



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

HILARION F. DIMAGIBA,  
IRMA MENDOZA, and ELLEN  
RASCO,

Petitioners, .

- versus -

JULITA ESPARTERO, MA.  
BERNARDITA L. CARREON and  
MELINA SAN PEDRO,

Respondents.

G.R. No. 154952

Present:

VELASCO, JR., J., Chairperson,  
PERALTA,  
ABAD,  
MENDOZA, and  
PERLAS-BERNABE, JJ.

Promulgated:

16 July 2012

*Maureen*

X -----X

DECISION

PERALTA, J.:

Assailed in this petition for review on *certiorari* are the Decision<sup>1</sup> dated May 30, 2002 and the Resolution<sup>2</sup> dated August 28, 2002 of the Court of Appeals issued in CA-G.R. SP No. 61261.

Petitioners Hilarion Dimagiba (Dimagiba), Irma Mendoza (Mendoza), and Ellen Rasco (Rasco) were employees of The Livelihood Corporation (LIVECOR), a government-owned and controlled corporation created under Executive Order No. 866. Petitioner Dimagiba was the Group Manager,

<sup>1</sup> Penned by Associate Justice Josefina Guevara-Salonga, with Associate Justices Eubulo G. Verzola and Bernardo P. Abesamis, concurring; *rollo*, pp. 46-68.

<sup>2</sup> *Id.* at 70-72.

*N*

Asset Development and Management Group; petitioner Mendoza was the Division Chief III, Asset Development and Management Group; and petitioner Rasco was the Project Evaluation Officer IV, Asset Development and Management Group.

On March 8, 1990, LIVECOR and the Human Settlement Development Corporation (HSDC), now known as Strategic Investment and Development Corporation (SIDCOR), also a government-owned and controlled corporation, created under Presidential Decree (P.D.) 1396, entered into a Trust Agreement<sup>3</sup> whereby the former would undertake the task of managing, administering, disposing and liquidating the corporate assets, projects and accounts of HSDC. In HSDC Board Resolution No. 3-26-A<sup>4</sup> dated March 26, 1990, it was provided that in order to carry out the trust agreement, LIVECOR personnel must be designated concurrently to operate certain basic HSDC/SIDCOR functions, thus, LIVECOR personnel, namely, petitioners Dimagiba and Mendoza were designated as Assistant General Manager for Operations and Head, Inter-Agency Committee on Assets Disposal and as Treasurer and Controller, respectively. The same resolution provided for the designees' monthly honoraria and commutable reimbursable representation allowances (CRRRA). Petitioner Rasco was designated as Technical Assistant to the Officer-in-Charge (OIC), also with CRRRA, under HSDC Board Resolution No. 05-19-B<sup>5</sup> dated May 19, 1993.

In a letter<sup>6</sup> dated November 14, 1997, the Department of Budget and Management informed LIVECOR of the approval of its organization/staffing pattern modifications which resulted in the abolition of petitioners' positions. As a result, petitioners were separated from the service

---

<sup>3</sup> *Rollo*, pp. 89-96; The trust agreement was extended for another five years; *rollo*, pp. 97-99.

<sup>4</sup> *CA rollo*, p. 136.

<sup>5</sup> *Id.* at 137.

<sup>6</sup> *Rollo*, pp. 100-101.

effective June 30, 1998 and were each given a separation package<sup>7</sup> as follows:

	Dimagiba	Mendoza	Rasco
1. Separation Pay	₱ 608,580.00	₱ 815,021.91	₱ 519,125.16
2. Gratuity Pay	165,600.00	132,150.00	112,555.00
3. Terminal Pay	352,075.48	58,398.18	22,633.25
4. Last Month Gross Salary	17,410.00	15,815.00	13,555.50
5. Service Award	<u>10,000.00</u>	<u>10,000.00</u>	<u>10,000.00</u>
TOTAL	₱1,153,665.48	₱1,031,385.00	₱ 678,169.91

The HSDC resolved to terminate petitioners' services because the latter's separation from LIVECOR would no longer allow them to perform their functions at the HSDC. However, the HSDC, through its OIC, Jose Rufino, wrote the Office of the Government Corporate Counsel (OGCC) and sought its opinion on the legality of HSDC's granting gratuity pay to petitioners.

