

RUBA, Lilibeth N.

Re Appeal; Dishonesty and Falsification
of Official Documents

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RESOLUTION NO. 020821

Lilibeth N. Ruba, former New Accounts Clerk, Land Bank of the Philippines (LBP)-Isulan Branch, appeals from Resolution No. 01-161, dated April 26, 2001, of the LBP Board of Directors, which denied her motion for reconsideration of an earlier decision rendered by the same Board (Resolution No. 01-159, dated February 14, 2001), finding her guilty of Dishonesty and Falsification of Official Documents.

Briefly, the LBP Board of Directors, in Board Resolution No. 01-161, thwarted the move of Ruba to effect the reconsideration of Board Resolution No. 01-159, which latter resolution embodied the concurrence of the LBP Board of Directors with the findings of the LBP General Counsel in the administrative case entitled "Land Bank of the Philippines, complainant vs. Lilibeth N. Ruba, respondent," to wit:

"2. Evaluation

2.1 As can be gleaned from the records, the Respondent committed the wrongful acts in 1998 while she was still a contractual employee hired from the DBP Service Corp. She was appointed a permanent employee of the Bank on March 1, 1999 as it appears that the Branch management was unaware of her wrong-doings at that time.

2.2 The act of the Respondent of fraudulently crediting to his father's account SSS pension payments when none was due constitutes the offense of Dishonesty and her forging of the initial of the Branch Cashier in the Credit Advices to effect the fraudulent crediting constitutes the offense of Falsification of Official Documents.

2.3 The Respondent's appeal for mercy and that she be meted out the penalty of Reprimand may not be granted because:

The offenses of Dishonesty and Falsification of Official Documents are both grave offenses punishable by Dismissal even if committed for the first time, as provided in Items 1 and 6, Paragraph A, Section 52, Revised Uniform Rules on Administrative Cases in the Civil Service.

The reasons cited by the Respondent in committing the offenses cannot be considered as extenuating nor mitigating circumstances. In fact, the falsification or forgery committed by her may be considered as an aggravating circumstance pursuant to Section 5 (l) of the Revised Uniform Rules on Administrative Cases in the Civil Service, i.e., employment of fraudulent means to commit or conceal the offense.

2.4 The penalty of Dismissal carries with it the forfeiture of retirement benefits.

"3. Recommendation

3.1 Foregoing considered, we recommend that Respondent Lilibeth N. Ruba be found guilty of Dishonesty and Falsification of Official Documents and meted out the penalty of DISMISSAL with forfeiture of retirement benefits."

In seeking the reversal of the adverse LBP Board Resolutions, Ruba predicates her case on two principal grounds:

1. The LBP Board of Directors gravely abused its discretion when it charged her and eventually found her guilty of acts committed prior to her employment.
2. Similarly, the same Board erred in its avowal of ignorance of prior wrongful acts when it extended a permanent appointment to her.

Expatriating on the first ground, Ruba claims that the fraudulent acts for which she was charged by the LBP, were committed previous to her employment in the said Bank. At that time, she alleges to be a contractual employee of the DBP Service Corporation (DBPSC), assigned at the LBP-Isulan Branch presumably by virtue of a labor-contracting arrangement between the DBPSC and the LBP. Consequently, the LBP, she asseverates, could not prosecute her for the said wrongful acts, without violating civil service law and rules. She further contends that if it were really the intention of the LBP to penalize her, it should have reported the matter to the DBPSC, which, being her employer then, had the disciplinary authority over her.

As to the other ground, it is her submission that the purported ignorance of the branch management of her previous wrongdoings that led to the issuance of a permanent appointment in her favor was not actually borne out by the circumstances. She maintains that the use of journal tickets to record transactions, where these tickets pass through so-called "procedural checkpoints" or a series of reviewing officers before obtaining final approval, and her subsequent restitution of the amount peculated could not but occasion attention to her misdeed. Thus, she contends that when the branch management deliberately chose to overlook the matter and even went to the extent of appointing her, her past dishonesty was, in effect, condoned and that she was given another chance to redeem herself, this time as a regular bank employee.

