

EN BANC

[G.R. No. 186279, April 02, 2013]

LAND BANK OF THE PHILIPPINES, PETITIONER, VS. ARTEMIO S. SAN JUAN, JR., RESPONDENT.

DECISION

BRION, J.:

For our consideration is the petition for review on *certiorari*,^[1] filed by petitioner Land Bank of the Philippines (LBP), assailing the decision^[2] dated October 17, 2007 and the resolution^[3] dated February 5, 2009 of the Court of Appeals (CA) in CA-G.R. SP No. 94757. The CA modified on appeal Resolution No. 060286,^[4] issued by the Civil Service Commission (CSC), finding Artemio S. San Juan, Jr. (*respondent*), then Acting LBP Manager - Binangonan Branch, guilty of gross neglect of duty. The CA, instead, found the respondent liable for simple neglect of duty.

Factual Antecedents

The facts, as gathered from the records, are as follows: in the morning of June 14, 2002, a certain Esmayatin Bonsalagan approached the respondent in his office at LBP-Binangonan Branch to encash a **check for Twenty-Six Billion pesos**.^[5] The check, numbered GH0 A0012480, was issued by the China Banking Corporation (China Bank), Greenhills-Ortigas Avenue Branch, and drawn against the account of CQ Ventures Corporation, with Bonsalagan as the payee.^[6]

The respondent then summoned to his office Acsa Ramirez, the Cashier/Operations Supervisor, and Leila Amparo, the Teller/Designated New Accounts Clerk, and informed them of Bonsalagan's desire to partially withdraw funds on the check. He also told them that the P26-Billion check had already been confirmed by China Bank.^[7] Ramirez expressed her reservation to the client's request because, as a matter of bank procedure and policy, the check must first be cleared before funds could be withdrawn.^[8]

To accommodate the client, the respondent suggested that Bonsalagan open a current/checking account with the branch where the China Bank check would first be deposited.^[9] Ramirez, who assisted in opening the checking account, required Bonsalagan to present at least two (2) valid identification cards (*IDs*), but the latter could only present one ID.^[10] The respondent assured Ramirez that it was alright to proceed with the opening of the checking account because Bonsalagan had previously presented the proper IDs, being a signatory to an existing account with the branch.^[11] The respondent also approved and authenticated Bonsalagan's specimen signature cards.^[12] Bonsalagan was consequently issued a check booklet.^[13]

The China Bank check was forwarded to the LBP-Cainta Branch, for clearing, in the afternoon of June 14, 2002 because it was already past the clearing cut-off time at the Binangonan Branch.^[14] Ramirez called the Cainta Branch to inform it of the incoming check and the certification issued by a certain Gonzalo T. Lambo II of China Bank that the funds from which the check was drawn against were of clean origin.^[15] Alarmed by the check's enormous amount, Florencio Quicoy, Jr., the Branch Manager of LBP-Cainta Branch, inquired whether the China Bank check had been reported to Carmencita Bayot of the Area Head Office.^[16] Ramirez then advised the respondent that he needed to immediately report the China Bank check to Bayot.^[17] The respondent directed Ramirez to just report the check on the next working day, which fell on a Monday.^[18]

Against the respondent's advice, Ramirez immediately called the Area Head Office to report the China Bank check.^[19] Liza Castrence, who received the call from the Area Head Office, instructed Ramirez to call China Bank to confirm the check.^[20] After a while, Castrence called back to inform Ramirez that Bayot had already communicated with China Bank to withhold the clearing of the P26-Billion check.^[21] Bayot then spoke with Ramirez and directed her to close Bonsalagan's checking account with the LBP-Binangonan Branch.^[22]

After an investigation, the LBP discovered that the P26-Billion check was spurious and unfunded,^[23] and that the check's account number did not belong to CQ Ventures Corporation, but to a certain Jing Limbo and/or Arien Romero.^[24] This discovery prompted the LBP to issue a Formal Charge^[25] against the respondent with the Office of the Government Corporate Counsel (OGCC) where it accused the respondent of gross neglect of duty^[26] for the following acts or omissions detrimental to the bank's interest: (a) in ordering that a current account be opened without properly verifying the depositor's identity in accordance with the bank's policy; (b) in not confirming the genuineness of the China Bank check and the legitimacy and sufficiency of its funds; and (c) in issuing a check booklet to Bonsalagan without waiting for the China Bank check to be cleared. The respondent was preventively suspended.^[27]

