

## SECOND DIVISION

[ G.R. No. 176058, March 23, 2011 ]

### **PRESIDENTIAL ANTI-GRAFT COMMISSION (PAGC) AND THE OFFICE OF THE PRESIDENT, PETITIONERS, VS. SALVADOR A. PLEYTO, RESPONDENT.**

#### **D E C I S I O N**

##### **ABAD, J.:**

This case is about the dismissal of a department undersecretary for failure to declare in his Sworn Statement of Assets, Liabilities, and Net Worth (SALN) his wife's business interests and financial connections.

##### **The Facts and the Case**

On December 19, 2002 the Presidential Anti-Graft Commission (PAGC) received an anonymous letter-complaint<sup>[1]</sup> from alleged employees of the Department of Public Works and Highways (DPWH). The letter accused DPWH Undersecretary Salvador A. Pleyto of extortion, illicit affairs, and manipulation of DPWH projects.

In the course of the PAGC's investigation, Pleyto submitted his 1999,<sup>[2]</sup> 2000,<sup>[3]</sup> and 2001<sup>[4]</sup> SALNs. PAGC examined these and observed that, while Pleyto said therein that his wife was a businesswoman, he did not disclose her business interests and financial connections. Thus, on April 29, 2003 PAGC charged Pleyto before the Office of the President (OP) for violation of Section 8 of Republic Act (R.A.) 6713,<sup>[5]</sup> also known as the Code of Conduct and Ethical Standards for Public Officials and Employees" and Section 7 of R.A. 3019<sup>[6]</sup> or "The Anti-Graft and Corrupt Practices Act."<sup>[7]</sup>

Pleyto claimed that he and his wife had no business interests of any kind and for this reason, he wrote "NONE" under the column "Business Interests and Financial Connections" on his 1999 SALN and left the column blank in his 2000 and 2001 SALNs.<sup>[8]</sup> Further, he attributed the mistake to the fact that his SALNs were merely prepared by his wife's bookkeeper.<sup>[9]</sup>

On July 10, 2003 PAGC found Pleyto guilty as charged and recommended to the OP his dismissal with forfeiture of all government financial benefits and disqualification to re-enter government service.<sup>[10]</sup>

On January 29, 2004 the OP approved the recommendation.<sup>[11]</sup> From this, Pleyto filed an Urgent Motion for Reconsideration<sup>[12]</sup> claiming that: 1) he should first be allowed to avail of the review and compliance procedure in Section 10 of R.A. 6713<sup>[13]</sup> before he is administratively charged; 2) he indicated "NONE" in the

column for financial and business interests because he and his wife had no business interests related to DPWH; and 3) his failure to indicate his wife's business interests is not punishable under R.A. 3019.

On March 2, 2004 PAGC filed its comment,<sup>[14]</sup> contending that Pleyto's reliance on the Review and Compliance Procedure was unavailing because the mechanism had not yet been established and, in any case, his SALN was a sworn statement, the contents of which were beyond the corrective guidance of the DPWH Secretary. Furthermore, his failure to declare his wife's business interests and financial connections was highly irregular and was a form of dishonesty.

On March 11, 2005 Executive Secretary Eduardo R. Ermita ordered PAGC to conduct a reinvestigation of Pleyto's case.<sup>[15]</sup> In compliance, PAGC queried the Department of Trade and Industry of Region III-Bulacan regarding the businesses registered in the name of Miguela Pleyto, his wife. PAGC found that she operated the following businesses: 1) R.S. Pawnshop, registered since May 19, 1993; 2) M. Pleyto Piggery and Poultry Farm, registered since December 29, 1998; 3) R.S. Pawnshop-Pulong Buhangin Branch, registered since July 24, 2000; and 4) RSP Laundry and Dry Cleaning, registered since July 24, 2001.<sup>[16]</sup>

The PAGC also inquired with the DPWH regarding their Review and Compliance procedure. The DPWH said that, they merely reminded their officials of the need for them to comply with R.A. 6713 by filing their SALNs on time and that they had no mechanism for reviewing or validating the entries in the SALNs of their more than 19,000 permanent, casual and contractual employees.<sup>[17]</sup>

On February 21, 2006 the PAGC maintained its finding and recommendation respecting Pleyto.<sup>[18]</sup> On August 29, 2006 the OP denied Pleyto's Motion for Reconsideration.<sup>[19]</sup> Pleyto raised the matter to the Court of Appeals (CA),<sup>[20]</sup> which on December 29, 2006 granted Pleyto's petition and permanently enjoined the PAGC and the OP from implementing their decisions.<sup>[21]</sup> This prompted the latter offices to come to this Court on a petition for review.<sup>[22]</sup>

### **Issues Presented**

This case presents the following issues:

1. Whether or not the CA erred in not finding Pleyto's failure to indicate his spouse's business interests in his SALNs a violation of Section 8 of R.A. 6713.
2. Whether or not the CA erred in finding that under the Review and Compliance Procedure, Pleyto should have first been allowed to correct the error in his SALNs before being charged for violation of R.A. 6713.

