



Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
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SECOND DIVISION

CIVIL SERVICE COMMISSION, G.R. No. 249126
Petitioner,

Present:

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

- versus -

HERNANDO,
INTING,
GAERLAN, and
DIMAAMPAO, JJ.

Promulgated:

MARILYN L. GAGABUAN,
Respondent.

SEP 29 2021 *[Signature]*

X ----- X

DECISION

INTING, J.:

This resolves the Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court filed by the Civil Service Commission (CSC) against Marilyn L. Gagabuan (Gagabuan) assailing the Decision² dated January 28, 2019 and the Resolution³ dated August 19, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 151505. The assailed Decision modified Decision No. 170225⁴ dated March 5, 2017 of the CSC which, in turn, upheld Decision No. 16-0010⁵ dated April 14, 2016 of the CSC Regional Office No. VIII (CSCRO VIII), Palo, Leyte, imposing the penalty of suspension for six (6) months against Gagabuan and its

¹ *Rollo*, pp. 24-39.

² *Id.* at 13-18; penned by Associate Justice Ramon M. Bato, Jr. with Associate Justices Ramon A. Cruz and Ronaldo Roberto B. Martin, concurring.

³ *Id.* at 9-11.

⁴ *Id.* at 78-85; signed by Commissioner Robert S. Martinez and Chairperson Alicia dela Rosa-Bala; and attested by Director I / Dolores B. Bonifacio, Commission Secretariat and Liaison Office.

⁵ *Id.* at 96-105; signed by Director IV Victoria F. Esber.

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subsequent Decision No. 16-0014⁶ dated April 19, 2016 ordering her dismissal from the service.

The Antecedents

Gagabuan is a Revenue Collection Clerk I of the Municipality of Gen. MacArthur, Eastern Samar. On May 9, 2011, the Municipal Mayor of Gen. MacArthur endorsed a complaint against Gagabuan with the CSCRO VIII, attaching copies of her Daily Time Records and a Summary of Tardiness.⁷ Upon investigation, it was found that Gagabuan incurred a total of 85 instances of tardiness at work from July 2010 until March 2011.⁸ The case was docketed as CSCRO8 ADC No. 11-048 for Frequent Unauthorized Tardiness and/or Habitual Tardiness pursuant to Section 52(A)(17), Rule IV of the Uniform Rules on Administrative Cases in the Civil Service (URACCS).⁹

Thereafter, on September 12, 2011, the CSCRO VIII received another complaint regarding the incurred tardiness of some employees of the Local Government Unit of Gen. MacArthur. One of the employees included in the complaint was Gagabuan. After the conduct of another investigation, it was established that she incurred a total of 72 instances of tardiness within the period of January to June 2010. The second case was docketed as CSCRO8 ADC No. 11-120 for Frequent Unauthorized Tardiness and/or Habitual Tardiness pursuant to Section 46(B)(5) of the Revised Rules on Administrative Cases in the Civil Service (RRACCS).¹⁰

For her part, Gagabuan admitted her repeated tardiness at work. However, she argued that she should be spared from its consequences because her tardiness was already deducted from her accrued leave credits.¹¹

Ruling of the CSCRO VIII

On April 14, 2016, the CSCRO VIII rendered Decision No. 16-

⁶ *Id.* at 106-117.

⁷ *Id.* at 96.

⁸ *Id.* at 101.

⁹ *Id.* at 96.

¹⁰ *Id.* at 106.

¹¹ *Id.* at 113.

0010¹² in CSCRO8 ADC No. 11-048 finding Gagabuan liable for Unauthorized Tardiness with a penalty of suspension for a period of six (6) months. Thus:

WHEREFORE, considering the frequency of Gagabuan's tardiness and its effect to government Service, a penalty of suspension for six (6) months, in its medium term, for Unauthorized Tardiness pursuant to *Section 52 Paragraph (A)(17) of the Uniform Rules on Administrative Cases in the Civil Service* is hereby imposed upon Marilyn L. Gagabuan, Revenue Collection Clerk I, Municipality of Gen. MacArthur, Eastern Samar.

