



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

LOURDES SCHOOL QUEZON G.R. No. 213128
CITY, INC.,

Petitioner, Present:

CARPIO, J., Chairperson,
PERALTA,
PERLAS-BERNABE,
CAGUIOA,
REYES, JR., JJ.

- versus -

LUZ V. GARCIA,

Respondent.

Promulgated:

07 FEB 2018

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HON. CARPIO PERALTA

DECISION

PERALTA, J.:

This petition for review on *certiorari* under Rule 45 of the Rules of Court (*Rules*) seeks to set aside the January 29, 2014 Decision¹ and June 18, 2014 Resolution² of the Court of Appeals (CA) in CA-G.R. SP No. 125316, which reversed the February 29, 2012 Decision³ and April 18, 2012 Resolution⁴ of the National Labor Relations Commission (NLRC) affirming with modification the August 25, 2011 Decision⁵ of the Labor Arbiter (LA).

¹ Penned by Associate Justice Ramon A. Cruz, with Associate Justices Hakim S. Abdulwahid and Romeo F. Barza (now Presiding Justice) concurring; *rollo*, pp. 35-54, 524-543.

² *Id.* at 64-65, 545-546.

³ *Id.* at 337-352, 548-563.

⁴ *Id.* at 384-386.

⁵ *Id.* at 260-268, 314-321.

Petitioner Lourdes School Quezon City, Inc. (*LSQC*) is a non-stock, non-profit educational institution offering elementary and high school education. Prior to the termination of her service, respondent Luz V. Garcia (*Garcia*) was its Chief Accountant and Head of the Accounting Office with a monthly salary of ₱56,912.10.

Sometime in September 2010, Fr. Cesar Acuin (*Acuin*), Rector of LSQC, issued a Memorandum creating two committees to investigate on the possible irregularities in the purchase of notebooks and the sale of textbooks in the school.⁶ The first committee composed of Antonio Romero, Jr., Lalaine Alejo, Editha Grandea, Leonardo Dizu, and Jocelyn Andaya looked into the oversupply of notebooks, while the second committee composed of Mary Jane Capistrano, Ma. Elviza Godinez, Edzel Gonzales, Ma. Socorro Pradillo, and Cecilia Toledo examined on the missing proceeds of the booksale. Garcia, as one of the employees subject of the investigations, was requested to submit a written report/statement on the matter.⁷

In a letter dated October 1, 2010, Fr. Antonio Ala (*Ala*), Treasurer of LSQC, instructed Garcia to turn-over all the money and other financial resources of the school.⁸ Garcia immediately complied by giving back the passbooks, certificates and receipts of placements and post-dated checks issued by parents for payment of tuition fees as well as the passbook of Lourdes Church's placement in a bank.⁹

After the physical inventory of notebooks in the stockroom; request of pertinent documents, records and data; invitation of resource persons (a lawyer and two certified public accountants); and interviews of school officials and personnel, as well as concerned individuals, the first committee submitted its final report to Fr. Acuin on October 22, 2010.¹⁰ The findings, with respect to Garcia, were as follows:

[Garcia] cannot deny her culpability in the oversupply of notebooks because:

1) Despite her denials that Sir Peter's immediate head is Father Treasurer and that in all matters of purchase, Sir Peter deals directly with the Fr. Treasurer, the following instances belie her claim:

- a. the organizational chart (ANNEX "C") and her job description (ANNEX "D") point to her as the immediate head of Sir Peter;
- b. in the Efficiency Rating (ANNEX "E") submitted to the Office of the Registrar

⁶ *Id.* at 97, 602.

⁷ *Id.* at 89-95, 594-600.

⁸ *Id.* at 246, 752.

⁹ *Id.* at 247-249, 753-755.

¹⁰ *Id.* at 96-115, 601-620.

every end of the SY, [Garcia] rates Sir Peter – she gives the 70% rating, while the Father Treasurer gives the remaining 30%. This clearly indicates that only a small portion of Sir Peter's work is rated by the Father Treasurer. Considering that the bulk of work of Sir Peter is in procurement and purchasing and that [Garcia], controls 70% of the latter's efficiency rating, it becomes downright absurd for [Garcia] to deny and disclaim any supervision to Sir Peter's work as purchase officer. Simply put, Sir Peter has more to answer to [Garcia] than to Father Treasurer.