Moreover, Ruba argues that the case arose out of the sheer vindictiveness of the new LBP-Isulan Branch Manager, Edgardo Barrios, who reported the incident to his superiors, when she questioned the "marginal" performance rating accorded to her.

Upon being directed to comment, in an order dated July 17, 2001, the LBP posits the following, thus:

"Respondent-appellant however claims that complainant-appellee acted in excess of its disciplinary jurisdiction when it charged her and eventually found her guilty of offenses that were committed prior to her employment by the Bank. She likewise claims that complainant-appellee grievously and seriously erred in its avowal of prior wrongful acts when it extended a permanent appointment to her.

"The contentions are bereft of merit.

"Admittedly, prior to her permanent appointment at Landbank, respondent-appellant was an employee of the DBPSC, hired and assigned as Cash Clerk at Isulan Branch, in a contractual status. Notwithstanding such fact, she can still be disciplined and held administratively liable by complainant-appellee.

"Firstly, the defense that she was a DBPSC contractual employee at the time she committed the offense, and therefore, could not be disciplined under the Administrative Code of 1987 was never raised by the respondent-appellant in her Answer of December 6, 2000. On the contrary, she expressly admitted in her answer the charges against her, waived her right to a formal investigation and submitted herself to Landbank's disciplinary authority, thus:

X X X

"Thus, the respondent-appellant is precluded from changing her theory or line of defense by raising the foregoing argument. Likewise, her admission may be used as evidence against her (sec. 26, Rule 130, Rules of Court). In short, she is estopped from questioning complainant-appellee's filing of an administrative case and the consequent finding of guilt against her.

"Secondly, the nature of the offenses (i.e., Dishonesty and Falsification of Official Documents) puts into question her moral fitness to enter and remain in the government service, x x x and as a public servant, respondent-appellant should have been free from any appearance of impropriety in her personal behavior. In other words, as a government employee, she shall possess and maintain good moral character at all times and shall observe irrefragable behavior so as not to outrage public decency (Legaspi vs. Garrete, 242 SCRA 679).

"Thus, existing laws, rules and regulations explicitly provide that government employees shall be selected on the basis of fitness to perform the duties and assume the responsibilities of the positions x x x. In the instant case, respondent appellant's act of fraudulently crediting to her father's account SSS pension payments through falsification of official documents clearly shows that she lacks good moral character, consequently, she forfeited her right to remain in the government service (Lucina L. Regalado vs. Lilia S. Buena, 309 SCRA 265).

"Thirdly, granting arguendo that complainant-appellee had condoned the offenses committed by the respondent-appellant by appointing her to a regular position despite knowledge of its Branch officers of such offenses, it is however, a settled jurisprudence that the government is not estopped by the mistake or error on the part of its officials or agents (Luciano vs. Estrella, 34 SCRA 769). In other words, the legal principle of estoppel may not apply on the hiring of government employees, in view of the legal requirement of hiring only those who are morally fit consonant with the state policy declaring that a public office is a public trust. Complainant-appellee therefore, may not be bound by the mistake or error committed by its Branch officers, particularly the Manager, in recommending the appointment/hiring of the respondent as a regular bank employee despite their knowledge of the wrongdoings committed by respondent-appellee.

"Complainant-appellee respectfully submits that herein appeal may be dismissed by this Honorable Commission, in view of the failure of respondent-appellant to perfect her appeal within the reglementary period. Records will show that respondent-appellant failed to submit a statement or certificate of non-forum shopping within fifteen (15) days from receipt of the denial of her motion for reconsideration, x x x"

The LBP then prays for the dismissal of the appeal.

Ruba, by way of a reply, takes exception from the comment of the LBP, contending, inter alia, that:

"ON THE FIRST OBSERVATION

x x x

"While change of theory is looked upon with disfavor when a case is elevated to an appellate body, and this was ardently argued by Appellee, it is respectfully pointed out that Appellant was not represented by counsel when she prepared and ultimately submitted her answer. This fact is apparent in her Answer. This fact is apparent in her Answer which she personally made under oath and under her own signature.

