

EN BANC

[G.R. No. 178630, November 27, 2012]

**ROSA F. MERCADO, PETITIONER, VS. COMMISSION ON HIGHER
EDUCATION, RESPONDENT.**

D E C I S I O N

PEREZ, J.:

This case is an appeal^[1] from the Resolution^[2] dated 29 June 2007 of the Court of Appeals in CA-G.R. No. SP No. 72864. In the assailed Resolution, the Court of Appeals denied the Motion for Leave to File *Motion for Reconsideration and to Admit Attached Motion for Reconsideration*^[3] of petitioner Rosa F. Mercado (Mercado) on the ground of lack of merit. The assailed Resolution provides:^[4]

WHEREFORE, premises considered, respondent's Motion for Leave to File Motion for Reconsideration and Admit Attached Motion for Reconsideration is hereby **DENIED** for lack of merit.

The antecedents:

Petitioner is a Senior Education Program Specialist of the respondent Commission on Higher Education (CHED).^[5]

On 13 November 1998, a letter-complaint^[6] against petitioner was filed before the CHED by one Ma. Luisa F. Dimayuga (Ms. Dimayuga)—Dean of the College of Criminology of the Republican College. In the letter-complaint, Ms. Dimayuga accused petitioner of "*arrogance and abuse of power and authority, ignorance of the appropriate provisions of the Manual of Regulations for Private Schools and CHED orders, and incompetence*" in relation to her evaluation of the Republican College's application for the recognition of its Master of Criminology program.^[7]

On 22 January 1999, CHED, through its Office of Program and Standards, issued a memorandum^[8] directing petitioner to explain in writing why no administrative charges should be filed against her.

On 26 January 1999, petitioner submitted her explanation^[9] denying the accusations in the letter-complaint. Ms. Dimayuga thereafter filed a reply.^[10]

On 27 September 1999, CHED *en banc* issued a decision^[11] finding petitioner guilty of discourtesy in the performance of her official duties and imposed upon her the penalty of reprimand coupled with a stern warning that a similar violation in the

future will warrant a more severe punishment.

The Alcala Resolution and the Affidavit of Desistance

On 26 October 1999, petitioner filed a motion for reconsideration^[12] of the CHED decision. In it, petitioner argued that the CHED decision was already barred by an earlier Resolution issued by former CHED Chairman Angel A. Alcala (*Alcala Resolution*)^[13] on 3 June 1999. According to the petitioner, the *Alcala Resolution* already dismissed the letter-complaint against her based on an *Affidavit of Desistance*^[14] executed by Ms. Dimayuga herself. Copies of both the *Alcala Resolution* and the *Affidavit of Desistance* were thus attached in petitioner's motion for reconsideration.

Questions about the authenticity of the Alcala Resolution and the *Affidavit of Desistance*, however, soon surfaced when CHED was able to discover that there was no official record of any such Alcala Resolution being passed and that the signature of Ms. Dimayuga in the *Affidavit of Desistance* differed from those in her authentic samples. These doubts prompted CHED to defer resolution of petitioner's motion for reconsideration until the genuineness of the *Alcala Resolution* and the *Affidavit of Desistance* would have been determined in a full-blown investigation.

The New Charges, Investigation and the CHED Resolution

On 24 December 1999, CHED en banc passed Resolution No. R-438-99^[15] adopting the recommendation of its Legal Affairs Service to investigate and place petitioner under preventive suspension in connection with her use of the apparently fake *Alcala Resolution and Affidavit of Desistance*. A Hearing and Investigating Committee (Committee) was organized to conduct the investigation.^[16] On 3 January 2000, petitioner was formally charged with "dishonesty, grave misconduct, conduct prejudicial to the best interest of the service and falsification of official document" and was placed under preventive suspension for sixty (60) days without pay.^[17]

The Committee scheduled hearings on 17 March, 13 April and 15 May 2000.^[18] However, despite being summoned in all three hearing dates, petitioner failed to appear in any of them.^[19]

