



SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

RAMIL A. BAGAOISAN, M.D.,
CHIEF OF HOSPITAL I,
CORTES MUNICIPAL
HOSPITAL,
CORTES, SURIGAO DEL SUR,
Petitioner,

G.R. No. 242005

Present:

CARPIO, J., Chairperson,
PERLAS-BERNABE,
CAGUIOA,
J. REYES, JR. and
LAZARO-JAVIER, JJ.

- versus -

OFFICE OF THE
OMBUDSMAN FOR
MINDANAO, DAVAO CITY,
Respondent.

Promulgated:

26 JUN 2019

[Handwritten Signature]

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DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*¹ are the Decision² dated February 28, 2018 and the Resolution³ dated August 23, 2018 rendered by the Court of Appeals (CA) in CA-G.R. SP No. 08117-MIN, which affirmed *in toto* the Decision⁴ dated December 5, 2016 and the Order⁵ dated May 2, 2017 of the Office of the Ombudsman (Ombudsman) in OMB-M-A-16-0176 finding petitioner Ramil A. Bagaoisan, M.D. (petitioner) guilty of Grave Misconduct and meting upon him the penalty of dismissal from service, with all its accessory penalties.

¹ Rollo, pp. 3-25.

² Id. at 33-36. Penned by Associate Justice Oscar V. Badelles, with Associate Justices Romulo V. Borja and Tita Marilyn Payoyo-Villordon, concurring.

³ Id. at 38-40.

⁴ Id. at 58-63. Approved by Deputy Ombudsman for Mindanao Rodolfo M. Elman.

⁵ Id. at 83-86.

The Facts

At the time material to this case, petitioner was the Chief of Hospital I of the Cortes Municipal Hospital in Cortes, Surigao del Sur.⁶

On May 26, 2011, petitioner issued Office Memorandum Order No. 012, series of 2011,⁷ designating his wife, Nelita L. Bagaoisan (Nelita), as Administrative Officer and Liaison Officer of the Cortes Municipal Hospital *in addition* to her work as Nutritionist-Dietician I.⁸ Thereafter, or on November 5, 2013, he also issued Office Memorandum Order No. 028, series of 2013⁹ directing Nelita to function as “Internal Control Unit” *in addition* to her previous designations.¹⁰

By virtue of an anonymous letter¹¹ from a “concerned citizen” alleging acts of nepotism committed by petitioner, the Field Investigation Unit – Office of the Deputy Ombudsman for Mindanao filed a complaint-affidavit¹² criminally and administratively charging petitioner with violation of Section 59,¹³ Chapter 8, in relation to Section 67,¹⁴ Chapter 10, Title I-A, Book V of Executive Order No. (EO) 292¹⁵ and Grave Misconduct. The complaint averred that petitioner’s acts designating Nelita as Administrative

⁶ See *id.* at 46-47, 51, and 58.

⁷ *Id.* at 43.

⁸ See Nelita’s Panunumpa sa Katungkulan dated January 9, 1998; *id.* at 42.

⁹ *Id.* at 44.

¹⁰ See *id.* at 33-34 and 58-59.

¹¹ Dated July 17, 2013. *Id.* at 45.

¹² Dated March 22, 2016. *Id.* at 46-50.

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CHAPTER 8 PROHIBITIONS

Section 59. *Nepotism.* – (1) All appointments in the national, provincial, city and municipal governments or in any branch or instrumentality thereof, including government-owned or controlled corporations, made in favor of a relative of the appointing or recommending authority, or of the chief of the bureau or office, or of the persons exercising immediate supervision over him, are hereby prohibited.

As used in this Section, the word “relative” and members of the family referred to are those related within the third degree either or consanguinity or of affinity.

(2) The following are exempted from the operation of the rules on nepotism: (a) persons employed in a confidential capacity, (b) teachers, (c) physicians, and (d) members of the Armed Forces of the Philippines: Provided, however, That in each particular instance full report of such appointment shall be made to the Commission.

The restriction mentioned in subsection (1) shall not be applicable to the case of a member of any family who, after his or her appointment to any position in an office or bureau, contracts marriage with someone in the same office or bureau, in which event the employment or retention therein of both husband and wife may be allowed.

(3) In order to give immediate effect to these provisions, cases of previous appointments which are in contravention hereof shall be corrected by transfer, and pending such transfer, no promotion or salary increase shall be allowed in favor of the relative or relatives who are appointed in violation of these provisions.

