s holding that condonation may apply in favor of Ricablanca despite the fact that she was not re-elected by exactly the same body politic which previously elected her as Barangay Kagawad of Barangay Poblacion, Sagay, Camiguin. There is no gainsaying that Barangay Poblacion forms part of the larger political unit of the Municipality of Sagay, Camiguin.[14] Thus, since the *barangay* squarely falls under the municipality's geographical division, the *ponencia* correctly ruled that Ricablanca was effectively elected by the same electorate. Verily, the expression of the will of Barangay Poblacion's constituents is already subsumed by Ricabalanca's election by the constituents of a political unit that is not only larger but more importantly, encompasses Barangay Poblacion.

In so ruling, this Court is not adding any new legal nuance to the abandoned condonation doctrine. In our jurisdiction, condonation, prior to its abandonment, has always been premised on the theory that an elective official's re-election cuts off the right to remove him for an administrative

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11 822 Phil. 361 (2017).
12 G.R. No. 237742, October 8, 2018.
13 Black's Law Dictionary, 8th Ed., p. 315.
14 See *ponencia*, p. 15.

offense committed during a prior term.[15] Accordingly, a public officer should never be removed for acts done prior to his present term of office because to do otherwise would deprive the people of their right to elect their officers.[16]

The condonation doctrine cases prior to *Carpio Morales* never exclusively restricted the condonation's application to a re-election by exactly the same body politic.

In this relation, the *ponencia* aptly highlights the cases of *Giron v. Ochoa*[17] (*Giron*), *Templonuevo v. Ombudsman*[18] (*Templonuevo*), and *Vergara*[19] where the statement "same body politic" was first uttered. However, it must be borne in mind that not only were all these cases decided after *Carpio Morales*, but also the main issues raised therein pertained to whether or not the condonation doctrine will apply to a public official who was re-elected, albeit in a different position. They did not involve – as in this case – an instance where an official was elected by a larger body politic comprising a smaller unit which had first voted the public officer.

Giron involved a former Barangay Chairman who was "re-elected" as Barangay Kagawad of the same barangay. In that case, the Court ruled, *inter alia*, that as stated in *Carpio Morales*, one of the considerations for the condonation doctrine is that the "courts may not deprive the electorate who are assumed to have known the life and character of the candidates, of their right to elect officers."[20] Proceeding from such consideration, the Court held that the condonation doctrine would apply to therein subject public official, as "it is a given fact that the body politic, who elected him to another office, was the same."[21]

Notably, *Templonuevo* (which involved a former Sangguniang Bayan Member who was elected as Vice-Mayor of the same municipality), *Vergara* (which involved a Mayor who was thereafter elected as Vice-Mayor of the same city), as well as the 2019 case of *Aguilar v. Benlot*[22] (which involved barangay officials who were re-elected to the same positions), appear to have misquoted *Giron* as all of them held that condonation would apply to a public

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15 *Carpio Morales v. Court Appeals*, supra note 2, at 764. In *Carpio Morales*, the Court dissected the rationale in *Pascual* in this wise: (1) the penalty of removal may not be extended beyond the term in which the public officer was elected for each term is separate and distinct; (2) an elective official's re-election serves as a condonation of previous misconduct, thereby cutting the right to remove him therefor; (3) courts may not deprive the electorate, who are assumed to have known the life and character of candidates, of their right to elect officers. (See id. at 760-761. See also *Aguinaldo v. Santos*, 287 Phil 851, 857-858 [1992].)

16 See *Pascual v. Provincial Board of Nueva Ecija*, supra note 4, at 471-472; emphases supplied. See also *Salalima v. Guingona, Jr.*, wherein the Court stated that the condonation prevented the elective official from being hounded by administrative cases filed by his political rivals "during [a] new term." (326 Phil. 847, 921 [1996].)

17 806 Phil. 624 (2017).

18 811 Phil. 686 (2017).

19 Supra note 11.

20 *Giron v. Ochoa*, supra note 17, at 634.

21 Id.

22 G.R. No. 232806, January 21, 2019.

officer who was elected to a different position, "*provided that it is shown that the body politic electing the person to another office is the same.*"[23] Again, no such restriction was intended by *Giron*, and besides, it is my view that no new substantive qualification should be made to the condonation doctrine after it had already been abandoned in the *Carpio Morales* case.

If at all, these cases only state a general rule as it is common in condonation cases that it is the same body politic who re-elects the public officer. However, this does not – as it should not – foreclose scenarios where the essence of condonation, *as known in our existing case law*, is preserved. To reiterate, **what remains significant is that the people chose to forgive the misdeeds committed by the elective official during a previous term. This forgiveness is manifested through the official's re-election for a new term and hence, cuts off the right to remove him for an administrative offense committed during a prior term**. This is the essence of condonation which was recognized by the Court prior to *Carpio Morales* where the doctrine was prospectively abandoned.

In this case, the recognized essence of condonation is merely preserved since the same body politic who first re-elected Ricablanca forms part of the larger body politic who elected her anew. Indeed, through such re-election, she obtained not only the forgiveness of the people she supposedly slighted in her previous term as Barangay Kagawad, but also the confidence of more people in choosing her to serve as Municipal Councilor.

In fine, I vote to **DENY** the present petition.

ESTELA M. PERLAS-BERNABE
Senior Associate Justice

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[23] See *Templonuevo v. Ombudsman*, supra note 18, at 699; *Ombudsman v. Vergara*, supra note 11, at 379; and *Aguilar v. Benlot*, id.