



Republic of the Philippines
Supreme Court
 Manila

THIRD DIVISION

OMAR ERASMO G. AMPONGAN, **G. R. No. 248037**

Petitioner, Present:

- versus -

LEONEN, J.,
 Chairperson,
 HERNANDO,
 INTING,
 DELOS SANTOS, and
 LOPEZ, J., JJ.

**OFFICE OF THE OMBUDSMAN,
 JOSE LL. GRIMALDO,
 BENJAMIN P. EPRES,
 SOFRONIO B. MAGISTRADO,
 DANTE C. OLIVA, JESSE S.
 ABONITE, and NENET B.
 BERIÑA,**

Promulgated:

Respondents.

June 28, 2021

Mis-POCBAH

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DECISION

DELOS SANTOS, J.:

Before us is a Petition for Review¹ under Rule 45 of the 1997 Rules of Civil Procedure assailing the Decision² of the Court of Appeals (CA) dated January 22, 2019, entitled *Omar Erasmo Ampongan vs. Office of the Ombudsman, et al.*, docketed as CA-G.R. SP No. 150981 and its subsequent Resolution³ dated June 25, 2019 denying his Motion for Reconsideration dated February 14, 2019, in a case involving a charge of grave misconduct, dishonesty and oppression against petitioner.

¹ *Rollo*, pp. 43-53.

² *Id.* at 43-53. Penned by Associate Justice Victoria Isabel A. Paredes with Associate Justices Marlene B. Gonzales-Sison and Gabriel T. Robeniol, concurring.

³ *Id.* at 54-55.

The Antecedents

Omar Erasmo G. Ampongan (petitioner), with a salary grade of 26, was a former Vice-Mayor of Iriga City whose term expired on June 30, 2016.

Respondents, on the other hand, were five (5) of the 11 members of the Sangguniang Panlungsod of Iriga City together with the Human Resource Management Officer (HRMO).⁴

Respondents alleged that sometime in June 2014, the position of Secretary of the Sangguniang Panlungsod (SP) became vacant due to the retirement of Dandy V. Friginal. Hence, Supervising Administrative Officer Avelino Pedro Vargas Jr. (Vargas, Jr.) was designated as Officer-in-Charge (OIC)-SP Secretary on June 30, 2014. Subsequently, on September 15, 2014, the SP with respondent Epres as Acting Presiding Officer, passed Resolution No. 2014-138, expressing the stand of the SP members that the vacant position of SP Secretary should be filled up by the next-in-rank employee.⁵

However, on November 3, 2014, despite the issuance of Resolution No. 2014-138, petitioner signed an Appointment Paper naming Mr. Edsel Dimaiwat (Dimaiwat), an outsider-applicant, as SP Secretary with permanent status. It must be noted that at the dorsal portion of the Appointment Paper, petitioner certified that the appointee was screened and found to be qualified by the Personnel Selection Board (PSB) when, in truth, he was not found qualified by the PSB and no screening took place.⁶

Hence, on November 6, 2014, respondents issued a Certification on the Absence of a PSB Screening/Deliberations stating that the certification by the petitioner on Dimaiwat's Appointment Paper is completely false and that the meeting set for PSB deliberation did not push through. Thereafter, on November 10, 2014, the Civil Service Commission (CSC) – Camarines Sur Field Office (CSFO) disapproved the appointment of Dimaiwat for failure to comply with CSC MC No. 3, s. 2001 and CSC MC No. 40, s. 1998.

In his Counter-Affidavit, petitioner claimed that on June 29, 2014, he requested HRMO Dr. Nenet B. Beriña (Beriña) to publish the vacancy for the position of SP Secretary. However, on July 23, 2014, he learned from the CSC-CSFO that HRMO Beriña did not publish the vacancy, prompting him to personally cause its publication. After the 15-day publication period,

⁴ Id. at 15-16.

⁵ Id. at 44.

