



Republic of the Philippines
Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
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SECOND DIVISION

OFFICE OF THE OMBUDSMAN,
 Petitioner,

G.R. No. 207606

Present:

PERLAS-BERNABE, *S.A.J.*,
 Chairperson,
 HERNANDO,
 INTING,
 GAERLAN, and
 DIMAAMPAO, *JJ.*

- versus -

TEODORA T. HERMOSURA,
 Respondent.

Promulgated:

FEB 16 2022

X-----X

DECISION

GAERLAN, J.:

For the Court's resolution is the present petition for review on *certiorari* assailing the Decision¹ dated October 23, 2012 and the Resolution² dated May 23, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 118223, which reversed the Decision³ dated January 29, 2010 and Order⁴ dated October 14, 2010 of the Office of the Ombudsman.

The Facts

Private Complainant, Brenda Ortiz (Ortiz), is a businesswoman engaged in the lending business while Teodora Hermosura a.k.a. Teodora Cornelio (respondent), was employed as a Computer Operator II at the University of Makati (UMAK) until her optional retirement was approved on June 15, 2008.⁵

¹ *Rollo*, pp. 44-52; penned by Associate Justice Agnes Reyes Carpio with Associate Justices Rosalinda Asuncion-Vicente and Priscilla J. Baltazar-Padilla (retired Member of this Court), concurring.
² *Id.* at 54-55.
³ *Id.* at 57-69; signed by Graft Investigation and Prosecution Officer II Adelyn P. Alvarado and approved by Ombudsman Ma. Mercedes N. Gutierrez.
⁴ *Id.* at 71-73; signed by Graft Investigation and Prosecution Officer II Adelyn P. Alvarado and approved by Ombudsman Ma. Mercedes N. Gutierrez.
⁵ *Id.* at 19.

In 2005, the respondent initially borrowed ₱10,000.00 from Ortiz. The loan was renewed several times and the respondent was able to pay on time, thus, the two became friends, and Ortiz eventually engaged the respondent as an agent in her lending business.⁶

As Ortiz's agent, the respondent was to extend loans or loan accommodation to their clients at an agreed interest rate. It was also the respondent's task to look for borrowers, determine their credit standing and the amount to be lent to each of them. As part of their process, the respondent: receives the money from Ortiz in trust with the obligation to deliver them to the borrowers, collects the installments or payments from the borrowers, and finally remits the same to Ortiz. As her compensation, the respondent receives from Ortiz a commission equivalent to five percent (5%) of the total loan collected. This process worked for them for quite some time, until in 2007, when the respondent started to fail in remitting her collections.⁷

Ortiz tried to contact the respondent but to no avail. Ortiz only got hold of the respondent's new phone number from an employee of UMAK. Ortiz and the respondent then met in person at a restaurant in Pasay City, where the respondent allegedly admitted that she spent the unremitted collection for her personal needs. However, she promised Ortiz that she would repay her. Subsequent to their meeting, the respondent could no longer be contacted.⁸

Through her counsel, Ortiz sent two demand letters to the respondent, warning her of the institution of legal action should she fail to return Ortiz's money in the amount of over ₱40,000,000.00.⁹ Despite the foregoing, the respondent still failed to remit her collections. Consequently, Ortiz filed an administrative complaint for dishonesty against the respondent.

In her counter-affidavit, the respondent denied the material allegations in the complaint. She repudiated the contract of agency between her and Ortiz, and claimed that they had a business venture where she was the industrial partner and Ortiz was the capitalist. She professed that she experienced difficulties in collecting from their borrowers due to the high interest rates imposed on the loans. Also, the university/companies imposed strict policies on salary deduction which made it difficult for her to collect from the borrowers. In another counter-affidavit, she maintained that she already remitted the sum of ₱65,693,770.00 to Ortiz.¹⁰

⁶ Id.

⁷ Id. at 58-59.

⁸ Id. at 59-60.

⁹ Id. at 80-81.

¹⁰ Id. at 61.

