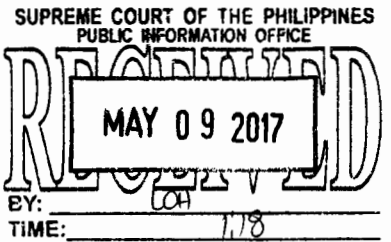




Republic of the Philippines
Supreme Court

Manila

EN BANC



COMMISSION
ELECTIONS,

ON G.R. No. 226622

Petitioner,

Present:

- versus -

BAI HAIDY D. MAMALINTA,
Respondent.

SERENO, C.J.,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
PERALTA,
BERSAMIN,
DEL CASTILLO,
MENDOZA,
REYES,
PERLAS-BERNABE,
LEONEN,
JARDELEZA,*
CAGUIOA,
MARTIRES, and
TIJAM, JJ.

Promulgated:

March 14, 2017

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DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*¹ are the Decision² dated March 11, 2016 and the Resolution³ dated August 26, 2016 of the

* No part.

¹ *Rollo*, pp. 12-40.

² *Id.* at 51-73. Penned by Associate Justice Sesinando E. Villon with Associate Justices Rodil V. Zalameda and Jhosep Y. Lopez concurring.

³ *Id.* at 75-76.

Court of Appeals (CA) in CA-G.R. SP No. 134368, which reversed and set aside the Decision No. 13-0969⁴ dated September 24, 2013 and the Resolution No. 14-00135⁵ dated January 28, 2014 of the Civil Service Commission (CSC), and accordingly, reinstated respondent Bai Haidy D. Mamalinta (Mamalinta) to her former position prior to her dismissal, without loss of seniority rights, and with payment of the corresponding back salaries and all benefits which she would have been entitled to if not for her illegal dismissal.

The Facts

During the May 10, 2004 Synchronized National and Local Elections, petitioner Commission on Elections (COMELEC) appointed Mamalinta as Chairman of the Municipal Board of Canvassers (MBOC) for South Upi, Maguindanao, together with Abdullah K. Mato (Mato) and Pablito C. Peñafiel (Peñafiel), Sr. as Vice-Chairman and Member, respectively. While performing their functions as such, the MBOC allegedly committed the following acts: (a) on May 16, 2004, the MBOC proclaimed Datu Israel Sinsuat (Sinsuat) as Mayor, Datu Jabarael Sinsuat⁶ as Vice-Mayor, and eight (8) members of the *Sangguniang Bayan* as winning candidates, on the basis of nineteen (19) out of the thirty-five (35) total election returns; (b) on even date, the MBOC caused the transfer of the place for canvassing of votes from Tinaman Elementary School, South Upi, Maguindanao to Cotabato City without prior authority from the COMELEC; and (c) two days later or on May 18, 2004, they proclaimed a new set of winning candidates, headlined by Antonio Gunsí, Jr. (Gunsí) as Mayor and four (4) new members of the *Sangguniang Bayan* on the basis of thirty (30) out of thirty-five (35) election returns. Thus, on May 20, 2004, Atty. Clarita Callar, Regional Election Director of the COMELEC Regional Office No. XII, reported the incidents to the COMELEC *En Banc*, which in turn, directed the COMELEC Law Department to conduct a fact-finding investigation on the matter. Thereafter, the COMELEC Law Department recommended the filing of administrative and criminal cases against the members of the MBOC, and subsequently, Mamalinta was formally charged with Grave Misconduct, Gross Neglect of Duty, Gross Inefficiency and Incompetence, and Conduct Prejudicial to the Best Interest of the Service.⁷

In her defense,⁸ Mamalinta denied the charges against her, essentially claiming that the MBOC's acts of double proclamation and transferring the place for canvassing were attended by duress in view of the imminent

⁴ Id. at 90-101. Signed by Chairman Francisco T. Duque III and Commissioners Nieves L. Osorio and Robert S. Martinez.

⁵ Id. at 110-114.

⁶ "Jabarael" (See CA *rollo*, p. 46) and "Jabarel" (See CA *rollo*, p. 9) in some parts of the records.

⁷ *Rollo*, pp. 52-53. See also pp. 80-82.