2) Contrary to [Garcia's] claims that she does not dip her hands or she is hands-off in purchasing, she is in fact privy to the transactions and workings of the purchasing officer, as shown by the following:

- a. Sir Peter admitted that there were occasions when he consulted with [Garcia] regarding purchases esp. when he is confused and when the Father Treasurer is not around.
- b. In the Fund Requisition Form (ANNEX "F"), her signature appeared as she noted the requisition.
- c. There were also requisitions (ANNEX "G") wherein she placed the source of fund for said purchases.
- d. Ms. Penny claimed that to date, all requisitions pass through [Garcia] for checking because if there are errors, [Garcia] will shout at her staff.
- e. [Garcia] told Ms. Bridget sometime in May that the former will just inform her when the next set of notebooks will be delivered.

3) Granting *arguendo* that Sir Peter does not directly report to [Garcia] in matters of purchasing, her position as Chief Accountant bestows upon her the duty to be vigilant and keen in protecting the financial interests of the school and to aid the management in its decision making. [Garcia] neglect, if not deliberately, betrays this trust as can be gleaned from the following series of event:

- a. Considering that she actually reviews and all requisitions, as witnessed by Ms. Penny, she is in the position to know and grasp the trend of the annual purchases of notebooks. She should have sensed the erratic and unsystematic estimation made by Sir Peter of the quantity of notebooks ordered annually. She, therefore, should have called Sir Peter's attention and clarified at the first



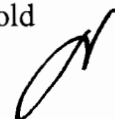
instance the basis and formula used for those estimations.

b. [Garcia] admitted knowledge of the big quantity of notebooks from last year's purchase. She, however, justified such to Fr. Tony by allegedly telling the latter that those notebooks will be good for two school years (SY2009-2011). If such were the case, it is baffling why [Garcia] would still remind Fr. Tony the need to order for additional notebooks for school year (SY2010-2011), knowing fully well that (i) there is still adequate supply of notebooks for SY2010-2011 and (ii) that no inventory has yet been conducted at that time to check whether there is still a need to order for more notebooks.

c. Part of the work of [Garcia] as contained in her job description (ANNEX "D") is to ensure that management is aided in decision-making by the preparation of statements and/or financial reports. [Garcia] claimed that she reminded and cautioned Fr. Tony of the existing supplies of notebooks from the previous purchase by saying "Father marami pa pong notebooks." This general comment, however, did not fully and effectively appraised Fr. Tony of the extent of the oversupply. This clearly shows [Garcia's] failure to aid the Treasurer in sound decision making by failing to show Fr. Tony the results of the inventory. She glaringly did not point out the oversupply to Fr. Tony when Fr. Tony was asking about the new orders from Bridge Media.

d. [Garcia] claimed to know of the big number of remaining notebooks in the inventory that is why she suggested to Fr. Tony to make the buying of notebooks compulsory. Fr. Tony *allegedly* accepted her suggestion hence Fr. Tony *allegedly* told her that he will talk to the GS principal to make the buying of notebooks compulsory to all students. Sometime during enrolment, [Garcia] learned that a number of parents purchased the notebooks of their sons outside the school. This should have alarmed [Garcia], knowing that Fr. Tony's *alleged* plan did not materialize. However, [Garcia] kept quiet and did not make any effort to call the attention of Fr. Tony or Mr. Bautista.

e. When her attention was called by Mr. Bautista sometime in August 2010 about her pronouncement that "*hindi required sa grade school ang notebook*", she never mentioned to Mr. Bautista that she was told



by Fr. Tony of the latter's *alleged* intent to make the purchase of the notebook from the school compulsory. Later, facing both Fr. Tony and Mr. Bautista, she again did not say anything about being told by Fr. Tony that it will be made compulsory. In summary, it appears that the idea to make the purchase of notebooks from the school compulsory was hatched by [Garcia] in order to maneuver the disposal of the remaining supplies of notebooks and to further justify the ordering of the notebooks from the supplier. Fr. Tony, trusting the advise of [Garcia], thought that it will work out but the latter never knew of the extent of oversupply.

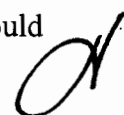
4) As immediate head of the Accounting office and the most trusted person in the Office, [Garcia] should have instituted an accounting system that is efficient and systematic. But this, she failed to do as evidenced by the following:

a. Sir Peter claims to be the one assisting in the inventory of notebooks as can be gleaned from his job descriptions for SY 2004-2010 and not the one really doing the inventory. But when the other accounting personnel were queried as to their function in the inventory-taking, they all mentioned that they only assist Sir Peter in the inventory-taking. Pouring over the job description in terms of inventory-taking (ANNEX "E"), it would seem that only Sir Peter is following his job descriptions and the others do not as regards inventory-taking (ANNEX "H").

b. [Garcia] was not able to monitor and provide a check and balance in the inventory-taking, which is a crucial part in the purchase of notebooks for the next school year. According to Sir Peter, he had not been doing monthly inventory since the canteen operations was transferred to them. Had [Garcia] impressed upon Sir Peter said work and demanded monthly reports, the oversupply of notebooks would not have happened.