On April 8, 1998, the OGCC rendered Opinion No. 078,<sup>8</sup> series of 1998, which resolved among others the grant of gratuity pay to petitioners. The OGCC found that it is within the power of the Board to grant reasonable Gratuity Pay/Package to petitioners subject to the usual rules of the Commission on Audit (COA) pertaining to allowances/benefits and disbursements of funds.

On May 19, 1998, the HSDC Board passed Resolution No. 05-19-A<sup>9</sup> terminating petitioners' services but resolved to grant petitioners their Gratuity Package/Pay, as follows:

1. MR. HILARION DIMAGIBA is hereby granted a Gratuity Package as follows:

1.1 Gratuity Pay in the amount of SEVEN HUNDRED THOUSAND PESOS (₱700,000.00);

<sup>7</sup> CA Decision, *id.* at 49.

<sup>8</sup> *Rollo*, pp. 105-108.

<sup>9</sup> *Id.* at 109-110.

1.2 Termination of LBP Lease Agreement No. 282-C/Lease Schedule I (Nissan Sentra UDC 919) effective 15 July 1998 in favor of Mr. Dimagiba, with Mr. Dimagiba paying LBP Leasing Corporation all charges, fees penalties, etc., including pre-termination charges;

2. MS. IRMA MENDOZA is hereby granted a Gratuity Pay in the amount of ONE HUNDRED EIGHTY THOUSAND (₱180,000.00) PESOS;

3. MS. ELLEN RASCO is hereby granted a Gratuity Pay in the amount of SIXTY THOUSAND PESOS (₱60,000.00).

RESOLVED FURTHER, That the total budgetary requirement and disbursement of the above Gratuity Pay is hereby approved and allocated from Corporate Funds;

RESOLVED FINALLY, That the Officer-in-Charge and the Trustee of corporate funds are hereby directed and authorized to disburse funds and execute the necessary documentation, acts and deeds relative to the immediate and full implementation of this resolution.<sup>10</sup>

In a Memorandum dated July 17, 1998 issued by LIVECOR Administrator Manuel Portes (Portes), it was stated that any payment of gratuities by the HSDC/SIDCOR to LIVECOR officers concurrently performing HSDC functions shall not be processed without prior clearance from him as the same shall be first cleared with the COA and OGCC to avoid any legal problem. Portes then sought the opinion of LIVECOR's Resident COA Auditor, Alejandro Fumar, regarding petitioners' claim for additional gratuity, who opined that such gratuity payment would amount to double compensation.

Subsequently, petitioners wrote a letter<sup>11</sup> dated July 29, 1998 addressed to Portes requesting for the processing of their HSDC gratuity pay. Attached in their letter were OGCC Opinion No. 078 and a letter<sup>12</sup> from the Presidential Management Staff (PMS), dated June 29, 1998, concurring with the OGCC's opinion.

---

<sup>10</sup> *Id.* at 110.

<sup>11</sup> *Id.* at 115.

<sup>12</sup> *Id.* at 114.

Portes then instructed respondent Atty. Ma. Bernardita L. Carreon (Carreon), Attorney IV of LIVECOR's Legal Services Department and a designated member of Special Task Force for HSDC, to draft a letter seeking clarification on OGCC Opinion No. 078. He likewise requested the LIVECOR Legal Services Department to issue an opinion on the matter of petitioners' HSDC/SIDCOR gratuity pay.

In a Memorandum<sup>13</sup> dated August 25, 1998 addressed to Portes, respondent Atty. Julita A. Espartero (Espartero), then LIVECOR'S Chief Legal Counsel, wrote that petitioners' designation as HSDC officers would not entitle them to receive any gratuity pay because:

First, the purpose for which Mr. Dimagiba, Ms. Mendoza and Ms. Rasco were elected or designated as SIDCOR officers is already made clear in the subject Resolution which provides as follows, *viz*: WHEREAS, in order to carry out the trust, LIVECOR personnel must be designated/elected concurrently to operate certain basic SIDCOR corporate offices/positions.