⁸ See Mamalinta's Answer dated April 25, 2007; CA *rollo*, pp. 67-74.

danger to their lives due to the violence and intimidation initiated by Gunsí's supporters.⁹

The COMELEC *En Banc* Ruling

In a Resolution¹⁰ dated May 24, 2012, the COMELEC *En Banc* found Mamalinta guilty of Grave Misconduct, Gross Neglect of Duty, and Conduct Prejudicial to the Best Interest of the Service, and accordingly, dismissed her from public service, with imposition of all accessory penalties relative thereto.¹¹

Adopting the findings of its Law Department, the COMELEC *En Banc* ruled that the MBOC's acts of proclaiming two (2) sets of winning candidates; issuing such proclamations based on an incomplete canvass of votes; and transferring the place for the canvassing of votes are blatant violations of various laws and COMELEC resolutions on the conduct of elections, and thus, sufficient to hold Mamalinta liable for the aforesaid administrative offenses, thereby justifying her dismissal from service. In this relation, the COMELEC *En Banc* did not lend credence to Mamalinta's claim of duress and/or threats, opining her failure to substantiate the same.¹²

Mamalinta moved for reconsideration,¹³ which was denied in a Resolution¹⁴ dated November 27, 2012. Aggrieved, she appealed to the CSC.¹⁵

The CSC Ruling

In Decision No. 13-0969¹⁶ dated September 24, 2013, the CSC affirmed the COMELEC *En Banc* ruling. It held that as MBOC Chairman, Mamalinta clearly committed the acts complained of which violated various election laws and rules and tarnished the image and integrity of her public office, as well as the elections in South Upi, Maguindanao, in general. The CSC likewise did not lend credence to Mamalinta's claims of violence,

⁹ *Rollo*, p. 82. See also *CA rollo*, pp. 70-71.

¹⁰ *Id.* at 79-89. Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Rene V. Sarmiento, Lucenito N. Tagle, Armando C. Velasco, Elias R. Yusoph, and Christian Robert S. Lim.

¹¹ *Id.* at 88-89.

¹² *Id.* at 83-87.

¹³ Dated June 28, 2012; *CA rollo*, pp. 90-100.

¹⁴ *Rollo*, pp. 104-107. Penned by Commissioner Armando C. Velasco with Chairman Sixto S. Brillantes, Jr. and Commissioners Rene V. Sarmiento, Lucenito N. Tagle, Elias R. Yusoph, Christian Robert S. Lim, and Ma. Gracia Cielo M. Padaca concurring.

¹⁵ See Notice of Appeal (with Appeal Memorandum) dated January 30, 2013; *CA rollo*, pp. 110-147.

¹⁶ *Rollo*, pp. 90-101.

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opining that they were self-serving, absent any evidence supporting the same.¹⁷

Dissatisfied, Mamalinta filed a motion for reconsideration,¹⁸ attaching thereto the Minutes¹⁹ of the MBOC dated May 14 and 15, 2004 and the Report²⁰ dated May 16, 2004, both prepared by Peñafiel narrating the incidents that transpired during the canvassing in South Upi, Maguindanao.²¹ Such motion was, however, denied by the CSC through Resolution No. 14-00135²² dated January 28, 2014. Undaunted, she elevated the matter to the CA *via* a petition²³ for review under Rule 43 of the Rules of Court.

The CA Ruling

In a Decision²⁴ dated March 11, 2016, the CA reversed and set aside the CSC ruling, and accordingly, reinstated Mamalinta to her former position prior to her dismissal, without loss of seniority rights, and with payment of the corresponding back salaries and all benefits which she would have been entitled to if not for her illegal dismissal.

Contrary to the findings of the COMELEC *En Banc* and the CSC, the CA found that Mamalinta sufficiently substantiated her claims of duress by presenting various documentary evidence, namely, the Joint-Affidavit²⁵ dated May 18, 2004 she executed with her Vice-Chairman, Mato, and the Minutes²⁶ of the MBOC dated May 14 and 15, 2004 and the Report²⁷ dated May 16, 2004 both prepared by Peñafiel, all of which recounted the acts of duress and intimidation pressed on them. Further noting that Mamalinta immediately flew to Manila after escaping the hostile incidents they experienced in order to report the same to then-COMELEC Chairman Benjamin Abalos, the CA concluded that Mamalinta and the rest of the MBOC were indeed forced, intimidated, and coerced into performing the acts constituting the charges against them, and thus, they could not be held administratively liable therefor.²⁸

¹⁷ Id. at 97-100.

¹⁸ Dated October 31, 2013; CA *rollo*, pp. 178-186.

¹⁹ CA *rollo*, pp. 187-197.

