594 Phil. 650

EN BANC

[G.R. No. 172776, December 17, 2008]

COMMISSION ON HIGHER EDUCATION, PETITIONER, VS. ATTY. FELINA S. DASIG, RESPONDENT.

D E C I S I O N

PER CURIAM:

This is a Rule 45 petition for review[1] of the 15 September 2003[2] Decision and 18 May 2008 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 61302.

The factual antecedents of the case follows.

Respondent Felina Dasig (Dasig) was the Chief Education Program Specialist of the Standards Development Division, Office of Programs and Standards, of petitioner Commission on Higher Education (CHED). She had also served as the officer-in-charge of the Legal Affairs Service (LAS) of the CHED.

In a Memorandum dated 9 October 1998,[4] the Director of the LAS brought to the attention of the CHED several complaints on the alleged anomalous activities of Dasig during her stint as the officer-in-charge of LAS. Attached to the memorandum were the sworn affidavits of the complainants.[5] The complainants consisted of Rosalie Dela Torre (Dela Torre), Rocella Eje (Eje) and Jacqueline Ng (Ng), students who applied to have their names corrected in their scholastic records to conform with their birth certificates; Maximina Sister (Sister), the CHED Human Resource Management Assistant assigned to the Records Unit; and Don Cesar Mamaril (Mamaril), Leysamin Tebelin (Tebelin), Joemar Delgado (Delgado), and Ellen Grace Nugpo (Nugpo), all from the CHED LAS staff. All the students alleged that Dasig tried to exact money from them under the pretense of attorney's fees in connection with their requests for correction of names in their academic records. Dasig's former staff at the LAS corroborated the allegations of the students. They also alleged that Dasig attempted to persuade them to participate in anomalous activities. Sister, in turn, claimed that Dasig refused to return the Official Record Book of the CHED which the latter borrowed from her.

Dasig submitted a Memorandum[6] and a Counter-Affidavit[7] to answer the charges against her. In her memorandum, she denied all the charges against her. She alleged that it was not within the CHED's power to entertain the request for change of name so she advised the students to file petitions in court. Dasig denied that the alleged closed-door meeting on 3 September 1998 with her former staff at the LAS in which she tried to persuade them to accept P20,000.00 from Ng had ever taken place for she was then allegedly in the Office of the Chairman for the Investigation and Performance Audit of Dr. Jaime Gellor, then President of the Central Mindanao University. As to the charge that she improperly took the Official Record Book on 7

September 1998 at around 3:00 p.m. and refused to return the same, Dasig insisted that she was inside the LAS hearing room during that time conducting the preliminary conference on the administrative complaint filed by Dr. Aleli Cornista against Dr. Magdalena Jasmin, Dr. Perlita Cabilangan, Dr. Arsenia Lumba, and Dr. Teresita de Leon, all from CHED Region 3, together with Special Investigators Buenaventura Macatangay (Macatangay) and Eulando Lontoc (Lontoc).

In her counter-affidavit,[8] Dasig explained that she had not offered her services as a lawyer to any person and that she had never represented any clients other than the immediate members of her family ever since she was admitted to the bar. Dasig denied the allegation that she had offered to look for a lawyer for the petitioners since it was inconceivable to have a lawyer who would accept P5,000.00 as attorney's fees.

The CHED formed a hearing committee and designated the members to investigate the complaints against Dasig in Resolution No. 166-98.[9] Dela Torre and Eje were not able to participate in the hearings conducted by the committee for they could not be notified in their given addresses while Ng and Dasig chose not to participate despite notice. However, Mamaril, Tebelin, Delgado, and Nugpo all affirmed before the committee the veracity of Ng's claim that Dasig solicited money from him and attested to the fact that Dasig even called them together with Macatangay and Lontoc for an emergency closed door meeting at the LAS conference room at around 4:00 p.m. on 3 September 1998. Dasig allegedly told them that Ng was willing to pay P20,000.00 for the publication of her request for correction of name and persuaded them to accept said amount for the purchase of a television and VHS player for their office and that any excess money would be divided equally among them. They all objected to Dasig's suggestion.[10]

The hearing committee concluded that there was substantial evidence on record to hold Dasig liable for dishonesty, grave misconduct, and conduct prejudicial to the best interest of the service and recommended that she be dismissed. The CHED found that the complaints against Dasig were substantiated and affirmed the recommendation of the hearing committee to dismiss her from the service as her actions constituted gross misconduct, dishonesty, and conduct prejudicial to the best interest of the service.[11] The Civil Service Commission (CSC) upheld the decision of the CHED[12] and denied Dasig's motion for reconsideration.[13]