"True, the charge sheet informed her of her right to counsel of her choice. It would then be tempting to argue that her failure to avail herself of one should be taken as a waiver. But waiver of counsel under the Constitution requires that the same must be made in the presence of counsel to ensure that the person waiving it is fully aware of the nature of the right sought to be waived, and the consequences of such waiver. It should be noted that the constitutional right to counsel is not confined to persons accused of crimes. It extends to any kind of investigation whether criminal, civil or administrative. (Salaw vs. NLRC, 202 SCRA 7)

x x x

"Had appellee borne that in mind, considering that the charges were serious and of such gravity that could mean Appellant's separation from the services, it should have apprised Appellant of the anomaly that her

Answer appeared to have been without the benefit of an attorney's assistance. That, it miserably failed to do. And this failure weighs heavily against the Appellee when viewed within the context that in cases of this nature, it is both the complainant, prosecutor and judge all rolled into one! The Appellant was thus in a situation where that element of cold neutrality and impartiality of a magistrate, so essential to due process, was absolutely wanting.

"On the other hand, Appellee would like to dwell on the issue of moral fitness that an employee in the Civil Service should have and that the nature of the acts committed forecloses her entry into the service. This cannot be the basis of a charge of dishonesty and falsification of official document under Section 46, Chapter 7, Subtitle (A), Title I, Book V of Executive Order No. 292, under which the Appellant was charged. Thereunder, such acts must have been committed while the employee is already in the service, and not before. x x x Such is not the case for as pointed out in the Motion for Reconsideration and in the Memorandum on Appeal, the acts complained of were committed while respondent was still an employee of the DBP Service Corporation.

"ON THE SECOND OBSERVATION

"In effect, Appellee admits having condoned the Appellant when it hired her as its regular employee. In this regard, however, it argues that such an act on its part cannot estop it from charging Appellant for offenses it had already condoned in the past. Estoppel, Appellee argues cannot operate against the government.

"This argument grossly misapplies the doctrine of the non-applicability of estoppel against the government. For one, the doctrine pertains to the government only in the exercise of its sovereign functions. (Go Tian An vs. Republic, 17 SCRA 1053 and the long line of decisions thereafter.) Secondly, the Appellee is definitely NOT the government. It is a government corporation that performs functions which are proprietary in nature. It cannot, therefore, arrogate to itself the protective mantle of the doctrine, for want of legal basis.

"ON THE THIRD OBSERVATION

"Appellant admits having omitted to submit a certification for non-forum-shopping as required under the Revised Uniform Rules. She invokes good faith and excusable negligence considering that the Revised Rules are quite recent and her counsel mistakenly relied on the previous Uniform Rules where such a certification was not required, despite the fact that his latest reference on the matter is a book of year 2000 edition. She felt comfortable when she filed her Memorandum on Appeal without such certification because in judicial proceedings the certification is required only in initiatory pleadings under Supreme Court Circular 04-94."

Devoid of unessentials, the extant records of the case reveal that from the months of June to August 1998, then a contractual employee of the DBPSC, assigned to render clerical services at the LBP-Isulan Branch, Ruba, in three separate occasions, prepared credit advices, and by falsifying the signature of the responsible bank official thereon, she caused the crediting in her father's LBP savings account of additional amounts totaling P11,400.00, purportedly representing her father's

SSS pension and pension differentials. Her father succeeded in withdrawing these credited amounts on various dates.

Perhaps, overtaken by fear or remorse, she proceeded shortly to partially restore the money she pilfered. Preparing a credit ticket complete with the forged signature of the branch cashier, she effected the debiting of the sum of P5,000.00 in her father's account. The remaining balance of P6,400.00 out of the total amount of P11,400.00 she eventually paid, as evidenced by the records of the case.

