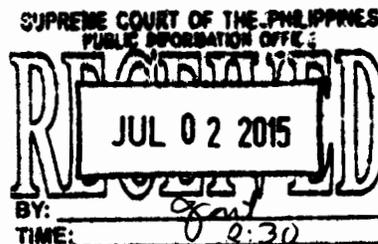




REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE



Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **02 February 2015** which reads as follows:*

G.R. No. 212999 – Field Investigation Office of the Office of the Ombudsman vs. Divina Patacsil Alvaro

During the time material to this case, Divina Patacsil Alvaro (respondent) was a Revenue Officer III of the Bureau of Internal Revenue (BIR), Revenue District Officer 8, Baguio City. In a complaint dated May 20, 2008, the Field Investigation Office (FIO), Office of the Ombudsman (petitioner) charged respondent with violation of Section 8 in relation to Section 11 of Republic Act (RA) No. 6713¹ and for Dishonesty, Gross Neglect of Duty and Conduct Prejudicial to the Best Interest of the Service. The charges stemmed from the alleged failure of respondent to file her Statement of Assets, Liabilities and Net Worth (SALN) corresponding to the years 1996 and 2003 as gathered from the certifications issued by Cordillera Administrative Division, Revenue Region 2 of the BIR, the Office of the Deputy Ombudsman for Luzon, and the Integrated Records Management Office (IRMO) of the Civil Service Commission (CSC).

Respondent denied the charges claiming that the certification issued by the BIR Revenue Region 2 did not categorically state that she did not file her SALN. Moreover, she did not receive any call-up order in accordance with the standard operating procedure in case a government personnel fails to file a SALN for a particular year.

Ruling of the Ombudsman

(Office of the Deputy Ombudsman for Luzon; Docketed as OMB-C-A-08-0616-K; Penned by Graft Investigation and Prosecution Officer I Regina C. Anniban and concurred in by Acting Director and Evaluation and Investigation Officer (Bureau A) Joaquin F. Salazar)

In its Decision dated December 10, 2009, the Ombudsman was convinced that respondent failed to file her SALN for the years 1996 and 2003, but found her liable only for simple neglect of duty. She was accordingly meted the penalty of two (2) months suspension from office without pay. Respondent moved for reconsideration but the same was denied on January 5, 2011.

Ruling of the Court of Appeals (CA)

(Docketed as CA-G.R. SP No. 120572; Promulgated on October 31, 2013; Penned by Associate Justice Angelita A. Gacutan and concurred in by Associate Justices Fernanda Lampas-Peralta and Francisco P. Acosta)

In her Petition for Review under Rule 43 of the Rules of Court, respondent contended that the Office of the Deputy Ombudsman for Luzon committed

¹ Otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees.

reversible error in finding her guilty of simple neglect of duty and in denying her motion to dismiss. She asserted that the Office misinterpreted the certifications issued by the agencies concerned. Moreover, she did not receive any show cause order to remind her of her non-compliance with regard to the filing of her SALN pursuant to CSC Resolution No. 06-0231. Thus, the filing of the charges against her was premature.

In its Comment, petitioner countered that the obligation to file and submit SALN is constitutionally mandated and strict compliance therewith is required. It further asserted that the factual findings of the Ombudsman are entitled to great weight and respect when supported by substantial evidence.

The CA was convinced with respondent's argument over that of the petitioner and granted the former's Petition. The dispositive portion of the CA Decision reads:

WHEREFORE, premises considered, the Petition is GRANTED. The Decision dated December 10, 2009 of the Office of the Deputy Ombudsman and the subsequent Order dated January 5, 2011 are hereby REVERSED and SET ASIDE.

SO ORDERED.

Hence, this Petition for Review on *Certiorari*.

Petitioner argues in the main that the Review and Compliance Procedure concerns only the issue of whether SALNs have been submitted on time, are complete, and are in proper form. It is not a prerequisite to the filing of an administrative charge. Petitioner also claims that CSC Resolution No. 06-0231 is not applicable because it became effective only on April 23, 2006 long after respondent already failed to file her SALN for the years 1996 and 2003.

In her Comment, respondent stands on her ground that there being no order of his superior for her to submit her required SALN or a show cause order for her to comment or submit her explanation, the charges against her for non-submission of her SALN is premature.

The Court's Ruling

We deny the Petition for being unmeritorious.

