

FIRST DIVISION

[G.R. No. 238643, September 08, 2020]

**MARIA TERESA B. SALIGUMBA, PETITIONER, VS. COMMISSION
ON AUDIT XIII, REPRESENTED BY CHERYL CANTALEJO-DIME
AND TEODORA J. BENIGA, RESPONDENT.**

D E C I S I O N

PERALTA, C.J.:

This is a petition for review on *certiorari*^[1] seeking to reverse and set aside the November 17, 2017 Decision^[2] of the Court of Appeals (CA) in CA-G.R. SP No. 08014-MIN, which affirmed the November 29, 2016 Decision^[3] of the Office of the Ombudsman for Mindanao (*Ombudsman*) in OMB-M-A-15-0605 that adjudged petitioner Maria Teresa B. Saligumba guilty of Gross Misconduct and Serious Dishonesty and, thereby, imposed upon her the penalty of dismissal from government service with cancellation of eligibility, forfeiture of retirement benefits and perpetual disqualification for re-employment in the government service.

The antecedent facts are as follows:

The case traces its roots from a complaint for Dishonesty and Grave Misconduct filed before the Ombudsman by the Commission on Audit, Regional Office No. XIII (COA), represented by State Auditors Cheryl Cantalejo-Dime and Teodora J. Beniga, against Saligumba, in her capacity as Assistant Municipal Treasurer of the Municipal Government of Barobo, Surigao del Sur.^[4]

In their Joint Affidavit of Complaint,^[5] State Auditors Cantalejo-Dime and Beniga alleged that on June 24, 2013, they conducted a cash and accounts examination on Saligumba covering the period from December 7, 2012 to June 24, 2013. The result of said examination disclosed that Saligumba incurred a total cash shortage of P223,050.93. They prepared a document denominated as Report of Cash Examination, reflecting the subject cash shortage, and Saligumba acknowledged therein that a demand was made upon her to produce all cash and cash items of which she is officially accountable. On May 14, 2014, the COA conducted a complete verification of her accountability, but made no formal demand upon Saligumba because she already restituted the missing funds by remitting the full amount thereof from July 3, 2013 to August 7, 2013.^[6]

In her February 9, 2016 Counter-Affidavit,^[7] Saligumba admitted that she indeed incurred the subject shortage of government funds. She explained that in 2009, then Municipal Mayor Arturo Ronquillo^[8] ordered her to issue official receipts in favor of the market vendors, who were delinquent taxpayers, to make it appear that they fully settled their unpaid taxes so that they could renew their annual permits even though there were no actual cash receipts from them. In return, the market vendors promised that they would pay their accounts to her on installment basis.

Unfortunately, the market vendors reneged on their promise to pay the installments due, resulting in the shortage of her cash collections. She submitted the joint affidavit executed by market vendors Fritzie Martinote and Rosenda Salem in support of her allegations.^[9]

She invoked good faith and absence of corrupt motive, claiming that the arrangement of issuing official receipts even without receiving cash payments was also practiced by her predecessor. Further, she asserted that the municipal government did not sustain any damage because she fully and promptly restituted the cash shortage.^[10] She prayed for the dismissal of the administrative charges against her for lack of merit.

In the position paper^[11] she subsequently filed before the Ombudsman, Saligumba reiterated that she was constrained to issue official receipts to the market vendors without the corresponding cash receipts from the latter in obedience to the instruction of Municipal Mayor Ronquillo. She argued that she could not have misappropriated public funds in the amount equivalent to the subject cash shortage, more so, converted the same for her personal use since there was no actual receipt of cash and, hence, the charge of Gross Misconduct against her is baseless. She averred that there was no malicious intent on her part to falsify reports, official receipts and documents as to warrant the charge of Dishonesty.

On November 29, 2016, the Ombudsman rendered a Decision finding Saligumba administratively liable for Gross Misconduct and Serious Dishonesty. The dispositive portion of which reads:

WHEREFORE, the Office finds respondent Maria Teresa B. Saligumba GUILTY of Grave Misconduct and Serious Dishonesty. She is meted out the penalty of DISMISSAL from service, including the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits, and the perpetual disqualification for re-employment in the government service. Considering that respondent is found guilty of two (2) charges, the penalty to be imposed should be that corresponding to the more serious charge and the other shall be considered as aggravating circumstance.