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CHAPTER 9 LEAVE OF ABSENCE

Section 67. *Penal Provision.* – Whoever makes any appointment or employs any person in violation of any provision of this Title or the rules made thereunder or whoever commits fraud, deceit or intentional misrepresentation of material facts concerning other civil service matters, or whoever violates, refuses or neglects to comply with any of such provisions or rules, shall upon conviction be punished by a fine not exceeding one thousand pesos or by imprisonment not exceeding six (6) months, or both such fine and imprisonment in the discretion of the court.

¹⁵ Otherwise known as the “Administrative Code of 1987.”

Officer and Liaison Officer, as well as “Internal Control Unit,” *in addition* to her position as Nutritionist-Dietician I, violated the rule against nepotism.¹⁶

In defense,¹⁷ petitioner claimed that the rule of nepotism does not prohibit designation, and that he merely designated his wife to a non-*plantilla* position in good faith. More importantly, he contended that his wife did not receive any additional compensation as a result of such designations.¹⁸

The Ombudsman’s Ruling

In a Decision¹⁹ dated December 5, 2016, the Ombudsman found substantial evidence to hold petitioner guilty of Grave Misconduct, and accordingly, meted the penalty of dismissal from service, including the accessory penalties thereof. Further, in the event that dismissal can no longer be enforced due to separation from service, the penalty shall be converted into a fine in the amount equivalent to his salary for one (1) year, payable to the Ombudsman, which may be deducted from his accrued leave credits or any receivable from the government.²⁰

The Ombudsman found that there was a flagrant disregard of Section 59, Chapter 8, Title I-A, Book V of EO 292, when petitioner designated his wife to other positions in the government, namely, Administrative Officer and Liaison Officer, as well as “Internal Control Unit.” Petitioner’s argument that the rule on nepotism proscribes only appointment and not designation is misplaced, as there is no distinction between them. The Ombudsman fully explained that if a designation is not to be deemed included in the term “appointed” as provided for in the law, then any appointing authority may circumvent the rule by merely designating, and not appointing, a relative within the prohibited degree to a vacant position in the career service. Finally, petitioner’s defense of good faith is immaterial in the determination of his administrative liability.²¹

Aggrieved, petitioner moved for reconsideration,²² insisting that the positions to which he designated his wife were non-existent.²³ In an Order²⁴ dated May 2, 2017, the Ombudsman denied his motion. Hence, he appealed²⁵ to the CA.

¹⁶ See *rollo*, pp. 34 and 58.

¹⁷ See Counter-Affidavit dated May 20, 2016; *id.* at 51-53.

¹⁸ See *id.* at 34, 52, and 54.

¹⁹ *Id.* at 58-63.

²⁰ *Id.* at 61.

²¹ See *id.* at 59-60.

²² See Motion for Reconsideration and Reinvestigation dated January 30, 2017; *id.* at 64-82.

²³ See *id.* at 73-74.

²⁴ *Id.* at 83-86.

²⁵ See Petition for Review dated May 25, 2017; *id.* at 105-123.

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The CA's Ruling

In a Decision²⁶ dated February 28, 2018, the CA denied petitioner's appeal and affirmed *in toto* the Ombudsman's ruling finding him guilty of Grave Misconduct,²⁷ considering the undisputed facts that Nelita is petitioner's wife and he designated her as Administrative Officer and Liaison Officer, as well as "Internal Control Unit," at the same time that she was holding the position of Nutritionist-Dietician I of the Cortes Municipal Hospital. Echoing the Ombudsman, the CA held that petitioner's defense of good faith, as well as his wife's alleged non-acceptance of additional compensation for the said designations, are immaterial. That there was no budgetary allocation appropriated for the said positions does not detract from the fact that petitioner issued the office memoranda creating the said positions to which he designated his wife. The Ombudsman also stressed that Section 59, Chapter 8, Title I-A, Book V of EO 292 refers to "all appointments," whether original or promotional in nature.²⁸

Undaunted, petitioner moved for reconsideration²⁹ which was denied in a Resolution³⁰ dated August 23, 2018; hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA erred in upholding the Ombudsman's finding that petitioner is guilty of Grave Misconduct and in meting upon him the penalty of dismissal from service.

The Court's Ruling

The petition lacks merit.

The prohibitory norm against nepotism in the public service is set out in Section 59, Chapter 8, Title I-A, Book V of EO 292.³¹ "Nepotism" is defined therein as follows:

Section 59. Nepotism. — (1) All appointments in the national, provincial, city and municipal governments or in any branch or instrumentality thereof, including government-owned or controlled corporations, made in favor of a relative of the appointing or recommending authority, or of the chief of the bureau or office, or of the persons exercising immediate supervision over him, are hereby prohibited.

