

## SECOND DIVISION

[ G.R. No. 242901, September 14, 2020 ]

**MA. LUISA R. LOREÑO, PETITIONER, VS. OFFICE OF THE  
OMBUDSMAN, RESPONDENT.**

### DECISION

**DELOS SANTOS, J.:**

Before the Court is a Petition for Review on *Certiorari*<sup>[1]</sup> seeking to annul the Resolutions dated 11 January 2018<sup>[2]</sup> and 18 October 2018<sup>[3]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 149987, which affirmed the Decision<sup>[4]</sup> dated 28 June 2016 of the Office of the Ombudsman (Ombudsman) in OMB-C-A-15-0318, finding Ma. Luisa R. Loreño (Loreño) guilty of Serious Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service, and thereby imposed upon her the penalty of dismissal from service, and cancellation of her civil service eligibility, forfeiture of retirement benefits, and perpetual disqualification to hold public office.

### FACTS

This case stemmed from a Complaint<sup>[5]</sup> filed by the Field Investigation Office I (FIO I) of the Ombudsman charging Loreño with violation of Article 217 of the Revised Penal Code (RPC) and Section 3 (e) of Republic Act No. (RA) 3019,<sup>[6]</sup> Serious Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service. It was alleged that Loreño was a Teacher I assigned at Andres Bonifacio Integrated School (ABIS) in Mandaluyong City. On 12 January 2009, a team from the Commission on Audit (COA) of City Schools of Mandaluyong City submitted an Audit Observation Memorandum on the audit of cash accounts of ABIS covering the period from March 2006 to June 2008. The team's initial audit finding was that the cash accounts of ABIS showed a shortage of P263,515.96. Thus, a demand letter, addressed to Loreño and Juanita P. Valle (Valle), former Elementary School Principal III of ABIS, was issued, demanding them to produce the above-mentioned amount immediately. Upon receipt of the letter, both Loreño and Valle denied the cash shortage and requested for a bill of particulars.<sup>[7]</sup>

On 13 March 2009, the COA constituted a team of auditors to conduct a complete examination of the cash accounts of Loreño, Valle, Evangeline A. Diaz, the incumbent principal, and Bernardita G. Tan, the acting collecting officer. The audit resulted in Loreño's cash shortage amounting to P171,240.01, representing the balance of collections from authorized school contributions/fees and school operating funds. Thus, another demand letter was sent to Loreño for the immediate production of the said amount. However, Loreño failed to produce the missing funds despite demand.<sup>[8]</sup> Hence, this complaint.

In her Position Paper,<sup>[9]</sup> Loreño denied that she was an accountable officer and that she was assigned as an Acting Collecting Officer of ABIS during the period of March 2006 to June 2008. She raised the defense that Valle merely asked for her help in counting the money received from teachers authorized to collect money, representing payment of students' identification cards (IDs), and not in any official capacity. She further alleged that the manner the COA auditors conducted the audit was very doubtful when they hauled all the records from ABIS to the COA office at the City School Division in Mandaluyong City and that she was not given an opportunity to refute their findings prior to the submission of the final audit report. Loreño maintained that as a teacher, she does not hold cash on a daily basis and was never designated to carry the responsibility of accounting money, nor was she involved in the disbursement of the Maintenance and Other Operating Expenses (MOOE). Thus, she prayed that the instant administrative complaint against her be dismissed.<sup>[10]</sup>

### **RULING OF THE OFFICE OF THE OMBUDSMAN**

In a Decision<sup>[11]</sup> dated 28 June 2016, the Ombudsman found Loreño guilty of Serious Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service, and imposed the ultimate penalty of dismissal from service with the accessory penalties of cancellation of civil service eligibility, forfeiture of retirement benefits, and perpetual disqualification to hold public office.<sup>[12]</sup> It ruled that Loreño was an accountable officer, because she was designated as Acting Collecting Officer of ABIS, tasked to receive money from school collections.<sup>[13]</sup> That according to the COA auditors, Loreño failed to deposit all her collections during the period of April 2007 to May 2008, in violation of Sections 69,<sup>[14]</sup> 111,<sup>[15]</sup> and 112<sup>[16]</sup> of Presidential Decree No. (PD) 1445.<sup>[17]</sup> Loreño's Motion for Reconsideration<sup>[18]</sup> was denied in an Order<sup>[19]</sup> dated 16 January 2017.

Aggrieved, Loreño filed a Petition for Review with Application for Temporary Restraining Order and/or Writ of Preliminary Injunction<sup>[20]</sup> before the CA and argued that the Ombudsman erred in ruling that she was an accountable officer under the law and that the alleged shortage of money was not supported by substantial evidence.