Government Center, Palo, Leyte.¹³

On April 19, 2016, the CSCRO VIII promulgated Decision No. 16-0014¹⁴ in CSCRO8 ADC No. 11-120 finding Gagabuan liable once again for Frequent Unauthorized Tardiness. Considering that it was her second offense, the penalty of dismissal was meted out upon her, to wit:

WHEREFORE, all evidence submitted, and considering that this is the respondent's second offense for Habitual Tardiness, a penalty of dismissal from the service is hereby imposed against Marilyn T. [sic] Gagabuan, Revenue Collection Clerk I, LGU-Gen. MacArthur, Eastern Samar, for Frequent Unauthorized Tardiness in Reporting for Duty, pursuant to *Section 46 Paragraph (B) (5) of the Revised Rules on Administrative Cases in the Civil Service*.

Government Center, Palo, Leyte.¹⁵

The allegations of tardiness were not disputed by Gagabuan. CSCRO VIII considered CSCRO8 ADC No. 11-120 as her second offense, and thus, imposed upon her the penalty of dismissal from service.¹⁶

Instead of filing a motion for reconsideration from the above Decisions of CSCRO VIII, Gagabuan filed a petition for review before the CSC.¹⁷ She argued that the two cases against her should have been consolidated by the CSCRO VIII and that the latter erred in finding her

¹² *Id.* at 96-105.

¹³ *Id.* at 105.

¹⁴ *Id.* at 106-117.

¹⁵ *Id.* at 117.

¹⁶ *Id.*

¹⁷ *Id.* at 81.

guilty in both administrative cases.¹⁸ The case was docketed as D-2016-08022.

Ruling of the CSC Proper

Finding no merit in her arguments, the CSC affirmed the rulings in CSCRO8 ADC Nos. 11-048 and 11-120 in its Decision No. 170225¹⁹ dated March 5, 2017. The dispositive portion of the CSC Decision states:

WHEREFORE, the Petition for Review of Marilyn L. Gagabuan, Revenue Collection Clerk I, Municipal Government of General MacArthur, Eastern Samar, is hereby DISMISSED. Accordingly, Decision No. 16-0010 dated April 14, 2016 of Civil Service Commission Regional Office (CSC RO) VIII, Palo, Leyte, finding her guilty of Frequent Unauthorized Tardiness and imposing upon her the penalty of six (6) months suspension is hereby AFFIRMED.

On the other hand, CSC RO VIII Decision No. 16-0014 dated April 19, 2016, finding her guilty for the second offense of Frequent Unauthorized Tardiness, and imposing upon her the penalty of dismissal from the service is hereby AFFIRMED. It is understood that the penalty of dismissal from the service carries with it the accessory penalties of cancellation of eligibility, perpetual disqualification from holding public office, bar from taking Civil Service examinations, and forfeiture of retirement benefits, except terminal/accrued leave credits and personal contributions to the GSIS, if any.

Copies of this Decision shall be furnished the Commission on Audit-Municipal Government of General MacArthur, Samar and the Government Service Insurance System (GSIS), for their reference and appropriate action.

Quezon City.²⁰

In affirming the CSCRO VIII rulings, CSC explained that the prevailing rule in CSCRO8 ADC No. 11-048 was Rule IV, Section 52(A) (17) of the URACCS where Frequent Unauthorized Absences were classified as a grave offense which is punishable by suspension of six (6) months and one (1) day to one (1) year from service for the first offense. On the other hand, CSCRO8 ADC No. 11-120 was already governed by the RRACCS²¹ which also classifies Frequent Unauthorized Tardiness as

¹⁸ *Id.*

¹⁹ *Id.* at 78-85.

²⁰ *Id.* at 85.

²¹ CSC Resolution No. 1101502, which took effect on December 6, 2011.

a grave offense. Being classified as such, it carries with it the penalty of dismissal from service for the second offense.²²

Gagabuan sought reconsideration of the CSC Decision but the CSC denied it in the CSC Resolution No. 1700873²³ dated May 16, 2017.

Ruling of the CA

Gagabuan elevated the case to the CA. In its assailed Decision²⁴ dated January 28, 2019, the CA modified the penalties imposed in Decision No. 170225, as follows:

WHEREFORE, the instant petition is *GRANTED*. Decision No. 170225 of the Civil Service Commission promulgated on 05 March 2017 is hereby modified as follows:

In ADC No. 11-048, petitioner Marilyn L. Gagabuan is found administratively liable for Habitual Tardiness under Rule IV, Section 52 (C) (4) of the Uniform Rules on Administrative Cases in the Civil Service and hereby meted the penalty of reprimand.