²⁰ Id. at 198.

²¹ See *rollo*, p. 60.

²² Id. at 110-114.

²³ Dated March 7, 2014; CA *rollo*, pp. 3-21.

²⁴ *Rollo*, pp. 51-73.

²⁵ CA *rollo*, pp. 57-58.

²⁶ Id. at 187-197.

²⁷ Id. at 198.

²⁸ *Rollo*, pp. 63-72.

The COMELEC moved for reconsideration,²⁹ which was, however, denied in a Resolution³⁰ dated August 26, 2016; hence, this petition.

The Issue Before the Court

The sole issue for the Court's resolution is whether or not the CA correctly reversed and set aside the CSC ruling, and consequently, absolved Mamalinta from the administrative charges of Grave Misconduct, Gross Neglect of Duty, and Conduct Prejudicial to the Best Interest of the Service.

The Court's Ruling

The petition is meritorious.

Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. To warrant dismissal from the service, the misconduct must be grave, serious, important, weighty, momentous, and not trifling. The misconduct must imply wrongful intention and not a mere error of judgment and must also have a direct relation to and be connected with the performance of the public officer's official duties amounting either to maladministration or willful, intentional neglect, or failure to discharge the duties of the office. In order to differentiate gross misconduct from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in the former.³¹

On the other hand, and as compared to Simple Neglect of Duty which is defined as the failure of an employee to give proper attention to a required task or to discharge a duty due to carelessness or indifference, Gross Neglect of Duty is characterized by want of even the slightest care, or by conscious indifference to the consequences, or by flagrant and palpable breach of duty.³²

Meanwhile, certain acts may be considered as Conduct Prejudicial to the Best Interest of Service as long as they tarnish the image and integrity of the public office and may or may not be characterized by corruption or a willful intent to violate the law or to disregard established rules.³³ In *Encinas*

²⁹ Dated April 4, 2016; CA *rollo*, pp. 300-314.

³⁰ *Rollo*, pp. 75-76.

³¹ *Office of the Court Administrator v. Viesca*, A.M. No. P-12-3092, April 14, 2015, 755 SCRA 385, 396, citing *Office of the Court Administrator v. Amor*, 745 Phil. 1, 8 (2014).

³² *Id.* at 395, citing *CA v. Manabat, Jr.*, 676 Phil. 157, 164 (2011).

³³ See *Office of the Ombudsman v. Castro*, G.R. No. 172637, April 22, 2015, 757 SCRA 73, 86-88, citations omitted.

v. Agustin, Jr.,³⁴ the Court outlined the following acts that constitute this offense, such as: misappropriation of public funds, abandonment of office, failure to report back to work without prior notice, failure to keep in safety public records and property, making false entries in public documents, and falsification of court orders.³⁵

In order to sustain a finding of administrative culpability under the foregoing offenses, only the quantum of proof of substantial evidence is required, or that amount or relevant evidence which a reasonable mind might accept as adequate to support a conclusion.³⁶

In the case at bar, a judicious review of the records reveals that Mamalinta is being charged of committing the following acts, namely: (a) the double proclamation of Sinsuat and Gunsu as mayor of South Upi; (b) the transfer of the place for canvassing of votes from Tinaman Elementary School, South Upi, Maguindanao to Cotabato City without prior authority from the COMELEC; and (c) the premature proclamation of Sinsuat as the winning candidate on the basis of an incomplete canvass of election returns.

Anent the first two (2) acts complained of, *i.e.*, the double proclamation and the unauthorized transfer of the place for canvassing, the Court agrees with the CA that Mamalinta should not be held administratively liable for the same to warrant her dismissal from the service, as such acts were committed while under duress and intimidation. In *People v. Nuñez*,³⁷ the Court defined duress as follows:

Duress, force, fear or intimidation to be available as a defense, must be **present, imminent and impending, and of such a nature as to induce a well-grounded apprehension of death or serious bodily harm if the act is not done.** A threat of future injury is not enough.

To be available as a defense, **the fear must be well-founded, an immediate and actual danger of death or great bodily harm must be present and the compulsion must be of such a character as to leave no opportunity to accused for escape or self-defense in equal combat.** It would be a most dangerous rule if a defendant could shield himself from prosecution for crime by merely setting up a fear from or because of a threat of a third person.³⁸ (Emphases and underscoring supplied)

Thus, “[d]uress, as a valid defense, should be based on *real, imminent* or reasonable fear for one’s own life. It should not be inspired by

³⁴ 709 Phil. 236 (2013).

