



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

PRESIDENTIAL BROADCAST STAFF-RADIO TELEVISION MALACAÑANG (PBS-RTVM),  
*Petitioner,*

G.R. No. 234624

Present:

PERLAS-BERNABE, S.A.J.,  
*Chairperson,*

REYES, A., JR.,

HERNANDO,

INTING, and

DELOS SANTOS, JJ.

- versus -

VERGEL P. TABASA,  
*Respondent.*

Promulgated:

26 FEB 2020

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DECISION

INTING, J.:

This is a Petition for Review on *Certiorari*<sup>1</sup> filed pursuant to Rule 45 of the Rules of Court seeking to reverse and set aside the Decision<sup>2</sup> dated March 30, 2017 and the Resolution<sup>3</sup> dated September 7, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 146150. The assailed Decision affirmed with modification the Decision<sup>4</sup> dated March 17, 2016 and the Resolution<sup>5</sup> dated May 26, 2016 of the Civil Service

<sup>1</sup> *Rollo*, pp. 33-49.

<sup>2</sup> *Id.* at 9-21; penned by Associate Justice Ma. Luisa C. Quijano-Padilla with Associate Justices Sesinando E. Villon and Rodil V. Zalameda (now a member of the Court).

<sup>3</sup> *Id.* at 24-26.

<sup>4</sup> *Id.* at 274-281; penned by Commissioner Robert S. Martinez with Chairman Alicia dela Rosa-Bala and Commissioner Nieves L. Osorio.

<sup>5</sup> *Id.* at 314-322.

Commission (CSC) in that it reduced the penalty imposed upon Vergel P. Tabasa (Tabasa) for simple misconduct from dismissal from service and all its accessory penalties to suspension of six months without salary, other benefits, and backwages.

#### *Antecedents*

On June 18, 2013, Sharmila Kaye Angco (Angco), a contractual employee of petitioner Presidential Broadcast Staff-Radio TV Malacañang (PBS-RTVM), filed an administrative complaint against Tabasa, a close-in cameraman of PBS-RTVM in Manila, for sexual harassment or grave misconduct.

According to Angco, sometime in December 28, 2012, at noon time, she was seated in a sofa of the Engineering Office watching Eat Bulaga when Tabasa suddenly sat beside her and cornered her. Tabasa then tickled her right knee much to her shock and humiliation. Despite her protestations, Tabasa also held her causing her to hit her left elbow in the nearby cabinet when she freed herself from Tabasa.<sup>6</sup> Distraught, she subsequently left the room and proceeded to the office toilet to cry. Thereafter, she returned to the Engineering Office and relayed the incident to her colleagues. Much to her dismay, Tabasa appeared and tried to approach her, but she avoided him. At that point, instead of apologizing, Tabasa taunted her, and with a smirk, uttered the following: “*Oh, umiyak ka daw.*” Tabasa then left the office.<sup>7</sup>

A Fact Finding Committee (Committee) was then created to conduct an investigation on Angco’s complaint.<sup>8</sup>

Meanwhile, a Decision in Tabasa’s prior administrative case was rendered on September 5, 2013, finding the latter liable for simple misconduct for his previous verbal altercation with another officemate.

At the onset, Tabasa demanded for the conduct of a formal investigation with proper representation by a legal counsel. Although he admitted that he touched the knee of Angco, he insisted that it was intended as a joke and done without malice considering that they were in

<sup>6</sup> *Id.* at 115.

<sup>7</sup> *Id.* at 116.

<sup>8</sup> *Id.* at 118.

a group who were laughing while watching television. He asserted that the simultaneous filing of the complaints by Angco, Bethlehem Dela Cruz, and Maria Cristeta David indicated a concerted action on the part of the lady employees to harass and inconvenience him. He further questioned the charge of misconduct against him arguing that it was not an act performed in connection to or related to his functions.

On May 20, 2014, after due notice and hearing, the Committee adjudged Tabasa guilty of simple misconduct.<sup>9</sup> The offense being the second one, the Committee meted out the penalty of dismissal from service pursuant to Section 46, D(2), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS),<sup>10</sup> CSC Memorandum Circular No. 30 s. 1989, and other pertinent Civil Service Laws.<sup>11</sup>

