

## EN BANC

[ G.R. NO. 167726, July 20, 2006 ]

**ROBERTO M. VILLANUEVA, PETITIONER, VS. QUISUMBING,  
COURT OF APPEALS AND HOUSE OF REPRESENTATIVES,  
REPRESENTED BY ROBERTO P. NAZARENO, IN HIS CAPACITY AS  
SECRETARY GENERAL, RESPONDENTS.**

### D E C I S I O N

**TINGA, J.:**

Assailed in this Rule 45 Petition for Review<sup>[1]</sup> is the Decision<sup>[2]</sup> dated 27 August 2003 of the Court of Appeals in C.A.-G.R. SP No. 75002, and its Resolution<sup>[3]</sup> dated 29 March 2005 denying herein petitioner Roberto M. Villanueva's (Villanueva) Motion for Reconsideration.<sup>[4]</sup> The dispositive portion of the challenged Decision reads as follows:

**WHEREFORE**, the writ of *certiorari* is **GRANTED**. The questioned resolutions of the Civil Service Commission is (sic) hereby **REVERSED** and **SET ASIDE**, and the said respondent **ORDERED** to **CEASE AND DESIST** from implementing the same. The Decision of the House of Representatives Disciplinary Board dated 07 June 2000 is hereby **REINSTATED**, and respondent Villanueva is **ORDERED DISMISSED** from the service with forfeiture of all benefits.

No Costs.

**SO ORDERED.**<sup>[5]</sup>

The antecedents are as follows:

On 24 November 1997, Villanueva, married man and the Legislative Assistant II of the Cashiering and Administrative Records Division of the House of Representatives (the House), was charged with *Grave Misconduct, Disgraceful and Immoral Conduct Prejudicial to the Best Interest of the Service* before the House Disciplinary Board. The charges were based on an entry in the Official Log Book as well as a Spot Inspection Report accomplished, respectively, by Frederick Maramba (Maramba) and Orencio Castillo (Castillo), both security officers of the House who were on regular roving patrol duty on the night of 16 October 1997. Their routine inspection tour included Room 305, Northwing Building, Office of Representative Constantino H. Navarro, Jr., of the First District of Surigao Del Norte.<sup>[6]</sup>

Maramba and Castillo narrated that when they came upon said office at around 9:30 of that night, they saw Villanueva, a married man<sup>[7]</sup> and a female asleep on the couch, both naked, with the woman's arm resting on Villanueva's body. The female was later identified as Elizabeth Navarro-Arguelles (Navarro-Arguelles),

Representative Navarro's daughter and confidential assistant, herself a married woman.<sup>[8]</sup>

Villanueva's immediate supervisor, Jose Ma. Antonio B. Tuano, Chief of the Cashiering and Administrative Records Division, lodged the complaint against the former.<sup>[9]</sup> Incidentally, no charges were filed against Navarro-Arguelles as the House Disciplinary Board has no jurisdiction over confidential assistants of Representatives.<sup>[10]</sup>

The House Disciplinary Board, after hearing, found Villanueva guilty as charged and suspended him for one (1) year without pay with a stern warning that any infraction in the future will be dealt with more severely.<sup>[11]</sup> However, acting on Villanueva's motion for reconsideration, the House Disciplinary Board increased the penalty to dismissal with forfeiture of all benefits.<sup>[12]</sup>

Speaker Manuel B. Villar, Jr. affirmed the latter Decision of the House Disciplinary Board in a Resolution<sup>[13]</sup> dated 5 October 2000. Villanueva moved for a reconsideration of the Decision but this was denied by Speaker Feliciano Belmonte, Jr., in a Resolution<sup>[14]</sup> dated 28 May 2001.<sup>[15]</sup>

Villanueva then interposed an appeal before the Civil Service Commission (the Commission) which, on 12 April 2002, modified the penalty to suspension. The dispositive portion of the Commission's Resolution No. 020536<sup>[16]</sup> reads as follows:

**WHEREFORE**, the appeal of Robert[o] M. Villanueva is hereby partly **GRANTED**. The Commission holds that Villanueva is guilty of Disgraceful and Immoral Conduct for which he is meted the penalty of one (1) year suspension. In all other respects, the decisions appealed from are affirmed.

Considering that Villanueva has been out of the service for more than the imposed suspension, he should now be reinstated to his former position. It is understood that this reinstatement shall not carry with it the payment of back salaries and other entitlements, for he is not totally exonerated.<sup>[17]</sup>

In its motion for reconsideration, the House prayed for the re-imposition of the penalty of dismissal on Villanueva. For his part, Villanueva moved for partial reconsideration, seeking that he be awarded his benefits for the period of January 1999 to February 2001. The Commission denied both motions in Resolution No. 021492<sup>[18]</sup> dated 18 November 2002, a copy of which the House received on 21 November 2002.<sup>[19]</sup>

In a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure filed on 20 January 2003 before the Court of Appeals, the House ascribed grave abuse of discretion to the Commission for reducing the penalty to a mere suspension.