³⁵ Id. at 263-264, citing *Philippine Retirement Authority v. Rupa*, 415 Phil. 713, 720-721 (2001).

³⁶ See *Office of the Court Administrator v. Lopez*, 654 Phil. 602, 607 (2011), citing *Velasco v. Angeles*, 557 Phil. 1, 20 (2007).

³⁷ 341 Phil. 817 (1997).

³⁸ Id. at 828, citing *People v. Villanueva*, 104 Phil. 450, 464 (1958).

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speculative, fanciful or remote fear. A threat of future injury is not enough. It must be clearly shown that the compulsion must be of such character as to leave no opportunity for the accused to escape.”³⁹

In the instant case, records reveal that Mamalinta and the rest of the MBOC of South Upi, Maguindanao, were under heavy duress from supporters of mayoralty candidate Gunsi. As stated in Mamalinta’s Joint Affidavit⁴⁰ with Mato, the Vice-Chairman of the MBOC, they were forcibly taken and held hostage by Gunsi’s supporters, and while detained, were forced, intimidated, and coerced into declaring Gunsi as the winning candidate, despite their earlier proclamation that Sinsuat was the true winner of the mayoralty elections. Mamalinta and Mato’s statements in their Joint Affidavit were then corroborated by the Minutes⁴¹ of the MBOC dated May 14 and 15, 2004 and the Report⁴² dated May 16, 2004 both prepared by Peñafiel, another member of the MBOC, stating *inter alia*, that while the MBOC was canvassing the votes, Gunsi’s supporters kicked open the doors of the room, rushed towards the members of the MBOC, and even attempted to throw chairs to them. Irrefragably, the foregoing incidents show that duress and intimidation were clearly exercised against Mamalinta and the rest of the MBOC, and thus, the latter succumbed to the same by performing the aforesaid acts, *i.e.*, the double proclamation and the unauthorized transfer of the place for canvassing, albeit against their will.

Furthermore, the CA aptly pointed out that as soon as Mamalinta and the MBOC escaped from their dire situation, she immediately flew to Manila to report the incidents to the COMELEC, and such fact was not seriously disputed by the latter.⁴³ Thus, there is more reason to believe that Mamalinta and the MBOC did not willingly commit the aforementioned acts.

To clarify, the CA did not err in considering Mamalinta and Mato’s Joint Affidavit – as well as the Minutes of the MBOC dated May 14 and 15, 2004 and the Report dated May 16, 2004 both prepared by Peñafiel – although they were not formally offered as evidence during the investigation before the COMELEC. As a rule, technical rules of procedure and evidence are not strictly applied in administrative proceedings. Hence, in proper cases such as this, the procedural rules may be relaxed for the furtherance of just objectives.⁴⁴ Thus, the CA did not err in taking these documents in consideration.

³⁹ *People v. Palencia*, 162 Phil. 695, 711 (1976), citations omitted.

⁴⁰ *CA rollo*, pp. 57-58.

⁴¹ *Id.* at 187-197.

⁴² *Id.* at 198.

⁴³ *See rollo*, pp. 69-71.

⁴⁴ *Gairan v. Alcala*, 486 Phil. 657, 669 (2004), citing *Montemayor v. Bundalian*, 453 Phil. 158, 166 (2003).

The foregoing notwithstanding, the Court notes that the CA failed to determine Mamalinta's administrative liability on the third act she was accused of committing, *i.e.*, the premature proclamation of Sinsuat as the winning candidate on the basis of an incomplete canvass of election returns. In *Nasser Immam v. COMELEC*,⁴⁵ the Court ruled that a complete canvass of votes is necessary in order to reflect the true desire of the electorate, and that a proclamation of winning candidates on the basis of incomplete canvass is illegal and of no effect, *viz.*:

Jurisprudence provides that **all votes cast in an election must be considered, otherwise voters shall be disenfranchised.** A canvass cannot be reflective of the true vote of the electorate unless and until all returns are considered and none is omitted. In this case, fourteen (14) precincts were omitted in the canvassing.

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An incomplete canvass of votes is illegal and cannot be the basis of a subsequent proclamation. A canvass cannot be reflective of the true vote of the electorate unless all returns are considered and none is omitted. This is true when the election returns missing or not counted will affect the results of the election.

