



Republic of the Philippines
Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
 PUBLIC INFORMATION OFFICE
RECEIVED
 MAY 03 2019
 BY: LCH
 TIME: 9:20

SECOND DIVISION

**PROCESO T. DOMINGO,
 ANGELITO D. TWAÑO and
 SUSAN M. SOLO,**

G.R. Nos. 226648-49

Petitioners,

Present:

- versus -

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

**HON. EXECUTIVE
 SECRETARY PAQUITO N.
 OCHOA, JR.,**

Promulgated:

Respondent.

27 MAR 2019

X-----X

DECISION

CAGUIOA, J.:

Before this Court is a Petition for Review on *Certiorari*¹ (*Petition*) under Rule 45 of the Rules of Court filed by petitioners Proceso T. Domingo (Domingo), Angelito D. Twaño (Twaño) and Susan M. Solo (Solo), against herein respondent Executive Secretary (ES) Paquito N. Ochoa, Jr., assailing the Court of Appeals (CA): (1) *Decision*² dated September 21, 2015 and (2) *Resolution*³ dated August 19, 2016 in CA-G.R. SP No. 130590 and SP No. 130591.

In the assailed *Decision* and *Resolution*, the Office of the President (OP), through the ES, found petitioners guilty of simple negligence and imposed on them the penalty of suspension for three (3) months. The OP likewise revoked the Career Executive Service Officer (CESO) ranks previously conferred upon petitioners.⁴

¹ Rollo, pp. 3-32.

² Id. at 33-43. Penned by Associate Justice Elihu A. Ybañez with Associate Justices Magdangal M. De Leon and Agnes Reyes Carpio, concurring.

³ Id. at 44-45.

⁴ Id. at 139.

The Antecedent Facts

The Career Executive Service Board (CESB) was created by virtue of Presidential Decree No. 1, dated September 24, 1972, to serve as the governing body of the Career Executive Service (CES). One of the functions of the CESB is to review, deliberate and vote upon applications for original appointments or promotion of CESO ranks of government officials.⁵ In January 2010, Domingo, then Undersecretary of the Department of National Defense (DND), Twaño, then Regional Director of the Department of Public Works and Highways (DPWH)⁶ and Solo, then Director IV at the Presidential Management Staff (PMS), were appointed by President Gloria Macapagal-Arroyo as members of the CESB to serve for a term of six (6) years.⁷

On June 2, 2010, the CESB convened in Tacloban City to deliberate on the applications for 30 presidential appointees – included in these applications were those of petitioners. Following the deliberations, the CESB passed several resolutions recommending candidates for appointment by the President to CESO ranks. Among these resolutions were: **Resolution No. 871**⁸ and **Resolution No. 872**.⁹ Resolution No. 871 recommended, among others, the appointment of Twaño to CESO III,¹⁰ while Resolution No. 872 recommended, among others, the adjustment of Domingo's rank from CESO VI to CESO I, and Solo's rank from CESO IV to CESO III.¹¹ Petitioners affixed their signatures on Resolution Nos. 871 and 872.¹²

The signed CESB Resolutions were subsequently forwarded by the CESB to the OP. Acting on the CESB Resolutions and the recommendations therein, the OP, on June 20, 2010, issued new appointments to the CESO ranks. Domingo was upgraded to the rank of CESO I, Twaño was upgraded to CESO III and Solo was appointed to CESO III.¹³

Later that year, the CESB Chairman, in a Memorandum dated December 14, 2010, resubmitted to the President a list of CESB recommendations for original, adjustment, and promotional appointments to CES ranks. Included in the list were petitioners' names. Subsequently, in a Memorandum¹⁴ issued in 2012, the OP confirmed the appointment of 10 appointees, excluding petitioners.

⁵ Id. at 277.

⁶ In October 2010, however, Twaño was reassigned by the Secretary of the DPWH as Officer in Charge-Director of the Bureau of Maintenance, see id. at 6.

⁷ Id. at 3.