The election or designation of Mr. Dimagiba, Ms. Mendoza and Ms. Rasco as SIDCOR officers were not intended to be independent of or separate from their employment with LIVECOR but was made precisely because of their being LIVECOR personnel tasked to carry out the Trust Agreement between SIDCOR and LIVECOR.

Second, Mr. Dimagiba, Ms. Mendoza and Ms. Rasco do not receive salaries or wages from SIDCOR but CRREs. This clearly shows that they are not organic SIDCOR employees but, as heretofore indicated, LIVECOR officers merely holding concurrent positions in SIDCOR.

The reason for the above-mentioned arrangement (grant of CRREs and not salaries or wages) is that: "While dual appointments in two government-owned corporations are permissible, dual compensation is not."

To allow Mr. Dimagiba, Ms. Mendoza and Ms. Rasco, therefore, to receive gratuity pay/package apart from what they are entitled to receive or have already received from LIVECOR will be to subvert or indirectly circumvent the above-stated legal principle.

Third, not being organic SIDCOR employees but LIVECOR officers merely holding concurrent positions in SIDCOR, Mr. Dimagiba, Ms. Mendoza and Ms. Rasco cannot be said to have been "separated" from SIDCOR.<sup>14</sup>

---

<sup>13</sup> CA *rollo*, pp. 195-197.

<sup>14</sup> *Id.* at 195-196.

In the meantime, petitioners had requested respondent Melina San Pedro (San Pedro), LIVECOR's Financial Analyst, to sign and process the disbursement vouchers for the payment of their gratuity pay but the latter refused to do so because of the adverse opinion of the LIVECOR Legal Department and based on the memorandum issued by Portes.

In October 1998, Portes was replaced by Atty. Salvador C. Medialdea (Atty. Medialdea) to whom petitioners subsequently referred the matter of their gratuity payment. In a letter<sup>15</sup> dated June 14, 1999, Atty. Medialdea sought clarification from the OGCC regarding its Opinion No. 078. The OGCC responded with the issuance of its Opinion No. 019,<sup>16</sup> s. 2000 on January 31, 2000, where it declared that HSDC Resolution No. 05-19-A, granting gratuities in favor of petitioners, could not be implemented as the intended beneficiaries were prohibited by law from receiving the same, citing Section 8 of Article IX-B of the Constitution, *i.e.*, proscription on double compensation.

On October 27, 1998, petitioners filed with the Office of the Ombudsman a Complaint-Affidavit charging Administrator Portes, Atty. Christine Tomas-Espinosa, Chief of Staff of the Office of the Administrator, respondents Espartero, Carreon, and San Pedro, with grave misconduct, conduct prejudicial to the best interest of the service, inefficiency and incompetence in the performance of official functions, and violation of Section 5 (a), Republic Act (RA) No. 6713.

In their complaint-affidavit, petitioners alleged that respondents conspired in refusing to release their gratuity pay and that such refusal for an unreasonable length of time despite repeated demands constituted the offenses charged.

---

<sup>15</sup> *Rollo*, pp. 469-476.

<sup>16</sup> *CA rollo*, pp. 206-213

Respondents filed their respective Counter-Affidavits denying the charges against them. Respondent Espartero contended that her actions relative to the processing of gratuity pay merely consisted of rendering an opinion that such gratuity would amount to double compensation, while respondent Carreon alleged that her only participation with regard to petitioners' claims for additional gratuity was to draft a letter addressed to the OGCC. On the other hand, respondent San Pedro claimed that her refusal to affix her signature on petitioners' disbursement vouchers for the release of said gratuity pay was based on the memorandum of Administrator Portes preventing LIVECOR officers and employees from acting on any claims for gratuity without the latter's prior approval.