Notwithstanding her recreant and deceitful conduct, Ruba was still given a commendable performance rating, for which she was favorably recommended for possible regularization in the LBP. This eventuated in her being appointed in the said branch under permanent status.

Sometime in June 2000, Ruba, already a New Accounts Clerk of the LBP-Isulan Branch, wrote the branch manager thereat, Edgardo Barrios, questioning the "marginal" rating given her for the period January to June 2000, and requesting reconsideration thereof. Apparently, in reaction thereto, Barrios reported to the LBP-Regional Head the purported discovery of Ruba's previous dishonest transactions detailed above. The LBP-Regional Head endorsed the report to the LBP Legal Services Group, which, after evaluating the pertinent documents, recommended to the LBP President that Ruba be charged with dishonesty and falsification of official documents. Forthwith, a formal charge, indicting Ruba with the offenses above-mentioned, was issued by the LBP President. It bears the following recitals:

"The undersigned, President and CEO of the Land Bank of the Philippines (LBP for brevity) hereby formally charges you with DISHONESTY AND FALSIFICATION OF OFFICIAL DOCUMENT pursuant to Section 46, Chapter 7, Subtitle (A), Title I, Book V of Executive Order No. 292, otherwise known as the 'Administrative Code of 1987' x x x, committed as follows:

"1. On or about and during the period between June to August, 1998, being then assigned as New Accounts Clerk at the LBP-Isulan Branch, you did then and there wilfully and unlawfully prepare or cause to be prepared three (3) 'Credit Advice' dated June 5, 1998, July 23, 1998, and August 3, 1998 to the effect that said Branch had credited the respective amounts of P5,000.00, P3,200.00 and P3,200.00 or in the total amount of P11,400.00 to your father's Savings Account x x x representing his alleged SSS pension x x x, including pension differential x x x;

"2. In doing so, you did then and there wilfully and unlawfully falsify and forge or cause to be falsified or forged the signature/initial or Leonor M. Delos Santos, Branch Cashier on the 'Checked By' and 'Authorized Signature' portions thereof x x x;

"3. As a result of you having falsely prepared aforesaid credit advices, your father, Leonardo S. Nolte, was able to withdraw from his deposit account the amounts of P4,800.00 x x x, P2,000.00 x x x, and P3,000.00 on August 3, 1998, when in truth and in fact and as you well knew, no such SSS pension account did exist at

said branch, x x x

"4. On September 15, 1998, with the intention of partially returning the money you wrongfully caused to be credited to your father's account, you did then and there wilfully and unlawfully prepare or cause to be prepared an 'LBP Credit Ticket' purporting to show that the entry of June 5, 1998 was reversed due to alleged double payment of SSS pension, thereby debiting from your father's account the amount of P5,000.00;

"5. In so doing, you likewise falsified and forged or caused to be falsified and forged the signature/initial of Leonor M. Delos Santos, Branch Cashier, x x x;"

X X X

In her answer, Ruba admitted her complicity, ratiocinating that what she did was occasioned by the financial distress of her family in the wake of the huge expenses attendant to the medical treatment of her sister, who was allegedly suffering from congenital rheumatic heart disease. At the same time, she pleaded for understanding and compassion, and throwing herself at the mercy of the Bank, as the disciplining authority, she implored that she be meted a "merciful sanction, i.e., reprimand." She promised never to do the same thing again.

Based on the documentary evidence adduced coupled with her admission and appeal for mercy, the LBP Board of Directors found Ruba guilty as charged. Whereupon she moved for the reconsideration of the said decision, this time raising the following new grounds:

"I. The Honorable Board seriously misapplied the provisions of Executive Order No. 292, Book V, Sec. 46 of Subtitle A, of Title I as the legal basis for this case;

"II. The Honorable Board seriously erred in taking cognizance of the offenses since at the time of their commission, the Bank was not respondent's direct employer;

"III. The Honorable Board seriously erred in charging the respondent with the offenses since it had already condoned the same, albeit through its Branch Manager, by its act of appointing the latter to a regular position in 2 March 1999, despite knowledge of its branch officers of such offenses."

