

EN BANC

[G. R. No. 155732, June 03, 2004]

CIVIL SERVICE COMMISSION, PETITIONER, VS. DELIA T. CORTEZ, RESPONDENT.

D E C I S I O N

PER CURIAM:

In this petition for review on *certiorari* under Rule 45 of the Rules of Court, petitioner Civil Service Commission (CSC) seeks to reverse and set aside the decision^[1] of 23 July 2002 of the Court of Appeals and its resolution^[2] of 18 October 2002 in CA-G.R. SP No. 65096. The former modified the penalty imposed by the CSC on respondent Delia T. Cortez from dismissal from the service with forfeiture of benefits and disqualification from reemployment in the government service without prejudice to any civil or criminal liability in a proper action to that of being considered resigned from the service with entitlement to all the benefits under the law. The latter denied petitioner's motion to reconsider the former.

The antecedent facts follow.

Respondent Delia T. Cortez, Chief Personnel Specialist of the Examination and Placement Services Division (EPSD) of Civil Service Regional Office (CSRO) No. X, Cagayan de Oro City, was formally charged with dishonesty, grave misconduct and conduct grossly prejudicial to the best interest of the service in Resolution No. 99-0039 of the CSC dated 7 January 1999. Pertinent portions of the formal charge read as follows:

1. That on June 26, 1998 at about 3 p.m., two teenagers, namely June Grace Abina and Rubielyn Ofredo appeared at the CSRO No. X for the purpose of filing application forms for the Career Service Professional Examination for their aunt and her [their aunt's] co-employees;
2. That on the above-mentioned date and time Abina and Ofredo proceeded to the CSRO No. X, Cashier's Office to purchase the required examination fee stamps. A personnel from the Cashier's Office, however, told them to first proceed to the EPSD for the approval of the said application forms;
3. That when Abina and Ofredo presented the said application forms at the EPSD, respondent Cortez pasted a stamp worth P150.00 on each of the application forms. Thereafter, she asked from them the payment corresponding to the value of the stamps pasted on the said application forms;

4. Thereafter, Abina and Ofredo returned to the Cashier's Office to inquire as to whether there are still other fees to be paid. But when the Cashier saw that the said application forms were already pasted with stamps, she examined the same and she noted that the serial numbers of the said stamps did not correspond with the serial numbers of the stamps issued to said Office;
5. This prompted the cashier, accompanied by Abina and Ofredo[,] to proceed to the EPSD and confronted [sic] respondent Cortez on the unauthorized selling of stamps. Consequently, respondent immediately removed the stamps from the application forms, kept them, and brought out the money which Abina and Ofredo earlier gave her and handed the same to the Cashier who subsequently, issued them another stamps;
6. That the stamps which respondent Cortez sold to Abina and Ofredo bearing serial numbers 0216430, 0216432, 0216441, and 0116443 were issued to the CSRO No. X way back in 1995 for the Professional Board Examination for Teachers (PBET).^[3]

Respondent Cortez filed an answer vehemently denying the charges against her. She averred that the application forms submitted to her by June Grace Abina (hereafter, Abina) and Rubielyn Ofredo (hereafter, Ofredo) for the actual applicants were already pasted with stamps. Noticing that the stamps were not the ones being currently sold, she asked Abina and Ofredo where the applicants were and told them to tell the applicants to personally file their application forms since the rules require that applicants must personally thumbmark their application forms in the EPSD. She thereafter removed the stamps so that she could show them to the applicants when they personally would come to file their application forms. After she removed the stamps, Abina and Ofredo ran towards the gate. She waited, but the applicants never came to her office. She denied that she collected money for the stamps and that there was a confrontation between her and the cashier. She branded the charges against her as "brazen lies and concoctions" of some people determined to destroy her more than twenty years of service in the CSC, eight years of which she served as Chief of the EPSD.^[4]

In its resolution of 1 February 1999, the CSC placed respondent under a 90-day preventive suspension pending formal investigation of the serious charges against her.^[5]