Assistant Secretary Virgilio P. Nadal, Jr. (Asec. Nadal) approved the recommendation in his Decision<sup>12</sup> dated May 20, 2014. Then Philippine Communications Operations Office (PCOO) Secretary Herminio "Sonny" Coloma, Jr. (Secretary Coloma) likewise affirmed the findings and the imposition of the penalty of dismissal from service against Tabasa.<sup>13</sup> Aggrieved, Tabasa appealed to the CSC on the ground that his right to due process was violated during the conduct of the investigation and questioned the partiality of PBS-RTVM in view of its active participation as complainant, prosecutor, and judge.<sup>14</sup> In the Decision<sup>15</sup> dated December 19, 2014, the CSC partly granted the appeal and remanded the case to the PBS-RTVM for the conduct of formal investigation.<sup>16</sup> The case was then remanded to PBS-RTVM for the conduct of a formal investigation. On August 11, 2015, Hearing Officer Atty. Michael M. Santiago submitted a Formal Investigation Report<sup>17</sup> equally finding Tabasa guilty of simple misconduct and recommended the imposition of dismissal from service, *viz.*:

<sup>9</sup> See Report of Investigation, *id.* at 125-132.

<sup>10</sup> Civil Service Resolution No. 1101502. Promulgated on November 8, 2011.

<sup>11</sup> *Id.* at 131-132.

<sup>12</sup> *Id.* at 133.

<sup>13</sup> *Id.* at 134.

<sup>14</sup> *Id.* at 135-151.

<sup>15</sup> *Id.* at 171-185; penned by Commissioner Nieves L. Osorio with Chairman Francisco T. Duque III and Commissioner Robert S. Martinez.

<sup>16</sup> *Id.* at 185.

<sup>17</sup> *Id.* at 218-231.

WHEREFORE, this Hearing Officer finds the respondent Vergel P. Tabasa, GUILTY of Simple Misconduct under Section 46 D(2) of the Revised Rules on Administrative Cases in the Civil Service. Considering that this is Respondent's second offense, and subject to the APPROVAL and CONFIRMATION of the Disciplining Authority, the imposable penalty is DISMISSAL from the service. The penalty of dismissal shall carry with it cancellation of eligibility, forfeiture of retirement benefits, perpetual disqualification from holding public office and bar from taking civil service examinations, provided under Sec. 52(a) of the RRACCS.

The decision imposing the penalty of dismissal by the Disciplining Authority is not immediately executory unless confirmed by the Secretary. Thus, should the Executive Director, PBS-RTVM approve this recommendation, it is respectfully recommended, that the same be forwarded to the Office of the Honorable Secretary Herminio B. Coloma, Jr. for his confirmation pursuant to Section 61 par. 2 of the RRACCS.

RESPECTFULLY SUBMITTED AND RECOMMENDED.<sup>18</sup>

Asec. Nadal affirmed *in toto* the findings of the hearing officer in a Decision<sup>19</sup> dated August 24, 2015 and rejected Tabasa's argument that misconduct could only be committed in relation to or in connection with the performance of official duty. The Decision emphasized that the personality of the complainant, *per se*, cannot affect the validity of the proceedings because, for all intents and purposes, the real complainant is the government.<sup>20</sup>

Secretary Coloma further affirmed the Decision in a Memorandum<sup>21</sup> dated September 21, 2015.

#### *Ruling of the CSC*

Tabasa elevated the case to the CSC by raising the partiality of PBS-RTVM in view of its active participation as complainant, prosecutor, and judge. Tabasa further submitted that the penalty of dismissal was too harsh considering the presence of mitigating circumstances, such as length of service and good faith. Lastly, he reiterated that the act complained of was not work-related; hence, he could not be adjudged guilty of misconduct, and that it took Angco six

<sup>18</sup> *Id.* at 230-231.

<sup>19</sup> *Id.* at 235-238.

<sup>20</sup> *Id.* at 237.

<sup>21</sup> *Id.* at 239-241.

months before she initiated the complaint, a delay which casts doubt on her credibility.

Initially, the CSC did not give due course to Tabasa's appeal for belated filing, but upon a motion for reconsideration, the CSC affirmed the findings of Secretary Coloma in Decision No. 160374<sup>22</sup> dated March 17, 2016, with the following dispositive portion:

WHEREFORE, the appeal of Vergel P. Tabasa, Close-in Cameraman Presidential Broadcast Staff-Radio TV Malacañang (PBS-RTVM), Manila, is hereby DISMISSED. Accordingly, the Decision dated August 24, 2015 of Assistant Secretary Virgilio P. Nadal, Jr., Executive Director, same agency, as affirmed in the Memorandum dated September 21, 2015 of Secretary Herminio "Sonny" B. Coloma, Presidential Communications Operations Office (PCOO), Malacañang, Manila, finding him guilty of Simple Misconduct (second offense) and imposing upon him the penalty of dismissal from the service with the accessory penalties of cancellation of eligibility, forfeiture of all benefits including retirement, except accrued leave/terminal benefits and personal contribution in the GSIS, if any, perpetual disqualification from holding public office, and bar from taking civil service examination, STANDS.