In ADC No. 11-120, petitioner Marilyn L. Gagabuan is found administratively liable for Habitual Tardiness under Section 46 (F) (4) of the Revised Rules on Administrative Cases in the Civil Service and hereby suspended for thirty (30) days without pay.

Petitioner is sternly warned that a repetition of the same offense will be dealt with more severely.

SO ORDERED.²⁵

In lowering the penalties imposed to Gagabuan, the CA considered Habitual Tardiness as a light offense pursuant to the pertinent provisions of the URACCS and the RRACCS. Moreover, the CA considered other factors such as her acknowledgment of her infractions and feeling of remorse, as well as her claim that she is a solo parent who has spent 25 years in government service.²⁶

²² *Rollo*, p. 84.

²³ *Id.* at 86-89.

²⁴ *Id.* at 13-18.

²⁵ *Id.* at 18.

²⁶ *Id.* at 17-18.

The CSC, represented by the Office of the Solicitor General, filed a Motion for Reconsideration of the assailed CA Decision. However, the CA denied it in the assailed Resolution²⁷ dated August 19, 2019 for lack of merit.

Hence, the petition before the Court.

Issue before the Court

The issue to be resolved in this case is whether the CA erred in imposing the penalties of reprimand and suspension for thirty (30) days against Gagabuan in CSCRO8 ADC Nos. 11-048 and 11-120, respectively.

The Court's Ruling

The Court denies the petition.

In its petition, the CSC avers that both Section 52(A)(17)²⁸ of the URACCS and Section 46(B)(5)²⁹ of RRACCS classify Frequent Unauthorized Tardiness as a grave offense. Accordingly, the penalties to be imposed are suspension for six (6) months and one (1) day to one (1)

²⁷ *Id.* at 9-11.

²⁸ Section 52(A)(17) of the Uniform Rules on Administrative Cases in Civil Service (URACCS) provides:

SECTION 52. *Classification of Offenses.* — Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

A. The following are grave offenses with their corresponding penalties:

x x x x

17. Frequent unauthorized absences, or tardiness in reporting for duty, loafing or frequent unauthorized absences from duty during regular office hours;

x x x x

²⁹ Section 46(B)(5) of the Revised Rules on Administrative Cases in the Civil Service (RRACCS) provides:

SECTION 46. *Classification of Offenses.* — Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

x x x x

B. The following grave offenses shall be punishable by suspension of six (6) months and one (1) day to one (1) year for the first offense and dismissal from the service for the second offense:

x x x x

5. Frequent unauthorized absences, or tardiness in reporting for duty, loafing from duty during regular office hours;

x x x x

year for the first offense, and dismissal from service for the second offense.³⁰

For her part, citing a plethora of cases decided by the Court, Gagabuan argued that the CA did not err when it classified her tardiness as a light offense.³¹ She added that the extreme penalty of dismissal is too harsh considering the attendant mitigating circumstances, *i.e.*, her acknowledgment of her infractions, remorse, and her status as a solo parent.³²

As earlier stated, Gagabuan was charged on July 12, 2011 with Frequent Unauthorized Tardiness and/or Habitual Tardiness in CSCRO8 ADC No. 11-048 under Section 52(A)(17), Rule IV of the URACCS. In CSCRO8 ADC No. 11-120, she was charged with the same offense but, this time, pursuant to Section 46(B)(5) of the RRACCS which took effect on December 6, 2011.

CSC Memorandum Circular No. 23, Series of 1998,³³ provides that an employee shall be considered habitually tardy if he or she incurs tardiness, regardless of the number of minutes, 10 times a month for at least two months in a semester or at least two consecutive months during the year.

There is no more dispute as to whether Gagabuan was guilty of habitual tardiness because she already admitted to the charges. The only issue left is the classification of this offense as grave or light which will ultimately determine the correct penalties to be imposed upon her.

Tardiness in reporting for duty is classified as a grave offense under Section 52(A)(17) of the URACCS. A similar provision is found in Section 46(B)(5) of the RRACCS which likewise classified Tardiness in reporting for duty as a grave offense. As such, the penalties to be imposed are suspension for six (6) months and one (1) day to one (1) year for the first offense and dismissal from service for the second offense.

³⁰ *Rollo*, p. 32.

³¹ *Id.* at 122; as culled from the Comment/Opposition filed by Respondent Marilyn L. Gagabuan.

³² *Id.* at 127.

³³ Entitled, "Reprimand as the Penalty for First Offense in Habitual Tardiness," approved on January 15, 1998.