⁸ Id. at 54-56.

⁹ Id. at 142-144.

¹⁰ Id. at 55.

¹¹ Id. at 143.

¹² Id. at 119-120, 144.

¹³ Id. at 8.

¹⁴ Id. at 148-151.



Thereafter, the ES, in an *Order*¹⁵ dated February 22, 2012, directed petitioners to submit their written explanation as to why no administrative disciplinary proceedings should be taken against them for violating the ethical standards on conflict of interest under Republic Act (R.A.) Nos. 3019¹⁶ and 6713¹⁷ in signing the CESB Resolutions recommending their own appointments.

In their answer¹⁸ to the ES' *Order* dated February 22, 2012, petitioners all argued that there is no personal gain in signing the Resolutions and that it was only by mere inadvertence that they signed the Resolutions without specifying that their signatures and participation were with respect only to the other recommended applicants.¹⁹

On September 25, 2012, the ES issued a *Formal Charge*²⁰ against petitioners, charging them with Conduct Prejudicial to the Best Interest of the Service and Gross Violation of the Ethical Standard on Conflict of Interest as Provided under R.A. Nos. 3019 (Anti-Graft and Corrupt Practices Act) and 6713 (Code of Conduct and Ethical Standards for Public Officials and Employees), directing them to file an answer²¹ within ten (10) days from receipt of the Formal Charge.²²

For their part, while all three petitioners admitted signing the Resolutions, they nevertheless argued that they should not be held administratively liable for affixing their signatures on the Resolutions, putting forward their respective arguments, *viz.*:

Twaño admitted signing the pertinent Resolution but denied acting with improper motive.²³ He claims that he inhibited himself and went outside the meeting room when his application was discussed by the CESB and was only informed when he returned to the room that the CESB had resolved to recommend him to the rank of CESO III.²⁴ Further, he argued that the CESB acted as a collegial body in issuing the Resolutions and that he was unaware of the practice of writing "no part" beside his signature in signing a CESB Resolution.²⁵

¹⁵ Id. at 152-153.

¹⁶ ANTI-GRAFT AND CORRUPT PRACTICES ACT, AUGUST 17, 1960.

¹⁷ AN ACT ESTABLISHING A CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES, TO UPHOLD THE TIME-HONORED PRINCIPLE OF PUBLIC OFFICE BEING A PUBLIC TRUST, GRANTING INCENTIVES AND REWARDS FOR EXEMPLARY SERVICE, ENUMERATING PROHIBITED ACTS AND TRANSACTIONS AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF AND FOR OTHER PURPOSES, otherwise known as the "Code of Conduct and Ethical Standards for Public Officials and Employees," February 20, 1989.

¹⁸ *Rollo*, pp. 87-95, 154-159.

¹⁹ Id. at 36.

²⁰ Id. at 160-161.

²¹ Id. at 98-106, 162-169, 170-174.

²² Id. at 160.

²³ Id. at 98, 137.

²⁴ Id. at 100-101, 277.

²⁵ Id. at 101, 278.



Domingo likewise admitted signing the pertinent Resolution but claims that he did not exert any influence on the CESB to recommend his rank adjustment. Further, he argues that his signature on the said Resolution was immaterial because the votes (other than his) were already sufficient for the approval of the said Resolution.²⁶

Solo claims that affixing her signature to the pertinent Resolution was her ministerial duty as CESB Member. Like Domingo, she claims that her signature was no longer necessary as the other votes were sufficient to recommend her rank adjustment.²⁷

Ruling of the OP

In its *Decision*²⁸ dated January 30, 2013 in OP-DC Case No. 12-B-013, the OP, through the ES, found petitioners guilty of simple negligence, viz.:

Finally, for violating the ethical standard on conflict of interest, Resolution Nos. 871 and 872 are declared invalid insofar as the [petitioners] are concerned. Conformably, their CESO ranks are revoked.