⁶ Id. at 45.

he received the applications of Dimaiwat and Vargas, Jr. to the vacant position. Subsequently, he received a Letter dated August 7, 2014 from HRMO Beriña informing him that before the vacant positions in the SP can be filled-up, all applicants must first be evaluated by the PSB. Consequently, on August 11, 2014, he sent a Reply-Letter requesting for the immediate evaluation of all credentials of the applicants but was ignored.⁷

On August 15, 2014, he posed a query to the CSC-SCFO seeking guidance as to the power of the Vice Mayor to create a PSB for the SP by way of an office order. The CSC, in CSC-RO5 Opinion No. 029, s. 2014 informed him that the Vice Mayor can chair the PSB but he cannot create the PSB by way of an office order.⁸

On October 8, 2014, he notified respondents, as PSB Members, to attend the deliberation on the applications set on October 13, 2014. However, despite receipt of the notice, respondents did not attend the scheduled deliberation.⁹ Sensing that respondents would not attend any future meeting he would set, he solely proceeded with the evaluation of the qualifications of the applicants. It was as such that he found Dimaiwat qualified for the vacant position and appointed Dimaiwat as SP Secretary on November 3, 2014. Since HRMO Beriña refused to accomplish the necessary appointment papers, petitioner signed the certifications on the completeness of the requirements of the appointee, compliance with the publication requirement and conduct of PSB deliberation.¹⁰

Petitioner alleged that it was not his intention to make a false representation or to commit dishonesty as he disclosed everything that happened in the Minutes of the PSB Evaluation and November 4, 2014 Letter that he sent to CSC-CSFO. He noted in said letter that the PSB Members were not able to evaluate the applicants' qualifications for SP Secretary as they failed to attend the meeting for the screening of the applicants and that the disapproval of Dimaiwat's appointment was based on technicality and part of respondents' scheme to cripple his appointing power as Vice Mayor. He pointed out that five of the respondents, who were members of the SP of Iriga City, were political allies of the Mayor and that all vacant positions in the SP have remained unfilled because of them."¹¹

Upon Order dated September 21, 2015, the parties filed their Position Papers.

⁷ Id.

⁸ Id.

⁹ Id.

¹⁰ Id.

¹¹ Id. at 45-46.

Ruling of the Ombudsman

On January 5, 2017, the Ombudsman rendered its Decision finding petitioner administratively liable for Grave Misconduct and Dishonesty. The Ombudsman found that petitioner flagrantly violated the Civil Service Rules on Appointment when he designated Dimaiwat as SP Secretary even before the PSB could conduct an impartial screening or evaluation of the applicants for the position. Moreover, he signed the certification in the Appointment Form despite knowing the falsity of the fact stated therein, to wit:

WHEREFORE, respondent Omar Erasmo G. Ampongan is adjudged administratively liable for Grave Misconduct and Dishonesty and is hereby SUSPENDED from office without pay for one (1) year.

x x x x

In the event that the penalty of suspension can no longer be enforced due to respondent Ampongan's separation from the service, the same shall be converted into a fine in the amount equivalent to his salary for one (1) year, payable to the Office of the Ombudsman, and may be deductible from accrued leave credits or any receivables from his office, or he may opt to directly pay the fine.

SO ORDERED.¹²

Petitioner filed a motion for reconsideration but was denied in the Order dated April 5, 2017.¹³

Aggrieved, petitioner filed a petition for review under Rule 43 of the Rules of Court arguing that he merely acted in good faith and that he would not have reduced in writing his intention to appoint certain individuals in the SP and submitted the same to the HRMO if his intention was to commit a wrong. He also claimed that he did not commit any falsity in signing the Appointment Form because he disclosed in the Minutes of the PSB Evaluation and November 4, 2014 Letter to the SCS-CSFO what really happened.¹⁴

Ruling of the CA

In a Decision dated January 22, 2019, the CA denied the petition and affirmed the assailed Decision of the Ombudsman. It held petitioner administratively liable for Grave Misconduct on the ground that he flagrantly violated the Civil Service Rules on Appointment when he appointed Dimaiwat as SP Secretary before the PSB could screen or evaluate

¹² Id. at 157.

¹³ Id. at 47.