### **The Court's Rulings**

This is the second time Pleyto's SALNs are before this Court. The first time was in G.R. 169982, *Pleyto v. Philippine National Police Criminal Investigation and Detection Group* (PNP-CIDG).<sup>[23]</sup> In that case, the PNP-CIDG filed on July 28, 2003 administrative charges against Pleyto with the Office of the Ombudsman for

violating, among others, Section 8 of R.A. 6713 in that he failed to disclose in his 2001 and 2002 SALNs his wife's business interests and financial connections.

On June 28, 2004 the Office of the Ombudsman ordered Pleyto dismissed from the service. He appealed the order to the CA but the latter dismissed his petition and the motion for reconsideration that he subsequently filed. Pleyto then assailed the CA's ruling before this Court raising, among others, the following issues: 1) whether or not Pleyto violated Section 8(a) of R.A. 6713; and 2) whether or not Pleyto's reliance on the Review and Compliance Procedure in the law was unwarranted.

After threshing out the other issues, this Court found that Pleyto's failure to disclose his wife's business interests and financial connections constituted simple negligence, not gross misconduct or dishonesty. Thus:

**Neither can petitioner's failure to answer the question, "Do you have any business interest and other financial connections including those of your spouse and unmarried children living in your household?" be tantamount to gross misconduct or dishonesty. On the front page of petitioner's 2002 SALN, it is already clearly stated that his wife is a businesswoman, and it can be logically deduced that she had business interests. Such a statement of his wife's occupation would be inconsistent with the intention to conceal his and his wife's business interests. That petitioner and/or his wife had business interests is thus readily apparent on the face of the SALN; it is just that the missing particulars may be subject of an inquiry or investigation.**

**An act done in good faith, which constitutes only an error of judgment and for no ulterior motives and/or purposes, does not qualify as gross misconduct, and is merely simple negligence. Thus, at most, petitioner is guilty of negligence for having failed to ascertain that his SALN was accomplished properly, accurately, and in more detail.**

**Negligence is the omission of the diligence which is required by the nature of the obligation and corresponds with the circumstances of the persons, of the time and of the place. In the case of public officials, there is negligence when there is a breach of duty or failure to perform the obligation, and there is gross negligence when a breach of duty is flagrant and palpable. Both Section 7 of the Anti-Graft and Corrupt Practices Act and Section 8 of the Code of Conduct and Ethical Standards for Public Officials and Employees require the accomplishment and submission of a true, detailed and sworn statement of assets and liabilities. Petitioner was negligent for failing to comply with his duty to provide a detailed list of his assets and business interests in his SALN. He was also negligent in relying on the family bookkeeper/accountant to fill out his SALN and in signing the same without checking or verifying the entries therein. Petitioner's negligence, though, is only simple and not gross, in the absence of bad faith or the intent to mislead or deceive on his**

**part, and in consideration of the fact that his SALNs actually disclose the full extent of his assets and the fact that he and his wife had other business interests.**

**Gross misconduct and dishonesty are serious charges which warrant the removal or dismissal from service of the erring public officer or employee, together with the accessory penalties, such as cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification from reemployment in government service. Hence, a finding that a public officer or employee is administratively liable for such charges must be supported by substantial evidence.**<sup>[24]</sup>

The above concerns Pleyto's 2001 and 2002 SALN; the present case, on the other hand, is about his 1999, 2000 and 2001 SALNs but his omissions are identical. While he said that his wife was a businesswoman, he also did not disclose her business interests and financial connections in his 1999, 2000 and 2001 SALNs. Since the facts and the issues in the two cases are identical, the judgment in G.R. 169982, the first case, is conclusive upon this case.

There is "conclusiveness of judgment" when any right, fact, or matter in issue, directly adjudicated on the merits in a previous action by a competent court or necessarily involved in its determination, is conclusively settled by the judgment in such court and cannot again be litigated between the parties and their privies whether or not the claim, demand, purpose, or subject matter of the two actions is the same.<sup>[25]</sup>

Thus, as in G.R. 169982, Pleyto's failure to declare his wife's business interest and financial connections does not constitute dishonesty and grave misconduct but only simple negligence, warranting a penalty of forfeiture of the equivalent of six months of his salary from his retirement benefits.<sup>[26]</sup>

With regard to the issue concerning compliance with the Review and Compliance Procedure provided in R.A. 6713, this Court already held in G.R. 169982 that such procedure cannot limit the authority of the Ombudsman to conduct administrative investigations. R.A. 6770, otherwise known as "The Ombudsman Act of 1989," intended to vest in the Office of the Ombudsman full administrative disciplinary authority.<sup>[27]</sup> Here, however, it was the PAGC and the OP, respectively, that conducted the investigation and meted out the penalty of dismissal against Pleyto. Consequently, the ruling in G.R. 169982 in this respect cannot apply.

Actually, nowhere in R.A. 6713 does it say that the Review and Compliance Procedure is a prerequisite to the filing of administrative charges for false declarations or concealments in one's SALN. Thus:

**Section 10. *Review and Compliance Procedure.* - (a) The designated Committees of both Houses of the Congress shall establish procedures for the review of statements to determine whether said statements which have been submitted on time, are complete, and are in proper form. In the event a determination is**