WHEREFORE, respondents Director Angelito D. Twaño, Undersecretary Proceso T. Domingo and Director Susan M. Solo are hereby found **GUILTY** of **SIMPLE NEGLIGENCE** and meted the penalty of **SUSPENSION** for **THREE (3) MONTHS**. In addition, the CESO ranks conferred to them are **REVOKED**.

SO ORDERED.²⁹

The OP found *prima facie* evidence that petitioners signed the Resolutions recommending their original appointment and/or rank adjustment knowingly, willfully, and with intent to gain.³⁰ Further, as CESB members, conflict of interest should have compelled petitioners to inhibit themselves from the CESB deliberations and from voting on matters involving the assessment of their qualifications.³¹

Thus, although petitioners claim that they took no part in the deliberations, they did not formally inhibit themselves from the CESB meeting while their respective CESO rank recommendations were being deliberated upon.³² More importantly, there was likewise nothing in the Minutes³³ of the CESB Meeting that indicated that petitioners in fact inhibited themselves when their applications were presented in the agenda.³⁴

²⁶ Id. at 163-165.

²⁷ Id. at 171-172.

²⁸ Id. at 136-139.

²⁹ Id. at 139.

³⁰ Id. at 136.

³¹ Id. at 137.

³² Id. at 337.

³³ Id. at 241-261.

³⁴ Id. at 333.

In any event, to the OP, petitioners' act of affixing their signatures on the CESB Resolutions goes against the norms of conduct in Sections 2³⁵ and 4(a)³⁶ of R.A. No. 6713 or the Code of Conduct and Ethical Standards for Public Officials and Employees, requiring public officials to always uphold the public interest above personal interest.³⁷ Consequently, the OP found that petitioners: (1) committed simple negligence when they failed to carefully examine whether the Resolutions were in order and determine the propriety of affixing their signatures thereto;³⁸ and (2) violated the ethical standard on conflict of interest.

In a *Resolution*³⁹ dated June 5, 2013, the OP denied petitioners' motions for reconsideration⁴⁰ for lack of merit. Aggrieved by the OP *Decision* and *Resolution*, petitioners filed a petition for *certiorari* under Rule 65⁴¹ before the CA.

Ruling of the CA

In a *Decision* dated September 21, 2015, the CA found that the OP did not commit grave abuse of discretion in rendering the assailed *Decision* and *Resolution*. Accordingly, the CA **dismissed** petitioners' petitions for *certiorari*, viz.:

[a]ll told, We find no grave abuse of discretion amounting to lack or in excess of jurisdiction was committed by the Executive Secretary in rendering the assailed decision finding all the petitioners guilty of simple negligence and providing penalties therefore.

FOR THESE REASONS, the instant petitions for *certiorari* are **DISMISSED**. The assailed Decision dated 30 January 2013 and Resolution dated 05 June 2013 of the Executive Secretary is **AFFIRMED**.

SO ORDERED.⁴²

In upholding the OP's finding that petitioners were guilty of simple negligence, the CA held that petitioners' excuse that they were unable to check the CESB Resolutions before signing them because the documents

³⁵ SEC. 2. *Declaration of Policy*.—It is the policy of the State to promote a high standard of ethics in public service. Public officials and employees shall at all times be accountable to the people and shall discharge their duties with utmost responsibility, integrity, competence, and loyalty, act with patriotism and justice, lead modest lives, and uphold public interest over personal interest. (February 20, 1989).

³⁶ SEC. 4. x x x

(a). *Commitment to public interest*.—Public officials and employees shall always uphold the public interest over and above personal interest. All government resources and powers of their respective offices must be employed and used efficiently, effectively, honestly and economically, particularly to avoid wastage in public funds and revenues. (February 20, 1989).

³⁷ *Rollo*, pp. 137-138.

³⁸ *Id.* at 138-139.

³⁹ *Id.* at 140-141.

⁴⁰ *Id.* at 107-113, 175-198.

⁴¹ *Id.* at 66-86, 114-133.