Copies of this Decision shall be furnished the Civil Service Commission-National Capital Region, Quezon City, the Government Service Insurance System (GSIS), the Resident Auditor, Commission on Audit (COA)-PBS-RTVM, and the Office of the Ombudsman, for their information and appropriate action.<sup>23</sup>

#### *Ruling of the CA*

While the CA was not persuaded by Tabasa's defense, it nevertheless partly granted the petition filed by Tabasa in a Decision dated March 30, 2017 wherein the *fallo* reads:

WHEREFORE, premises considered, the instant petition for review is PARTLY GRANTED. The Decision of the Civil Service Commission dated March 17, 2016 and its Resolution dated May 26, 2016 are AFFIRMED with MODIFICATION, reducing the penalty for simple misconduct from dismissal from service and all its

<sup>22</sup> *Id.* at 274-281; penned by Commissioner Robert S. Martinez with Chairperson Alicia dela Rosa-Bala and Commissioner Nieves L. Osorio.

<sup>23</sup> *Id.* at 281.



accessory penalties to suspension of six (6) months without salary and other benefits as well as backwages. Petitioner Vergel P. Tabasa is likewise STERNLY WARNED that another transgression of a similar nature will merit dismissal from the service.

SO ORDERED.<sup>24</sup>

The CA was in conformity with the findings that Tabasa committed a less grave offense of simple misconduct. The CA was likewise not convinced that Tabasa's act of tickling the knee of Angco was innocent and merely made to uplift the latter's morale and spirit while watching television. Nevertheless, the CA reduced and mitigated the imposed penalty of dismissal considering that Tabasa's second offense was not beyond rectification, the triviality of the complained offense, and the length of his service with the government which dates back from 1987.

#### *The Issue*

The issue brought to this Court for resolution is worded by PBS-RTVM as follows:

THE COURT OF APPEALS COMMITTED A GRAVE ERROR WHEN IT REDUCED THE PENALTY IMPOSED ON RESPONDENT TO A MERE SUSPENSION OF SIX (6) MONTHS WITHOUT SALARY AND OTHER BENEFITS AND BACKWAGES, CONSIDERING THE FACT THAT IT WAS ALREADY RESPONDENT'S SECOND OFFENSE.<sup>25</sup>

Simply put, the issue boils down to whether the reduction of the penalty from dismissal from service to suspension for six months is proper.

PBS-RTVM, as represented by the Office of the Solicitor General (OSG), argues that the RRACCS is clear and unambiguous in categorically prescribing the penalty of dismissal from service for a second commission of a less grave offense. It further disputes the mitigation of the penalty for "special reasons" which, for the OSG, is underservingly given to Tabasa, who did not even exemplify any hint of

<sup>24</sup> *Id.* at 20.

<sup>25</sup> *Id.* at 41.

remorse for his lewd behavior towards Angco. For the OSG, whatever his intentions were, Tabasa's act of taunting Angco instead of apologizing to her after the incident demonstrated his insensitivity; and with this being his second offense, it displayed his propensity to create a mockery of the public office that he holds.<sup>26</sup>

As to the CA's appreciation of the length of service of Tabasa, the OSG opines that this should be treated as an aggravating circumstance instead since his seniority apparently emboldened him to commit unsolicited advances against a powerless and helpless Angco, who was barely three months in service at the time of the incident. The OSG is likewise of the view that Tabasa's disgraceful act demonstrated the highest degree of ingratitude and ungratefulness to the institution that has been the source of his livelihood for 28 years. Tabasa's penchant for picking up fights to disrupt fellow employees who are innocently resting, as in his first administrative offense wherein he intentionally bumped the knee of another employee which resulted in a verbal altercation, was an indication that he is unworthy of public service as it could engender a negative perception in the eyes of the public, and more importantly, set a bad example to his fellow employees.<sup>27</sup>

On the other hand, Tabasa, in his Comment,<sup>28</sup> maintains that the penalty of dismissal from service is not commensurate with the offense that he committed considering the mitigating circumstances of good faith and length of service. He contends that he should not be dismissed from service due to simple misconduct without considering the mitigating circumstances of length of service and lack of malice. He also reiterates the partiality of PBS-RTVM as the complainant and at the same time the disciplining authority, and highlights that his dismissal from service would make his minor children suffer because of an unsubstantiated claim against him.<sup>29</sup>

#### *Ruling of the Court*

The Court finds the petition meritorious and rules in favor of petitioner PBS-RTVM.