During the 13 March 2000 hearing, Ms. Dimayuga appeared and testified under oath that she never signed any affidavit of desistance much less the *Affidavit of Desistance* being presented by petitioner.^[20] On the other hand, at the 11 May 2000 hearing, CHED Records Officers, Ms. Maximina Sister and Ms. Revelyn Brina, testified that the purported *Alcala Resolution* does not exist per CHED records.^[21]

The Committee likewise made a comparison of the signatures of Ms. Dimayuga and Chairman Alcala.^[22] The Committee observed that the signature of Ms. Dimayuga as appearing in the *Affidavit of Desistance* is remarkably different with those in the samples^[23] supplied by her.^[24] It also noted disparity between the signatures of Chairman Alcala in the *Alcala Resolution* with those in earlier resolutions signed by him.^[25]

After evaluating the evidence thus gathered, the Committee issued a Consolidated Fact Finding Report^[26] on 8 June 2000. In it, the Committee concluded that, based on the evidence yielded by its investigation, there is strong indication that the *Alcala Resolution* and the *Affidavit of Desistance* attached in petitioner's motion for reconsideration were not genuine.^[27]

Thus, on 19 June 2000, CHED en banc issued a Resolution^[28] adopting the findings of the Committee and holding petitioner guilty of the charges of "*dishonesty, grave misconduct, conduct prejudicial to the best interest of the service and falsification of official documents.*" Petitioner was therein meted the penalty of dismissal from the service with forfeiture of leave credits and retirement benefits.^[29] In addition, CHED en banc also denied petitioner's motion for reconsideration.^[30]

The CSC Appeal

Aggrieved by her dismissal, petitioner filed an appeal^[31] with the Civil Service Commission (CSC).

On 18 October 2000, the CSC issued Resolution No. 00-2406^[32] wherein it initially denied the appeal of petitioner. However, upon petitioner's motion for reconsideration, the CSC reversed itself. Thus, on 21 August 2002, the CSC issued Resolution No. 02-1106^[33] granting petitioner's motion for reconsideration and ordering her reinstatement.

The CSC hinged its reversal on the following pieces of evidence that were submitted by the petitioner only during the course of the appeal:

1. Signature analyses of the Philippine National Police (PNP) as contained in Questioned Document Report Nos. 134-00^[34] and 141-01.^[35]
 - a. Questioned Document Report No. 134-00 dealt with a comparison of the signature of Chairman Alcala as appearing in the *Alcala Resolution* and his standard signature as appearing in sample documents.^[36] The report stated that the signature in the *Alcala Resolution* and in the sample documents, appear to be written by one and the same person.^[37]
 - b. Questioned Document Report No. 141-01 dealt with a comparison of the signature of Ms. Dimayuga as appearing in the *Affidavit of Desistance* and her standard signature as appearing in sample documents.^[38] The report stated that the signature in the *Affidavit of Desistance* and in the sample documents, appear to be written by one and the same person.^[39]
2. An affidavit dated 11 January 2001 executed by Chairman Alcala (*Alcala Affidavit*),^[40] wherein the latter affirmed that he indeed issued the *Alcala Resolution*.

The CSC considered the foregoing as “*newly discovered evidence*,” which tend to prove that the *Alcala Resolution* and the *Affidavit of Desistance* were genuine and not falsified.^[41] The CSC thus found no basis to hold petitioner accountable for her use of the *Alcala Resolution* and the *Affidavit of Desistance*.^[42]

The Ensuing Appeals

CHED then filed an appeal^[43] with the Court of Appeals, which was docketed as CA-G.R. SP No. 72864.

On 13 January 2003, the Court of Appeals rendered a decision^[44] denying the appeal of CHED on the *technical* ground of prematurity. This decision, however, eventually became the subject of an appeal by *certiorari* before this Court in G.R. No. 157877 or the case of *Commissioner of Higher Education vs. Rosa F. Mercado*.