⁴² *Id.* at 42-43.

were “lumped together”⁴³ was flimsy, at best.⁴⁴ As CESB Members, petitioners were mandated to scrutinize every document presented to them before affixing their signatures thereon not only to avoid personal liability, but more so because of the significance of their signatures in a given document.⁴⁵

In any event, the CA echoes the OP’s finding that the Minutes of the Meeting do not support petitioners’ claim that they were outside the meeting room during the deliberations on their applications.⁴⁶ Consequently, there was no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the OP in finding petitioners guilty of simple negligence.

In a *Resolution* dated August 19, 2016, the CA denied petitioners’ motions for reconsideration⁴⁷ for lack of merit.

Thus, on September 16, 2016, petitioners submitted the present *Petition*. In a *Comment*⁴⁸ dated September 28, 2017, the OP argued that the finding of simple negligence against petitioners and the revocation of their CESO conferment are valid under the Code for Ethical Standards.⁴⁹

Issue

The sole issue for the Court’s resolution is whether the CA committed any reversible error in issuing its *Decision* dated September 21, 2015 and *Resolution* dated August 19, 2016 in CA-G.R. SP No. 130590 and SP No. 130591.

Our Ruling

The *Petition* lacks merit.

In determining whether the CA committed any reversible error in its *Decision* dated September 21, 2015 and *Resolution* dated August 19, 2016, the Court necessarily proceeds from the prism of whether the OP acted with grave abuse of discretion amounting to lack or excess of jurisdiction in finding petitioners guilty of simple negligence and in revoking their CESO ranks.⁵⁰ The Court finds that no such grave abuse of discretion existed on the part of the OP. Consequently, the CA correctly affirmed the OP *Decision* and *Resolution*, for the following reasons:

⁴³ Id. at 41.

⁴⁴ Id.

⁴⁵ Id.

⁴⁶ Id.

⁴⁷ Id. at 298-320.

⁴⁸ Id. at 329-344.

⁴⁹ Id. at 332.

⁵⁰ Id. at 12.



First, the CA correctly affirmed the OP's finding of simple negligence on the part of petitioners. Negligence is the omission of the diligence required by the nature of the obligation and corresponds with the circumstances of the persons, of the time and of the place.⁵¹ In the case of public officials, there is negligence when there is a breach of duty or failure to perform the obligation.⁵² Specifically, an act done in good faith, when the same constitutes only an error of judgment with no ulterior motives and/or purposes, constitutes simple negligence.⁵³

Here, as ranking officials in their respective offices and as members of the CESB, petitioners certainly cannot justify the lack of diligence in the performance of their functions as CESB members by the mere expediency of claiming that they did not know the documents they were signing or that they were unable to verify the relevant CESB Resolutions before signing because the documents were "lumped together."⁵⁴

While it is true that the act of affixing a public officer's signature on a document in the ordinary course of business does not automatically mean that he/she becomes a participant in an illegal or anomalous transaction, however, when the very face of the document reflects a possible irregularity, then there arises an additional reason for the public officer to examine the document in more detail and exercise a greater degree of diligence before signing the document.⁵⁵

Here, considering that they allegedly – albeit the Minutes of the Meetings do not support it – "stepped out"⁵⁶ during the CESB deliberations when it was time to discuss their respective applications, petitioners were aware of the possible conflict of interest that would arise in their participation in the CESB deliberations and should have, when presented with the Resolutions, been more circumspect in reviewing the same before affixing their signatures thereon. Failure to do so results in negligence in the performance of their functions.

Second, the revocation of petitioners' CESO conferment necessarily flows from the invalidity of Resolution Nos. 871 and 872 insofar as petitioners' appointments are concerned. To be clear, persons occupying positions in the CES are under the disciplinary authority of the President.

Since petitioners' act of signing the Resolutions recommending their own appointments is contrary to the ethical standards imposed on, and the

⁵¹ *Atty. Navarro v. Office of the Ombudsman*, 793 Phil. 453, 475 (2016).