²⁶ Id. at 33-36.

²⁷ Id. at 36.

²⁸ See id. at 35-36.

²⁹ See Motion for Reconsideration dated March 23, 2018; id. at 124-137.

³⁰ Id. at 38-40.

³¹ See *Debulgado v. Civil Service Commission*, G.R. No. 111471, September 26, 1994, 237 SCRA 184, 191.

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As used in this Section, the word “relative” and members of the family referred to are those related **within the third degree either of consanguinity or of affinity.**

(2) The following are exempted from the operation of the rules on nepotism: (a) persons employed in a confidential capacity, (b) teachers, (c) physicians, and (d) members of the Armed Forces of the Philippines: Provided, however, That in each particular instance full report of such appointment shall be made to the Commission.

x x x x (Emphases supplied)

Under the foregoing definition, one is guilty of nepotism if an appointment is issued in favor of a relative within the third civil degree of consanguinity or affinity of any of the following: (a) appointing authority; (b) recommending authority; (c) chief of the bureau or office; and (d) person exercising immediate supervision over the appointee.³²

Meanwhile, “designation” is defined as “an appointment or assignment to a particular office,” and “to designate” means “to indicate, select, appoint, or set apart for a purpose or duty.”³³ In *Binamira v. Garrucho, Jr.*,³⁴ the Court explained further that:

Designation may also be loosely defined as an appointment because it likewise involves the naming of a particular person to a specified public office. That is the common understanding of the term. However, where the person is merely designated and not appointed, the implication is that he shall hold the office only in a temporary capacity and may be replaced at will by the appointing authority. In this sense, the designation is considered only an acting or temporary appointment, which does not confer security of tenure on the person named.³⁵

In Section 13 (c), Rule IV of Memorandum Circular No. 14,³⁶ series of 2018 of the Civil Service Commission (CSC), “designation” was defined as follows:

RULE IV
EMPLOYMENT STATUS, NATURE OF APPOINTMENT
AND OTHER HUMAN RESOURCES

Section 13. Other Human Resource Actions. x x x x

c. Designation -- movement that involves an imposition of additional and/or higher duties to be performed by a public official/employee

³² *CSC v. Dacoycoy*, 366 Phil. 86, 102-103 (1999).

³³ *Laurel V v. CSC*, 280 Phil. 212, 228 (1991)

³⁴ 266 Phil. 166 (1990).

³⁵ *Id.* at 171; underscoring supplied.

³⁶ Entitled “2017 OMNIBUS RULES ON APPOINTMENTS AND OTHER HUMAN RESOURCE ACTIONS” (JULY 3, 2018).

which is temporary and can be terminated anytime at the pleasure of the appointing authority officer/authority. Designation may involve the performance of duties of another position on a concurrent capacity or on full-time basis.

A designation in an acting capacity entails not only the exercise of the ministerial functions attached to the position but also the exercise of discretion since the person designated is deemed to be the incumbent of the position.

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Jurisprudence has it that for the purpose of determining nepotism, there should be no distinction between *appointment* and *designation*;³⁷ otherwise, the prohibition on nepotism would be meaningless and toothless. Any appointing authority may circumvent it by merely designating, and not appointing, a relative within the prohibited degree to a vacant position in the career service. Indeed, what cannot be done directly cannot be done indirectly.³⁸

Here, it is undisputed that Nelita, the appointee, is the wife of petitioner, the appointing authority and Chief of Hospital I of the Cortes Municipal Hospital. By virtue of his position, petitioner appointed Nelita as Administrative Officer and Liaison Officer, as well as “Internal Control Unit,” in addition to her position as Nutritionist-Dietician I of the Cortes Municipal Hospital.³⁹

Petitioner maintains, however, that he merely “designated” her to perform additional functions, considering that the positions of Administrative Officer and Liaison Officer, as well as “Internal Control Unit,” are non-existent positions in the *plantilla* of the Cortes Municipal Hospital. As these positions were non-existent, he explains that there could have been no personnel movement in Nelita’s case as there was a mere “designation of additional function” as opposed to “designation to a government position,” which would have the same context as “appointment.”⁴⁰ Claiming good faith, he argues that he could not be held guilty of nepotism, as nepotism presupposes that there is an actual or existing government position to which the public official’s relative within the third degree of consanguinity or affinity may be appointed or designated.⁴¹

The Court is not convinced.

³⁷ See *Laurel V v. CSC*, supra note 33, at 227-228.

³⁸ Id. at 228-229.