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<sup>26</sup> *Id.* at 43-45.

<sup>27</sup> *Id.* at 46-47.

<sup>28</sup> *Id.* at 375-403.

<sup>29</sup> *Id.* at 401-402.

Prefatorily, it is established that in petitions for review on *certiorari*, only questions of law may be raised by the parties and passed upon by the Court.<sup>30</sup> As a general rule, factual findings of administrative agencies, such as the CSC, that are affirmed by the CA, are conclusive upon and generally not reviewable by the Court, unless these findings are not supported by substantial evidence.<sup>31</sup>

In this case, the disciplining authority, the CSC and the CA similarly ruled that Tabasa committed simple misconduct. Hence, the Court holds that the evidence extant in the records of this case is sufficient to support a finding that Tabasa is, indeed, guilty of the offense lodged against him. Thus, there is no cogent reason to depart from the findings of the disciplining authority, the CSC and the CA as to the commission by Tabasa of simple misconduct.

*Teasing in the Workplace  
Constituting Simple Misconduct*

Misconduct is a transgression of some established or definite rule of action; more particularly, it is an unlawful behavior by the public officer.<sup>32</sup>

There is evidence to support the claim that Tabasa committed an unlawful behavior against Angco. A careful perusal of the records of the case would show that there is no dispute that Tabasa deliberately touched the knee of Angco in jest and that this act was unsolicited. As defense, Tabasa justified his actions as a form of bantering. However, it is important to stress that there is playful teasing and then there is hurtful teasing. Despite teasing's positive effects to interpersonal relationships, it may not always be perceived favorably. The way a person views a joke may differ depending on the situation and on how one perceives a tease—a teaser's intentions and his/her overall interaction with the teaser. Insensitive jokes or actions could border on harassment, due to the fact that targets may be unaware of the teaser's intentions. Therefore, for the

<sup>30</sup> *Wooden v. Civil Service Commission*, 508 Phil. 500, 510 (2005), citing *Tsai v. Court of Appeals*, 418 Phil. 606, 617 (2001).

<sup>31</sup> *Barcelona v. Lim, et al.*, 734 Phil. 766, 792 (2014), citing *Dadubo v. Civil Service Commission*, 295 Phil. 825, 831 (1993).

<sup>32</sup> *Quiroz v. Orfila*, 338 Phil. 828, 835 (1997), citing *Office of the Court Administrator v. Bucoy*, 305 Phil. 640, 647 (1994) and *Amosco v. Judge Magro*, 165 Phil. 110, 113 (1976).



protection of all employees, a line has to be drawn before an innocent action becomes a full-blown harassment.

In this case, Tabasa's antic of touching Angco's knee may be a joke to him, but for its recipient, it was completely embarrassing and inappropriate. Even though Tabasa could have the best of intentions in making a moment lighthearted with Angco while watching a noon time television show, the latter's reception of the joke was clearly resistive. For obvious reasons, Angco could not be faulted for her own perception of decency and decorum exacting upon employees in the government service. The touching of the knee was clearly unsolicited and uncalled for and Tabasa does not have any right to do so. Even if the act was done without malice, it is beyond all bounds of decency and decorum for a person to touch any body part of another without consent for that matter. Veritably, Tabasa not only demonstrated his moral depravity and lack of respect towards female co-employees, but also his unprofessionalism in his interactions with his colleagues.

Indeed, by his conduct, Tabasa violated the yardstick of public service imposed under Section 1, Article XI of the Constitution which enunciates the state policy of promoting a high standard of ethics and utmost responsibility in the public service.<sup>33</sup> As a public servant, he is bound by the ethical standards demanded by Republic Act No. 6713 on professionalism, justness, and sincerity. He should at all times respect the rights of others, and shall refrain from doing acts contrary to law, good morals, good customs, public policy, public order, public safety and public interest.<sup>34</sup>

This is not to completely prohibit light-hearted banter for no one would want to create a sterile working environment. Creating an atmosphere of playfulness in the workplace is an understandable form of social interaction. The Court takes judicial notice that humor in the workplace could positively leverage work-related outcomes such as work productivity, staff motivation, job satisfaction, group cohesion, commitment, and most importantly, stress reduction. However, unsolicited physical contact, even if done in jest, has no place in the workplace, especially in the government service.

