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[G.R. No. 196201. June 19, 2012]

FRANCISCO T. DUQUE III, in his capacity as Chairman of the CIVIL SERVICE COMMISSION, *petitioner, vs.* **FLORENTINO VELOSO,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; DISHONESTY OF EMPLOYEE; PENALTY; APPLICATION OF MITIGATING, AGGRAVATING OR ALTERNATIVE CIRCUMSTANCES, ALLOWED. — Dismissal from the service is the prescribed penalty imposed by Section 52(A)(1), Rule IV of the Uniform Rules for the commission of dishonesty even as a first offense. The aforesaid rule underscores the constitutional principle that public office is a public trust and only those who can live up to such exacting standard deserve the honor of continuing in public service. It is true that Section 53, Rule IV of the Uniform Rules provides the application of mitigating, aggravating or alternative circumstances in the imposition of administrative penalties. Section 53, Rule IV applies only when clear proof is shown, using the specific standards set by law and jurisprudence, that the facts in a given case justify the mitigation of the prescribed penalty. In appreciating the presence of mitigating, aggravating or alternative circumstances to a given case, two constitutional principles come into play which the Court is tasked to balance. The first is public accountability which requires the Court to consider the improvement of public service, and the preservation of the public's faith and confidence in the government by ensuring that only individuals who possess good moral character, integrity and competence are employed in the government service. The second relates to social justice which gives the Court the discretionary leeway to lessen the harsh effects of the wrongdoing committed by an offender for equitable and humanitarian considerations.

2. ID.; ID.; ID.; ID.; WHEN LENGTH OF SERVICE IS CONSIDERED AGAINST THE OFFENDER; RATIONALE. — While in most cases, length of service is considered in

favor of the respondent, it is not considered where the offense committed is found to be serious or grave; or when the length of service helped the offender commit the infraction. The factors against mitigation are present in this case. Under the circumstances, the administrative offense of dishonesty committed by the respondent was serious on account of the supervisory position he held at Quedancor and the nature of Quedancor's business. Quedancor deals with the administration, management and disposition of public funds which the respondent was entrusted to handle. x x x In addition, the respondent's length of service allowed him to take advantage of his familiarity with Quedancor operations and employees – a factor that made the misappropriation possible.

3. **ID.; ID.; ID.; ID.; THE GENERAL PROVISION RELATING TO THE APPRECIATION OF MITIGATING, AGGRAVATING OR ALTERNATIVE CIRCUMSTANCES MUST YIELD TO THE EXPRESS PROVISION FOR THE PENALTY OF DISMISSAL; JUSTIFIED. —** The clear language of Section 52, Rule IV does not consider a first-time offender as a mitigating circumstance. Likewise, under statutory construction principles, a special provision prevails over a general provision. Section 53, Rule IV of the Uniform Rules, a general provision relating to the appreciation of mitigating, aggravating or alternative circumstances, must thus yield to the provision of Section 52, Rule IV of the Uniform Rules which expressly provides for the penalty of dismissal *even for the first commission of the offense*. While we are not unmindful of the existing jurisprudence cited by the respondent where the penalty of dismissal from the service was not imposed despite the clear language of Section 52, Rule IV of the Uniform Rules, the respondent failed to clearly show exceptional and compelling reasons to justify a deviation from the general rule.

4. **ID.; ID.; ID.; ID.; PRINCIPLE OF SOCIAL JUSTICE CANNOT BE PROPERLY SUSTAINED TO SHIELD THE RESPONDENT FROM THE FULL CONSEQUENCES OF HIS DISHONESTY; CASE AT BAR.—** All told, in reversing the CA's decision, we emphasize that the principle of social justice cannot be properly applied in the respondent's case to shield him from the full consequences of his dishonesty. x x x Prejudice to the service is not only through wrongful disbursement of public funds or loss of public property. Greater

Supreme Court E-Library

> damage comes with the public's perception of corruption and incompetence in the government. Thus, the Constitution stresses that a public office is a public trust and public officers must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives. These constitutionally-enshrined principles, oft-repeated in our case law, are not mere rhetorical flourishes or idealistic sentiments. They should be taken as working standards by all in the public service.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
John Aldrich D. Bonete for respondent.

D E C I S I O N

BRION, *J.*:

We review the petition filed under Rule 45 of the Rules of Court by petitioner Francisco T. Duque III, in his capacity as Chairman of the Civil Service Commission (*CSC*), assailing the decision[1] and the resolution[2] issued by the Court of Appeals (*CA*)[3] in CA-G.R. SP No. 01682-MIN. The CA modified CSC Resolution No. 061714,[4] finding Florentino Veloso (*respondent*) guilty of dishonesty, by reducing the penalty imposed by the CSC from dismissal from the service to suspension from office for one year without pay.