In its challenged Decision, the Court of Appeals granted the petition for certiorari and sustained the Decision of the House Disciplinary Board dismissing Villanueva. In arriving at this conclusion, the Court of Appeals emphasized the similarity of the

factual circumstances of the case at bar with *Dicdican v. Fernan, Jr.*,<sup>[20]</sup> wherein the Court dismissed the court personnel found guilty of disgraceful and immoral conduct.<sup>[21]</sup> The appellate court stated that adherence to case law dictates the imposition of a similar penalty for the similar offense in the case at bar. Otherwise, the Court would be imposing on judicial employees more stringent standards than employees of the Legislature or the Executive.<sup>[22]</sup>

The appellate court likewise pointed out that the Commission gravely erred in failing to recognize the gravity of Villanueva's misconduct, stressing that Villanueva not only disregarded his marriage vows but also exhibited total disrespect of the marital status of Elizabeth Navarro-Arguelles.<sup>[23]</sup>

Moreover, the Court of Appeals held that Villanueva's offense relates to his official functions as it was made possible precisely by his official functions. By virtue of his position, Villanueva had free rein inside the building even after office hours. Clearly, therefore, Villanueva used his office to commit the misconduct for which he was charged,<sup>[24]</sup> it concluded.

Finally, the appellate court disclosed its desire to improve the public regard of the government sector by safeguarding morality in the ranks.<sup>[25]</sup>

The Court of Appeals likewise denied Villanueva's Motion for Reconsideration.<sup>[26]</sup> Thus, Villanueva filed the instant petition.

In the instant petition, Villanueva insists that the appellate court did not have jurisdiction over the House's petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure as it was a substitute for lost appeal.<sup>[27]</sup> Villanueva also maintains that the Commission acted well within the confines of its jurisdiction when it imposed the penalty prescribed by law for disgraceful and immoral conduct.<sup>[28]</sup> Villanueva likewise contends that the *Dicdican* adjudication finds no application in the instant case as it was arrived at in the Court's exercise of its administrative jurisdiction over its personnel.<sup>[29]</sup> Further, Villanueva points out that his misconduct is in no way connected with his official functions and it cannot thus be equated with grave misconduct as defined by law.<sup>[30]</sup>

In its Comment,<sup>[31]</sup> the House contends that an appeal from the decision of the Commission would not constitute a speedy and adequate remedy thus necessitating the resort to the remedy of certiorari under Rule 65. The House reasons that the decision of the Commission was immediately executory and its execution would not have been stayed by an ordinary appeal.<sup>[32]</sup> The House also maintains that the ruling of the appellate court is in accordance with law and jurisprudence, particularly the *Dicdican* case. The House argues that employees of the legislature, just like employees of the judiciary, should be subject to the same exacting standards of morality and decency in their professional and private conduct.<sup>[33]</sup>

Lastly, the House posits that since Villanueva was found guilty of Grave Misconduct, Disgraceful and Immoral Conduct and Conduct Prejudicial to the Best Interest of the Service, dismissal indeed is the appropriate penalty.<sup>[34]</sup>

In his Reply,<sup>[35]</sup> Villanueva maintains, among other things, that even if an appeal before the Court of Appeals does not stop the execution of the Commission's Decision the House could have applied for a restraining order or injunction to stay it,<sup>[36]</sup> noting that Section 82, Rule VI of the Uniform Rules on Administrative Cases in the Civil Service<sup>[37]</sup> provides, thus:

**Section 82. *Effect of Pendency of Petition for Review/Certiorari with the Court.***-The filing and pendency of a petition for review with the Court of Appeals or certiorari with the Supreme Court shall not stop the execution of the final decision of the Commission unless the Court issues a restraining order or an injunction.

Moreover, Villanueva points out that the House could have easily availed of the remedy of appeal under Rule 43 of the 1997 Rules of Civil Procedure. The House received a copy of the assailed

resolution of the Commission on 21 November 2002. According to the Rules, the House had fifteen (15) days, or until 6 December 2002, to perfect an appeal which apparently, it did not do. Instead, it filed a petition for certiorari under Rule 65 to make up for the lost remedy of appeal.<sup>[38]</sup>

The Court finds merit in the petition.

At the outset, we find that the Court of Appeals erred in giving due course to the House's petition for certiorari as it was filed in lieu of an appeal which is the prescribed remedy. Section 5, Rule 43 of the 1997 Rules of Civil Procedure states that final orders or resolutions of the Commission are appealable to the Court of Appeals through a petition for review. However, instead of availing of the remedy of appeal, the House resorted to the wrong remedy of certiorari.

Notably, the House received the assailed resolution of the Commission on 21 November 2002, and thus it had until 6 December 2002 or fifteen (15) days after, to file an appeal. Despite the sufficient time, the House allowed the period to elapse and instead filed a petition for certiorari under Rule 65 on 20 January 2003, close to two (2) months after its receipt of the resolution. Failing to undertake an appeal, the House interposed a special civil action of certiorari. Evidently, the House intended to make up for the lost remedy of appeal and substituted it with a petition for certiorari under Rule 65.

Settled is the rule that a special civil action of certiorari is not a substitute for a lost or lapsed remedy of appeal.<sup>[39]</sup> As the Court aptly held in *David v. Cordova*,<sup>[40]</sup> to wit:

x x x x Where appeal is available to the aggrieved party, the action for certiorari will not be entertained. The remedies of appeal (including petitions for review) and certiorari are mutually exclusive, not alternative or successive. Hence, certiorari is not and cannot be a substitute for an appeal, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse. One of the requisites of certiorari is that there be no available appeal or any plain, speedy and adequate