Dasig filed a petition for review under Rule 43 with the Court of Appeals and raised four issues before it.[14] The first issue was whether Dasig was denied due process of law; the second was whether the CSC erred in not giving weight to the 1 June 1999 Resolution of CHED Chairman Angel Alcala (Alcala) absolving her from any administrative liability; the third was whether the CSC erred in not considering evidence discovered after her dismissal which would have materially affected the result of the case; and the fourth or last was whether the CSC erred in not considering that the penalty of dismissal imposed on her was too harsh and oppressive taking into account her thirty years of government service.

While the case was pending before the appellate court, this Court came out with a Resolution dated 1 April 2003[15] which ordered the disbarment of Dasig. Several high-ranking officers of the CHED filed an administrative case for disbarment against

Dasig, charging her with gross misconduct in violation of the Attorney's Oath "for having used her public office to secure financial spoils to the detriment of the dignity and reputation of the CHED" with one of the grounds for disbarment being Dasig's exaction of money from Dela Torre, Eje and Ng. In the administrative case, the Court affirmed the following findings of fact:

> **In this case, the record shows that the respondent, on various occasions, during her tenure as OIC, Legal Services, CHED, attempted to extort from Betty C. Mangohon, Rosalie B. Dela Torre, Rocella G. Eje, and Jacqueline N. Ng sums of money as consideration for her favorable action on their pending applications or requests before her office.** The evidence remains unrefuted, given the respondent's failure, despite the opportunities afforded her by this Court and the IBP Commission on Bar Discipline to comment on the charges. We find that respondent's misconduct as a lawyer of the CHED is of such a character as to affect her qualification as a member of the Bar, for as a lawyer, she ought to have known that it was patently unethical and illegal for her to demand sums of money as consideration for the approval of applications and requests awaiting action by her office.[16] (Emphasis supplied.)

The Court denied with finality the motion for reconsideration of Dasig in a resolution dated 17 June 2003.[17] Despite the Court's findings in the disbarment proceeding, the Court of Appeals, however, gave a different assessment of the evidence on record as it found that Dasig was only "moonlighting" when she offered her legal services to the students who were requesting the CHED to change their names appearing in their academic records to conform to their birth certificates. The money which Dasig had asked from the students was, as found by the appellate court, for "attorney's fees" and other litigation expenses. The appellate court held that the acts of Dasig had constituted only simple misconduct.

Only the aspect of the Court of Appeals' decision finding Dasig liable only for simple misconduct is subject to review before this Court. The appellate court decided all the first three issues in favor of the CHED. It held that administrative due process was complied with since Dasig was given a fair and reasonable opportunity to explain her side. It also declared the 1 June 1999 resolution of CHED Chairman Alcala absolving Dasig invalid and without legal effect since it was he alone who signed it, contrary to the collegial structure of the CHED. And it gave scant attention to the additional affidavits submitted by Dasig as they were not presented during the proceedings before the CHED in line with the rule that no question, issue, or evidence shall be entertained on appeal unless it was raised in the court or agency below.

The Court of Appeals explained its "moonlighting" approach, thus:

> After a close perusal of the vital portions of Jacqueline S. Ng's Affidavit, We find that Petitioner was trying to collect the money from the three students as her attorney's fees and for the purpose of covering the expenses which shall be incurred in instituting the appropriate action or proceeding in court- filing fee, publication, etc. for the correction of the name of said student affiant.[18]

x x x x

> We are of the well-considered view, that [p]etitioner was not trying to use the influence of her position to cause the correction of the names of the students within the CHED. It can be safely assumed that as a lawyer, [p]etitioner is fully aware that an error in a person's name may only be legally corrected upon the filing of the necessary Special Proceeding under the Rules of Court, specifically Rule 108. Analy[z]ing [p]etitioner's acts, therefore, [w]e hold that she was merely trying to engage in the private practice of the legal profession while employed at the CHED. This is a classic case of "moonlighting", that is, holding an additional job in addition to a regular one. We are perfectly mindful of [p]etitioner's indiscretion, and so hold that her acts were improper and unbecoming of a public servant, more particularly of one with a relatively high and responsible position like her. Simply put, [p]etitioner's acts must not be condoned, particularly considering that she even attempted to persuade her former staff at the Legal Affairs Services Office to partake of and materially benefit from her would-be earnings in the aborted deal with the three students.[19] x x x.