In the meantime, Section 52(C)(4)³⁴ of the URACCS classified Frequent Unauthorized Tardiness or Habitual Tardiness as a light offense. The classification is reiterated in Section 46(F)(4)³⁵ of the RRACCS. In both provisions, the penalties imposed are reprimand, suspension for one (1) to thirty (30) days, and dismissal for the first, second, and third offenses, respectively.

At first glance, there appears to be conflicting provisions as regards the classification of the offense of Habitual Tardiness. Recognizing this, the CSC issued Memorandum Circular No. 1, Series of 2017³⁶ (MC 01-2017) stating:

The classification of Habitual Tardiness as either a grave offense or a light offense would depend on the frequency or regularity of its commission and its effects on the government service.

In this case, the Court agrees with the CA that the habitual tardiness of Gagabuan should be considered as a light offense.

Under Section 48, Rule 10 of the RRACCS, physical fitness, good faith, first offense, length of service, and other analogous circumstances may be appreciated in determining the penalty to be imposed upon an erring employee. The Court has repeatedly extended its compassion to said employees, taking into consideration several mitigating factors.³⁷

³⁴ Section 52(C)(4) of the URACCS provides:

SECTION 52. *Classification of Offenses.* —

C. The following are Light Offenses with corresponding penalties:

x x x x

4. Frequent unauthorized tardiness (Habitual Tardiness)

1st offense — Reprimand

2nd offense — Suspension 1—30 days

3rd offense — Dismissal

³⁵ Section 46(F)(4) RRACCS provides:

SECTION 46. *Classification of Offenses.* — Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

x x x x

F. The following light offenses are punishable by reprimand for the first offense; suspension of one (1) to thirty (30) days for the second offense; and dismissal from the service for the third offense:

x x x x

4. Frequent unauthorized tardiness (Habitual Tardiness);

³⁶ Entitled, "Reiteration of the Policy on Government Office Hours; and the Administrative Offenses of Frequent Unauthorized Absences (Habitual Absenteeism); Tardiness in Reporting for Duty; and Loafing from Duty During Regular Office Hours," approved on January 31, 2017.

³⁷ *In Re Curitana*, A.M. No. 2014-08-SC (Notice), October 13, 2014.

During the years when the URACCS and the RRACCS were in effect, the Court, in many cases, had considered Habitual Tardiness as a light offense in view of attending circumstances.³⁸ As in the case, Gagabuan has shown remorse for her actions and did not deny the allegations against her from the beginning. She only contended that she should be spared from the consequences of her infractions because the tardiness which she incurred was already deducted from her leave credits.³⁹ She further averred that she already made corrective measures by reporting for office at the prescribed working hours, and promised that she will not commit the same acts again.⁴⁰

With the foregoing, the CA did not err when it modified the penalties in CSCRO8 ADC Nos. 11-048 and 11-120 to reprimand and suspension for thirty (30) days, respectively, consistent with the previous rulings of the Court on the matter.

WHEREFORE, the petition is **DENIED**. The Decision dated January 28, 2019 and the Resolution dated August 19, 2019 of the Court of Appeals in CA-G.R. SP No. 151505 are **AFFIRMED**.

SO ORDERED.



HENRI JEAN PAUL B. INTING
Associate Justice

³⁸ *Id.*; see also *Re: Habitual Tardiness of Shirley V. De Guzman*, A.M. No. P-13-3142, September 18, 2013; *Re: Habitual Tardiness of Florence F. Salango*, A.M. No. P-13-3166 (Notice), January 20, 2014; *Re: Habitual Tardiness of Ruby C. Tabio*, A.M. No. P-20-4026 (Notice), January 27, 2020; *Re: Employees Incurring Habitual Tardiness in the Second Semester of 2009*, 660 Phil. 608 (2011); *In re Gloria F. Basada*, A.M. No. P-15-3337 (Notice), July 22, 2015; *Re: Habitual Tardiness of Sayam*, 544 Phil. 693 (2007); *Re: Habitual Tardiness of Ms. Divina A. Kiamko*, 506 Phil. 601 (2005).

³⁹ *Rollo*, p. 102.

⁴⁰ *Id.*

WE CONCUR:


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson



RAMON PAUL L. HERNANDO
Associate Justice


SAMUEL H. GAERLAN
Associate Justice


JAPAR B. DIMAAMPAG
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.


ALEXANDER G. GESMUNDO
Chief Justice

