

SECOND DIVISION

[G.R. No. 141141, June 25, 2001]

**PHILIPPINE AMUSEMENT AND GAMING CORPORATION
(PAGCOR), PETITIONER, VS. CARLOS P. RILLORAZA,
RESPONDENT.**

D E C I S I O N

DE LEON, JR., J.:

Before us is a petition for review on *certiorari* praying for the reversal of the Decision dated August 31, 1999^[1] as well as the Resolution dated November 29, 1999, rendered by the Court of Appeals in CA-G.R. SP No. 51803.

The facts are undisputed:

On November 5, 1997, administrative charges for dishonesty, grave misconduct, conduct prejudicial to the best interest of the service, and loss of confidence, were brought against respondent Carlos P. Rilloraza, a casino operations manager of petitioner PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR). Respondent allegedly committed the following acts:

Summary description of charge(s):

Failure to prevent an irregularity and violations of casino and regulations committed by co-officers during his shift on October 9, 1997.

1. During his shift of 6:00 a.m.-2:00 p.m. on October 9, 1997, four (4) personal checks with a total value of Pesos: Five Million (P5,000,000) were issued by a small-time financier/player and were facilitated by a COM with the Treasury Division which enabled the small-time financier/player to withdraw and receive said amount. The facilitation of the checks was not authorized by the Senior Branch Manager (SBM) or the Branch Manager for Operations (BMO) and the COM who facilitated the checks was not on duty then.
2. He even facilitated one (1) of the personal checks with a value of Pesos: Five Hundred Thousand (P500,000.00).
3. He failed to stop a top-ranking officer from placing bets over and above the allowable limit of P5,000.00 per deal, he failed to stop the same officer from playing in the big tables and lastly, he allowed the same officer to play beyond the allowable time limit of 6:00 a.m.

Respondent duly filed his answer during an investigation conducted by petitioner's Corporate Investigation Unit. He narrated the events that transpired:

"When I reported for my 6:00 a.m. to 2:00 p.m. shift, on October 9, that morning I saw BM RICHARD SYHONGPAN beside TABLE #22 (BB) sitting at a coffee table inside Area 3. While inside the Area 3, GAM RENE QUITO approached me with a check worth P500,000.00 requested by a customer for endorsement to the Treasury. Since I've been out of Manila branch for 2 years and I've just been recalled to this branch for only more than 3 weeks, I'm not quite familiar with the systems and I don't know this customer. I immediately approached COM CARLOS GONZALES, who at that time was still around, to verify regarding the said check and his immediate reply was "IT'S OKAY AND GOOD AND IT WAS GUARANTEED BY BM SYHONGPAN". In fact, I reconfirmed it again with COM GONZALES since he is more familiar with the systems and customers, he answered me the same. So I gave the approval to GAM QUITO for endorsement. When I went in the office, I instructed OOS GILBERT CABANA to beep SBM VIC ADVINCULA and BMO DARIO CORDERO to call office "ASAP" because I wanted to relay this matter to them and there were no reply from both of them. I instructed OOS CABANA to send messages again to SBM & BMO, but still I received no reply. It was until after noontime that BMO CORDERO returned my call and I reported the incident to him. When I was at home at around 3:30 p.m. SBM ADVINCULA returned my call and I reported the incident. I also relayed the incident to SBM REYES.

While during my rounds, I went down to the New VIP area and there I saw BM SYHONGPAN sitting at TABLE #3(BB) and he was holding house cards at that time. I approached and stopped him but he reacted that the bet was not his but to a CUSTOMER'S. I took his words because as a subordinate, I respected him as one of our superior who very well know all our company's policy esp. that an officer is not allowed to play at BIG table and are only allowed to bet with a maximum of P5,000.00 only. So I believe it was not his bet but the said customer. At that time there was no way for me to stop the game because I saw the said customer, named MS. CORAZON CASTILLO, whom I don't know her [sic] since I was out of Manila Branch 2 years, and whom BM SYHONGPAN was referring to as the player, has a lot of chips worth about P7 Million in front of her and was betting P1.5M on the banker side which was over the maximum table limit by P500,000.00. I know we are allowed to authorize approval by raising the betting limits as per request of the playing customers.

After the game, the chips were encashed and I instructed GAM J. EUGENIO to accompany BM SYHONGPAN to his room because he was too drunk. When I was doing my rounds again, that's how I found out from rumors within the gaming areas that this MS. CASTILLO was used by BM SYHONGPAN and COM GONZALES to played [sic] in behalf of them the whole time. And I also learned that there were four checks endorsed during my shift which I facilitated only one check worth P500,000.00 after I verified and confirmed it with COM GONZALES. With regards to

the other 3 checks, I have no knowledge about it since they, BM SYHONGPAN and COM GONZALES, kept it a secret from me. When GAM EUGENIO returned from the room of BM SYHONGPAN he handed me some cash, which according to him, was given by BM SYHONGPAN as 'BALATO'. I did not accept the money because at that moment I was so mad that they involved me beyond my innocence since I am new in the branch. I then instructed GAM EUGENIO to return the money to BM SYHONGPAN. (sic)

Finding Rilloraza's explanation unsatisfactory, the PAGCOR Board handed down a Resolution on December 2, 1997 dismissing respondent and several others from PAGCOR, on the grounds of dishonesty, grave misconduct and/or conduct prejudicial to the best interest of the service and loss of confidence, effective December 5, 1997. The Board also denied respondent's motion for reconsideration in a Resolution dated December 16, 1997.