Her motion for reconsideration having proved futile, she now comes before this Commission.

It can be gleaned from the submissions of the contending parties that the present controversy involves both procedural and substantive issues, which may be crystallized, as follows:

1. Whether it is proper for Ruba to assert new grounds in her motion for reconsideration below; and
2. Whether she can be held liable for dishonesty arising from falsification of public documents.

As what is wont in this jurisdiction, questions of procedures are first inquired into, before the actual and substantive merits of a case are disposed of.

In impugning her conviction, Ruba puts emphasis on the fact that she was not yet a bank employee at the time she perpetrated the falsification of documents, thus, she could not validly be disciplined by the LBP for such misconduct. It is pertinent to note that Ruba interposed this particular argument only during the motion for reconsideration stage of the administrative proceedings held below. The LBP thus challenges the propriety of raising the argument, vigorously contending that she could no longer raise the same, having waived it by her failure to promptly allege it in her answer to the formal charge.

It is true that failure to plead an issue in an answer constitutes a waiver of the same. Concomitantly, it is said that a party cannot be allowed to escape the adverse effects of his defense by belatedly raising a new theory. These rules notwithstanding, it should be noted that administrative proceedings like the one at bar, are not strictly bound by technical rules of procedures such as those above-mentioned, unlike in court litigations where rigid application of procedural requirements is explicitly called for.

Whenever the paramount interest of substantial justice so dictates, procedures must yield to substance, and administrative controversies should be disposed of on the merits, and not by mere technicalities. Indeed, "dismissal of appeals based on purely technical grounds is frowned upon as the policy of the courts is to encourage hearing of appeals on the merits. Rules of procedures are intended to promote, not to defeat substantial justice, and therefore, they should not be applied in a very rigid and technical sense." (**Calasiao Farmers Cooperative Marketing Association, Inc. vs. Court of Appeals, 106 SCRA 630**)

In another case, the Court enunciated that:

"Truly, technical rules of procedure need not be strictly followed by the public respondent in rendering decisions if they are impediments in giving justice and equity to litigants." (**Republic Planters Bank General Services Employees Union-National Association of Trade Unions vs. Laguesma, 264 SCRA 637**)

Withal, despite Ruba's tardy or belated invocation of her defense of the LBP's lack of disciplinary authority over her for the offenses charged since she was not yet then a bank employee, the Commission believes that the same should not be outrightly visited with waiver or even estoppel, particularly so when the very decision of the LBP adjudging her guilty alluded to the fact that at the time she committed the offenses imputed against her, she was, indeed, still a contractual employee of the DBPSC, and not the LBP. When Ruba therefore raised the said defense in her motion for reconsideration, she was, in effect, pointing out the conclusions in the decision that do not conform with law, in which case the pronouncement of the Supreme Court in the case of **Nieto vs. Delos Santos (109 SCRA 180)** finds some parallelism:

"A motion for reconsideration of a final order of a court should point out specifically the findings and conclusions not supported by evidence or the law and should make express reference to the record and pertinent

statutory provision."

To put it another way, the interjection of the defense in question was a matter proper for a motion for reconsideration, and thus, Ruba was not at fault for not asserting the same at the earliest opportunity.

Moreover, a judicious examination of Ruba's defense discloses that she was, in actuality, attacking the jurisdiction of the LBP to try her case. It is the entrenched rule that the issue of lack of jurisdiction may be raised anytime even on appeal.

The same thing about liberal application of technical rules may be said anent the late submission of the certificate of non-forum shopping.

The procedural questions thus taken care of, the Commission shall now squarely address itself to the bone of contention: Whether the LBP may hold Ruba accountable for her dishonest acts prior to her actual employment in LBP.

After a judicious evaluation of the arguments posited and the evidence adduced, the Commission remains utterly convinced that Ruba is, indeed, guilty of dishonesty. She herself confessed, as the records of the case would unequivocally show, to having perpetrated the wrongdoings ascribed to her. Not only did she fail to belie the allegations, she even appealed for mercy and understanding.