The Facts

The records show that the respondent, then District Supervisor of Quedan and Rural Credit Guarantee Corporation (*Quedancor*),

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[1] Dated August 20, 2010; *rollo*, pp. 28-33.

[2] Dated March 8, 2011; *id.* at 34-35.

[3] Twenty-First Division. The assailed rulings were penned by Associate Justice Edgardo T. Lloren, and concurred in by Associate Justice Romulo V. Borja and Associate Justice Ramon Paul L. Hernando.

[4] Dated September 25, 2006; *rollo*, pp. 41-52.

Supreme Court E-Library

Cagayan de Oro City, was administratively charged with three (3) counts of dishonesty in connection with his unauthorized withdrawals of money deposited by Juanito Quino (*complainant*), a client of Quedancor. The complainant applied for a restructuring of his loan with Quedancor and deposited the amount of ₱50,000.00 to Quedancor's cashier for his Manila account. In three (3) separate occasions, the respondent, without notice and authority from the complainant and with the assistance of Quedancor's cashier, managed to withdraw the ₱50,000.00 deposit. Upon the discovery of the withdrawals, the complainant demanded the return of the money and called the attention of the manager of Quedancor in Cagayan de Oro City, who issued to the respondent a memorandum requiring him to explain the withdrawals and to return the money.

In compliance with the memorandum, the respondent returned the money. The respondent admitted having received the ₱50,000.00 from Quedancor's cashier knowing that it was intended for the complainant's loan repayment.

From the established facts, the respondent was charged by Quedancor with dishonesty, and was subsequently found guilty of the charges and dismissed from the service. The CSC affirmed the findings and conclusions of Quedancor on appeal.

Dissatisfied with the adverse rulings of Quedancor and the CSC, the respondent elevated his case to the CA which adjudged him guilty of dishonesty, but modified the penalty of dismissal to one (1) year suspension from office without pay. The CA cited the case of *Miel v. Malindog*[5] as supporting basis and relied on Section 53, Rule IV of the Uniform Rules on Administrative Cases (*Uniform Rules*) which allows the appreciation of mitigating circumstances in the determination of the proper imposable penalty. The CA took into account the following mitigating circumstances: (1) the respondent's length of service of 18 years; (2) the prompt admission of culpability;

[5] G.R. No. 143538, February 13, 2009, 579 SCRA 119, 135, citing *Apuyan, Jr. v. Sta. Isabel*, Adm. Matter No. P-01-1497, 430 SCRA 1; and *Civil Service Commission v. Belagan*, G.R. No. 132164, October 19, 2004, 440 SCRA 578.

Supreme Court E-Library

(3) the return of the money; and (4) the respondent's status as a first time offender.

The Present Petition

The CSC argues that the CA disregarded the applicable law and jurisprudence which penalize the offense of dishonesty with dismissal from the service. The CSC also argues that there are no mitigating circumstances to warrant a reduction of the penalty, for the following reasons:

(1) The respondent's length of service aggravated his dishonesty since the respondent took advantage of his authority over a subordinate and disregarded his oath that a public office is a public trust. The respondent's length of service cannot also be considered mitigating given the number of times the dishonest acts were committed and the supervisory position held by the respondent.

(2) The admission of guilt and the restitution by the respondent were made in 2003, while the misappropriation took place in 2001. The respondent admitted his culpability and effected payment not because of his desire to right a wrong but because he feared possible administrative liabilities.

(3) The respondent was charged with, and admitted having committed, dishonesty in three separate occasions.

(4) Section 52(A)(1), Rule IV of the Uniform Rules imposes dismissal from the service for dishonesty, even for the first offense.

In compliance with our Minute Resolution dated May 31, 2011, the respondent filed his comment to the petition. The respondent begs the Court to apply jurisprudence where the Court, for humanitarian reasons, refrained from meting out the actual penalties imposed by law, in the presence of mitigating circumstances. In this case, the respondent calls attention to the following circumstances: (1) that he is the sole breadwinner of his family; (2) his length of service with Quedancor; and (3)

Supreme Court E-Library

other than this case, no other administrative case had been filed against him for his past 21 years of government service.[6]

The Issue

The issue in this case is the determination of the proper administrative penalty to be imposed on the respondent.

The Court's Ruling

We grant the petition.

Dismissal from the service is the prescribed penalty imposed by Section 52(A)(1), Rule IV of the Uniform Rules for the commission of dishonesty even as a first offense. The aforesaid rule underscores the constitutional principle that public office is a public trust and only those who can live up to such exacting standard deserve the honor of continuing in public service.[7] It is true that Section 53, Rule IV of the Uniform Rules provides the application of mitigating, aggravating or alternative circumstances in the imposition of administrative penalties. Section 53, Rule IV applies only when clear proof is shown, using the specific standards set by law and jurisprudence, that the facts in a given case justify the mitigation of the prescribed penalty.