In the event that the penalty can no longer be enforced due to respondent's separation from service, it shall be converted into a Fine in the amount of her salary, for one (1) year, payable to the Office of the Ombudsman, and may be deducted from her accrued leave credits or any receivable from the government.

Mayor Felixberto S. Urbiztondo of the Municipal Government of Barobo, Surigao del Sur, is directed to implement the penalty meted out against respondent, within ten (10) days from receipt hereof, and to submit to the Office, within the same period, a Compliance Report indicating the docket number of this case.

SO ORDERED.^[12]

According to the Ombudsman, Saligumba committed Grave Misconduct and Serious Dishonesty when she misappropriated public funds in the amount of P223,050.93, and this is evident from her failure to satisfactorily explain what happened to the missing funds in her custody. The Ombudsman rejected Saligumba's reasoning on

how the subject cash shortage allegedly occurred for being self-serving and unsupported by any plausible proof.

On January 4, 2017, Municipal Mayor Felixberto Urbiztondo of the Municipality of Barobo, Surigao del Sur issued Office Order No. 01, Series of 2017, enforcing the penalty of dismissal from government service with all its accessory penalties against Saligumba, in compliance with the directive of the Ombudsman in its November 29, 2016 Decision. Office Order No. 01, Series of 2017 took effect on January 9, 2017.
[13]

Saligumba filed a motion for reconsideration, dated January 12, 2017, of the foregoing Decision of the Ombudsman, and annexed thereto the affidavit of Administrative Officer IV Reynaldo Pontillo,^[14] the joint affidavit^[15] of two more market vendors, Marivic Montederamos and La Mae Theresa Caballos, and the certificate^[16] from her co-employee in the Municipality of Barobo to further prove the alleged veracity of her explanation regarding the missing public funds.

On February 15, 2017, the Ombudsman issued an Order^[17] denying Saligumba's motion and stated that the issues she raised were mere reiterations of those that it had already squarely passed upon in its assailed Decision. The Ombudsman added that her length of service will not be considered in her favor since the offenses she committed were found to be of serious nature.

Not in conformity, Saligumba filed a Petition for Review^[18] under Rule 43 of the Rules of Court before the CA, praying for the reversal of the Decision of the Ombudsman.

On November 17, 2017, the CA rendered its assailed Decision denying Saligumba's petition for review; the *fallo* of which states:

WHEREFORE, premises considered, the Petition for Review is DENIED.
The Decision dated 29 November 2016 of respondent Office of the Ombudsman in OMB-M-A-15-0605 is AFFIRMED.

SO ORDERED.^[19]

The CA ruled that the findings of the Ombudsman that Saligumba committed Grave Misconduct and Serious Dishonesty were adequately supported by substantial evidence. Anent the explanation she proffered for the cash shortage, the CA declared that with or without such order from Municipal Mayor Ronquillo, the issuance of government official receipts without actually receiving cash payments is downright wrong as it is an unquestionable dishonest act and inimical to the interest of the Municipal Government of Barobo, Surigao del Sur which was deprived of the collection of taxes due to it.

Saligumba moved for a reconsideration, but the same was denied by the CA in its March 7, 2018 Resolution.^[20]

The Issues

Unfazed, Saligumba filed the present petition and posited the following issues, to wit:

[1] What are the rudiments of procedural due process? Was

petitioner accorded the same in the course of the Formal Investigation proceedings conducted? Was the filing of pleadings without considering the evidence and arguments raised therein, constitutes sufficient compliance with the requirements of due process?

- [2] Is the immediate implementation of the Decision of the Office of the Ombudsman in an administrative case, even before petitioner filed her Motion for Reconsideration and subsequent appeal, proper and justifiable?
- [3] What are the elements in Grave Misconduct and Serious Dishonesty? Are these elements attendant to the charges against petitioner?
- [4] Is petitioner entitled to the mitigating circumstances owing to her length of service, her being a first-time offender, very satisfactory performance and good moral character?^[21]

Essentially, Saligumba maintains that the Ombudsman erred in finding her administratively culpable for Gross Misconduct and Serious Dishonesty. She insists that she acted in good faith as she merely obeyed the directive of Municipal Mayor Ronquillo to issue official receipts to the market vendors even without receiving cash payments. She points out that her good faith was amply demonstrated by her act of fully restituting her accountability in the sum of P223,050.93. She denies misappropriating public funds in the amount equivalent to the subject cash shortage.

