

# FIRST DIVISION

[ G.R. No. 231120, January 15, 2020 ]

**RADAMES F. HERRERA, PETITIONER, VS. NOEL P. MAGO, SIMEON B. VILLACRUSIS, AND JOSE R. ASIS, JR., RESPONDENTS.**

## DECISION

**LAZARO-JAVIER, J.:**

### The Case

This petition for review on certiorari assails the following issuances of the Court of Appeals in CA-G.R. SP No. 144741 entitled "*Radames F. Herrera v. Noel P. Mago, Simeon B. Villacrusis, and Jose R. Asis, Sr.:*"

- 1) Decision<sup>[1]</sup> dated October 24, 2016, affirming petitioner's liability for grave misconduct and conduct prejudicial to the best interest of service and the penalty of dismissal and accessory penalties imposed on him; and
- 2) Resolution<sup>[2]</sup> dated April 7, 2017, denying petitioner's motion for reconsideration.

### Antecedents

On May 15, 2013, the Department of Budget and Management (DBM) issued Local Budget Circular No. 103 granting an increase in the Representation and Transportation Allowances (RATA) of local chief executives, local vice-chief executives, *sanggunian* members, department heads, assistant department heads, chiefs of hospitals, and division chiefs in special cities. The increase was chargeable to the local government units (LGUs) concerned. The increase was retroactive to January 1, 2013, subject to the 45% to 55% limitation on personal services expenditure under Section 325(a) of Republic Act No. 7160<sup>[3]</sup> (RA 7160).<sup>[4]</sup>

On August 12, 2013, the *Sangguniang Bayan* of Vinzons, Camarines Norte passed Supplemental Budget No. 21-2013 and Appropriation Ordinance No. 02-2013 appropriating the amount of P4,136,512.83 to cover its members' RATA increase from January to June 2013. Mayor Agnes Diezno-Ang, however, vetoed in part the appropriation for "RATA differential" insofar as it exceeded the 45% statutory limitation on personal services expenditure or a total of P443,520.00 only.<sup>[5]</sup>

By Resolution No. 34-2013 dated October 14, 2013, the *Sangguniang Bayan* unanimously voted to override the veto.<sup>[6]</sup>

On December 25, 2013, former councilor Enrique Palacio, Jr. wrote petitioner Vice-Mayor Radames Herrera for the release of his "RATA differential" for January to June

2013. In response, petitioner instructed Municipal Accountant Leonilo Pajarin to prepare the corresponding payroll for "RATA differentials" due not only to Enrique Palacio, Jr., but also to other former councilors Victor Ingatan, Gilberto Adorino, and Nestor Pajarillo.<sup>[7]</sup>

Municipal Accountant Leonilo Pajarin signified his reservations about the payment of "RATA differentials" to the four (4) former councilors. He opined that pursuant to Section 106 of Presidential Decree No. 1445 (PD 1445) and Section 454 of RA 7160, they were not entitled to RATA differential because they were no longer in active service when the supplemental budget and ordinance were passed. But despite Pajarin's reservations, Obligation Request No. 713-12-13-2722 for P76,800.00 corresponding to the four (4) councilors' RATA differentials was released.<sup>[8]</sup>

The obligation request was forwarded to Municipal Budget Officer Raul Rigodon, who refused to sign it for the same reason. He annotated his objection on the obligation request. But, again, despite this objection, Disbursement Voucher No. 1002014030061 for P76,800.00 was prepared and referred to Municipal Treasurer Cynthia Jimenez, who refused to sign it and wrote "*I invoke Section 344 of RA 7160 and Section 40 of NGA's and the right not to be liable/accountable from any liability that may arise in this transaction.*"<sup>[9]</sup>

In the end, it was only petitioner who signed the disbursement voucher in his capacity as agency head or authorized representative. The amount of P76,800.00 was released and the four (4) former councilors received their RATA differential.<sup>[10]</sup>

On review, the *Sangguniang Panlalawigan* of Camarines Norte declared as inoperative Supplemental Budget No. 21-2013 and Appropriation Ordinance No. 02-2013 based on the same ground cited by Mayor Agnes Diezno-Ang, *i.e.*, the appropriation exceeded the 45% limit set by law on personal services expenditures. Subsequently, the Commission on Audit (COA), Daet, Camarines Norte issued Notice of Disallowance dated October 14, 2014 to the extent of P76,800.00. Petitioner and the four (4) former councilors were, therefore, directed to return the amount, which they did.<sup>[11]</sup>