On June 2, 2000, the Ombudsman rendered its Decision,<sup>17</sup> the dispositive portion of which reads:

WHEREFORE, foregoing premises considered, respondents JULITA ESPARTERO, BERNARDITA CARREON and MELINA SAN PEDRO are hereby found guilty of Gross Neglect of Duty, Oppression, Conduct Prejudicial to the Best Interest of Service, Inefficiency and Incompetence, and Violation of Section 5 (a), Republic Act No. 6713, and are hereby meted out the penalty of DISMISSAL from the service coupled with the accessory penalties of cancellation of their eligibilities, forfeiture of leave credits and retirement benefits as well as disqualification of reemployment in the government service pursuant to Sections 9, 17 and 22, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292.

On the contrary, the instant complaint against respondents MANUEL PORTES and CHRISTINE TOMAS-ESPINOSA is DISMISSED for being moot and academic, they being already out of the government service without prejudice to any civil or criminal actions filed against them.

Furthermore, pursuant to Section 15 (2), Republic Act No. 6770, the incumbent Administrator of the Livelihood Corporation and other public officers concerned are hereby directed to facilitate the processing and payment of complainants' gratuity in accordance with HSDC Board Resolution No. 05-19-A, s. 1998.

The Honorable Administrator, Livelihood Corporation (LIVECOR), 7/F Hanston Building, Emerald Avenue, Pasig City, is hereby tasked to implement this Decision in accordance with law

---

<sup>17</sup> *Rollo*, pp. 488-520.

informing this Office of the action taken thereon within ten (10) days upon receipt hereof.

Let copies of this Decision be furnished the Civil Service Commission for their guidance and reference.

SO ORDERED.<sup>18</sup>

In so ruling, the Ombudsman stated that the prohibition on double compensation would not apply to pensions or gratuities because they are gifts or bounty given in recognition of the employees' past services. It found that the HSDC Board had the discretion and authority to decide on matters which were within its competence and jurisdiction, such as granting of benefits and retirement gratuities to its officers and employees. It concluded that payment of petitioners' gratuities did not involve judgment or discretion on LIVECOR's part, hence, a ministerial act; and that Resolution No. 05-19-A which granted the gratuity pay to petitioners directed LIVECOR as HSDC's trustee to disburse funds and execute the necessary documentation for the full implementation of the same.

Respondents filed their motions for reconsideration, which the Ombudsman disposed in an Order<sup>19</sup> dated August 8, 2000 in this wise:

WHEREFORE, except as to the finding of guilt on respondent ESPARTERO's alleged violation of Section 5 (a), Republic Act No. 6713, the assailed June 23, 2000 DECISION is affirmed with finality.<sup>20</sup>

SO ORDERED.

On September 7, 2000, the Ombudsman issued an Order<sup>21</sup> directing the implementation of its decision; thus, LIVECOR's Final Notice of Dismissal from Service were subsequently served on respondents. Petitioners' gratuity pay were then released.

---

<sup>18</sup> *Id.* at 518-519.

<sup>19</sup> *Id.* at 601-616.

<sup>20</sup> *Id.* at 615.

<sup>21</sup> *CA rollo*, pp. 379-380.



Respondents filed with the CA a petition for review under Rule 43 with application for a writ of preliminary mandatory injunction and/or temporary restraining order (TRO) and/or writ of preliminary prohibitory injunction. The CA issued a TRO<sup>22</sup> and later granted the writ of preliminary injunction.<sup>23</sup>

On May 30, 2002, the CA rendered its assailed Decision, the dispositive portion of which reads:

WHEREFORE, the petition is hereby GRANTED and the assailed decision of the Office of the Ombudsman, dated June 2, 2000, and the Order dated August 8, 2000, are REVERSED and SET ASIDE and judgment is hereby rendered:

1. Reinstating petitioners to their positions held prior to their dismissal from office with full backwages and benefits;
2. Ordering private respondents to return the gratuity packages received from HSDC; and
3. Granting a permanent and final injunction enjoining the Office of the Ombudsman from executing the assailed decision and Order.<sup>24</sup>