For purposes of declaring the assets, liabilities and net worth of public officials and employees, the governing law is Republic Act No. 6713 or the Code of Conduct and Ethical Standards for Public Officials and Employees. To implement the provision of said law, CSC issued on February 1, 2006 Resolution No. 06-0231 amending Rule VIII of the Implementing Rules of the Law. The pertinent amended portion provides the duties of the Chief/Head of the Personnel/Administrative Division or Unit/HRMO, to

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submit a list of employees in alphabetical order, who: a) filed their SALNs with complete data; b) filed their SALNs but with incomplete data; and c) did not file their SALNs, to the head of office, copy furnished the CSC, on or before May 15 of every year (Section 2). The amendment also provides in its Section 3 that immediately upon receipt of the aforementioned list and recommendation, it shall be the ministerial duty of the Head of Office to issue an order requiring those who have incomplete data in their SALN to correct/supply the desired information and those who did not file/submit their SALNs to comply within a non-extendible period of three (3) days from receipt of said order. While Section 4 provides the sanction for failure to comply/issuance of a show cause order.²

It was precisely on the basis of the amendatory provisions of the law, mandatory as they were, that the CA reversed and set aside the assailed decision of the petitioner. As correctly held by the CA:

It is therefore clear that there is a corrective measure available in case of failure to file SALN. The public official/employee is just given the opportunity to submit his/her SALN if none was truly filed.

There is no question that it is petitioner's duty to submit her SALN to the HRMU. However, there is also the ministerial duty of the head of the office to

² On January 24, 2013, CSC Resolution No. 1300174 amended Sections 3 and 4 of CSC Resolution No. 06-0231 which now reads:

Section 3. Ministerial Duty of the Head of Office to Issue Compliance Order.

"Within five (5) days from receipt of the aforementioned list and recommendation, it shall be the ministerial duty of the Head Office to issue an order requiring those who have incomplete data in their SALN to correct/supply the desired information and those who did not file/submit their SALNs to comply within a non-extendible period of thirty (30) days from receipt of the said Order.

Section 4. Sanction for Failure to Comply/Issuance of a Show Cause Order.

Failure of an official or employee to correct/submit his/her SALN in accordance with the procedure and within the given period pursuant to the directive in Section 3 hereof shall be a ground for disciplinary action. The Head of Office shall issue a show-cause order directing the official or employee concerned to submit his/her comment or counter-affidavit; and if the evidence so warrants, proceed with the conduct of the administrative proceedings pursuant to the Revised Rules on Administrative Cases in the Civil Service (RRACCS), CSC Resolution No. 1101502 dated November 8, 2011. The offense of failure to file SALN is punishable under Section 46 (D)(8) of Rule X thereof, with the following penalties:

First Offense – Suspension of one (1) month and one (1) day to six (6) months

Second Offense - Dismissal from the service

Public officials and employees who fail to comply within the thirty (30) day period required under Section 3 hereof or who submit their SALNs beyond the said period shall be considered as not having filed their SALNs, and shall be made liable for the offense of Failure to File SALN with a penalty suspension of one (1) month and one (1) day to six (6) months for the first offense, and dismissal from the service for the second offense.

"Heads of agencies/offices who fail to comply with the provisions of CSC Resolution No. 06-231 dated February 1, 2006, as amended, shall be liable for Simple Neglect of Duty, which shall be punishable by suspension of one (1) month and one (1) day to six (6) months for the first offense, and dismissal from the service for the second offense.

issue a compliance order. It is only when petitioner fails to comply with the order of her superior to submit the required SALN that she be issued a show cause order to which she could comment or submit a counter-affidavit. If petitioner indeed failed to submit her SALN for the years in question, she should have been given the opportunity to submit the same. Consequently, in the absence of the compliance order, the charge filed against petitioner is considered premature.³

The fact that CSC Resolution No. 06-0231 became effective several years after respondent already failed to file her SALNs for 1996 and 2003 is not material. What is significant is that there is yet no compliance/show cause order when the complaint dated May 20, 2008 was filed.

WHEREFORE, there being no reversible error on the part of the Court of Appeals, the Petition is **DENIED**. (*J. Velasco, Jr., designated Acting Member in view of the leave of absence of J. Brion, per Special Order No. 1910 dated January 12, 2015*).

Very truly yours,

MA. LOURDES C. PERFECTO
MA. LOURDES C. PERFECTO
Division Clerk of Court *jle 02/11*

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Please notify the Court of any change in your address.
GR212999. 02/02/15(46[b])sr

³ Rollo, p. 36.