We note that the votes of petitioner totaled one thousand nine hundred and sixty-one (1,961) while private respondent garnered a total of one thousand nine hundred thirty (1,930) votes. The difference was only thirty-one (31) votes. There were fourteen (14) precincts unaccounted for whose total number of registered voters are two thousand three hundred and forty-eight (2,348). Surely, these votes will affect the result of the election. Consequently, the non-inclusion of the 14 precincts in the counting disenfranchised the voters.⁴⁶ (Emphases and underscoring supplied)

In the case at bar, the COMELEC *En Banc* correctly pointed out that the uncanvassed election returns can still drastically affect the outcome of the elections, since "at the time of Sinsuat's proclamation, he garnered only [1,230] votes, with the exclusion of the [12] election returns and [4] election returns that have yet to be canvassed. These [4] election returns amount to [3,049] votes, or equivalent to 42.91% of the total registered voters of South Upi, Maguindanao."⁴⁷ Notably, Mamalinta's defense of duress – which was upheld in her other two (2) acts of double proclamation and unauthorized transfer of the place for canvassing – is untenable in this instance as there was no showing that the MBOC was intimidated or coerced into proclaiming Sinsuat as the winning candidate for the position of Mayor of South Upi, Maguindanao. The allegations of Mamalinta that force and threats were exerted on her to make said premature proclamation are self-serving and not

⁴⁵ 379 Phil. 953 (2000).

⁴⁶ *Id.* at 962-964, citations omitted.


⁴⁷ *Rollo*, p. 85.

supported by any other evidence, hence, cannot be relied upon.⁴⁸ Therefore, Mamalinta's afore-described act of premature proclamation may still be considered as Grave Misconduct, Gross Neglect of Duty, and/or Conduct Prejudicial to the Best Interest of Service, and thus, she should be held administratively liable therefor.


In sum, while Mamalinta may be absolved from administrative liability for her acts of double proclamation and unauthorized transfer of the place for canvassing as such acts were done under duress, she is nevertheless administratively liable for her premature proclamation of Sinsuat as the winning candidate on the basis of an incomplete canvass of votes.


WHEREFORE, the petition is **GRANTED**. The Decision dated March 11, 2016 and the Resolution dated August 26, 2016 of the Court of Appeals in CA-G.R. SP No. 134368 are **REVERSED** and **SET ASIDE**. Respondent Bai Haidy D. Mamalinta is hereby found **GUILTY** of Grave Misconduct, Gross Neglect of Duty, and Conduct Prejudicial to the Best Interest of the Service. Accordingly, her civil service eligibility is **CANCELLED**, and her retirement and other benefits, except accrued leave credits, are hereby **FORFEITED**. Further, she is **PERPETUALLY DISQUALIFIED** from re-employment in any government agency or instrumentality, including any government-owned and controlled corporation or government financial institution.

SO ORDERED.


ESTELA M. PERLAS-BERNABE
 Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
 Chief Justice


ANTONIO T. CARPIO
 Associate Justice


PRESBITERO J. VELASCO, JR.
 Associate Justice

⁴⁸ See *Reyes v. Nieva*, A.C. No. 8560, September 6, 2016, citing *People v. Mangune*, 698 Phil. 759, 771 (2012).

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
 Associate Justice

Diosdado M. Peralta
DIOSDADO M. PERALTA
 Associate Justice

Lucas P. Bersamin
LUCAS P. BERSAMIN
 Associate Justice

Mariano C. del Castillo
MARIANO C. DEL CASTILLO
 Associate Justice

Jose Catral Mendoza
JOSE CATRAL MENDOZA
 Associate Justice

Bienvenido L. Reyes
BIENVENIDO L. REYES
 Associate Justice

Marvic M.V.F. Leonen
MARVIC M.V.F. LEONEN
 Associate Justice

Francis H. Jardelez No part
FRANCIS H. JARDELEZA P104
 Associate Justice OSG
 Action

Alfredo Benjamin S. Caguioa
ALFREDO BENJAMIN S. CAGUIOA
 Associate Justice

Samuel R. Martires
SAMUEL R. MARTIRES
 Associate Justice

Noel G. Tijam
NOEL G. TIJAM
 Associate Justice

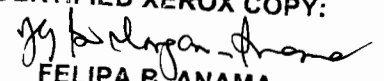
CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.



MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED XEROX COPY:



FELIPA B. ANAMA
CLERK OF COURT, EN BANC
SUPREME COURT