The CA found that the gratuity packages received by petitioners from HSDC constituted the prohibited additional or double compensation under the Constitution. It found no evidence to support the Ombudsman decision finding respondents guilty of the administrative charges as they acted accordingly as public officers. Anent the issue of the timeliness of the filing of the petition, the CA ruled that petitioners filed their appeal within the 15-day period prescribed under Section 4 of Rule 43 of the Rules of Court, relying on the case of *Fabian v. Desierto*.<sup>25</sup> However, since there was no clear pronouncement that appeals of Ombudsman decision in administrative cases cannot be made under Section 4 of Rule 43, the dismissal of the petition on the ground that it was filed beyond the 10-day period provided under Section 27 of RA 6770, or the Ombudsman Act of 1989, would result

---

<sup>22</sup> Resolution dated September 25, 2000, *id.* at 506-507.

<sup>23</sup> Resolution dated December 26, 2000, *id.* at 689-690.

<sup>24</sup> *Rollo*, p. 67.

<sup>25</sup> G.R. No. 129742, September 16, 1998, 295 SCRA 470.

to glaring injustice to respondents; and that dismissal of appeals purely on technical grounds is frowned upon especially if it will result to injustice.

Petitioners' motion for reconsideration was denied by the CA in a Resolution dated August 28, 2002.

Hence, this petition for review. Petitioners raise the following issues:

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED WHEN IT GAVE DUE COURSE TO RESPONDENTS' PETITION FOR REVIEW DESPITE BEING FILED BEYOND THE REGLEMENTARY PERIOD OF TEN (10) DAYS SET BY SECTION 27 OF REPUBLIC ACT 6770.

WHETHER OR NOT THE COURT OF APPEALS ERRED WHEN IT RULED THAT THE GRATUITIES GRANTED TO PETITIONERS DIMAGIBA, MENDOZA AND RASCO BY HSDC CONSTITUTE DOUBLE COMPENSATION PROHIBITED UNDER ARTICLE IX (B), SECTION 8 OF THE 1987 CONSTITUTION DESPITE THE FACT THAT SAID GRATUITIES CLEARLY FALL UNDER THE EXCEPTION UNDER THE SAME PROVISION.<sup>26</sup>

Anent the first issue, petitioners contend that the CA erred in acting on the petition which was filed beyond the 10-day reglementary period for filing the same as provided under Section 27 of RA 6770. They claim that respondents received the Ombudsman order denying their motion for reconsideration on August 25, 2000 and filed a motion for extension of time with the CA on September 11, 2000, which was the 15<sup>th</sup> day from receipt of the order, relying on our ruling in *Fabian v. Desierto*<sup>27</sup> and Rule 43 of the Rules of Court. Petitioners cite the cases of *Lapid v. CA*<sup>28</sup> and *Barata v. Abalos, Jr.*<sup>29</sup> to support the application of the 10-day period for filing the petition in the CA from receipt of the Ombudsman order.

We are not persuaded.

---

<sup>26</sup> *Rollo*, p. 30.

<sup>27</sup> *Supra* note 25.

<sup>28</sup> G.R. No. 142261, June 29, 2000, 334 SCRA 738.

<sup>29</sup> G.R. No. 142888, June 6, 2001, 358 SCRA 575.

Section 27 of RA 6770 provides as follows:

Section 27. *Effectivity and Finality of Decisions.* - All provisional orders of the Office of the Ombudsman are immediately effective and executory.

X X X X

Findings of fact by the Office of the Ombudsman when supported by substantial evidence are conclusive. Any order, directive or decision imposing the penalty of public censure or reprimand, suspension of not more than one month's salary shall be final and unappealable.

In all administrative disciplinary cases, orders, directives or decisions of the Office of the Ombudsman may be appealed to the Supreme Court by filing a petition for *certiorari* within ten (10) days from receipt of the written notice of the order, directive or decision or denial of the motion for reconsideration in accordance with Rule 45 of the Rules of Court.