¹⁴ Id. at 49-50.

the qualifications of the applicants for the said position. The CA did not give credence to the “good faith defense” of petitioner because of the lack of conscious effort on the part of petitioner to see to it that the appointment process was complied with pursuant to the applicable rules. The dispositive portion of the said decision reads:

WHEREFORE, premises considered, the Petition for Review is **DISMISSED**. The *Decision* dated January 5, 2017 and Order Dated April 5, 2017 of the Office of the Ombudsman, are **AFFIRMED**.

SO ORDERED.¹⁵

Disagreeing with the Decision of the CA, petitioner filed his Motion for Reconsideration. However, this was denied in a Resolution dated June 25, 2019.¹⁶ Hence, this petition.

A Comment¹⁷ dated January 14, 2020 to the petition was filed by the respondents and a Reply¹⁸ dated August 21, 2020 was filed by petitioner, both reiterating their previous arguments.

Issue

Whether or not the CA erred in finding Ampongan guilty of grave misconduct and dishonesty.

Arguments of the Petitioner

In support of his petition and denial of the charge of grave misconduct, petitioner reiterates his contention that he was merely acting in good faith when he signed the Appointment Paper of Dimaiwat to become SP Secretary. He submits that he had no intention to violate or circumvent the Civil Service Rules on Appointment. He avers that his good faith was shown when he called private respondents who were members of the Personnel Selection Board to a meeting to evaluate the applicants for position after being ordered to do so by the HRMO.¹⁹

He pins the blame on the deliberate refusal of private respondents, who were members of the Personnel Selection Board, from attending the October 13, 2014 PSB meeting called by petitioner for purposes of assisting him in evaluating the qualifications of the applicants. Moreover, petitioner

¹⁵ Id. at 52-53.

¹⁶ Id. at 54-55.

¹⁷ Id. at 374-385.

¹⁸ Id. at 398-420.

¹⁹ Id. at 25-27.



avers that it was an error on the part of the members of the SP of Iriga City to issue a resolution to the effect that only the next-in-rank should fill-up the vacancy to the position of SP Secretary when under the law, the appointment to such position is discretionary on the part of the appointing authority which is the Vice-Mayor. Petitioner posits that since the conduct of the private respondents is inequitable, unfair and unjust, the case against him should have been dismissed pursuant to the clean hands doctrine.²⁰

Furthermore, petitioner denies having committed dishonesty because according to him, he did not distort the truth in a matter connected with the performance of his duty as Vice-Mayor of Iriga City. He notes that he did not make it appear that members of the PSB screened the applicants because he attached the minutes of the PSB Evaluation to the Appointment Paper of Dimaiwat which disclosed what really transpired prior to the latter's appointment by petitioner.²¹

Finally, petitioner laments the imposition of the penalty of one (1) year suspension or fine on him and pleads leniency considering that it is his first term as vice mayor, he acted in good faith, and that he recently had an expensive hospitalization amounting to ₱400,000.00.²²

Arguments of the Office of the Ombudsman

In its Comment, the Office of the Ombudsman (Ombudsman) stresses that there was substantial evidence to hold petitioner liable for grave misconduct and dishonesty. Contrary to petitioner's claim that he was not liable for the charges against him, the records reveal otherwise. Furthermore, the Ombudsman avers that petitioner was biased and heavily favored Dimaiwat to be appointed as Sanggunian Secretary and that petitioner predetermined who will be appointed Sanggunian Secretary even before the PSB meeting had been set, rendering such meeting a farce.²³

Moreover, according to the Ombudsman, petitioner committed dishonesty when he certified the Appointment form that the appointee has been screened and found to be qualified by the Personnel Selection Board when, in fact, such was not true.

Ruling of the Court

After a careful review of the records of the case, the Court finds it proper to modify the penalty imposed by the Ombudsman as affirmed by the CA.

²⁰ Id.

²¹ Id. at 30-34.

²² Id. at 34.

²³ Id. at 378-383.