The Ombudsman's Decision

On January 29, 2010, the Ombudsman rendered a Decision¹¹ which found the respondent guilty of dishonesty. The Ombudsman rejected the respondent's contention that it has no jurisdiction over the administrative complaint considering the approval of her optional retirement on June 15, 2008, whereas the complaint was filed only on October 24, 2008.¹² The Ombudsman also observed that the respondent did not present evidence to support her claim of payment while her explanation on the difficulties she encountered in collecting from the borrowers was unsubstantiated.¹³

As regards the penalty, the Ombudsman cited Section 23, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 which provides that as a grave offense, dishonesty is punishable by dismissal for the first offense, with forfeiture of benefits except accrued leave credits, and perpetual disqualification for re-employment in government service.¹⁴ The decretal portion of the Decision reads:

WHEREFORE, premises considered, this Office finds respondent TEODORA HERMOSURA a.k.a. TEODORA CORNELIO guilty of Dishonesty. As she had already retired from government service, she is meted the penalties of cancellation of eligibility, forfeiture of retirement benefits and the perpetual disqualification for reemployment in the government service.

SO ORDERED.¹⁵

In an Order¹⁶ dated October 14, 2010, the Ombudsman denied the respondent's motion for reconsideration, which led the respondent to lodge an appeal before the CA.

The CA Decision

On October 23, 2012, the CA promulgated its Decision¹⁷ reversing the judgment of the Ombudsman. The CA ruled that the respondent could not be held administratively liable, given that there is no proof that she availed of optional retirement to prevent the filing of an administrative complaint against her.¹⁸ The CA expounded as follows:

¹¹ Supra note 3.

¹² *Rollo*, p. 62.

¹³ *Id.* at 68.

¹⁴ *Id.* at 66.

¹⁵ *Id.* at 69.

¹⁶ Supra note 4.

¹⁷ *Rollo*, pp. 44-52.

¹⁸ *Id.* at 51.

In the case of *Office of the Ombudsman vs. Andutan, Jr.*, the Supreme Court explained that a public official who has validly severed his/her ties with the civil service may no longer be the subject of an administrative complaint up to his/her deathbed, viz:

“To recall, we have held in the past that a public official’s resignation does not render moot an administrative case that was filed prior to the official’s resignation. In *Pagano v. Nazarro, Jr.*, we held that:

In *Office of the Court Administrator v. Juan* [A.M. No. P-03-1726, 22 July 2004, 434 SCRA 654, 658], this Court categorically ruled that the precipitate resignation of a government employee charged with an offense punishable by dismissal from the service does not render moot the administrative case against him. Resignation is not a way out to evade administrative liability when facing administrative sanction. The resignation of a public servant does not preclude the finding of any administrative liability to which he or she shall still be answerable [*Baquerfo v. Sanchez*, A.M. No. P-05-1974, 6 April 2005, 455 SCRA 13, 19-20]

Likewise, in *Baquerfo v. Sanchez*, we held:

Cessation from office of respondent by resignation [*Reyes v. Cristi*, A.M. No. P-04-1801, 2 April 2004, 427 SCRA 8] or retirement [*Re: Complaint Filed by Atty. Francis Allan A. Rubio on the Alleged Falsification of Public Documents and Malversation of Public Funds*, A.M. No. 2004-17-SC, 27 September 2004] neither warrants the dismissal of the administrative complaint filed against him while he was still in the service [*Tuliao v. Ramos*, A.M. No. MTJ-95-1065, 348 Phil. 404, 416 (1998), citing *Perez v. Abiera*, A.C. No. 223-J, 11 June 1975, 64 SCRA 302; *Secretary of Justice v. Marcos*, A.C. No. 207-J, 22 April 1977, 76 SCRA 301] nor does it render said administrative case moot and academic [*Sy Bang v. Mendez*, 350 Phil. 524, 533 (1998)]. The jurisdiction that was this Court’s at the time of filing of the administrative complaint was not lost by the mere fact that the respondent public official had ceased in office during the pendency of his case [*Flores v. Sumaljag*, 353 Phil. 10, 21 (1998)]. Respondent’s resignation does not preclude the finding of any administrative liability to which he shall still be answerable [*OCA v. Fernandez*, A.M. No. MTJ-03-1511, 20 August 2004].

