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FIRST DIVISION

[G.R. No. 149549. February 26, 2004]

BUREAU OF INTERNAL REVENUE and the FACT FINDING AND INTELLIGENCE BUREAU, Represented by Dir. AGAPITO B. ROSALES, *petitioners, vs.* **LILIA B. ORGANO,** *respondent.*

SYNOPSIS

Respondent, a revenue collection officer of the Bureau of Internal Revenue (BIR), was charged with grave misconduct and dishonesty for receiving, without proper authority, withholding tax returns together with the corresponding check payments and giving them to a BIR clerk who was not likewise authorized to receive them and who subsequently deposited the checks in an unauthorized bank account. The administrative case was transferred to the Office of the Ombudsman which found respondent guilty of grave misconduct. On appeal, the Court of Appeals ruled that the evidence presented to prove respondent's culpability for grave misconduct was insufficient. Hence, this appeal revolving on the issue of whether respondent's acts amounted to grave misconduct.

The Supreme Court ruled that when respondent performed the denounced acts, it was already the established rule that income tax withheld was to be deposited in any authorized agent bank within the Revenue District Office where the withholding agent's office is located. It was only in places where there were no agent banks that payment was to be made to the Revenue District Officer. By accommodating and accepting withholding tax returns and check payments, respondent disregarded an established BIR rule. Because of her complicity in the transgression of the BIR regulation as well as her gross negligence, the Court found respondent administratively liable for misconduct. The sketchiness of the uncontroverted facts, however, failed to sufficiently establish flagrancy in her act. Hence, she was held liable only for simple, not gross, misconduct, for which she was suspended for six months.

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SYLLABUS

1. **REMEDIAL LAW; ACTIONS; APPEALS; QUESTION OF LAW AND QUESTION OF FACT, DISTINGUISHED; CASE AT BAR.**— There is a question of law in a given case when doubt or disagreement arises as to which law pertains to a certain state of facts; and there is a question of fact when doubt arises as to the truth or the falsity of the facts alleged. In the present case, there is no doubt as to the truth of the CA's finding of facts, which neither party controverts. The bone of contention centers on whether the law on grave misconduct applies to the admitted facts. Hence, resort to this Court *via* a petition for review under Rule 45 of the Rules of Court is proper.

2. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; MISCONDUCT, DEFINED.**— In *Arcenio v. Pagorogon,* the Court defined misconduct as "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer."

3. **ID.; ID.; ID.; SIMPLE AND GRAVE MISCONDUCT, DISTINGUISHED.**— As differentiated from simple misconduct, in grave misconduct "the elements of corruption, clear intent to violate the law or flagrant disregard of established rule, must be manifest."

4. **ID.; ID.; ID.; SIMPLE MISCONDUCT; PENALTY.**— The penalty provided by the Civil Service Rules for the first offense of simple misconduct is suspension for one (1) month and one (1) day to six (6) months.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Feir Ramos and *Associates Law Office* for respondent.

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DECISION

PANGANIBAN, *J.*:

Violations or disregard of regulations governing the custody, safekeeping and deposit of government funds are administratively sanctionable. Intended to safeguard public funds, these regulations must be followed strictly.

The Case

Invoking Rule 45 of the Rules of Court, petitioners seek to set aside the Decision[1] of the Court of Appeals[2] (CA) in CA-GR SP No. 60613, promulgated on June 22, 2001. The dispositive part of the Decision reads:

"*WHEREFORE*, the instant petition for review is *GRANTED*. The Decision dated March 13, 2000 and Order dated August 9, 2000 issued by the Office of the Ombudsman insofar as they declared petitioner Lilia B. Organo guilty of Grave Misconduct, is *REVERSED and SET ASIDE*, and petitioner Organo is hereby found *NOT GUILTY* of the charge of Grave Misconduct."[3]

On the other hand, the Office of the Ombudsman's March 13, 2000 Decision,[4] which was reversed by the CA, had disposed as follows:

"*WHEREFORE, PREMISES CONSIDERED*, this office finds respondents *DOMINGA S. MANALILI, LILIA ORGANO* and *JOEL MARCELO*, Guilty of *GRAVE MISCONDUCT*, for which the penalty of *DISMISSAL FROM THE SERVICE WITH FORFEITURE OF BENEFITS, CANCELLATION OF ELIGIBILITY and PERPETUAL*

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[1] *Rollo*, pp. 28-47.