The then Rules of Procedure of the Office of the Ombudsman likewise contain a similar provision. Section 7, Rule III of Administrative Order (A.O.) No. 07<sup>30</sup> provides as follows:

Sec. 7. *Finality and Execution of Decision* - Where the respondent is absolved of the charge and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final, executory and unappealable. In all other cases, the decision shall become final after the expiration of ten (10) days from receipt thereof by the respondent, unless a motion for reconsideration or petition for *certiorari*, shall have been filed by him as prescribed in Section 27 of R.A. 6770.

In *Fabian v. Desierto*,<sup>31</sup> we declared unconstitutional Section 27 of RA 6770 and Section 7, Rule III of A.O. No. 7 and any other provision of law implementing the aforesaid Act and insofar as they provide for appeals in administrative disciplinary cases from the Office of the Ombudsman to the Supreme Court. We held that such provision was violative of Section 30, Article VI of the Constitution as it expanded our appellate jurisdiction without our advice and concurrence; and that it was also inconsistent with Section 1, Rule 45 of the Rules of Court which provides that a petition for review on *certiorari* shall apply only to a review of judgments or final

---

<sup>30</sup> Dated April 10, 1990.

<sup>31</sup> *Supra* note 25, at 489.

orders of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court, or other courts authorized by law. We then said:

As a consequence of our ratiocination that Section 27 of Republic Act No. 6770 should be struck down as unconstitutional, and in line with the regulatory philosophy adopted in appeals from quasi-judicial agencies in the 1997 Revised Rules of Civil Procedure, appeals from decisions of the Office of the Ombudsman in administrative disciplinary cases should be taken to the Court of Appeals under the provisions of Rule 43.<sup>32</sup>

Subsequently, in *Lapid v. CA*<sup>33</sup> which involved the issue of whether or not the decision of the Ombudsman finding then Governor Manuel Lapid administratively liable for misconduct and imposing on him a penalty of one year suspension without pay is immediately executory. We then ruled:

x x x The only provision affected by the *Fabian* ruling is the designation of the Court of Appeals as the proper forum and of Rule 43 of the Rules of Court as the proper mode of appeal. All other matters included in said Section 27, including the finality or non-finality of decisions, are not affected and still stand.<sup>34</sup>

Thus, we said that since the penalty imposed on Lapid which was one year suspension was not among those enumerated under Section 27 as final and unappealable, an appeal timely filed by Lapid will stay the immediate implementation of the decision of the Ombudsman appealed from.

Later came the case of *Barata v. Abalos, Jr.*<sup>35</sup> which was decided in 2001. The issue brought to us then was whether the CA committed grave abuse of discretion in ruling that the Ombudsman decision exonerating respondent Mayor Abalos, Jr. of an administrative charge is not appealable, which we answered in the negative. We also said that even on the assumption that appeal is allowed, the same can no longer prosper, thus:

---

<sup>32</sup> *Id.* at 491.

<sup>33</sup> *Supra* note 28.

<sup>34</sup> *Id.* at 750.

<sup>35</sup> *Supra* note 29.

This notwithstanding, even on the assumption that appeal is allowed, the same can no longer prosper. As correctly pointed out by private respondent, since the Order dated September 10, 1999 of the Ombudsman denying the motion for reconsideration was received by petitioner on October 15, 1999, petitioner had until October 25, 1999 to appeal in accordance with Section 27, R.A. 6770 or at the most, until November 24, 1999, if he availed of the 30-day extension provided under Section 2, Rule 43 of the 1997 Rules on Civil Procedure. However, the petition was filed with the Court of Appeals only on February 1, 2000, way beyond the reglementary period.<sup>36</sup>

Thus, it appeared that the period provided under Section 27 of RA 6770 which is ten days must be observed in filing a petition with the CA assailing the Ombudsman decision in administrative case.