However, the facts of those cases are not entirely applicable to the present case. **In the above-cited cases, the Court found that the public officials - subject of the administrative cases – resigned,**

either to prevent the continuation of a case already filed or to pre-empt the imminent filing of one. Here, neither situation obtains.

x x x x

While we commend the Ombudsman's resolve in pursuing the present case for violations allegedly committed by Andutan, the Court is compelled to uphold the law and dismiss the petition. Consistent with our holding that Andutan is no longer the proper subject of an administrative complaint, we find no reason to delve on the Ombudsman's factual findings.

WHEREFORE, we DENY the Office of the Ombudsman's petition for review on certiorari, and AFFIRM the decision of the Court of Appeals in CA-G.R. SP No. 68893, promulgated on July 28, 2004, which annulled and set aside the July 30, 2001 decision of the Office of the Ombudsman, finding Uldarico P. Andutan, Jr. guilty of Gross Neglect of Duty. (Emphasis supplied)

After a careful and judicious review of the records of this case, We find no evidence on record showing that the petitioner only availed of her optional retirement in order to pre-empt the imminent filing of the administrative case against her. Absent proof to the contrary, petitioner's retirement from the civil service is deemed bona fide which renders her an ineligible subject of an administrative investigation. Thus, the public respondent committed a reversible error when it did not dismiss the administrative complaint filed by the private respondent against herein petitioner, considering that the latter had already validly severed her ties with the civil service several months before the filing of the aforesaid complaint.

x x x x¹⁹

In conclusion, the CA disposed of the case as follows:

WHEREFORE, premises considered, the assailed Decision and Order of the honorable public respondent, finding petitioner Teodora T. Hermosura, guilty of Dishonesty, are hereby ANNULLED and SET ASIDE.

SO ORDERED.²⁰

The CA likewise denied the Ombudsman's motion for reconsideration in its Resolution²¹ dated May 23, 2013.

Thus, the Ombudsman filed the present petition. In her Comment,²² the respondent submits that the Ombudsman failed to establish that her retirement was aimed at pre-empting the imminent filing of the administrative case against

¹⁹ Id. at 49-51.

²⁰ Id. at 148.

²¹ Id. at 54-55.

²² Id. at 98-101.

4

her. Thus, the presumption is that her retirement is considered valid and lawful.²³ She further contends that pursuant to the Court's ruling in *Office of the Ombudsman v. Andutan, Jr. (Andutan)*,²⁴ "she may no longer be the subject of an administrative complaint up to her deathbed."²⁵ Rebutting the respondent's arguments, the Ombudsman, in its Reply,²⁶ raised the fact that the respondent's severance from the government service prior to the filing of the complaint was due to her availment of optional retirement, after Ortiz informed her, through demand letters, that cases would be filed against her in case of non-payment of her obligation.²⁷

Essentially, the issues are: 1.) Whether the Ombudsman should not have taken cognizance of the complaint against the respondent in view of her retirement from the government service; and 2.) Whether the respondent should be held administratively liable for the charge against her.

The Court's Ruling

*Respondent can still be held
administratively liable as her
retirement was voluntary*

In *Office of the Court Administrator v. Juan*,²⁸ a public officer tendered his resignation a day after he confessed to the commission of an administrative offense. Holding that the respondent's resignation does not render the case moot, the Court ruled that "resignation is not a way out to evade administrative liability when a court personnel is facing administrative sanction."²⁹

The Court reiterated the same principle in a case³⁰ where a public officer filed her resignation prior to the date she was set to appear for a formal investigation, to wit:

x x x we view respondent's act of filing her resignation before the investigation as indicative of her guilt. Indeed, an employee's act of tendering her resignation immediately after the discovery of the anomalous transaction is indicative of her guilt as flight in criminal cases. And, resignation is not a

²³ Id. at 100.

