

## THIRD DIVISION

[ G.R. No. 238566, February 20, 2019 ]

**PHILIP JOHN B. MORENO, ACCOUNTANT III/DIVISION CHIEF II,  
PHILIPPINE RETIREMENT AUTHORITY, PETITIONER, VS. COURT  
OF APPEALS (SPECIAL FORMER TENTH DIVISION) AND OFFICE  
OF THE OMBUDSMAN, RESPONDENTS.**

### D E C I S I O N

#### **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.<sup>[1]</sup> And so that public accountability is more than just a phrase written on parchment, public servants who fail to observe the stringent requirement of the law must meet the appropriate consequences, with the most severe being dismissal from the service. To be sure, such consequences are meant no to punish the erring public officer, but rather to preserve the People's faith and confidence in the government.<sup>[2]</sup>*

*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*<sup>[3]</sup> challenges the February 22, 2017 Decision<sup>[4]</sup> and March 14, 2018 Resolution<sup>[5]</sup> 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.<sup>[6]</sup>

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.<sup>[7]</sup>

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.<sup>[8]</sup>

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 P151,358.42 in government funds. Relevantly, the report revealed that Moreno was responsible for the certification of the following DVs:<sup>[9]</sup>

<b>Foreign Travel</b>	<b>DV No.</b>	<b>Amount of Advance</b>	<b>Amount Unliquidated</b>
USA (May 29-Jun 5)	0305848	P182,022.00	P13,190.00
China (Sept 4-17)	03091472	P247,320.00	P208,848.00
Japan (Sept 28-Oct 2)	03091647	P27,575.00	P27,575.00
Japan (Oct 24-29)	03101835 & 03101840	P113,252.25	P58,007.25
Taiwan (Nov 16-23)	03111942	P149,485.50	P110,730.00
Hong Kong & China (Dec 5-11)	03122129	P149,526.00	P27,690.00
<b>TOTAL</b>		<b>P869,180.75</b>	<b>P446,040.25</b>
LESS: Liquidations		Application of amount for Hong Kong trip (Dec 7-12) to outstanding cash advance balance	P294,654.83
<b>UNLIQUIDATED CASH ADVANCES AS OF DEC 31, 2007</b>			<b>P151,385.42</b>

Essentially, the charge against Moreno was that his recurrent false certification of DVs caused the loss of P151,358.42 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.<sup>[10]</sup>

### **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.<sup>[11]</sup> 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.<sup>[12]</sup>

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.<sup>[13]</sup>

### **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.<sup>[14]</sup> In addition, the CA ruled that the penalty of dismissal was appropriate considering the serious or grave nature of Moreno's offense.<sup>[15]</sup> The *fallo* of the appellate court's decision reads:

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

SO ORDERED.<sup>[16]</sup>

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.<sup>[17]</sup>

### **The Issue**

WHETHER OR NOT THE OFFICE OF THE OMBUDSMAN AND COURT OF APPEALS ERRED IN RULING THAT THE PENALTY OF DISMISSAL IS APPROPRIATE CONSIDERING THE CIRCUMSTANCES OF THIS CASE<sup>[18]</sup>

### **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.<sup>[19]</sup> It is an odious offense that has always been and will continue to be anathema in the civil service.<sup>[20]</sup> As such, pursuant to Rule IV, Section 52 (A) No. 3 of the Uniform Rules on Administrative Cases in the Civil Service (Uniform Rules),<sup>[21]</sup> 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 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.<sup>[22]</sup>

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*,<sup>[23]</sup> 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.<sup>[24]</sup> (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*,<sup>[25]</sup> 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 P10,000.00.

Likewise, in *Re: Delayed Remittance of Collections of Teresita Lydia R. Odtuhan*,<sup>[26]</sup> 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, she was only fined P10,000.00 and warned that her next offense would be dealt with more severely.

In *Civil Service Commission v. Belagan*,<sup>[27]</sup> 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*,<sup>[28]</sup> 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*,<sup>[29]</sup> *Apuyan, Jr. v. Sta. Isabel*,<sup>[30]</sup> *Adoma v. Gatcheco*,<sup>[31]</sup> and *Albello v. Galvez*,<sup>[32]</sup> 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*,<sup>[33]</sup> 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 therefore 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 unblemished years of service and the fact that he was never charged in