[2] Fifteenth Division, composed of *JJ* Romeo A. Brawner (chairman), Remedios A. Salazar-Fernando (*ponente*), and Josefina Guevara-Salonga (member).

[3] Assailed Decision, p. 19; *rollo*, p. 46.

[4] Rendered by Graft Investigation Officer II Joselito P. Fangon and approved, except as to the Complaint against Teopisto Sapitula, by Ombudsman Aniano A. Desierto.

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DISQUALIFICATION [FROM] RE-EMPLOYMENT IN THE GOVERNMENT SERVICE is hereby imposed pursuant to Section 25 of Republic Act No. 6770 and Section 10, Rule III of Administrative Order No. 07.

"The Honorable x x x Commissioner, Bureau of Internal Revenue is hereby furnished a copy of this Decision for implementation, in accordance with law.

"The complaint against respondents *TEOPISTO SAPITULA* and *NORMA SOLOMON* is hereby *DISMISSED*, for insufficiency of evidence."[5]

The Facts

Respondent Lilia B. Organo is a revenue collection officer of the Bureau of Internal Revenue (BIR), Revenue Region 7, Quezon City. On May 13, 1997, then BIR Commissioner Liwayway Vinsons Chato filed with the BIR a formal administrative charge against petitioner for grave misconduct and dishonesty as follows:

"That you, a Revenue Collection Officer assigned in Revenue District Office No. 40, Cubao, Quezon City, on several occasions, received without proper authority, withholding tax returns together with its corresponding check payments from several taxpayers, among them, the House of Representatives, Quezon City Government, MAJECCA (a janitorial services [*sic*]), Josol Décor Improvement Center, Incorporated, and Ateneo de Manila University; that on February 20, 1997, you, without authority, received from Mr. Abraham G. Calica, Disbursing Officer of the House of Representatives, withholding tax returns with its corresponding check payments of the House of Representatives amounting to ₱22,841,517.84, which you subsequently gave to Mr. Joel DP. Marcelo, a Revenue Clerk in the Administrative Division, Revenue Region No. 7, Quezon City, who was not authorized to receive the same; that Mr. Joel DP. Marcelo deposited the aforesaid check payments with the Land Bank of the Philippines, West Triangle Branch, Diliman, Quezon City, under the unauthorized BIR Account No. 0232-1099-71; and that thereafter, checks were issued to different payees in various amounts drawn against the funds of the said

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[5] *Rollo*. pp. 90-91.

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unauthorized BIR account and were subsequently encashed, to the damage and prejudice to the government."[6]

Attached, among others, as an annex to the formal administrative Complaint was a copy of respondent's own Affidavit dated April 7, 1997.[7]

On June 10, 1997, respondent filed[8] her verified Answer, in which she admitted[9] that she had no specific authority allowing her to receive withholding tax returns and check payments. She alleged in her Counter-affidavit that her duties as collection officer consisted merely of collecting delinquent accounts and performing other tasks that her supervisor would assign to her from time to time; and that her acceptance of the withholding tax returns and check payments for transmittal to BIR-authorized banks was a mere assistance extended to taxpayers, without any consideration.[10]

The BIR's Personnel Inquiry Division conducted an administrative investigation. Atty. Antonio J. Mangubat of the Anti-Fraud Division was the lone witness. Marked as exhibits during the hearing were transmittal letters from Abraham Calica of the House of Representatives, all addressed to respondent. These did not bear her signature acknowledging receipt, but the signatures of some other persons like Bong Latonero.[11]

On December 12, 1997, Ombudsman Aniano Desierto issued an Order, the dispositive portion of which reads:

"ACCORDINGLY, pursuant to Section 21 of Republic Act No. 6770, otherwise known as the Ombudsman Act of 1989, this Office shall henceforth conduct the investigation and adjudication of the

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[6] Assailed Decision, p. 3; *rollo*, p. 30.