In this case, respondents filed with the CA their motion for extension of time to file petition for review under Rule 43 on September 11, 2000, *i.e.*, on the 15<sup>th</sup> day from receipt of the Ombudsman order denying their motion for reconsideration, and filed the petition on September 19, 2000. At the time the petition was filed, the matter of which reglementary period must apply, whether 10 days under Section 27 of RA 6770 or 15 days under Section 4, Rule 43 of the Rules of Court, had not been established with definiteness until the *Barata case* was decided later. Considering that the *Fabian* ruling stated that Rule 43 of the Rules of Court should be the proper mode of appeal from an Ombudsman decision in administrative cases, and Section 4 of Rule 43 provides for 15 days from receipt of the order appealed from, the motion for extension to file petition which was filed on the 15<sup>th</sup> day from receipt of the Ombudsman order is considered timely filed.

Moreover, as correctly stated by the CA, dismissal of appeals on purely technical ground is frowned upon especially if it will result to unfairness as in this case. In *Baylon v. Fact-Finding Intelligence Bureau*,<sup>37</sup> we cited reasons or justifications to resist the strict adherence to procedure, to wit: (1) matters of life, liberty, honor and property; (2) counsel's

---

<sup>36</sup> *Id.* at 582.

<sup>37</sup> G.R. No. 150870, December 11, 2002, 394 SCRA 21.

negligence without the participatory negligence on the part of the client; (3) the existence of special or compelling circumstances; (4) the merits of the case; (5) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (6) a lack of any showing that the review sought is merely frivolous and dilatory; and (7) the other party will not be unjustly prejudiced thereby.

Here, the Ombudsman found respondents guilty of the charges filed against them and imposed upon them the penalty of dismissal from the service. The penalty of dismissal is a severe punishment, because it blemishes a person's record in government service.<sup>38</sup> It is an injury to one's reputation and honor which produces irreversible effects on one's career and private life. Worse, it implies loss of livelihood to the employee and his family.<sup>39</sup> If only to assure the judicial mind that no injustice is allowed to take place due to a blind adherence to rules of procedure, the dismissal on technicality of respondents' petition, which is aimed at establishing not just their innocence but the truth, cannot stand.<sup>40</sup>

As to the second issue, petitioners contend that the gratuity given to them by the HSDC Board cannot be considered as additional or double compensation which is prohibited by the Constitution.

We find no merit in this argument.

The additional grant of gratuity pay to petitioners amounted to additional compensation prohibited by the Constitution.

---

<sup>38</sup> *Miel v. Malindog*, G.R. No. 143538, February 13, 2009, 579 SCRA 119, 130.

<sup>39</sup> *Id.* at 130-131.

<sup>40</sup> *Baylon v. Fact-Finding Intelligence Bureau*, *supra* note 37, at 32-33.

As provided under Section 8 of Article IX-B of the 1987 Constitution:

Section 8. No elective or appointive public officer or employee shall receive additional, double, or indirect compensation, unless specifically authorized by law, nor accept without the consent of the Congress, any present, emolument, office, or title of any kind from any foreign government.

Pensions or gratuities shall not be considered as additional, double, or indirect compensation.

Clearly, the only exception for an employee to receive additional, double and indirect compensation is where the law allows him to receive extra compensation for services rendered in another position which is an extension or is connected with his basic work. The prohibition against additional or double compensation, except when specifically authorized by law, is considered a “constitutional curb” on the spending power of the government. In *Peralta v. Mathay*,<sup>41</sup> we stated the purpose of the prohibition, to wit:

x x x This is to manifest a commitment to the fundamental principle that a public office is a public trust. It is expected of a government official or employee that he keeps uppermost in mind the demands of public welfare. He is there to render public service. He is of course entitled to be rewarded for the performance of the functions entrusted to him, but that should not be the overriding consideration. The intrusion of the thought of private gain should be unwelcome. The temptation to further personal ends, public employment as a means for the acquisition of wealth, is to be resisted. That at least is the ideal. There is then to be awareness on the part of an officer or employee of the government that he is to receive only such compensation as may be fixed by law. With such a realization, he is expected not to avail himself of devious or circuitous means to increase the remuneration attached to his position.<sup>42</sup> x x x

The gratuity pay being given to petitioners by the HSDC Board was by reason of the satisfactory performance of their work under the trust agreement. It is considered a bonus and by its very nature, a bonus partakes of an additional remuneration or compensation.<sup>43</sup> It bears stressing that

---

<sup>41</sup> G.R. No. L-26608, March 31, 1971, 38 SCRA 256.

