

THIRD DIVISION

[A.M. No. P-08-2512 (Formerly OCA I.P.I. No. 07-8-193-MCTC), August 11, 2008]

OFFICE OF THE COURT ADMINISTRATOR, PETITIONER, VS. MRS. FELICITAS T. MARCELO, FORMER CLERK OF COURT, MUNICIPAL CIRCUIT TRIAL COURT, RAMON-SAN ISIDRO, ISABELA, RESPONDENT.

RESOLUTION

AUSTRIA-MARTINEZ, J.:

The instant administrative case stems from the audit conducted on the books of account of Felicitas T. Marcelo (Felicitas), former Clerk of Court, Municipal Circuit Trial Court (MCTC), Ramon-San Isidro, Isabela.

In the initial report of the Court Management Office (CMO), Office of the Court Administrator (OCA) on the books of account of Felicitas as of April 30, 2004, shortages in the total amount of P76,049.45 were discovered.^[1] Felicitas, in her comment dated May 21, 2004, admitted that her cashbook was not updated and that she was not able to immediately deposit her collections, which was the probably the reason why her collections and remittances did not tally. She also apologized for her failure to comply with Supreme Court (SC) Circular Nos. 32-93 and 50-95 regarding the submission of monthly reports of collections.^[2] In a Memorandum by the OCA dated March 18, 2005, Felicitas was directed to explain in writing why she should not be administratively charged with failure to strictly comply with the circulars issued by the Court.^[3] In an undated letter to the OCA, Felicitas requested an extension of 15 days within which to comply, alleging that she was hospitalized on February 24-26, March 17-19 and April 29 to May 1, 2005.^[4] The request was granted by the OCA. However no compliance or explanation was subsequently submitted by Felicitas.^[5]

In a letter dated January 13, 2006, Acting Presiding Judge Renato P. Pine informed the OCA that Felicitas had gone on leave because she suffered a stroke, rendering her incapable of discharging her duties and responsibilities. He also discovered that there were missing records of cases. Thus, he requested that an immediate audit of Felicitas's accountabilities, including court exhibits and equipment, be conducted.^[6]

On January 10, 2006, Felicitas filed an application for disability retirement under Republic Act No. 8291^[7] effective January 2, 2006, which the Court's Third Division approved on June 28, 2006.^[8]

On December 3, 2006, Felicitas's husband Gaudencio Marcelo (Gaudencio) wrote the Court requesting partial release of his wife's disability retirement benefits. The Court replied that the clearance could not be issued at that time because the financial

audit on Felicitas's accounts was not yet completed.^[9]

On August 2, 2007, the OCA submitted its final report dated July 23, 2007 on the financial audit conducted on all the records of Felicitas for the period May 2004 to March 31, 2005, and it was established that Felicitas had incurred a total shortage of **P136,699.25**, broken down as follows: (1) Judiciary Development Fund (JDF) = P27,816.00; (2) General Fund = P456.00; (3) Special Allowance for the Judiciary (SAJ) Fund = P21,967.00, and; (4) Fiduciary Fund = P86,460.25.^[10]

In a letter to the CMO dated March 8, 2007, Gaudencio requested that the shortage be deducted from his wife's leave credits and other benefits.^[11] The equivalent money value of Felicitas's leave credits amounts to **P336,090.59** as reported by the Finance Division of the Court's Fiscal Management Office.^[12]

In the Memorandum dated July 23, 2007, the OCA recommended that Felicitas be dismissed from the service for gross dishonesty and grave misconduct with forfeiture of all her retirement benefits, except accrued leave credits, and that the amount of P136,699.25 be deducted from her terminal leave pay.^[13] In the Resolution dated September 10, 2007, the Court directed Felicitas to show cause why she should not be dismissed as recommended by the OCA.^[14]

In a letter dated October 18, 2007 addressed to Clerk of Court Lucita Abjelina-Soriano, Gaudencio, on behalf of his wife, stated that they were willing to have the shortage of P136,699.25 deducted from her accrued leave credits, but prayed that his wife's other benefits not be forfeited.^[15] Gaudencio attached the letters of Felicitas to Land Bank-Santiago City Branch dated May 20, 2004 and July 20, 2005 asking confirmation of the deposits she made in the court's Savings Account; Felicitas's Comment on the Audit Observation dated May 21, 2004; and a list of cases which were dismissed and which were allegedly included in the cash accountability of Felicitas.^[16]