### **Proceedings before the Office of the Ombudsman**

On January 9, 2015, respondents Noel Mago, Simeon Villacrusis, and Jose Asis, Sr., all residents of the Municipality of Vinzons, filed a Complaint Affidavit (with Urgent Prayer for Preventive Suspension) against petitioner. They accused petitioner of disregarding the ethical standards of public officials and gravely abusing his position when he facilitated the release of the RATA differential for the four (4) former councilors despite the refusal/reservations of the municipal accountant, municipal treasurer, and municipal budget officer. Notably, Municipal Accountant Leonilo Pajarin still issued Obligation Request No. 713-12-13-2722 because petitioner told him "*Ipaparelease ko yan at ako na ang may sagot kung idis-allow yan ng COA.*" Petitioner was guilty of grave abuse of authority, gross ignorance of law, conduct prejudicial to the best interest of the service, and violation of the rules and regulations on the disbursement of public funds because of his act of illegally releasing the RATA differentials to the four (4) former councilors.<sup>[12]</sup>

Petitioner, in turn, denied any wrongdoing and prayed for the dismissal of the

complaint. He asserted that the complaint was politically-motivated because it was initiated by the supporters of Mayor Agnes Ang, with whom he was not in good terms. He admitted that he requested the Office of the Municipal Accountant to prepare the RATA differential because he believed in good faith that the four (4) former councilors were entitled thereto. He, however, denied compelling the municipal officers to release the RATA differentials. The municipal officers voluntarily signed the pertinent documents although they expressed reservations thereon. Proper procedures were observed and there were, in fact, available funds for the RATA differentials. When COA disallowed the payment, the four (4) former councilors returned the corresponding amounts they received.<sup>[13]</sup>

### **Ruling of the Ombudsman**

By Decision<sup>[14]</sup> dated October 2, 2015, the Office of the Ombudsman found petitioner guilty of grave misconduct and conduct prejudicial to the best interest of service, thus, meting on him the penalty of dismissal from the service with all the accessory penalties. Petitioner improperly interfered with the release of the RATA differentials, despite the objections of the municipal officers, tarnished the integrity of his office, and committed an act prejudicial to public interest. Further, his clear intent to violate the law was manifest, amounting to grave misconduct when he allowed payment of the RATA differential despite the absence of the respective signatures of the municipal accountant and the municipal treasurer on the disbursement voucher.<sup>[15]</sup> Consequently, the Office of the Ombudsman decreed:

WHEREFORE, finding substantial evidence, respondent RADAMES F. HERRERA, is found administratively liable for Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service and is meted the penalty of DISMISSAL FROM THE SERVICE with all its accessory penalties including cancellation of eligibility, forfeiture of retirement benefits, except accrued leaves, perpetual disqualification to hold public office and bar from taking civil service examinations pursuant to Section 10, Rule III, Administrative Order No. 07 as amended by Administrative Order No. 17, in relation to Section 25 of Republic Act No. 6770.

In the event that the penalty of dismissal can no longer be enforced due to respondent's separation from the service, the same shall be converted into a fine in the amount equivalent to respondent's salary for one (1) year payable to the Office of the Ombudsman and may be deductible from respondent's retirement benefits, accrued leave credits, or any receivable from their office.

The Honorable Secretary, Department of the Interior and Local Government is hereby directed to implement this DECISION immediately upon receipt thereof pursuant to Section 7, Rule III of Administrative Order No. 07, as amended by Administrative Order No. 17 (Ombudsman Rules of Procedure) in relation to Memorandum Circular No. 1 Series of 2005 dated 11 April 2006 and to promptly (notify) this Office of the action taken hereon.

SO ORDERED.<sup>[16]</sup>

Petitioner moved for reconsideration which the Office of the Ombudsman denied under Joint Order dated January 18, 2016.<sup>[17]</sup>

### **Proceedings before the Court of Appeals**

Petitioner, thereafter, sought affirmative relief from the Court of Appeals. He basically argued that he acted in good faith in facilitating the release of the RATA differentials. Since he acted in good faith, he could not be guilty of conduct prejudicial to the best interest of the service and grave misconduct.<sup>[18]</sup>

By its assailed Decision dated October 24, 2016, the Court of Appeals affirmed. It held that the factual findings of the Office of the Ombudsman are accorded with great respect and finality especially when these are supported by substantial evidence.<sup>[19]</sup> Petitioner was guilty of grave misconduct when he facilitated the release of the RATA differential without following the procedure set by law, *viz.*: 1) the local budget officer must certify to the existence of appropriation that has been legally made for the purpose; 2) the local accountant must obligate said appropriation; and 3) the local treasurer must certify to the availability of funds for the purpose.<sup>[20]</sup> By facilitating the release of the funds, he was guilty of conduct prejudicial to the best interest of service.<sup>[21]</sup>