After having been apprised of the Court's factual findings in the disbarment case against Dasig, the Court of Appeals maintained its decision and denied petitioner's motion for reconsideration. Specifically, it held thus:

> The foregoing ruling of the Highest Court of the Land notwithstanding, [w]e still do not find the propriety of modifying [o]ur conclusion that petitioner should be held administratively liable only for the less serious infraction of Simple Misconduct. Verily, the disbarment proceedings against petitioner was predicated in part upon the provisions of the Attorney's Oath which contained more stringent and rigid standards by which a lawyer's act must be tested, whereas [w]e examine petitioner's conduct by using the rules as fixed by the CSC as well as jurisprudence. But more importantly, aside from the difference in the laws applied, [w]e cannot defer to and take bearing with the ruling of the Supreme Court considering that there is a significant variance between the undisputed facts as found by the High Court in the disbarment proceedings against petitioner, on one hand, and the material factual backdrop upon which [w]e tested petitioner's conduct in public service, on the other. It must be emphasized that petitioner did not participate in the disbarment proceedings, and as a necessary consequence of her omission it became automatically undisputed, and thus glaring in the eyes of the High Court, that she extorted money from the students by way of consideration for a favorable resolution of the students' applications and formal requests for the correction of their names, which were purportedly pending before petitioner's office at the CHED.[20] x x x.

The lone issue raised in the present petition is whether the Court of Appeals had correctly held Dasig liable only for simple misconduct.

The Court finds the present petition meritorious.

The Court of Appeals committed a monumental blunder when it arrived at findings of fact different from those of the Court in the disbarment case. It is inexplicable

why the appellate court would propound and insist on its "moonlighting" conclusion when even Dasig herself had denied offering her services to anyone in the first place. It was only after the Court of Appeals had come up with such finding that Dasig incorporated it into her theory of defense, belatedly arguing that she should not be held liable for "moonlighting" since the CHED allows limited practice of law pursuant to an alleged CHED memorandum dated 16 January 1995 entitled, "Authorizing Lawyers of the Commission to Engage in Limited Practice of Profession."

Despite having been apprised of the Court's findings in the disbarment case which should be a matter of judicial notice[21] in the first place, the Court of Appeals still insisted on its divergent finding and disregarded the Court's decision ordering the disbarment of Dasig in which one of the determinative facts in issue was whether Dasig had attempted to extort money from Dela Torre, Eje and Ng who in turn had wanted to have their academic records corrected to conform to their birth certificates.

Apart from its mandated duty to take judicial notice of the resolution in the disbarment case, the Court of Appeals is bound by this Court's findings and conclusions in the said resolution in accordance with the doctrine of "*stare decisis et non quieta movere.*"[22] Although the administrative case is different from the disbarment case, the parties are different and trials were conducted separately, there can only be one truth: Dasig had attempted to extort money from the students. For the sake of certainty, a conclusion reached in one case should be applied to that which follows, if the facts are substantially the same, even though the parties may be different. Otherwise, one would be subscribing to the sophistry: truth on one side of the Pyrenees, falsehood on the other![23]

Obstinately, the appellate court sought to justify its presumptuously aberrant stance on the alleged circumstance that Dasig had not participated in the disbarment case. A careful look at the Court's decision shows that Dasig had been duly informed of the disbarment case when the Court in a resolution dated 3 February 1999 required her to file a Comment on the charges against her. The resolution was sent to the same address she had used in filing the petition for review with the Court of Appeals. She likewise chose not to comply with the order of the Integrated Bar of the Philippines (IBP) Commission on Bar Discipline dated 6 February 2001 which had directed her to submit an Answer to the Complaint. The IBP Commission had directed her anew to file her Answer in an order dated 8 January 2002, but again she failed to comply with the directive.[24] Although Dasig had chosen not to respond to the complaints against her, she was still able to file a motion for reconsideration, which this Court denied with finality. Clearly, Dasig was given sufficient opportunity to respond to the charges against her.

The Court of Appeals asserted that "petitioner did not participate in the disbarment proceedings, and as a necessary consequence of her omission it became automatically undisputed, and thus glaring in the eyes of the High Court, that she extorted money from the students."[25] In more comprehensible terms, the appellate court declared that petitioner did not participate in the disbarment proceedings; and because of her non-participation the conclusion on her extortion activity was unquestioned and appeared ineluctable from the Court's perspective. It is worth noting that disbarment proceedings are under the administration of the