Gaudencio also sent these letters: one addressed to Chief Justice Reynato S. Puno, dated October 18, 2007, reiterating his request that the retirement benefits of his wife be not forfeited, since his wife had been bedridden since September 2005, and they were only relying on her retirement benefits;^[17] and another addressed to Atty. Soriano dated October 25, 2007 stating that his wife had been trying to answer and explain her side, but due to her sickness, she was not able to do so in writing.^[18] The Court on January 16, 2008 referred the letters of Gaudencio and its attachments to the OCA for its evaluation, report and recommendation.^[19]

Gaudencio sent another letter to the Chief Justice dated December 3, 2007, regarding his request for the immediate release of his wife's benefits and stating their conformity to the deduction of her accountability from her earned leave credits.^[20] The OCA, in its Memorandum dated January 2, 2008, replied that while the disability retirement of Felicitas was approved in June 2006, her clearance had to be deferred pending the resolution of the Court on the financial audit report.^[21]

In a letter to Atty. Soriano dated January 24, 2008, Gaudencio informed the Court that there were cases that had been dismissed, the corresponding bailbonds of

which, totaling P13,400.00, had been included in the accountabilities of Felicitas. He prayed that said amount be deducted from his wife's accountabilities and that she not be dismissed from the service.^[22] In a letter of the same date addressed to the Chief Justice, Gaudencio prayed that, for humanitarian reasons, his wife's acts be pardoned by the Court. He averred that his wife first became ill in 1994 and started taking medicines from such time until March 2005 when she had her second stroke; that because of her illness, she got delayed in submitting her reports; and that on September 2005, his wife had her third stroke, which left half of her body paralyzed.^[23] Attached to said letter were pictures of his bedridden wife.

In a Resolution dated February 20, 2008, the Court again referred the instant case to the OCA for its evaluation, report and recommendation.^[24]

In its Memorandum dated March 28, 2008, the OCA found Felicitas guilty of dishonesty and grave misconduct for incurring shortages in the court's funds. However in view of the mitigating circumstances in her favor, it recommended the imposition of a fine in lieu of dismissal, reasoning as follows:

It bears emphasis that Mrs. Felicitas Marcelo has devoted a considerable number of years in her life in public service. In fact, prior to her application for disability retirement benefits on January 2, 2006, she had been with the judiciary for a period of 26 years and 7 months, having started as Court Stenographer I on June 1, 1979. Further, records show that she is just a first time offender and the amount misappropriated by her was not considerably huge as to prejudice the Court. While it is true that the amount misappropriated should not be made the basis of the penalty imposed, the same could be considered in the instant case more so that Mrs. Marcelo at present is suffering from an illness due to stroke. As a matter of fact, half her body is already paralyzed. The photographs sent by her husband are mute evidence of her weak condition and physical suffering. While the Court has remained vigilant in eradicating the so-called rotten eggs in its roster, it will not hesitate to temper the penalty with compassion and for humanitarian reasons. Be that as it may, Mrs. Marcelo should not be totally exonerated from her offense. The fact remains that she committed an offense prejudicial to the orderly administration of justice. Instead of imposing the ultimate penalty of dismissal for grave misconduct and dishonesty, a fine in the amount of P20,000.00 is fair and reasonable.^[25]

The OCA then recommended that:

1. the amount of One hundred thirty six thousand six hundred ninety nine and 25/100 (136, 699.25) be DEDUCTED from the terminal leave pay of Mrs. Felicitas Marcelo, former Clerk of Court, MCTC, Ramon-San Isidro, Isabela to be applied to her accountabilities and to release the balance to her if there be any;
2. she be FINED in the amount of P20,000.00 for gross dishonesty and grave misconduct, to be deducted from her retirement benefits and
3. the Employee Welfare and Benefits Division be directed to compute and to immediately release whatever benefits she is entitled to