In its Report of Investigation dated October 21, 2004,^[28] the OGCC found the respondent guilty of gross neglect of duty and recommended that he be dismissed from the service.^[29]

In Resolution No. 04-394 dated October 26, 2004,^[30] the LBP Board of Directors adopted the OGCC's findings and approved the respondent's dismissal. The respondent moved for reconsideration, but his motion was denied for lack of merit;^[31] hence, his appeal to the CSC.

Resolution of the CSC

In Resolution No. 060286 dated February 15, 2006,^[32] the CSC affirmed the LBP Board's Resolution No. 04-394 and similarly found the respondent guilty of gross

neglect of duty. The CSC ruled that:

As the Acting Head of the Land Bank of the Philippines-Binangonan Branch, San Juan has control and supervision over all the employees in his branch, especially so that the transaction involved in this case was his very own client whom he has admitted to have convinced to deposit in his Branch the P26 Billion check. The transaction was done in his office and in his presence. As the Acting Head of the Branch, with full knowledge of the transaction done right before his eyes, it becomes his inherent duty to see to it that the bank's policies, rules and regulations involving the opening of a checking account is faithfully observed. His failure to do so makes him liable for Gross Neglect of Duty.^[33]

The CSC imposed on the respondent the penalty of dismissal, together with the accessory penalties of cancellation of eligibility, perpetual disqualification from re-employment in the government service and forfeiture of retirement benefits. The respondent appealed the CSC's resolution to the CA under Rule 43 of the Rules of Court.

Decision of the CA

In its decision dated October 17, 2007,^[34] the CA partly granted the respondent's appeal and affirmed with modification the assailed CSC resolution by finding the respondent guilty of simple, not gross, neglect of duty.

The CA found that, while the respondent was negligent in allowing Bonsalagan to open a checking account and to deposit the China Bank check with the branch without complying with the bank's procedures, his negligence could not be considered as so gross that it would merit the respondent's dismissal from the service; that the respondent did exercise some degree of diligence in the performance of his duties as Acting LBP Manager when he: (a) instructed Ramirez to confirm Lambo's certification as to the legitimacy of the source and the sufficiency of the China Bank check's funding, (b) required Bonsalagan to submit an additional ID on the next banking day, and (c) ordered the "tagging" of Bonsalagan's account with the branch, which means that, despite the premature issuance of a check booklet to Bonsalagan, funds of the China Bank check could be withdrawn only when the said check is cleared and after the completion of the client's identification requirements.

Despite the respondent's efforts, however, the CA considered them short of the diligence expected of the respondent as the branch's Acting Manager. The CA stated that:

While it is true that the duty to process the opening of an account, to validate the identity of the would-be depositor, to verify and determine the genuineness of the check deposit, and to issue the check booklet are the specific duties of the Operations Supervisor, such would not absolve petitioner from any administrative liability. As Head/Manager of the Branch, he has direct control and supervision over all the employees and of all the transactions of the Branch, hence, **he has the inherent duty**

and responsibility to effect faithful compliance of bank policies, rules and regulations with respect to the opening and processing of accounts.^[35] (emphasis ours)

Under the Uniform Rules on Administrative Cases in the Civil Service, simple neglect of duty is a less grave offense punishable with the penalty of suspension from work for one (1) month and one (1) day to six (6) months for the first offense.^[36] **The CA imposed on the respondent the penalty of six (6) months suspension.**^[37]

The LBP moved to reconsider the CA's decision but the latter denied the motion in a resolution dated February 5, 2009;^[38] hence, the present petition for review on *certiorari* filed with this Court.

