

## **SPECIAL SIXTH DIVISION**

**[ CA-G.R. SP No. 132855, May 29, 2014 ]**

**MARILOU T. TOLOSA, PETITIONER, VS. DEPARTMENT OF  
EDUCATION, RESPONDENT.**

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

**ABDULWAHID, J.:**

This is a petition for review under Rule 43 of the 1997 Rules of Civil Procedure, filed by petitioner Marilou T. Tolosa, assailing the Decision<sup>[1]</sup> promulgated on July 12, 2013 of the Civil Service Commission (CSC), finding her guilty of the offense of gross neglect of duty as Head of the Accounting Unit of the Department of Education, Regional Office No. IX (DepEd RO IX), and its Resolution<sup>[2]</sup> promulgated on November 5, 2013, denying the motion for reconsideration thereof.

Petitioner was designated as Accountant III and assigned as Accounting Head of the DepEd RO IX. Petitioner was responsible for the accounts of Personnel Services, Maintenance and Other Operating Expenses (MOOE), and Trust Funds of the Office. Sometime in 2000, the DepEd RO IX implemented the Belgian Integrated Agrarian Reform Support Program (BIARSP) funded by the Government of Belgium. The funds were deposited in the Philippine Veterans Bank (PVB), Zamboanga City Branch with Special Account No. 02801-000527-3 (BIARSP Account). The BIARSP project was terminated in 2003.<sup>[3]</sup>

On August 13, 2007, petitioner requested the PVB for the closure of the BIARSP Account and the transfer of the remaining balance to the Trust Fund account to prevent the Office from incurring bank charges.<sup>[4]</sup> Although the BIARSP Account was already closed as of 2003, it appeared that on November 29, 2007, Regional Director Jesus L. Nieves and Administrative Officer V (Cashier III) Virginia A. Montero of the DepEd RO IX, authorized the PVB to transfer the amounts of P6,347,354.76 and P6,164,424.43 funds from the ATM Payroll Account to the BIARSP Account. On the same date, Nieves drew PVB Check Nos. 000206804 and 000206803 for P6,347,354.76 and P6,164,424.43, respectively, payable to the order of Montero. Check No. 000206804 was withdrawn on the same date, while Check No. 000206804 was encashed on December 3, 2007.<sup>[5]</sup>

The foregoing transactions amounting to P12,571,779.19 were not supported by Disbursement Vouchers and were not recorded in the Books of Accounts or Reports of Checks Issued (RCI), thus rendering them highly irregular.<sup>[6]</sup>

On May 6, 2008, Elizabeth B. Tatel, Chief Administrative Officer of Finance, reported the anomaly to then DepEd Secretary Jesli A. Lapuz, who immediately conducted a fact-finding investigation. Nieves, Montero and petitioner submitted their Joint Counter-Affidavit<sup>[7]</sup>, while petitioner submitted a Supplemental Counter-Affidavit<sup>[8]</sup>. Petitioner alleged that as Head of the Accounting Unit in their Regional Office, all

bank charges of their Office passed through her. Accordingly, she took it upon herself to close the BIARSP Account to prevent their Office from incurring bank charges even if the project was already terminated. She further averred that she had no knowledge or any involvement in the alleged transfer of P6,347,354.76 and P6,164,424.43 from the ATM Payroll Account to the BIARSP Account. She is not the account officer responsible for the BIARSP Account. It was monitored by the accountant-in-charge Benedict Inoferio in accordance with the Memoranda<sup>[9]</sup> dated March 21 and July 11, 2005, and July 18, 2007.

After the fact-finding investigation was concluded, Secretary Lapuz formally charged Nieves and Montero with administrative offenses of grave misconduct and conduct grossly prejudicial to the best interest of the service, and petitioner with gross neglect of duty and conduct grossly prejudicial to the best interest of the service.<sup>[10]</sup>

On May 11, 2012, the DepEd rendered a Decision,<sup>[11]</sup> finding substantial evidence of guilt against petitioner, Nieves and Montero. The *fallo* of the judgment reads, as follows:

**WHEREFORE, premises considered,** respondent **Jesus L. Nieves** is hereby found GUILTY of the offenses of GRAVE MISCONDUCT (5 Counts) and CONDUCT GROSSLY PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE and meted the penalty of DISMISSAL from the service. Accordingly, his retirement benefits, except accrued leave credits, are FORFEITED. His Civil Service eligibility is CANCELLED and he is PERPETUALLY DISQUALIFIED for reemployment in the government or any of its agencies or instrumentalities, including government-owned or controlled corporations.