<sup>42</sup> *Id.* at 258.

<sup>43</sup> *Id.* at 262.

when petitioners were separated from LIVECOR, they were given separation pay which also included gratuity pay for all the years they worked thereat and concurrently in HSDC/SIDCOR. Granting them another gratuity pay for the works done in HSDC under the trust agreement would be indirectly giving them additional compensation for services rendered in another position which is an extension or is connected with his basic work which is prohibited. This can only be allowed if there is a law which specifically authorizes them to receive an additional payment of gratuity. The HSDC Board Resolution No. 05-19-A granting petitioners' gratuity pay is not a law which would exempt them from the Constitutional proscription against additional, double or indirect compensation.

Neither does the HSDC law under P.D. 1396 contain a provision allowing the grant of such gratuity pay to petitioners. Section 9 of P.D. 1396 provides:

**Section 9.** *Appointment, Control and Discipline of Personnel.* –

The Board, upon recommendation of the General Manager of the Corporation, shall appoint the officers, and employees of the Corporation and its subsidiaries; fix their compensation, allowances and benefits, their working hours and such other conditions of employment as it may deem proper; grant them leaves of absence under such regulations as it may promulgate; discipline and/or remove them for cause; and establish and maintain a recruitment and merit system for the Corporation and its affiliates and subsidiaries.

The above-quoted provision applies to the persons appointed as employees of the HSDC and does not extend to petitioners who were LIVECOR employees merely designated in HSDC under a trust agreement. The fact that they were not HSDC employees was emphatically stated in Resolution No. 3-26-A passed by the HSDC Board of Directors on March 26, 1990, where it was provided that “in order to carry out the trust agreement, LIVECOR personnel must be designated/elected concurrently to operate certain basic SIDCOR corporate offices and positions.”



Petitioners claim that the proscription against double compensation does not include pensions and gratuity.

We are not persuaded. We quote with approval what the CA said, thus:

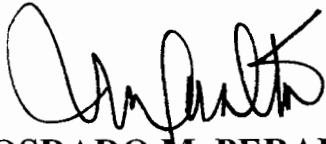
The second paragraph of Section 8, Article IX specifically adds that "pensions and gratuities shall not be considered as additional, double or indirect compensation." This has reference to compensation already earned, for instance by a retiree. A retiree receiving pensions or gratuities after retirement can continue to receive such pension or gratuity even if he accepts another government position to which another compensation is attached.

The grant to designees Dimagiba *et al.* of another gratuity from HSDC would not fall under the exception in the second paragraph as the same had not been primarily earned, but rather being granted for service simultaneously rendered to LIVECOR and HSDC. Hence, to allow the release of the second gratuity from HSDC would run afoul over the well-settled rule that "in the absence of an express legal exception, pension or gratuity laws should be construed as to preclude any person from receiving double compensation."<sup>44</sup>

We thus find no reversible error committed by the CA in granting the petition filed by respondents and reversing the Ombudsman decision finding them guilty of the administrative charges.

WHEREFORE, the petition for review is **DENIED**. The Decision dated May 30, 2002 and the Resolution dated August 28, 2002 of the Court of Appeals are hereby **AFFIRMED**.


**SO ORDERED.**


  
**DIOSDADO M. PERALTA**  
Associate Justice

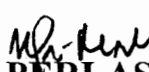
**WE CONCUR:**

  
**PRESBITERO J. VELASCO, JR.**

Associate Justice  
Chairperson

  
**ROBERTO A. ABAD**  
Associate Justice

  
**JOSE CATRAL MENDOZA**  
Associate Justice

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**PRESBITERO J. VELASCO, JR.**

Associate Justice  
Chairperson, Third Division

**CERTIFICATION**

I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**ANTONIO T. CARPIO**

Senior Associate Justice  
(Per Section 12, R.A. 296,

The Judiciary Act of 1948, as amended)