Petitioner cannot invoke good faith for the attendant circumstances would have already put him on guard. He was duly informed of the objections of the municipal officers concerned but he still compelled the release of the RATA differential. He had been repeatedly told that the release of the RATA differential was illegal.<sup>[22]</sup>

Since petitioner committed two (2) offenses, the imposable penalty should correspond to the most serious offense. Conduct prejudicial to the best interest of service is punishable by suspension from six (6) months and one (1) day to one (1) year for the first offense and dismissal for the second offense. Grave misconduct is punishable by dismissal with cancellation of eligibility, forfeiture of retirement benefits, perpetual disqualification for reemployment in the government service and bar from taking the civil service examination. Since grave misconduct was the more serious offense, dismissal and its accessory penalties were duly imposed by the Office of the Ombudsman.<sup>[23]</sup>

Petitioner moved for reconsideration, which the Court of Appeals denied through its assailed Resolution<sup>[24]</sup> dated April 7, 2017.

### **The Present Petition**

Petitioner now invokes this Court's discretionary appellate jurisdiction for affirmative relief *via* Rule 45 of the Revised Rules of Court. He basically argues: his alleged illegal acts were committed sometime between 2013 and 2014. He was re-elected as Vice-Mayor of the Municipality of Vinzons, Camarines Norte in the 2016 national and local elections, thus, he was already exonerated of the charges per the "Aguinaldo doctrine." The "Binay doctrine," which abandoned the "Aguinaldo doctrine," only has prospective application, that is, it only covers administrative charges from November 10, 2015 onward. Nonetheless, he was not guilty of serious misconduct because he was not impelled by malice, ill motive, or corruption when

he facilitated the release of the RATA differential. Nor was he guilty of conduct prejudicial to the best interest of service because the disbursement of funds was merely an internal matter and did not involve the public at large.<sup>[25]</sup>

In their Manifestation<sup>[26]</sup> dated September 6, 2017, respondents aver that they would no longer file a comment since their former counsel is abroad and no other lawyer would accept the case.

## **Ruling**

### ***Petitioner can no longer avail of the condonation doctrine***

The condonation doctrine was first enunciated on October 31, 1959 in ***Pascual v. Provincial Board of Nueva Ecija***,<sup>[27]</sup> viz.:

We now come to the main issue of the controversy-the legality of disciplining an elective municipal official for a wrongful act committed by him during his immediately preceding term of office.

In the absence of any precedent in this jurisdiction, we have resorted to American authorities. We found that cases on the matter are conflicting due in part, probably, to differences in statutes and constitutional provisions, and also, in part, to & divergence of views with respect to the question of whether the subsequent election or appointment condones the prior misconduct. The weight of authority, however, seems to incline to the rule denying the right to remove one from office because of misconduct during a prior term, to which we fully subscribe.

"Offenses committed, or acts done, during previous term are generally held not to furnish cause for removal and this is especially true where the constitution provides that the penalty in proceedings for removal shall not extend beyond the removal from office, and disqualification from holding office for the term for which the officer was elected, or appointed." (67 C.J.S. p. 248, citing *Rice vs. State*, 161 S.W. 2d. 401; *Montgomery vs. Nowell*, 40 S.W. 2d. 418; *People ex rel. Bagshaw vs. Thompson*, 130 P. 2d. 237; *Board of Com'rs of Kingfisher County vs. Shutler*, 281 P. 222; *State vs. Blake*, 280 P. 388; *In re Fudula*, 147 A. 67; *State vs. Ward*, 43 S.W. 2d. 217).

**The underlying theory is that each term is separate from other terms, and that the reelection to office operates as a condonation of the officer's previous misconduct to the extent of cutting off the right to remove him therefor** (43 Am. Jur. p. 45, citing *Atty. Gen. vs. Hasty*, 184 Ala. 121, 63 So. 559, 50 L.R.A. (NS) 553. As held in *Conant vs. Brogan* (1887) 6 N.Y.S.R. 332, cited in 17 A.I.R. 281, 63 So. 559, 50 LRA (NS) 553-

**"The Court should never remove a public officer for acts done prior to his present term of office. To do otherwise would be to deprive the people of their right to elect**