⁵² *Daplas v. Department of Finance*, G.R. No. 221153, April 17, 2017, 823 SCRA 44, 56, citing *Office of the Ombudsman v. Atty. Bernardo*, 705 Phil. 524, 543 (2013), *Pleyto v. PNP-Criminal Investigation & Detection Group*, 563 Phil. 842, 910 (2007).

⁵³ *Daplas v. Department of Finance*, *id.*, citing *Pleyto v. PNP-Criminal Investigation & Detection Group*, *id.*

⁵⁴ *Rollo*, p. 41.

⁵⁵ *Peralta v. Hon. Desierto*, 510 Phil. 111 (2005); *Veloso v. Sandiganbayan*, 265 Phil. 536 (1990); *Arias v. Sandiganbayan*, 259 Phil. 794 (1989).

⁵⁶ *Rollo*, p. 41.

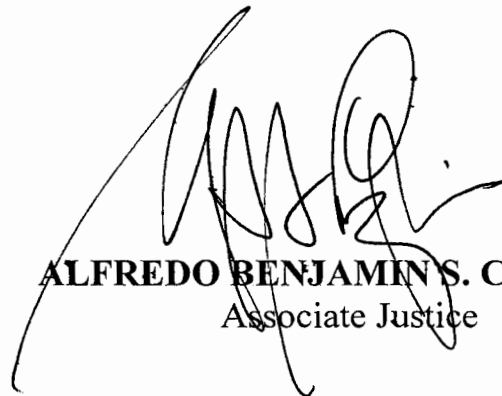


due diligence demanded of public officers, then necessarily, the OP validly considered the CESB recommendations concerning their own appointments as invalid. As aptly pointed out by the ES, the recommendations being invalid, the conferment of CESO ranks flowing from those invalid recommendations are likewise invalid. In this regard, suffice it to state that the power of appointment and conversely, the power to remove, is essentially discretionary and cannot be controlled, not even by the Court, as long as it is exercised properly by the appointing authority.⁵⁷

The Court thus ends where it began – petitioners in this case failed to prove that the CA committed any reversible error in its *Decision* dated September 21, 2015 and *Resolution* dated August 19, 2016, considering that, based on the records of the case, there is no showing that the OP acted with grave abuse of discretion amounting to lack or excess of jurisdiction in finding petitioners guilty of simple negligence and in revoking their CESO ranks.⁵⁸

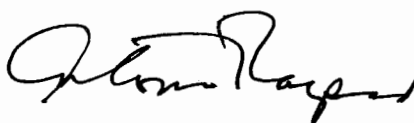
Given the foregoing considerations, the Court resolves to **DENY** the present *Petition*. The Court of Appeals' *Decision* dated September 21, 2015 and *Resolution* dated August 19, 2016 in CA-G.R. SP No. 130590 and SP No. 130591 are hereby **AFFIRMED**.

SO ORDERED.



ALFREDO BENJAMINS S. CAGUIOA
Associate Justice

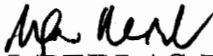
WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson

⁵⁷ *Erasmó v. Home Insurance & Guaranty Corp.*, 436 Phil, 689, 697-698 (2002).

⁵⁸ *Rollo*, p. 12.



ESTELA M. PERLAS-BERNABE
 Associate Justice


JOSE C. REYES, JR.
 Associate Justice


AMY C. LAZARO-JAVIER
 Associate Justice

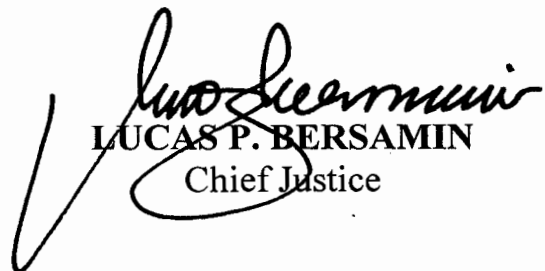
ATTESTATION

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