Grave misconduct is defined as the transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer coupled with the elements of corruption, willful intent to violate the law or disregard established rules.²⁴ In grave misconduct, as compared from simple misconduct, the elements of corruption, clear intent to violate the law or flagrant disregard of established rules, must be manifest²⁵ and established by substantial evidence. Grave misconduct necessarily includes the lesser offense of simple misconduct.²⁶ Thus, a person charged with grave misconduct may be held liable for simple misconduct if it is proven that the misconduct does not involve any of the elements to qualify the misconduct as grave.²⁷

Meanwhile, dishonesty has been defined as the concealment or distortion of truth, which shows lack of integrity or a disposition to defraud, cheat, deceive, or betray, or intent to violate the truth.²⁸ Dishonesty becomes serious when it is qualified by any of the circumstances under Section 3 of the Civil Service Commission Resolution No. 06-0538,²⁹ to wit:

Section 3. Serious Dishonesty. — The presence of any of one of the following attendant circumstances in the commission of the dishonest act would constitute the offense of Serious Dishonesty:

a. The dishonest act causes serious damage and grave prejudice to the government.

b. The respondent gravely abused his authority in order to commit the dishonest act.

c. Where the respondent is an accountable officer, the dishonest act directly involves property, accountable forms or money for which he is directly accountable and the respondent shows an intent to commit material gain, graft and corruption.

d. The dishonest act exhibits moral depravity on the part of the respondent.

e. The respondent employed fraud and/or falsification of official documents in the commission of the dishonest act related to his/her employment.

f. The dishonest act was committed several times or in various occasions.

²⁴ See *First Great Ventures Loans, Inc. v. Mercado*, A.M. No. P-17-3773, October 1, 2019.

²⁵ *Villanueva v. Court of Appeals*, 528 Phil. 432, 442 (2011); *Civil Service Commission v. Lucas*, 361 Phil. 486, 490-491 (1999).

²⁶ *Santos v. Rosalan*, 544 Phil. 35, 43 (2007); *Civil Service Commission v. Ledesma*, 508 Phil. 569, 580 (2005).

²⁷ *Id.*

²⁸ See *Office of the Ombudsman v. Saligumba*, G.R. No. 212293, June 15, 2020.

²⁹ Issued on April 4, 2006.

g. The dishonest act involves a Civil Service examination, irregularity or fake Civil Service eligibility such as, but not limited to, impersonation, cheating and use of crib sheets.

h. Other analogous circumstances.

Under Section 46 (A) of the Revised Rules on Administrative Cases in the Civil Service, the penalty for the grave offenses of serious dishonesty and grave misconduct is dismissal for the first offense. However, this penalty may be mitigated depending on particular circumstances of each case.

To recall, petitioner claims that all his actions were done in good faith and done in honest belief, being a first timer and newly elected Vice-Mayor, who was unfamiliar with the procedures of appointment. Petitioner notes that there was no willful intent on his part to violate the law and the truth, defraud, cheat, and deceive. As proof of good faith, he even wrote a Letter to HRMO Beriño to inform her about the importance and need to have a permanent or Regular Secretary to the SP due to the great degree of responsibility and accountability attached to the position. Further, petitioner sent a separate legal query to the CSC to seek guidance on the matter pertaining to the creation of the PSB and on the appointment or promotion for the position. Afterwards, petitioner sent letters to the members of the PSB for a meeting to discuss the vacant position of Secretary to the SP which was scheduled after the regular session of the SP to ensure attendance. However, notwithstanding complete attendance in the regular session, no one attended the PSB meeting which was the reason why the petitioner proceeded alone with the evaluation of the applicants. Petitioner reiterates that even if there was an infirmity regarding the appointment of Dimaiwat, he nonetheless disclosed it in the Minutes of the PSB Evaluation which was attached to the Appointment Paper of Dimaiwat, proving that there was no intent to falsify on his part.

We rule for the petitioner.

First of all, petitioner showed that he had no willful intent to violate the law when he invited the private respondents who were members of the Personnel Selection Board, for a meeting set immediately after the regular session to ensure complete attendance, to assist him in the evaluation of the applicants to the position of Secretary of the SP. This shows that petitioner has the intention to follow the proper procedure in selecting the proper applicant for the job of Secretary of the SP.