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<sup>33</sup> *Bernardo v. Court of Appeals*, 473 Phil. 284, 299 (2004).

<sup>34</sup> Section 4(c), RA 6713, otherwise known as the "Code of Conduct and Ethical Standards for Public Officials and Employees."

*Imposition of the Penalty of  
Dismissal from Service for  
Second Offense*

It should be recalled that this is Tabasa's second offense in light of his previous administrative case for simple misconduct wherein he was meted out with the penalty of suspension for two months and one day.

Under the Civil Service Law<sup>35</sup> and its implementing rules on administrative cases,<sup>36</sup> the penalty for the second offense of simple misconduct is dismissal from the service.<sup>37</sup> Thus, as provided by law, there is no penalty that should be imposed on Tabasa other than the penalty of dismissal.

Although, the rules allow the consideration of mitigating and aggravating circumstances and provide for the manner of imposition of the proper penalty even in cases where the penalty prescribed by law is dismissal from the service, under the facts of this case, Tabasa is not entitled to a lower penalty.

As correctly expounded by PBS-RTVM, length of service should be taken against Tabasa, coupled with the fact that this is already his second offense. Length of service is not a magic word that would automatically be considered as a mitigating circumstance in favor of the party invoking it.<sup>38</sup> Length of service is an alternative circumstance; it could either be a mitigating or aggravating circumstance depending on the factual *milieu* of each case.<sup>39</sup>

In this case, Tabasa's length of service cannot be considered as a mitigating circumstance since it is the number of years in the service that seemingly gave him the impression that he could do away with his teasing and offensive humor to the detriment of his co-workers. As supported by the statement of a co-employee, Ms. Sheridan Navarro, as

<sup>35</sup> Subtitle A, Title I, Book V of Executive Order No. 292, otherwise known as the Administrative Code of 1987.

<sup>36</sup> 2017 Rules on Administrative Cases in the Civil Service (2017 RACCS).

<sup>37</sup> Section 50 D(2), Rule 10, 2017 Rules on Administrative Cases in the Civil Service (2017 RACCS).

<sup>38</sup> *Civil Service Commission v. Cortez*, 474 Phil. 670,685-686 (2004).

<sup>39</sup> *Id.*

to Tabasa's behavior, the latter was known to her as a person who likes to banter and fool around. Indeed, Tabasa's lack of professionalism and his penchant for teasing were evident. As correctly observed by the OSG, Tabasa's seniority emboldened him to commit unsolicited advances. Where a government employee concerned takes advantage of his long years of service and position in public office, length of service may not be considered in lowering the penalty.<sup>40</sup>

Under the circumstances, his dismissal is warranted. His years of service should have impelled him to set a good example to his co-employees and other civil servants instead of flagrantly and shamelessly violating the law and undermining the professionalism and integrity required from public servants. Tabasa should be reminded that a public servant must exhibit at all times the highest sense of professionalism, honesty and integrity for no less than the Constitution mandates that a public office is a public trust and public officers and employees 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.<sup>41</sup> These principles should be taken as working standards by all in the public service.<sup>42</sup> High standard of ethics and utmost responsibility in the public service must be promoted.<sup>43</sup>

**WHEREFORE**, the petition is **GRANTED**. The Decision dated March 30, 2017 and the Resolution dated September 7, 2017 of the Court of Appeals in CA-G.R. SP No. 146150, is **REVERSED** and **SET ASIDE**. Accordingly, Decision No. 160374 dated March 17, 2016 of the Civil Service Commission, dismissing respondent Vergel P. Tabasa from the service with the accessory penalties of cancellation of eligibility, forfeiture of all benefits including retirement, except accrued leave/terminal benefits and personal contribution in the Government Service Insurance System, if any, disqualification from reemployment in the government service, and bar from taking civil service examination is hereby **REINSTATED**.


**SO ORDERED.**

<sup>40</sup> *Gannapao v. Civil Service Commission et al.*, 665 Phil. 60, 81 (2011).


<sup>41</sup> *De Castro v. Field Investigation Office, Office of the Ombudsman, et al.*, 810 Phil. 31, 56 (2017).

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


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

  
**HENRI JEAN PAUL B. INTING**  
*Associate Justice*

WE CONCUR:

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

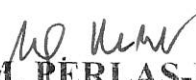
  
**ANDRES B. REYES, JR.**  
*Associate Justice*

  
**RAMON PAUL L. HERNANDO**  
*Associate Justice*

  
**EDGARDO L. DELOS SANTOS**  
*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.

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

**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.



**DIOSDADO M. PERALTA**  
*Chief Justice*