[7] *Rollo*, pp. 109-110.

[8] Assailed Decision, p. 3; *rollo*, p. 30.

[9] Motion for Reconsideration, p. 2; *rollo*, p. 144.

[10] Ombudsman's Decision, p. 7; *rollo*, p. 83.

[11] Lilia B. Organo's Petition for Review, p. 12; *rollo*, p. 63.

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administrative cases against respondents TEOPISTO A. SAPITULA, DOMINGA S. MANALILI, JOEL D.P. MARCELO, LILIA B. ORGANO and NORMA D. SOLOMON.

"Commissioner LIWAYWAY VINZONS-CHATO of the Bureau of Internal Revenue, and Mr. JESLI A. LAPUS, President of the Land Bank of the Philippines, are hereby requested to transfer and elevate to this Office the complete records of the respective administrative cases against respondents."[12]

Thus, the administrative case against respondent was transferred to the Office of the Ombudsman, which adopted the "proceedings, evidence/exhibits presented at the administrative proceedings before the Bureau of Internal Revenue."[13] In due course, it rendered its Decision finding respondent guilty of grave misconduct.

Ruling of the Court of Appeals

On appeal, the CA ruled that it had jurisdiction over the Petition, in accordance with *Fabian v. Desierto*.[14] On the issue of respondent's culpability for grave misconduct, the CA held that the evidence presented to prove it was insufficient. It reasoned thus:

"While the evidence, including an affidavit allegedly executed by petitioner dated April 7, 1997, purports to show that it was petitioner who received the withholding tax returns and check payments from Abraham Calica of the House of Representatives; that petitioner gave said returns and check payments to Joel DP. Marcelo; and that Marcelo in turn deposited the check payments under the unauthorized BIR Account No. 0232-10990-71, there is no showing that petitioner was aware that the check payments were going to be deposited in an unauthorized account. There is likewise no showing that petitioner knew that said unauthorized account was opened by Manalili, and that checks drawn against said account were issued in favor of third persons. The participation of petitioner was limited to receiving the

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[12] Assailed Decision, pp. 4-5; *rollo*, pp. 31-32.

[13] November 25, 1999 Order of the Office of the Ombudsman.

[14] 356 Phil. 787, September 16, 1998.

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check payments and passing it on to Marcelo, and then giving the returns and validated payments to Calica."[15]

Hence, this appeal.[16]

Issues

Petitioners submit the following issues for the resolution of this Court:

"A.

Whether there is substantial evidence to find respondent administratively guilty of grave misconduct.

"B.

Whether conspiracy between respondent and her co-accused in the criminal case is material in the administrative charge for grave misconduct."[17]

In sum, the main issue is whether respondent's acts amounted to grave misconduct.

The Court's Ruling

The Petition is partly meritorious.

Preliminary Issue:
Proper Remedy

Respondent contends that the Petition is not the proper remedy available to petitioners, since it raises pure questions of fact, a process not allowed under Rule 45 of the Revised Rules of Court.

We are not persuaded. There is a question of law in a given case when doubt or disagreement arises as to which law pertains

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[15] Assailed Decision, p. 18; *rollo*, p. 45.

[16] This case was deemed submitted for resolution on August 15, 2002, upon receipt by the Court of respondent's Memorandum signed by Atty. Nicolas B. Nicolas. Petitioner's Memorandum, signed by Assistant Solicitor General Carlos N. Ortega and Solicitor Magtanggol M. Castro, was received earlier on August 2, 2002.

[17] Petitioner's Memorandum, pp. 4-5; *rollo*, pp. 176-177.

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to a certain state of facts; and there is a question of fact when doubt arises as to the truth or the falsity of the facts alleged.[18] In the present case, there is no doubt as to the truth of the CA's finding of facts, which neither party controverts. The bone of contention centers on whether the law on grave misconduct applies to the admitted facts. Hence, resort to this Court *via* a petition for review under Rule 45 of the Rules of Court is proper.