³⁹ See *rollo*, pp. 33-34 and 58-59.

⁴⁰ See id. at 17-20.

⁴¹ See id. at 19-20.

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It is true that the *plantilla* positions of the Cortes Municipal Hospital for Fiscal Years 2011,⁴² 2012,⁴³ and 2016,⁴⁴ offered in evidence by petitioner, collectively show that the positions of Administrative Officer, Liaison Officer, and “Internal Control Unit” are non-existent positions. This fact is confirmed by the Certifications separately issued by the Provincial Accounting Office,⁴⁵ Provincial Budget Office,⁴⁶ and the Office of the Provincial Administrator,⁴⁷ all of the Province of Surigao del Sur. The Certifications issued by the Provincial Accounting Office and the Provincial Budget Office even state that “no budgetary allocation was appropriated for the above-positions and that no appointment exists or is submitted for processing with our office since 2011 until at present.”⁴⁸

However, the rule on nepotism does not require the existence of a government position in the *plantilla* of an organization for its application. Neither is a budgetary allocation therefor or that the appointee received benefits as a result of the appointment required before the rule on nepotism can apply. Instead, Section 59 above-cited is so comprehensive and encompassing that in *Debulgado v. CSC (Debulgado)*,⁴⁹ the Court explained:

A textual examination of Section 59 at once reveals that the prohibition was cast in **comprehensive and unqualified terms**. Firstly, it explicitly covers “all appointments,” without seeking to make any distinction between differing kinds or types of appointments. Secondly, Section 59 covers all appointments to the national, provincial, city and municipal governments, as well as any branch or instrumentality thereof and all government owned or controlled corporations. Thirdly, there is a list of exceptions set out in Section 59 itself, but it is a short list:

- (a) persons employed in a confidential capacity;
- (b) teachers;
- (c) physicians; and
- (d) members of the Armed Forces of the Philippines.

The list has not been added to or subtracted from for the past thirty (30) years. The list does not contain words like “and other similar positions.” Thus, the list appears to us to be a closed one, at least closed until lengthened or shortened by Congress.

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The purpose of Section 59 which shines through the comprehensive and unqualified language in which it was cast and has remained for decades, is precisely to take out of the discretion of the appointing and recommending authority the matter of appointing or recommending for appointment a relative. In other words, Section 59

⁴² Id. at 159.

⁴³ Id. at 160-161.

⁴⁴ Id. at 162-163.

⁴⁵ Id. at 156. Signed by Provincial Accountant Charles B. Tonera.

⁴⁶ Id. at 157. Signed by Provincial Budget Officer Delia D. Abelardo.

⁴⁷ Id. at 158. Signed by Supervising Administrative Officer Theresa E. Burgos.

⁴⁸ Id. at 156-157.

⁴⁹ Supra note 31.

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insures the objectivity of the appointing or recommending official by preventing that objectivity from being in fact tested. The importance of this statutory objective is difficult to overstress in the culture in which we live and work in the Philippines, where family bonds remain, in general, compelling and cohesive.

The conclusion we reach is that Section 59, Book V, E.O. No. 292 means exactly what it says in plain and ordinary language: it refers to “all appointments” whether original or promotional in nature. The public policy embodied in Section 59 is clearly fundamental in importance, and the Court has neither authority nor inclination to dilute that important public policy by introducing a qualification here or a distinction there.⁵⁰

Based on the foregoing disquisitions, it is of no consequence that petitioner appointed/designated Nelita to non-*plantilla* positions in the Cortes Municipal Hospital or that he merely “designated” her to perform “additional functions,” as opposed to an existing government position. Neither is it material that Nelita did not receive compensation as a result of said appointments nor that petitioner acted in good faith in issuing the Office Orders creating the said positions. The Ombudsman pointed out that it was rather dubious why petitioner had to designate his wife to perform additional functions notwithstanding its non-existence in the *plantilla*;⁵¹ indeed, there is no reason why said additional functions cannot be performed by other qualified employees who are not relatives of petitioner and thus, insuring his objectivity. It bears to stress that the prohibition applies without regard to the actual merits of the proposed appointee and to the good intentions of the appointing or recommending authority, and that the prohibition against nepotism in appointments, whether original or promotional, is not intended by the legislative authority to penalize faithful service.⁵²

The public policy embodied in Section 59 is clearly fundamental in importance, and the Court has neither authority nor inclination to dilute that important public policy by introducing a qualification here or a distinction there,⁵³ as petitioner would want the Court to do. In *CSC v. Dacoycoy*,⁵⁴ the Court elucidated that:

Nepotism is one pernicious evil impeding the civil service and the efficiency of its personnel. In *Debulgado*, we stressed that “[t]he basic purpose or objective of the prohibition against nepotism also strongly indicates that the prohibition was intended to be a comprehensive one.” “The Court was unwilling to restrict and limit the scope of the prohibition which is textually very broad and comprehensive.” If not within the exceptions, it is a form of corruption that must be nipped in the bud or abated whenever or wherever it raises its ugly head. As we said in an earlier case “what we need now is not only to punish the wrongdoers or reward the ‘outstanding’ civil servants, but also to plug the hidden gaps

⁵⁰ Id. at 194-198; emphasis and underscoring supplied.

⁵¹ See id. at 180.

⁵² *Debulgado v. CSC*, supra note 31, at 198.

⁵³ Id.

⁵⁴ Supra note 32.

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and potholes of corruption as well as to **insist on strict compliance with existing legal procedures in order to abate any occasion for graft or circumvention of the law.**⁵⁵


In light of the foregoing, the Court finds that petitioner's actions constitute Grave Misconduct.

Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross neglect of duty by a public officer. The misconduct is considered to be grave if it also involves other elements, such as corruption or the willful intent to violate the law or to disregard established rules, which must be proven by substantial evidence; otherwise, the misconduct is only simple. In grave misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of an established rule, must be evident.⁵⁶ Corruption, as an element of grave misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others.⁵⁷

In this case, there was a willful intent to violate the law or to disregard established rules, as petitioner knowingly appointed his wife, Nelita, as Administrative Officer and Liaison Officer, and to perform functions as "Internal Control Unit" at the Cortes Municipal Hospital. Accordingly, since a government employee who is found guilty of Grave Misconduct may be dismissed from service even for the first offense⁵⁸ under the Revised Rules on Administrative Cases in the Civil Service (RRACCS),⁵⁹ the CA aptly meted the penalty of dismissal, with accessory penalties, to petitioner.

WHEREFORE, the petition is **DENIED**. The Decision dated February 28, 2018 and the Resolution dated August 23, 2018 rendered by the Court of Appeals in CA-G.R. SP No. 08117-MIN, which affirmed *in toto* the Decision dated December 5, 2016 and the Order dated May 2, 2017 of the Office of the Ombudsman in OMB-M-A-16-0176 are **AFFIRMED**.

SO ORDERED.


ESTELA M. PERLAS-BERNABE
Associate Justice

⁵⁵ Id. at 106; emphasis supplied.

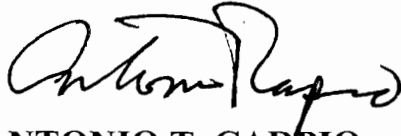
⁵⁶ *Office of the Ombudsman-Mindanao v. Martel*, 806 Phil. 649, 662 (2017), citing *Bureau of Internal Revenue v. Organo*, 468 Phil. 111, 118 (2004) and *Chavez v. Garcia*, 783 Phil. 562, 573 (2016).

⁵⁷ *Office of the Ombudsman v. Mallari*, 749 Phil. 224, 249 (2014).

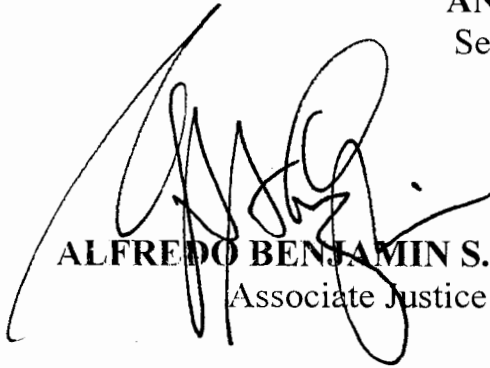
⁵⁸ *Ganzon v. Arlos*, 720 Phil. 104, 107 (2013).

⁵⁹ See Section 46 (A), Rule 10 of the RRACCS.

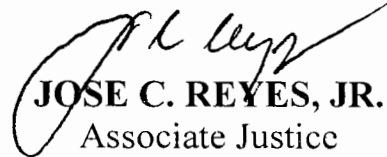
WE CONCUR:



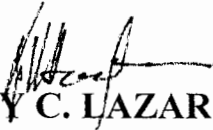
ANTONIO T. CARPIO
Senior Associate Justice
Chairperson



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



JOSE C. REYES, JR.
Associate Justice



AMY C. LAZARO-JAVIER
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.



ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, 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.



LUCAS P. BERSAMIN
Chief Justice