Moreover, Saligumba claims that she had been denied of her right to procedural due process, alleging that the evidence she presented, as well as the arguments she raised in her various pleadings, was never considered by the Ombudsman in arriving at its decision. She contends that the immediate implementation of the November 29, 2016 Decision of the Ombudsman, without giving her the opportunity to file a motion for reconsideration, is unjust and constitutes a violation of her right to due process. Finally, Saligumba submits that, even granting that there exists substantial evidence to hold her administratively liable, the penalty of dismissal from government service is too harsh. She posits that she is entitled to a mitigated penalty considering her length of service, her very satisfactory work performance, her good moral character, her being a first-time offender, and her full restitution of the amount of cash shortage before the filing of the case against her.

The Court's Ruling

Preliminarily, it must be emphasized that questions of fact may not be raised *via* a petition for review on *certiorari* under Rule 45 because the Court is not a trier of facts. As a general rule, factual findings of the Ombudsman are conclusive when supported by substantial evidence and are accorded due respect and weight, especially when affirmed by the CA.^[22] However, the courts may not be bound by such findings of fact when there is absolutely no evidence in support thereof or such evidence is clearly, manifestly and patently insubstantial; and when there is a clear showing that the administrative agency acted arbitrarily, with grave abuse of discretion, or in a capricious and whimsical manner, such that its action may amount

to an excess or lack of jurisdiction.^[23] None of these exceptions is present in the case at bench.

A finding of guilt in an administrative case would have to be sustained for as long as it is supported by substantial evidence that Saligumba has committed the acts stated in the complaint or formal charge.^[24] Substantial evidence is defined as such amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion. It is more than a mere scintilla of evidence.^[25] The standard of substantial evidence is satisfied when there is reasonable ground to believe that a person is responsible for the misconduct complained of, even if such evidence might not be overwhelming or even preponderant.^[26]

In the case at bench, the Ombudsman found Saligumba guilty of Gross Misconduct and Serious Dishonesty, which the CA affirmed. Gross Misconduct is defined as the transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer, coupled with the elements of corruption, or willful intent to violate the law or to disregard established rules.^[27] On the other hand, dishonesty has been defined as the concealment or distortion of truth which shows lack of integrity or a disposition to defraud, cheat, deceive, or betray, or intent to violate the truth.^[28] The charge of Serious Dishonesty necessarily entails the presence of any one of the following circumstances: (a) the dishonest act caused serious damage and grave prejudice to the government; (b) the respondent gravely abused his authority in order to commit the dishonest act; (c) where the respondent is an accountable officer, the dishonest act directly involves property, accountable forms or money for which he is directly accountable and the respondent shows an intent to commit material gain, graft and corruption; (d) the dishonest act exhibits moral depravity on the part of the respondent; (e) the respondent employed fraud and/or falsification of official documents in the commission of the dishonest act related to his/her employment; (f) the dishonest act was committed several times or in various occasions; (g) the dishonest act involves a Civil Service examination irregularity or fake Civil Service eligibility, such as, but not limited to, impersonation, cheating and use of crib sheets; and (h) other analogous circumstances.^[29]

After a judicious study of the case, the Court finds that the evidence on record sufficiently demonstrates Saligumba's culpability for Grave Misconduct and Serious Dishonesty, and fully satisfies the standard of substantial evidence.

The evidence shows that the state auditors prepared a Report of Cash Examination which stated the total shortage of public funds and demanded upon Saligumba to produce all cash for which she is officially accountable. Saligumba signed and acknowledged said report. It is undisputed that Saligumba offered no explanation to the state auditors for such shortage of funds when the demand was made but, instead, admitted her accountability.

Grave Misconduct was committed when Saligumba failed to keep and account for cash and cash items in her custody. Her corrupt intention was apparent from her failure to give a satisfactory explanation as to what happened to the missing public funds despite reasonable opportunity to do the same. Saligumba's act constitutes Serious Dishonesty because her dishonest act deals with money on her account. Saligumba's failure to account for the cash shortage showed an intent to commit material gain, graft and corruption. Evidence of misappropriation of the missing