Main Issue:

Grave Misconduct

The CA found the existence of the following facts: (1) respondent accommodated a payer of withholding tax and actually received the returns and the corresponding check payments therefor; (2) she had no authority to receive such returns and checks; (3) she gave the check payments to Joel Marcelo, a BIR clerk who did not have authority to receive it; and (4) Marcelo deposited the checks in an unauthorized bank account. Did these facts constitute grave misconduct on respondent's part?

She answers in the negative, saying that "[w]hat may not be authorized does not necessarily mean that they are prohibited and illegal."[19]

In *Arcenio v. Pagorogon*, the Court defined misconduct as "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer."[20] As differentiated from simple misconduct, in grave misconduct "the elements of corruption, clear intent to violate the law or flagrant disregard of established rule, must be manifest."[21]

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[18] *Spouses Caoili v. Court of Appeal*, 373 Phil. 122, September 14, 1999.

[19] Comment, p. 5; *rollo*, p. 154.

[20] 224 SCRA 246, 254, July 5, 1993, *per curiam*.

[21] *Landrito v. Civil Service Commission*, 223 SCRA 564, 567, June 22, 1993, per Quiason, *J.*

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In 1996 and 1997, when respondent performed the denounced acts, it was already the established rule that income tax withheld was to be deposited in any authorized agent bank within the Revenue District Office where the withholding agent's office is located. It was only in places where there were no agent banks that payment was to be made to the Revenue District officer. Revenue Regulation No. 4-93 states:

"Sec. 8. Sec. 16 of Revenue Regulation 6-82, as amended is hereby further amended to read, as follows:

"Sec. 16. Return and payment of income tax withheld on compensation BIR Form 1743-W — Every person required under the provisions of Chapter X, Title II of the NIRC, to deduct and withhold the tax on compensation shall make a return and pay such tax on or before the 10th day of the month following the month in which withholding was made ***to any authorized agent bank*** within the Revenue District Office ***or in places where there are no agent banks, to the Revenue District Officer*** of the City or Municipality where the Withholding Agent/Employers legal residence or place of business or office is located. x x x." (Emphasis supplied)

By accommodating and accepting withholding tax returns and check payments from Abraham Calica of the House of Representatives, respondent disregarded an established BIR rule. Revenue Regulation No. 4-93 requires payment through the banks precisely to avoid, whenever possible, BIR employees' direct receipt of tax payments. Yet, respondent was not deterred from making accommodations that circumvented this provision.

To compound matters, her acts were essential ingredients paving the way for the commission of fraud against, and consequent damage to, the government. Her claimed ignorance thereof cannot erase her liability. Obviously, she disregarded the established practice and rules. In the face of her silence, the fact that the checks ended up in an unauthorized BIR account eloquently speaks, at the very least, of her gross negligence in taking care of collections that should not have passed through her hands in the first place.

Because of her complicity in the transgression of the cited BIR regulation as well as her gross negligence, respondent is

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administratively liable for misconduct. The sketchiness of the uncontroverted facts, however, fails to sufficiently establish flagrancy in her act. Hence, she is liable only for simple, not gross, misconduct.

The penalty provided by the Civil Service Rules for the first offense of simple misconduct is suspension for one (1) month and one (1) day to six (6) months.

WHEREFORE, the Petition is hereby ***PARTLY GRANTED***, and the assailed Decision ***MODIFIED***. Respondent is found guilty of simple misconduct, for which she is ***SUSPENDED*** for six (6) months. No costs.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Ynares-Santiago, Carpio, and *Azcuna, JJ.,* concur.

EN BANC

[G.R. Nos. 151249-50. February 26, 2004]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ARIEL MACARANG,** *appellant.*

SYNOPSIS

Appellant was charged with qualified rape perpetrated on two separate occasions against his own daughter. After pre-trial, the prosecution proceeded to present evidence and thereafter, rested its case. The presentation of evidence for the defense, however, had been repeatedly postponed mostly at the instance of appellant and his lawyer which prompted the trial court to declare appellant to have waived his right to present evidence. Based on the prosecution evidence, the trial court found appellant guilty of two counts of qualified rape. He was sentenced to