During the formal investigation, Abina and Ofredo identified and affirmed their joint-affidavit^[6] wherein they narrated that upon perusal by a clerk in the Cashier's Office of their aunt's and their aunt's officemates' application forms, they were told to first go to the EPSD for approval of the application forms. Once there, they saw a woman, who was later identified as respondent Delia T. Cortez, attending to three applicants who were in the process of buying examination fee stamps from her. When it was their turn, respondent pasted examination fee stamps worth P150 each on each of the four application forms, took Abina's and Ofredo's money (P900) and gave them their change (P300). When they went back to the Cashier's Office to inquire for further requirements, the clerk asked them where they got the stamps and they told the clerk that they got them from the EPSD. The clerk immediately

brought the matter to the Acting Cashier and the latter accompanied them to the EPSD where a confrontation took place between respondent and the cashier regarding the unauthorized sale of stamps. Respondent removed the stamps, but only after the cashier was able to successfully copy the serial numbers of the stamps. The respondent, followed by the cashier, then went inside the adjacent room, where, from outside, they saw respondent took their money from a cabinet. Respondent then handed back to them their money, which the latter thereafter used to buy another set of examination fee stamps at the Cashier's Office.^[7]

Eva S. Alcalde and Angeline P. Lim, clerk and Acting Cashier of CSRO No. X, respectively, also identified and affirmed their affidavits^[8] supporting the joint-affidavit of Abina and Ofredo.

Eva S. Alcalde affirmed that she told Abina and Ofredo to first go to the EPSD for the approval of their aunt's and their aunt's officemates' application forms before she could issue to them examination fee stamps. However, when the two teenagers went back to the Cashier's Office from the EPSD, Alcalde noticed that the application forms were already pasted with stamps. Puzzled, she referred the matter to her superior, Acting Cashier Angeline P. Lim.^[9]

Acting Cashier Angeline P. Lim affirmed that Alcalde referred to her certain application forms containing stamps whose serial numbers did not correspond to the serial numbers of the stamps the Cashier's Office was authorized to issue for that particular day. Upon information from Abina and Ofredo that the stamps came from the EPSD, Lim, with Abina and Ofredo, immediately proceeded to the EPSD where a confrontation took place between Lim and respondent regarding the questionable stamps. Respondent feigned innocence, saying "Unsa man diay ni day?" ("What is this all about?"). However, after Lim copied the serial numbers of the stamps in front of respondent, respondent detached the stamps and went inside the Records Section of the EPSD. Lim followed her inside the room, and respondent handed to her P600 which Lim did not accept but instead told respondent to personally return the money to Abina and Ofredo. When Lim returned to her office, she immediately traced the origin of the questionable stamps and discovered that they were among the batch of stamps bearing serial numbers 0215993 to 0216492 issued by then Cashier Marilyn S. Tapay and sold two years ago (18 May 1995) by the Cashier's Office under O.R. No. 1332901 for the Professional Board Examination for Teachers. Around 5:00 p.m. of the same day, respondent approached Lim and told her that someone just asked her to sell the recycled stamps. When Lim asked respondent who made her do such a thing, respondent vaguely answered that the person was their co-employee and a mere rank and file personnel. When Lim inquired further the person's real identity, respondent did not reply. The following day, respondent once again approached Lim during the general assembly and told her that they had to talk after the meeting. After the meeting, respondent told Lim that it would be better if the matter would not reach top management because the person she referred to yesterday as the source of the recycled stamps would see to it that they (respondent and Lim) would be the first ones to lose their jobs.^[10]

Respondent Cortez, for her part, identified and affirmed the contents of her counter-affidavit.^[11] Her counter-affidavit contained almost the same averments as that in her answer, that is, that the application forms were already pasted with stamps when presented to her by Abina and Ofredo and that the charges against her were

"brazen lies." In addition, respondent alleged in her counter-affidavit that Acting Cashier Lim concocted the charges against her in order for Lim to be promoted.^[12]

After carefully evaluating the evidence of the parties, petitioner CSC in its Resolution No. 010499 of 22 February 2001 concluded that the version of the complainants was more credible. It noted that witnesses Abina and Ofredo categorically pointed to respondent as the source of the questionable stamps and material portions of their testimonies were corroborated by two other witnesses, Eva S. Alcalde and Acting Cashier Angeline P. Lim. In contrast, the CSC noted that respondent Cortez relied on mere denials which could not prevail over the clear, positive and categorical testimonies against her. It also pointed out that respondent never presented any competent and credible evidence to show why the witnesses against her, especially Abina and Ofredo, would falsely testify against her. Thus, it ruled that respondent was guilty of illegally selling recycled stamps for her own financial gain, an act which constituted dishonesty, grave misconduct and conduct grossly prejudicial to the best interest of the service. It ordered respondent dismissed from the service with forfeiture of benefits and disqualification from reemployment in the government service, without prejudice to any civil or criminal liability in a proper action.^[13]

Respondent filed a motion for reconsideration, but the CSC denied it in its Resolution No. 010926 of 11 May 2001, on the ground that the motion was a mere rehash of the allegations in her answer and counter-affidavit which had already been passed upon by the Commission in its decision.^[14]

Respondent promptly filed a petition for review before the Court of Appeals under Rule 43 of the Rules of Court. She raised in her petition the issues of violation of administrative due process and the propriety of the penalty of dismissal.^[15] The appeal was docketed as CA-G.R. SP No. 65096.