### **RULING OF THE CA**

In a Resolution<sup>[21]</sup> dated 11 January 2018, the CA denied the petition and affirmed the assailed Decision of the Ombudsman. It held that Loreño falls within the definition of an accountable officer under PD 1445, as she was the Acting Collecting Officer of ABIS in charge of collecting, among others, identification and graduation fees. In addition, Loreño was bonded in accordance with PD 1445, which is only required for accountable officers. Therefore, her failure to deposit her collections and submit the required reports are in contravention of the established rules and regulations in keeping of accounts and recording of transactions. Loreño's failure or inability to produce the alleged shortage constituted a *prima facie* evidence that she used the missing funds for her personal gain.<sup>[22]</sup>

Loreño moved for reconsideration<sup>[23]</sup> but was denied in a Resolution<sup>[24]</sup> dated 18 October 2018. Hence, this petition.

## **ISSUES**

- (1) Whether or not the CA erred in finding Loreño as an accountable officer as defined under the law.
- (2) Whether or not the CA erred in finding Loreño guilty of Serious Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service.

### **ARGUMENTS OF THE PETITIONER**

In support of her petition, Loreño reiterated that she is not an accountable officer, as erroneously found by both the Ombudsman and the CA. Her official designation in ABIS was Teacher I, thus, her duties does not include possession or custody of government funds or property. However, she admitted that as an additional duty, she was tasked by Valle, the school principal, to collect payments mainly for the cost of the school IDs from the students. Loreño also maintained that her duty was merely to collect the said funds, count them, and turn it over to Valle, who was primarily responsible for the safekeeping and custody of the collected funds.<sup>[25]</sup>

Further, Loreño insisted that there was no substantial evidence to prove that she incurred the shortage of P171,240.01. According to her, the alleged shortage was based on assumption, conjectures and utterly devoid of factual or legal basis.<sup>[26]</sup> The circumstances surrounding the audit was highly irregular as there was no actual cash count conducted by the auditors and there was no face-to-face discussion between her and the said auditors. She also claimed that the records pertaining to the subject audit were brought outside of ABIS and the COA auditors did not issue any acknowledgment receipt.<sup>[27]</sup> She likewise denied receiving the amount of P5,587,297.65, as stated in the demand letter. The said amount does not represent actual cash received by her, but "DO Downloaded Funds".<sup>[28]</sup>

Lastly, Loreño denied that she committed serious dishonesty, grave misconduct, and conduct prejudicial to the best interest of the service. The basis of the administrative complaint against her was anchored on the premise that she was an accountable officer and that she incurred a shortage during the COA audit. Unfortunately, the Ombudsman failed to prove by substantial evidence such claims.<sup>[29]</sup> Thus, she prayed that the Resolutions of the CA be set aside and that the instant complaint be dismissed.

### **ARGUMENTS OF THE RESPONDENT**

In its Comment<sup>[30]</sup> to the instant petition, the Ombudsman stressed that there was substantial evidence to hold Loreño liable for serious dishonesty, grave misconduct, and conduct prejudicial to the best interest of the service. Contrary to Loreño's claim that there was no factual or substantial basis to hold her liable for the alleged shortage of PI 71,240.01, the records reveal otherwise.<sup>[31]</sup> As found by the COA auditors, as the Acting Collecting Officer, Loreño was mandated to faithfully comply with the provisions of PD 1445 with regard to the keeping of accounts, recording of transactions, and depositing all her collections.<sup>[32]</sup>

Also, Loreño's claim that the COA audit was irregular and seriously flawed has no basis, as she failed to specify her legal basis. Hence, the COA findings remain lawful, regular, and conclusive as to their contents.<sup>[33]</sup>

Therefore, her failure to account for the shortage and to produce it upon demand, and her understating the amounts she collected for the IDs in the official receipts are all indicative of a lack of honesty, integrity and probity as an accountable officer.

[34]

## **RULING OF THE COURT**

The petition is bereft of merit.

It must be noted at the outset that the jurisdiction of the Court in a petition for review under Rule 45 of the Revised Rules of Court is limited only to reviewing errors of law, not of fact. A question of law arises when there is doubt as to what the law is on a certain set of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must solely rely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact.<sup>[35]</sup> In this case, the issues raised by Loreño are substantially factual, as it requires a re-examination of the evidence presented.

In the case at the bar, the Ombudsman found Loreño guilty of Serious Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service, which was affirmed by the CA.

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.<sup>[36]</sup> Dishonesty becomes serious when it is qualified by any of the circumstances under Section 3 of the Civil Service Commission Resolution No. 06-0538,<sup>[37]</sup> to wit:

Section 3. Serious Dishonesty. The presence of any of one of the following attendant circumstances in the commission of the dishonest act would constitute the offense of Serious Dishonesty:

- a. The dishonest act causes 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