Second, petitioner should not be held liable for dishonesty. It is clear from his acts that he did not have any intention to distort the truth because he


attached the Minutes of the PSB Evaluation which narrated the events that transpired before and during the supposed PSB meeting. What constitutes dishonesty is if petitioner falsified the minutes he attached to the appointment form of Dimaiwat. However, the contrary happened. It is clear from his actions that there was no intention to mislead the Civil Service Commission of Camarines Del Sur with respect to the appointment of Dimaiwat. Even though he signed the dorsal portion of Dimaiwat's appointment paper, this does not mean that he concealed or misrepresented anything because he attached the Minutes of the PSB Evaluation, revealing the truth that the PSB members did not attend the meeting.

Nevertheless, we hold the petitioner liable for simple misconduct. Petitioner should have exercised the necessary prudence to ensure that the proper procedure was complied with in the appointment of Dimaiwat. As aptly found by the CA, although there was indeed a meeting which the PSB Members failed to attend, prudence dictates that petitioner should have attempted to hold the meeting on another date. He should not have immediately concluded that subsequent meetings would be futile throwing the blame that the non-attendance of the PSB members were politically motivated.

Lastly, it is important to note that the validity of Dimaiwat's appointment is not affected by the irregularity of the meeting held. While there may be a formal irregularity in the appointment of Dimaiwat, such irregularity is not significant enough to void his appointment. Nonetheless, because of such irregularity, petitioner subjected himself to administrative liability from which the instant case arose.

All in all, while petitioner could have handled the situation much better, it is not proper to penalize him with gross misconduct in the absence of willful intent to violate the law or intent to deceive based on the totality of his acts. However, this does not mean that there was no transgression of the rules and because of this, petitioner should be liable for simple misconduct.

WHEREFORE, the instant petition is **PARTLY GRANTED**. The Decision of the Court of Appeals dated January 22, 2019 docketed as CA-G.R. SP No. 150981 and its subsequent Resolution dated June 25, 2019 are hereby **MODIFIED**. The Court hereby finds petitioner Omar Erasmo G. Ampongan **GUILTY** of Simple Misconduct, and imposes a penalty of three (3) months **SUSPENSION**. In the event that the penalty of suspension can no longer be enforced due to petitioner's separation from the service, the same shall be converted into a **FINE** in the amount equivalent to his salary for three (3) months, payable to the Office of the Ombudsman, and may be deductible from accrued leave credits or any receivables from his office, or he may opt to directly pay the fine.

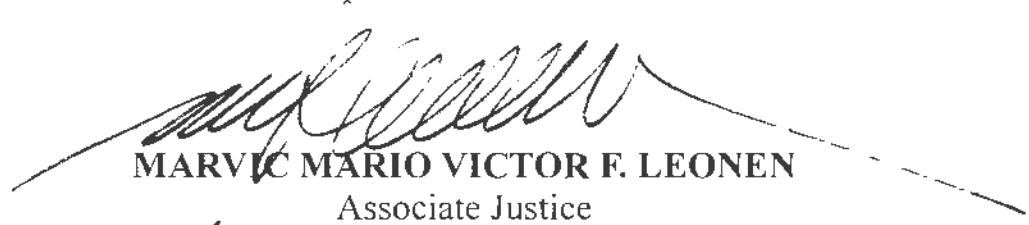


SO ORDERED.

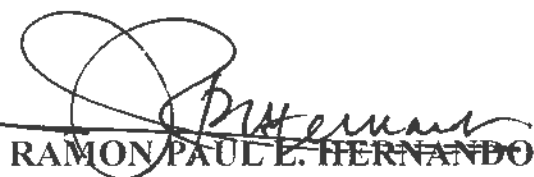


EDGARDO L. DELOS SANTOS
Associate Justice

WE CONCUR:



MARVIC MARIO VICTOR F. LEONEN
Associate Justice
Chairperson



RAMON PAUL E. HERNANDO
Associate Justice




HENRI JEAN PAUL B. INTING
Associate Justice



JHOSEP V. LOPEZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARVIC MARIO VICTOR F. LEONEN
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ALEXANDER G. GESMUNDO
Chief Justice