In G.R. No. 157877, We reversed the 13 January 2003 Decision of the Court of Appeals and ordered the latter to instead resolve CA-G.R. SP No. 72864 *on the merits*.^[45]

Following Our directive in G.R. No. 157877, the Court of Appeals rendered another Decision^[46] on 30 March 2007. In it, the Court of Appeals granted CHED’s appeal and ordered Resolution No. 02-1106 of the CSC to be set aside.^[47] Accordingly, the appellate court affirmed the findings of CHED that petitioner ought to be dismissed from the service *except* that the latter cannot be deprived thereby of her accrued leave benefits.^[48]

In overturning Resolution No. 02-1106, the Court of Appeals mainly faulted the CSC in treating the PNP signature analyses as “*newly discovered evidence*.”^[49] According to the appellate court, they could not have constituted as “*newly discovered evidence*” for the following reasons:^[50]

1. The sample documents^[51] used as basis of the comparisons in the two (2) PNP signature analyses were not actually “*newly discovered*” but were readily available to petitioner from the very start of the proceedings before the CHED. Such documents could have been easily presented during the Committee hearings.
2. The two (2) PNP signature analyses cannot be given any weight for being hearsay evidence. The police officers who executed the signature analyses were never presented before the CSC. Hence, the said officers were never cross-examined.
3. The integrity of the findings contained in the two (2) PNP signature analyses was not established, because the competency of the police officers who conducted the examinations on the contested signatures were not qualified as experts.

Records reveal that copies of the 30 March 2007 Decision of the Court of Appeals were served by registered mail upon petitioner, both at her address-on-record^[52] and also thru one Atty. Juan S. Sindingan (Atty. Sindingan).^[53] The copy sent to petitioner's address was returned unserved.^[54] However, Atty. Sindingan was able to receive his copy on 13 April 2007.^[55]

More than a month thereafter, or on 7 June 2007, petitioner filed a *Motion for Leave to File Motion for Reconsideration and to Admit Attached Motion for Reconsideration (Motion for Leave)*^[56] before the Court of Appeals. The said motion was accompanied by an *Entry of Appearance*^[57] of one Atty. Adolfo P. Runas (Atty. Runas), who sought recognition as petitioner's new counsel *in lieu* of Atty. Sindingan.

Motion for Leave and This Petition

In her *Motion for Leave*, petitioner asked that she be allowed to seek reconsideration of the 30 March 2007 Decision even though more than a month has already passed since its promulgation. Petitioner claims that:^[58]

1. She came to know about the 30 March 2007 Decision of the Court of Appeals only on 29 May 2007 *i.e.*, the date when she went to the Court of Appeals to personally inquire about her case. Hence, she should be entitled to at least fifteen (15) days from such date, or until 13 June 2007, within which to file a motion for reconsideration.
2. Atty. Sindingan's receipt of the 30 March 2007 Decision does not bind her. At that time, Atty. Sindingan was no longer her counsel—the former having earlier withdrawn from the case. Atty. Sindingan also never informed her about the 30 March 2007 Decision.

In the *Motion for Reconsideration* attached to the *Motion for Leave*, on the other hand, petitioner vouched for the correctness of CSC Resolution No. 02-1106 and faults the Court of Appeals for overturning the same.^[59] She argued that the Court of Appeals, unlike the CSC, failed to consider the merits of the *Alcala Affidavit* as evidence to show that the *Alcala Resolution* was not falsified.^[60]

Also in the *Motion for Reconsideration*, petitioner seeks the introduction, for the first time, of the following entries in the logbook for incoming communications of Chairman Alcala—as new and additional proof of the authenticity of the *Alcala Resolution*, to wit:^[61]

1. Page 58 – which shows that the *Affidavit of Desistance* was received by the Office of the CHED Chairman on 21 May 1999;
2. Page 78 – which shows receipt of the draft for the *Alcala Resolution*;
3. Page 89 – which shows that the *Alcala Resolution* was officially released.