²⁴ 670 Phil. 169 (2011).

²⁵ Id. at 178.

²⁶ *Rollo*, pp. 176-182.

²⁷ Id. at 178.

²⁸ 478 Phil. 823 (2004).

²⁹ Id. at 828-829.

³⁰ *Re: (1) Lost Checks Issued to the Late Melliza, Former Clerk II, MCTC, Zaragga, Iloilo; and (2) Dropping from the Rolls of Ms. Andres*, 537 Phil. 634 (2006).

way out to evade administrative liability when a court employee is facing administrative sanction.³¹

Here, in holding that the respondent cannot be held administratively charged for dishonesty in view of the absence of proof that she applied for optional retirement to pre-empt the imminent filing of the administrative complaint against her, the CA applied, albeit erroneously, the Court's pronouncements in *Andutan*.

Indeed, in *Andutan*, the Court dismissed the administrative case against Andutan, which was filed one year and two months after his resignation. The Court ruled that "the Ombudsman can no longer institute an administrative case against Andutan because the latter was not a public servant at the time the case was filed." However this was decided in light of the circumstances obtaining in *Andutan*:

The Ombudsman's general assertion that Andutan pre-empted the filing of a case against him by resigning, since he "knew for certain that the investigative and disciplinary arms of the State would eventually reach him" is unfounded. First, Andutan's resignation was neither his choice nor of his own doing; he was forced to resign. Second, Andutan resigned from his DOF post on July 1, 1998, while the administrative case was filed on September 1, 1999, exactly one (1) year and two (2) months after his resignation. The Court struggles to find reason in the Ombudsman's sweeping assertions in light of these facts.

What is clear from the records is that Andutan was forced to resign more than a year before the Ombudsman filed the administrative case against him. Additionally, even if we were to accept the Ombudsman's position that Andutan foresaw the filing of the case against him, his forced resignation negates the claim that he tried to prevent the filing of the administrative case.³²

To emphasize, Andutan's resignation from the government service was not voluntary, as he was merely forced to resign. Therefore, whether he knew that a case would be filed against him or not is immaterial— what is certain is that, he could not have resigned with the purpose of pre-empting the filing of administrative case against him.

In the present case, it is undisputed that the respondent availed of optional retirement after Ortiz's counsel sent her letters, which informed her of the possibility of the institution of legal action against her should she fail to settle her obligation. Verily, a complaint was filed against her four months after her optional retirement. This is in huge contrast with *Andutan*, who was *forced*

³¹ Id. at 649-650.

³² *Office of the Court Administrator v. Juan*, supra note 24 at 184-185.

to resign from his post. Thus, *Andutan* cannot be applied to respondent's case. The respondent's *voluntary* separation from the government service, in addition to her knowledge that a complaint would most likely be filed against her at anytime, bolsters the Ombudsman's position that the respondent attempted to forestall the filing of an administrative case against her by availing of optional retirement.

The foregoing also finds support in *Bangko Sentral ng Pilipinas v. Office of the Ombudsman and Jamorabo*,³³ where the Court arrived at a similar conclusion:

Given the suspicious timing and the circumstances surrounding his *voluntary* retirement from the service, coupled with his actual departure from the Philippines in April 2010, barely four months after the loan was finally settled by his wife and sister-in-law, this Court finds that Jamorabo's voluntary separation from government service was calculated to pre-empt the charges that will inevitably result from the discovery of the illicit loan he entered into. As it turned out, RBKSI did report the loan to the BSP in the very next examination period; and the complaint against Jamorabo was filed shortly thereafter.³⁴

Certainly, the respondent's voluntary severance from the government service is not a bar to the filing of an administrative case against her given that the surrounding circumstances of her optional retirement reveal that it was availed of to avert impending administrative charges concerning her unfulfilled obligation.