Ruba, in her defense, makes too much of the fact that at the time she committed the dishonest conduct imputed against her, she was not yet an employee of the LBP, thus, outside the pale of disciplinary jurisdiction of the latter office. While it is the general rule that administrative liability flows from the holding of a public office or position such that acts done while not yet in office cannot be the proper subject of administrative proceedings, this is not to be taken as an iron-clad rule, devoid of any exceptions. Thus, in cases of resignation or retirement, it has been said that the government still retains disciplinary jurisdiction over the employee concerned for his misdeeds committed during his incumbency. The underlying reason has been clearly expostulated in the case of **Perez vs. Abiera, 64 SCRA 302**:

"In other words, the jurisdiction that was Ours during the time of the filing of the administrative complaint was not lost by the mere fact that the respondent public official had ceased to be in office during the pendency of his case. x x x The Court retains its jurisdiction either to pronounce the respondent official innocent of the charges or declare him guilty thereof. A contrary rule would be fraught with injustices and pregnant with dreadful and dangerous implications. If only for reasons of public policy, this Court must assert and maintain its jurisdiction over members of judiciary and other officials under its supervision and control for acts performed in office which are inimical to the service and prejudicial to the interests of the litigants and the general public."
(underscoring supplied)

If, for compelling reasons of public policy, an act of severance of employment does not oust the government of its jurisdiction to try the respondent employee, then the same imperatives of public policy demands that Ruba must still be made to account for her misconduct even though committed prior to her entering the service. To reiterate, "a contrary rule would be

fraught with injustices and pregnant with dreadful and dangerous implications." Needless to say, it would reward unscrupulous individuals similarly situated as Ruba, who would take advantage of the absence of employment relationship to deliberately and conscientiously perpetrate fraud and other imposturings against the government, knowing that they could easily evade prosecution on the flimsy ground that they were not yet not government employees when they committed the same. This is simply unacceptable, to say the least. At the time when the government is serious in its crusade to eradicate all forms of graft and corruption in every nook and cranny of the bureaucracy, it would be the height of anachronism to uphold the contention of Ruba. Indeed, the Commission would be striking a disastrous and fatal blow to the campaign, if it were to allow Ruba to go scot-free.

The foregoing rationale becomes even more plausible when viewed in the light of the fact that Ruba committed the very act in the same office where she is now connected. Certainly, the LBP cannot just turn a blind eye to her misfeasance which betrays her questionable character and perfidious tendency, and renders her unfit for her position of LBP New Accounts Clerk, involving as it is a fiduciary relationship. Truth to tell, the requirement of good behavior in public office is not circumscribed by time. If only to vivify the dictum that a public office is a public trust, then good behavior should be understood as a continuing requisite that must exist before, during and even after public employment.

Ruba would foist, however, the act of the LBP in subsequently hiring her as a regular employee as condoning her offense. On this score, the Commission cannot but concur with the view taken by the LBP that it "may not be bound by the mistake or error committed by its Branch officers, particularly the Manager, in recommending the appointment/hiring of the respondent as a regular bank employee despite their knowledge of the wrongdoings committed by respondent-employee." Estoppel simply does not lie against the government for the mistakes or errors of its agents.

In view of the foregoing, the Commission sees no cogent reason to depart from the ruling of the LBP.

WHEREFORE, the appeal of Lilibeth N. Ruba is hereby dismissed. The decision of the Land Bank of the Philippines (LBP) subject of the present appeal is sustained in all respects.

Further, the LBP is directed to institute against Ruba criminal action warranted under the circumstances.

Quezon City, JUN 13 2002

(Signed)
JOSE F. ERESTAIN, JR.

(Signed)
KARINA CONSTANTINO-DAVID
Chairman

Commissioner

(Signed)
J. WALDEMAR V. VALMORES
Commissioner

Attested by:

(Signed)
ARIEL G. RONQUILLO
Director III

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