Respondent appealed to the Civil Service Commission. On November 20, 1998, the Commission issued Resolution No. 983033,^[2] the dispositive portion of which provides, to wit:

WHEREFORE, the appeal of Carlos P. Rilloraza is hereby dismissed. However, the Commission finds appellant guilty only of Simple Neglect of Duty and metes out upon him the penalty of one month and one day suspension. The assailed Resolution of PAGCOR Board of Directors is thus modified.

The Commission denied petitioner's motion for reconsideration in Resolution No. 990465 dated February 16, 1999.^[3]

On appeal, the Court of Appeals affirmed the resolution of the Commission.^[4] The appellate court ordered petitioner to reinstate private respondent with payment of full backwages plus all tips, bonuses and other benefits accruing to his position and those received by other casino operations managers for the period starting January 5, 1998 until his actual reinstatement. Petitioner filed a motion for reconsideration,^[5] which was denied by the appellate court in the assailed resolution of November 29, 1999.^[6]

Hence, the instant petition.

PAGCOR avers that:

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THE COURT OF APPEALS GRAVELY ERRED WHEN IT FAILED AND REFUSED TO CONSIDER THAT RESPONDENT WAS A CONFIDENTIAL APPOINTEE OR EMPLOYEE WHOSE TERM HAD EXPIRED BY REASON OF LOSS OF CONFIDENCE.

II

THE COURT OF APPEALS GRAVELY ERRED WHEN IT AFFIRMED THE CSC RESOLUTIONS MODIFYING THE PENALTY METED OUT ON RESPONDENT FROM DISMISSAL TO SUSPENSION, DESPITE THE GRAVITY OR SERIOUSNESS OF THE OFFENSES COMMITTED BY THE LATTER ON ACCOUNT OF THE EXTRAORDINARY RESPONSIBILITIES AND DUTIES REPOSED IN THE RESPONDENT BY VIRTUE OF HIS POSITION.

The wellspring of stability in government service is the constitutional guarantee of entrance according to merit and fitness and security of tenure, viz:

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(2) Appointments in the civil service shall be made only according to merit and fitness to be determined, as far as practicable, and, except to positions which are policy-determining, primarily confidential, or highly technical, by competitive examination.

(3) No officer or employee of the civil service shall be removed or suspended except for cause provided by law.^[7]

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In the case at bar, we are basically asked to determine if there is sufficient cause to warrant the dismissal, not merely the suspension, of respondent who, petitioner maintains, occupies a primarily confidential position. In this connection, Section 16 of Presidential Decree No. 1869^[8] provides:

Exemption.--All positions in the Corporation, whether technical, administrative, professional or managerial are exempt from the provisions of the Civil Service Law, rules and regulations, and shall be governed only by the personnel management policies set by the Board of Directors. All employees of the casinos and related services shall be classified as "Confidential" appointee.

Petitioner argues that pursuant to the aforequoted provision, respondent is a primarily confidential employee. Hence, he holds office at the pleasure of the appointing power and may be removed upon the cessation of confidence in him by the latter. Such would not amount to a removal but only the expiration of his term. However, there should be no lingering doubt as to the true import of said Section 16 of P.D. No. 1869. We have already definitively settled the same issue in *Civil Service Commission v. Salas*,^[9] to wit:

In reversing the decision of the CSC, the Court of Appeals opined that the provisions of Section 16 of Presidential Decree No. 1869 may no longer be applied in the case at bar because the same is deemed to have been

repealed in its entirety by Section 2(1), Article IX-B of the 1987 Constitution. This is not completely correct. On this point, we approve the more logical interpretation advanced by the CSC to the effect that "Section 16 of PD 1869 insofar as it exempts PAGCOR positions from the provisions of Civil Service Law and Rules has been amended, modified or deemed repealed by the 1987 Constitution and Executive Order No. 292 (Administrative Code of 1987).

However, the same cannot be said with respect to the last portion of Section 16 which provides that "all employees of the casino and related services shall be classified as 'confidential' appointees." While such executive declaration emanated merely from the provisions of Section 2, Rule XX of the Implementing Rules of the Civil Service Act of 1959, the power to declare a position as policy-determining, primarily confidential or highly technical as defined therein has subsequently been codified and incorporated in Section 12(9), Book V of Executive Order No. 292 or the Administrative Code of 1987. This later enactment only serves to bolster the validity of the categorization made under Section 16 of Presidential Decree No. 1869. Be that as it may, such classification is not absolute and all-encompassing.

Prior to the passage of the aforesaid Civil Service Act of 1959, there were two recognized instances when a position may be considered primarily confidential: *Firstly*, when the President, upon recommendation of the Commissioner of Civil Service, has declared the position to be primarily confidential; and, *secondly*, in the absence of such declaration, when by the nature of the functions of the office there exists "close intimacy" between the appointee and appointing power which insures freedom of intercourse without embarrassment or freedom from misgivings of betrayals of personal trust or confidential matters of state.

At first glance, it would seem that the instant case falls under the first category by virtue of the express mandate under Section 16 of Presidential Decree No. 1869. An in-depth analysis, however, of the second category evinces otherwise.

When Republic Act No. 2260 was enacted on June 19, 1959, Section 5 thereof provided that "the non-competitive or unclassified service shall be composed of positions expressly declared by law to be in the non-competitive or unclassified service or those which are policy-determining, primarily confidential, or highly technical in nature." In the case of *Piñero, et al. vs. Hechanova, et al.*, the Court obliged with a short discourse there on how the phrase "*in nature*" came to find its way into the law, thus:

"The change from the original wording of the bill (expressly declared by law x x x to be policy-determining, etc.) to that finally approved and enacted ('or *which are* policy determining, etc. *in nature*') came about because of the observations of Senator Tañada, that as originally worded the proposed bill gave Congress power to declare by *fiat of law* a