Respondent **Virgina A. Montero** is hereby found GUILTY of the offenses of GRAVE MISCONDUCT (6 counts), CONDUCT GROSSLY PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE, and SERIOUS DISHONESTY and meted the penalty of DISMISSAL from the service. Accordingly, her retirement benefits, except accrued leave credits, are FORFEITED. Her Civil Service eligibility is CANCELLED and she is PERPETUALLY DISQUALIFIED for reemployment in the government or any of its agencies or instrumentalities, including government-owned or controlled corporations.

Respondent Marilou T. Tolosa is hereby found GUILTY of the offenses of CONDUCT GROSSLY PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE and GROSS NEGLECT OF DUTY (2 Counts) and meted the penalty of DISMISSAL from the service. Accordingly, her retirement benefits, except accrued leave credits, are FORFEITED. Her Civil Service eligibility is CANCELLED and she is PERPETUALLY DISQUALIFIED for reemployment in the government or any of its agencies or instrumentalities, including government-owned or controlled corporations.

With respect to respondent Jesus L. Nieves, the Records Division of this Department is hereby directed to provide the Office of the President of the Republic of the Philippines a copy of this Decision with copies of the records of the case, for confirmation, pursuant to Sections 1 and 43 of DepED Order No. 49, s. 2006.

Copies of this Decision shall be provided to the Regional Director of DepED Region IX to be served to respondents Virginia A. Montero and Marilou T. Tolosa and implement the same.

The Office of the Ombudsman shall likewise be provided with the complete records of the case for the filing of criminal cases against the respondents.

All moneys under the official accountabilities of the respondents which are not liquidated and/or accounted for by them shall be charged or deducted from the terminal leave benefits and/or other benefits may be due them.

Petitioner elevated the case to the CSC via an appeal. However, in its July 12, 2013 Decision<sup>12</sup>, the CSC affirmed with modification the decision of the DepEd. It ruled that petitioner as head of the Personnel Services, including the ATM Payroll Account, is presumed to have knowledge of the irregular actions coming from the account under her control. Thus, despite petitioner's argument that she was not aware of the transfer of the funds from ATM Payroll Account to BIARSP Account, the DepEd held that petitioner is guilty of gross negligent in the performance of her duty to oversee the transactions coming to and from the account under her control. The dispositive portion of the decision reads, as follows:

**WHEREFORE**, the Appeal of Marilou T. Tolosa, Accountant III, Department of Education (DepEd), Regional Office No. IX, Zamboanga City, is hereby **PARTLY GRANTED**. The Resolution dated September 17, 2012, affirming the Decision dated May 11, 2012 issued by Secretary Armin A. Luistro, same agency, finding Tolosa guilty of two (2) counts of Gross Neglect of Duty and Conduct Prejudicial to the Best Interest of the Service and imposing upon her the penalty of dismissal from the service with all its necessary penalty is hereby **MODIFIED** in so far as Tolosa is found guilty only of one (1) count of Gross Neglect of Duty. Nevertheless, the imposition of penalty of dismissal with its accessory penalties of forfeiture of retirement benefits, cancellation of Civil Service eligibility and perpetual disqualification from holding public office, is **AFFIRMED**. The accessory penalty of bar from taking Civil Service examination is likewise deemed imposed.

Copies of this Decision shall be furnished the Commission on Audit-DepEd, Regional Office No. IX, Zamboanga City, Government Service Insurance System (GSIS), Office of the Ombudsman, and the Integrated Records Management Office (IRMO), this Commission, for appropriate action.

Petitioner filed a motion for reconsideration but the same was denied in the CSC Resolution<sup>[13]</sup> dated November 5, 2013.

Undaunted, petitioner filed the instant petition, premised on the lone issue, to wit:  
<sup>[14]</sup>

**WHETHER PETITIONER IS GUILTY OF THE OFFENSE OF GROSS NEGLIGENCE OF DUTY.**