In appreciating the presence of mitigating, aggravating or alternative circumstances to a given case, two constitutional principles come into play which the Court is tasked to balance. The first is public accountability which requires the Court to consider the improvement of public service, and the preservation of the public's faith and confidence in the government by ensuring that only individuals who possess good moral character, integrity and competence are employed in the government service.[8] The second relates to social justice which gives the Court the discretionary leeway to lessen the harsh effects of the wrongdoing

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[6] *Rollo*, pp. 60-65.

[7] *Cesar S. Dumduma v. Civil Service Commission*, G.R. No. 182606, December 4, 2011.

[8] *Civil Service Commission v. Cortez*, G.R. No. 155732, June 3, 2004, 430 SCRA 593, 608.

Supreme Court E-Library

committed by an offender for equitable and humanitarian considerations.

A significant aspect which the CA failed to consider under the circumstances is the inapplicability to the present case of the Court's ruling in *Vicente A. Miel v. Jesus A. Malindog*,[9] which in turn cited *Apuyan, Jr. v. Sta. Isabel*[10] and *Civil Service Commission v. Belagan*.[11] The rulings in these three (3) cases were rendered under different factual circumstances involving dishonest acts, *i.e.,* submission of false entries in the Personal Data Sheet, the solicitation of money, or the non-compliance with the prescribed court procedure, among others. In terms of seriousness and gravity, these dishonest acts differ from the dishonest acts committed by the respondent **who used public funds under his responsibility for his own personal benefit**. Unlike the cases cited by the CA, we also take into account the **nature** of Quedancor's business – it is a credit and guarantee institution where the public perception of the official's credibility and reputation is material.

In the clearest of terms, the CA upheld that factual findings of the CSC. Thus, it is on the basis of these findings that we must now make our own independent appreciation of the circumstances cited by the respondent and appreciated by the CA as mitigating circumstances. After a careful review of the records and jurisprudence, we disagree with the CA's conclusion that mitigating circumstances warrant the mitigation of the prescribed penalty imposed against the respondent.

First, we have repeatedly held that length of service can either be a mitigating or an aggravating circumstance depending on the facts of each case.[12] While in most cases, length of service is considered in favor of the respondent, it is not considered where the offense committed is found to be serious

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[9] *Supra* note 5.

[10] *Supra* note 5.

[11] *Supra* note 5.

[12] *Civil Service Commission v. Cortez*, *supra* note 8, at 604.

Supreme Court E-Library

or grave;[13] or when the length of service helped the offender commit the infraction.[14] The factors against mitigation are present in this case.

Under the circumstances, the administrative offense of dishonesty committed by the respondent was serious on account of the supervisory position he held at Quedancor and the nature of Quedancor's business. Quedancor deals with the administration, management and disposition of public funds which the respondent was entrusted to handle.

The respondent's dishonest acts carried grave consequences because Quedancor is a credit and guarantee institution, and the public's perception of its credibility is critical. In this case, the sanction of dismissal imposed on the respondent as a dishonest employee assures the public that: first, public funds belonging to Quedancor are used for their intended purpose; second, public funds are released to their proper recipients only after strict compliance with the standard operating procedure of Quedancor is followed; and lastly, only employees who are competent, honest and trustworthy may manage, administer and handle public funds in Quedancor.

Like a bank, Quedancor as a credit and guarantee institution is expected to observe the highest degree of competence and diligence as it is a business imbued with public interest.[15] To promote trust and confidence, employees in Quedancor are expected to possess the highest standards of integrity and moral uprightness. The respondent's dismissal from the service is a measure of self-protection and self-preservation by Quedancor of its reputation before its clients and the public.

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[13] *Id.* at 605, citing *University of the Philippines v. Civil Service Commission, et al.*, G.R. No. 89454, April 20, 1992, 208 SCRA 174; *Yuson v. Noel*, A.M. No. RTJ-91-762, October 23, 1993, 227 SCRA 1; and *Concerned Employee v. Nuestro*, A.M. No. P-02-1629, September 11, 2002, 388 SCRA 568.

[14] *Id.* at 605-606.

[15] *Philippine Savings Bank v. Chowking Food Corporation*, G.R. No. 177526, July 4, 2008, 557 SCRA 318, 330.

