

THIRD DIVISION

[A.M. No. 00-4-06-SC, January 15, 2002]

RE: COMPLAINT OF EXECUTIVE JUDGE TITO GUSTILO, REGIONAL TRIAL COURT, ILOILO CITY, AGAINST CLERK OF COURT MAGDALENA LOMETILLO, REGIONAL TRIAL COURT, ILOILO CITY.

DECISION

VITUG, J.:

In a letter-complaint, dated 23 March 2000, Executive Judge Tito Gustilo of the Regional Trial Court ("RTC") of Iloilo City charged Atty. Magdalena Lometillo, the Clerk of Court, with gross neglect of duty and habitual tardiness.

In his complaint, Judge Gustilo stated that on 04 September 1999, a Saturday, the office of the Clerk of Court of the RTC was closed from 1:30 to 4:30, p.m., in violation of Supreme Court Administrative Circular No. 2-99, dated 15 January 1999, requiring offices of the Clerk of Court to maintain a skeletal force on Saturdays from 8:30 a.m. to 12 noon and from 12:30 to 4:30 p.m. Judge Gustilo had learned that the office of the RTC Clerk of Court remained closed on the date aforesaid when a criminal complaint for violation of Republic Act No. 6425 was directly received in his chambers instead of it being filed with the office of the Clerk of Court. The Judge issued a memorandum requiring respondent to explain why no administrative sanction should be taken against her and other personnel concerned for their failure to report for duty on 04 September 1999. A similar memorandum was issued when on 11 March 2000, also a Saturday, the office of the Clerk of Court was once again found to be closed from 1:30 to 4:30 in the afternoon. Additionally, complainant cited respondent for habitual tardiness on certain days in October and November of 1999 and in January and February of 2000.

In her comment, respondent averred that pursuant to the Supreme Court Memorandum Order, dated 19 November 1973, the office of the Clerk of Court had since then been observing a Saturday work schedule. Respondent explained that two court personnel, Emilia Manikan and Genoveva Tacorda, were assigned to report for work on 04 September 1999 at the office of the Clerk of Court between 1:30 to 4:30 in the afternoon. Manikan, however, had to leave the office, around one o'clock in the afternoon, to attend to her ailing mother who was in the hospital in critical condition but by 2:30 p.m. Manikan was back at the office. Genoveva Tacorda, on the other hand, said that she went home at 1:30 p.m. due to a severe migraine but returned to the office at 3:45 p.m. Respondent confirmed that the two did report for work on that day. Relative to their absence from work on 11 March 2000, respondent stated that she had to leave town on that day, and she was thus unable to monitor the attendance of the personnel assigned that day at the office of the Clerk of Court. She added that the assignments for the Saturday work schedule of court personnel were made two months in advance. Anent the charge for habitual

tardiness, respondent admitted having been tardy during the months of October to November 1999, and January to February 2000, during which time, she continued, she was suffering from chronic back pain. Indeed, on 25 to 29 January 2000, she was admitted at the Manila Doctor's Hospital for a diagnostic work-up and underwent constant check-up from 14 to 17 February 2000. Although she did arrive late for work on those days, she would, however, also leave the office late in the day in order to make-up for the hours missed.

The Court, in its Resolution of 25 October 2000, referred the matter to 2nd Executive Judge Jose Azarraga of the Regional Trial Court, Branch 27, of Iloilo City, for investigation, report and recommendation. His report, dated 30 March 2001, gave these findings; *viz*:

"To the mind of this Investigating Judge, respondent Magdalena Lometillo has not been remiss in her job, when on September 4, 1999 and on March 11, 2000, the office personnel on duty left the office. Inasmuch as what is required is only a skeletal force of the total office personnel to be on duty during Saturdays, it can be presumed that the head of the office has the discretion of selecting whom and how many are to be assigned to work on this particular day, provided that the required duties and responsibilities of the office are met. Neither is it required that the head of the office, should be physically present in the office during these Saturdays, so long as competence in the job is maintained by those who compose the skeletal force.

"Neither can the trust and confidence in the office personnel assigned to man the office on the two dates referred to by the respondent be questioned inasmuch as based on their length of service and track records, they are presumed to be familiar with their work and are expected to perform well. Besides, it is the respondent who is in the best position to gauge the competence and reliability of her subordinates in the office, so that when she claimed she trusted and had confidence in such personnel there is no reason to doubt or disbelieve her. That she was proven wrong when these trusted personnel has not lived to her expectations, that should not be taken against her especially so in this case, when she has shown that the lapse on the part of the personnel concerned cannot be traced to any wrongdoing on her part or direct participation in the commission or omission thereof.

"Besides, gross neglect connotes a willfull dereliction of duty and implies wrongful intent. The neglect must be of grave character and not merely trivial or unimportant. The charge in the instant case against respondent does not find ample support in the evidence on record that she is guilty thereof. If ever there was any lapse on the part of respondent Lometillo, it was in her failure to call up the office the whole day of March 11, 2000, to check on the personnel on duty that day resulting in her failure to know that these two left the office at noon and failed to come back for the rest of the day.

"Be that as it may, the fact remains that this lapse is not serious or of grievous character as to amount to a gross neglect of duty on her part. Besides, respondent has offered her apologies and took steps to

discipline the personnel in her office and had been more vigilant in the performance of her duties as well as in the supervision of the office employees under her. This is shown by the fact that after this incident of March 11, 2000, nothing of this sort has again happened.

"On the charge of Habitual Tardiness.

"As earlier adverted to, respondent did not deny incurring those tardiness alleged in the letter complaint and her reasons for it are: poor health and traffic problem in Iloilo City.

"Relevant hereto is Section 22 of the Omnibus Rules Implementing Book V of E.O. No. 292, which considers an officer or employee in the Civil Service to be 'habitually absent if he incurs unauthorized absences exceeding the allowable 2.5 days monthly credit under the Leave Law for at least three months in a semester or at least three consecutive months during the year.' Also:

'Any employee shall be considered habitually tardy if he incurs tardiness regardless of number of minutes, ten (10) times a month for at least two months in a semester or at least two consecutive months during the year. In case of claim of ill-health, heads of departments or agencies are required to verify the validity of such claim and if not satisfied with the reason given, should disapprove the application for sick leave. On the other hand, cases of employees who absent themselves from work before the approval of the application should be disapproved outright. (Italics supplied.)'

"Respondent Lometillo for the months of October and November 1999, incurred 7 and 8 tardiness respectively. January and February 2000, she incurred 9 and 7 tardiness, respectively.

"October and November, 1999, are two successive months in a semester; so are January and February, 2000. However, her tardiness for each of the successive months are all less than ten (10). Can it still be considered habitual? Are her grounds for these repeated tardiness valid and legal?

"The law speaks of ten (10) as the least number of tardiness incurred in a month for two successive months in a semester before the tardiness can be considered habitual. Therefore, it leaves no room for an interpretation. Less than such number could not be considered habitual. However, her documentary evidence to support her being tardy for so many times, such as her medical certificates and her Applications for Leave are quite irrelevant. That she got sick and has undergone surgery does not necessarily mean that that prevented her from reporting for work punctually because, when she reported for work it only meant that she was physically fit and well, and therefore it follows that her being late to arrive in the office was not brought about by her illness but by some other forces independent thereof. As a matter of fact when she was ill or sick, she was on sick leave.