The Petition

The LBP contends that the respondent's infractions constitute gross, and not simply simple neglect of duty considering that the respondent held a position of trust and integrity, dealt with public money, and was engaged in the banking business.^[39] It argues that due to the fiduciary nature of banking, the law imposes upon banks, its officers and employees, high standards of integrity and performance, and requires them to assume a degree of diligence higher than that of a good father of a family;^[40] that the respondent's negligent acts and performance as Acting LBP Manager fell short of the exacting and high standards expected from bank officials and employees;^[41] and that the respondent's extraordinary accommodation of Bonsalagan could lead to only one conclusion, i.e., the respondent and Bonsalagan were in collusion to defraud the bank, the bank's depositors, and the government.^[42] The LBP further contends that the respondent's failure to report the China Bank check to the Anti-Money Laundering Council clearly constituted gross neglect of duty.^[43]

The Respondent's Comment

In his comment dated June 29, 2009,^[44] the respondent counter-argued that the LBP's petition should be denied on the ground that the sole issue raised by the LBP, as to whether the acts committed by the respondent constitute gross neglect of duty, is a question of fact that cannot be raised in a petition under Rule 45 of the Rules of Court. Even if assuming that the issue raised by the LBP is a valid question of law, the respondent contends that the CA correctly ruled that he is only guilty of simple neglect of duty considering that he specifically instructed that Bonsalagan's account with the branch be tagged.

The Court's Ruling

We find LBP's petition meritorious.

The LBP's petition hinges on the question of whether the acts imputed on the respondent constitute gross neglect of duty so as to justify the respondent's dismissal from the government service.

We stress that the issue presented is a question of fact whose determination entails an evaluation of the evidence on record. Generally, purely factual questions are not passed upon in petitions for review on *certiorari* under Rule 45 because “this Court is not a trier of facts[.]”^[45] In view, however, of the contrary findings made by the CSC and the CA in this case, we shall resolve the presented factual question.^[46]

Simple neglect of duty is defined as the failure of an employee to give proper attention to a required task or to discharge a duty due to carelessness or indifference.^[47] On the other hand, gross neglect of duty is characterized by want of even the slightest care, or by conscious indifference to the consequences, and in cases involving public officials, by flagrant and palpable breach of duty.^[48] It is the omission of that care that even inattentive and thoughtless men never fail to take on their own property.^[49]

Our review of the records convinces us that the respondent’s actuations constitute gross, and not simple, neglect of duty.

A bank manager has the duty to ensure that bank rules are strictly complied with, not only to ensure efficient bank operation, but also to serve the bank’s best interest.^[50] His responsibility over the functions of the employees of the branch cannot simply be overlooked as their acts normally pass through his supervision and approval. He should serve as the last safeguard against any pretense employed to carry out an illicit claim over the bank’s money.

In the present case, the respondent miserably failed to discharge his functions as Acting LBP Manager.

First, the respondent allowed, even prodded, his employees to bypass bank procedures that were in place to secure the bank’s funds. Through the respondent’s assurances as to Bonsalagan’s identity, Ramirez blindly opened a current account despite the client’s submission of incomplete identification requirements. The respondent even approved and authenticated Bonsalagan’s specimen signature cards to facilitate the opening of Bonsalagan’s current account.

The respondent contends that since Bonsalagan was already a signatory of the Humanitarian Foundation Order of Service, Inc., which had an existing account with the LBP-Binangonan Branch, Bonsalagan did not need to present the additional identification requirements to open an account with the branch. We find the respondent’s leniency in this regard to be misplaced. Bonsalagan, in his personal capacity, and the Humanitarian Foundation Order of Service, Inc., as a corporate entity, are different personalities and their accounts with the branch should have been treated individually and separately.

The respondent further argues that the duties of opening and processing the bank’s accounts fell on the shoulders of Ramirez and Amparo and were not part of his specific duties and responsibilities as Acting LBP Manager; thus, he should not be made accountable. We cannot, however, accept this excuse. As Acting LBP Manager, the respondent had the primary duty to see to it that his employees faithfully observe bank procedures. Whether or not the opening and processing of accounts were part of his job description or not was of no moment because the respondent