Supreme Court E-Library

We additionally note that length of service should also be taken against the respondent; the infraction he committed and the number of times he committed the violations demonstrate the highest degree of ingratitude and ungratefulness to an institution that has been the source of his livelihood for 18 years. His actions constitute no less than disloyalty and betrayal of the trust and confidence the institution reposed in him. They constitute ingratitude for the opportunities given to him over the years for career advancement. Had it not been for the respondent's length of service, he could not have taken the subject funds for his own use as he could not have held a supervisory position. In addition, the respondent's length of service allowed him to take advantage of his familiarity with Quedancor operations and employees – a factor that made the misappropriation possible.

Second, the circumstance that this is the respondent's first administrative offense should not benefit him. By the express terms of Section 52, Rule IV of the Uniform Rules, the commission of an administrative offense classified as a serious offense (like dishonesty) is punishable by dismissal from the service even for the first time. In other words, the clear language of Section 52, Rule IV does not consider a first-time offender as a mitigating circumstance. Likewise, under statutory construction principles, a special provision prevails over a general provision.[16] Section 53, Rule IV of the Uniform Rules, a general provision relating to the appreciation of mitigating, aggravating or alternative circumstances, must thus yield to the provision of Section 52, Rule IV of the Uniform Rules which expressly provides for the penalty of dismissal *even for the first commission of the offense*.

While we are not unmindful of the existing jurisprudence[17] cited by the respondent where the penalty of dismissal from the service was not imposed despite the clear language of Section 52, Rule IV of the Uniform Rules, the respondent failed to clearly show exceptional and compelling reasons to justify a deviation from the general rule.

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[16] *Vinzons-Chato v. Fortune Tobacco Corporation*, G.R. No. 141309, June 19, 2007, 525 SCRA 11, 23.

[17] *Supra* note 5.

Finally, we reject as mitigating circumstances the respondent's admission of his culpability and the restitution of the amount. As pointed out by the CSC, the respondent made use of the complainant's money in 2001 while the restitution was made only in 2003, during the pendency of the administrative case against him.[18] Under the circumstances, the restitution was half-hearted and was certainly neither purely voluntary nor made because of the exercise of good conscience; it was triggered, more than anything else, by his fear of possible administrative penalties.[19] The admission of guilt and the restitution effected were clearly mere afterthoughts made two (2) years after the commission of the offense and after the administrative complaint against him was filed. With these circumstances in mind, we do not find it justified to relieve the respondent of the full consequences of his dishonest actions.

All told, in reversing the CA's decision, we emphasize that the principle of social justice cannot be properly applied in the respondent's case to shield him from the full consequences of his dishonesty. The Court, in *Philippine Long Distance Telephone Co. v. NLRC*,[20] clearly recognized the limitations in invoking social justice:

> **The policy of social justice is not intended to countenance wrongdoing simply because it is committed by the underprivileged**. At best it may mitigate the penalty but it certainly will not condone the offense. Compassion for the poor is an imperative of every humane society but only when the recipient is not a rascal claiming an undeserved privilege. **Social justice cannot be permitted to be [the] refuge of scoundrels any more than can equity be an impediment to the punishment of the guilty. Those who invoke social justice may do so only if their hands are clean and their motives blameless and not simply because they happen to be poor**. This great policy of our Constitution is not meant for the protection of those who have proved they are not worthy of it, like the workers who have tainted the cause of labor with the blemishes of their own character.[21] [Emphases supplied.]

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[18] *Rollo*, p. 20.

[19] *Ibid.*

[20] 247 Phil. 641 (1988).

[21] *Id.* at 650.

Supreme Court E-Library

Prejudice to the service is not only through wrongful disbursement of public funds or loss of public property.[22] Greater damage comes with the public's perception of corruption and incompetence in the government.[23]

Thus, the Constitution stresses that a public office is a public trust and public officers must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.[24] These constitutionally-enshrined principles, oft-repeated in our case law, are not mere rhetorical flourishes or idealistic sentiments. They should be taken as working standards by all in the public service.[25]

WHEREFORE, premises considered, we **GRANT** the petition, and **REVERSE and SET ASIDE** the decision dated August 20, 2010 and the resolution dated March 8, 2011 issued by the Court of Appeals in CA-G.R. SP No. 01682-MIN. The resolutions of the Civil Service Commission, affirming the decision dated August 11, 2004 of the Quedan and Rural Credit Guarantee Corporation, imposing upon respondent Florentino Veloso the penalty of dismissal from the service, with the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification for reemployment in the government service, for dishonesty, are hereby **REINSTATED.**

SO ORDERED.

Carpio, Senior Associate Justice, concurs.

Leonardo-de Castro, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Sereno, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Velasco, Jr., and *Mendoza, JJ.,* on leave.

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[22] *Jerome Japson v. Civil Service Commission,* G.R. No. 189479, April 12, 2011.

[23] *Ibid.*

[24] *Ibid.*

[25] *Ibid.*