In its decision of 23 July 2002, the Court of Appeals granted respondent's petition. It ruled that although respondent was properly accorded administrative due process as evidenced by the fact that she was able to file an answer, a counter-affidavit and even a motion for reconsideration, the penalty of dismissal imposed on her was too harsh considering (a) her twenty-one years of service in the government, (b) the fact that it was her first offense and (c) that no damage was sustained by the Government. Accordingly, it modified the penalty imposed on respondent from dismissal from the service with all its accessory penalties to that of forced resignation from the service with entitlement to all the benefits under the law. Pertinent portions of the decision of the Court of Appeals read as follows:

Applying these principles and given the fact that Petitioner duly filed her Answer, Counter-Affidavit and even a Motion for Reconsideration, there is no denying that she was duly accorded administrative due process.

Nonetheless, We agree with the Petitioner that the penalty of dismissal would be too harsh for the offense she has committed. Considering that the Petitioner has been in the service for twenty one (21) years, the fact that this is her first offense, during the length of her service she was never administratively called upon to answer for any official misconduct not to mention that no damage was sustained by the government for the misconduct she has committed, should be considered mitigating

circumstances for which a penalty less than dismissal would be justified. In her motion for reconsideration, Petitioner prayed that if the penalty imposed upon her be mitigated, that she would just be considered forcibly resigned.

WHEREFORE, premises considered, the instant Petition for Review is GRANTED. Petitioner is hereby considered forcibly resigned from the service with a right to all the benefits to which she may be entitled under the law.

SO ORDERED.^[16]

Its motion for reconsideration having been denied by the Court of Appeals for having been filed one day late,^[17] petitioner filed the petition at bar, assigning the following issue for our consideration:

WHETHER THE PENALTY OF DISMISSAL METED OUT TO RESPONDENT IS TOO HARSH TAKING INTO CONSIDERATION HER BEING A FIRST-TIME OFFENDER AND HER OVER TWENTY-ONE (21) YEARS IN GOVERNMENT SERVICE.

After the issues were joined, we gave due course to the petition and required the parties to submit their respective memoranda.

To be sure, respondent's guilt for the administrative offense charged has long been settled when she did not question before the Court of Appeals the decision of the CSC finding her guilty of dishonesty, grave misconduct and conduct grossly prejudicial to the best interest of the service. What respondent questioned before the Court of Appeals was the penalty of dismissal imposed on her, which she considered to be too harsh considering her length of service in the government and the fact that the offense she was found guilty of was her first offense.^[18]

Petitioner contends that respondent is not entitled to any penalty lesser than dismissal considering the gravity of her offense. Respondent's act constituted dishonesty, grave misconduct and conduct grossly prejudicial to the best interest of the service which, under Section 52 in relation to Section 55 of the Uniform Rules on Administrative Cases in the Civil Service, are all grave offenses punishable by dismissal from the service. Based on jurisprudence, dishonesty warrants dismissal from the service, with forfeiture of benefits and disqualification from reemployment in the government service. The mitigating circumstances of length of service and "first offense" invoked by respondent cannot be considered since dismissal is an indivisible penalty. In any case, if length of service is to be considered at all, it should be taken against the respondent because despite her long service in the government, she did not exhibit any sense of loyalty; instead, she abused the government's trust by taking advantage of her position. Petitioner also asserts that the Court of Appeals erred in imposing the penalty of forced resignation on respondent since forced resignation as an administrative penalty is not provided under the Administrative Code of 1987. Besides, the penalty of forced resignation without forfeiture of benefits and disqualification from reemployment in the government service for the grave offenses of dishonesty, grave misconduct and conduct grossly prejudicial to the best interest of the service is reprehensible because this, in effect, would be rewarding an erring employee instead of punishing