*Respondent is administratively liable
for Simple Dishonesty*

Civil Service Commission (CSC) Resolution No. 06-0538 or the Rules on the Administrative Offense of Dishonesty defines dishonesty as "the concealment of truth, which shows lack of integrity or a disposition to defraud, cheat, deceive or betray and an intent to violate the truth."³⁵ This Resolution was issued "to provide a classification for the offense of Dishonesty to impose the corresponding penalty based on the circumstances of the case."³⁶ Thus, dishonesty is classified as serious, less serious, or simple.

For dishonesty to be considered serious, the presence of any of the following circumstances is necessary:

³³ G.R. No. 201069, June 16, 2021.

³⁴ Id.

³⁵ CSC Resolution No. 06-0538, Section 1.

³⁶ CSC Resolution No. 06-0538, Sixth Whereas Clause.

- a. The dishonest act caused 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 various occasions;
- 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. x x x³⁷

Dishonesty is less serious under any of the following circumstances:

- a. The dishonest act caused damage and prejudice to the government, which is not so serious as to qualify under the immediately preceding classification.
- b. The respondent did not take advantage of his/her position in committing the dishonest act.
- c. Other analogous circumstances.³⁸

Lastly, if any one of the following circumstances is present, dishonesty is classified as simple:

- a. The dishonest act did not cause damage or prejudice to the government.
- b. The dishonest act has no direct relation to or does not involve the duties and responsibilities of the respondent.
- c. In falsification of any official document, where the information falsified is not related to his/her employment.
- d. That the dishonest act did not result in any gain or benefit to the offender.

³⁷ CSC Resolution No. 06-0538 (2006), Section 3.

³⁸ CSC Resolution No. 06-0538 (2006), Section 4.

4

e. Other analogous circumstances.³⁹


In this case, the Ombudsman found the respondent guilty of dishonesty for which she was meted the penalty of forfeiture of retirement benefits along with perpetual disqualification from government employment. Indeed, the respondent's act of not remitting her collections to Ortiz and evading the latter constitute dishonesty. The respondent could have simply forwarded the names of the defaulting borrowers to Ortiz if she was in fact having difficulty collecting payment from them. Aside from her bare allegations, she did not present any proof regarding the borrowers' unpaid loans.

Nonetheless, the Court finds that none of the circumstances provided in the case of serious dishonesty obtains in the case at bar. The respondent's act, although dishonest, did not cause serious damage or grave prejudice to the government, nor was it committed in relation to or in connection with her duties. Thus, the respondent is administratively guilty of simple dishonesty only.

Simple dishonesty is punishable by suspension of one month and one day to six months for the first offense.⁴⁰ Considering that the respondent has already voluntarily retired from the government service, the forfeiture of six months' salary to be deducted from the respondent's retirement benefits is sufficient penalty.

WHEREFORE, the Decision dated October 23, 2012 and the Resolution dated May 23, 2013 of the Court of Appeals in CA-G.R. SP No. 118223 are hereby **REVERSED and SET ASIDE**. Respondent Teodora T. Hermosura a.k.a. Teodora Cornelio is hereby found **GUILTY** of simple dishonesty and is **FINED** in an amount equivalent to her salary for six (6) months to be deducted from her retirement benefits.


SO ORDERED.



SAMUEL H. GAERLAN
Associate Justice


³⁹ CSC Resolution No. 06-0538 (2006), Section 5.


⁴⁰ CSC Resolution No. 06-0538, Section 2.

WE CONCUR:


ESTELA M. PERLAS-BERNABE
Senior Associate Justice



RAMON PAUL L. HERNANDO
Associate Justice


HENRI JEAN PAUL B. INTING
Associate Justice


JAPAR B. DIMAAMPAO
Associate Justice

ATTESTATION

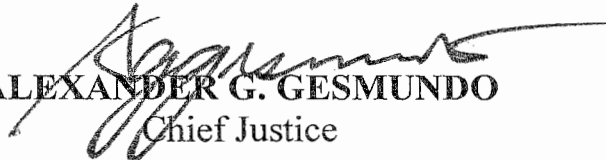
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson, Second Division

4

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