c. A cursory glance at the inventory results in January and April 2010 revealed some irregularities leading the committee to conclude that no counter-checking is being done with the inventory.

d. Sir Peter had been left unchecked and unguided in doing the estimation of the notebooks to be purchased. [Garcia] could



have assisted Sir Peter in determining the quantity of notebooks to be ordered.

e. Considering the amount of money/funds, which amounts to millions of pesos, sourced out from the school's coffers for the purchase of notebooks, it is highly irregular for the accounting to simply approve the requisition form without any scrutiny. This is problematic considering that the accounting office has access to the physical inventory of the notebooks because it is being done by the accounting staff.

f. [Garcia] is accountable for the absence of monthly inventory which she did not meticulously require from Sir Peter. Instead, what she did was to require the accounting staff to submit a tentative inventory at the end of February. By the time the inventory was finished, the notebooks had already been ordered by Sir Peter rendering the results of the tentative inventory useless. She should have monitored her accounting staff in charge of the inventory. Had she done that, she would have discovered some discrepancies in the reporting of inventory (ANNEX "I").¹¹

The first committee recommended the termination of employment of Garcia for breach of trust and confidence through gross and habitual neglect of duty. On the same ground, the second committee suggested her immediate dismissal, reasoning that "*[it] would be harmful and more damaging for LSQC to wait until further damage or harm is done especially on the financial aspect of the school due to an imminent malpractice or possible misrepresentation of school's finances.*"¹² The endorsement was based on the following:

1. Gross inefficiency and incompetence in the performance of assigned duty.

As the chief accountant, [Garcia] is "responsible for the implementation of the Accounting system, Policies and procedures and the related internal control system to protect the Institution's financial activities."

It is, therefore expected, of her to ensure the proper accounting of collection from the booksale. She is expected to supervise all the accounting staff, including the accounting responsibility of the Supplies/Purchasing Staff related to the booksale.

[Garcia] claimed giving reminders/orientation on the responsibility and nature of the work of her staff particularly on the booksale during the

¹¹ *Id.* at 109-113, 614-618. (Underscoring in the original)

¹² *Id.* at 124, 630.



first five years as the chief accountant. However, since the work of her staff (particularly the cashier and purchasing staff) became a regular routine in the operation of the accounting office, she assumed that they already know the meaty-gritty (*sic*) of their responsibility thus she did not see the need to conduct regular reminders and update/check on the regular routines for the booksale.

[Garcia] cited Mrs. Pelayo as the cashier assigned to receive remittance from the booksale (money with accompanying documents) and prepare the summary of booksale. She cited giving a sort of orientation to Mrs. Pelayo particularly in accounting matters concerning the booksale every year during the first five years. It was expected that upon the daily remittance of the payment from the booksale, the used yellow receipt with the attached booklist will be kept in the accounting office. All unused receipts are expected to be surrendered to the accounting after the booksale. However, [Garcia] claimed having not checked whether the procedure on the safekeeping and retrieval of the receipts was implemented.

[Garcia] cited Mr. Salas as the Purchasing staff responsible for the release of the requested number of OR booklets for the booksale. She claimed instructing Mr. Salas during her first five years to log the serial numbers of the booklets with the signature of the person who received the booklets. She claimed further that Mr. Salas did as instructed but the log of booklets the committee required of him to present was allegedly misplaced/lost due to the renovation of the accounting office last summer. She cited that Mr. Salas had the log of booklets for this school year but the committee informed her that the said log was asked from the library staff after the issue on the unremitted money from the booksale was uncovered. The said log was a crumpled paper and did not bear the signature of the library personnel who received the booklets.

It can be concluded that there is a failure to establish prescribed standards of work to her subordinates (cashier and supplies staff). Furthermore, there is no systematic measure to account for all the booklets released for the booksale as well as the retrieval of the unused booklets.

The accounting office verifies the statement of account from the publishing house for the claim of payment of the books based on the booksale report submitted by the Librarians. The librarians' booksale report reflected the actual number of books delivered, sold and returned and the corresponding prices (Publishing and LSQC's price). The accounting office has no detailed accounts of the books sold. The office did not use the triangulation of data (accounting, librarians and publishing) to verify the veracity of the report submitted by the librarians against the remitted money.

The absence of a scheme to validate the librarians' report with the remitted money from the booksale gave an opportunity for the conduct of repeated fraudulent activity in the booksale.

[Garcia], being the Chief accountant, failed to develop, recommend and implement an adequate and effective internal control system for the collection and accounting of the booksale.

2. Habitual neglect of duties prejudicial to the employer's interest



[Garcia] claimed to have regularly prepared the yearly booksale status report which she allegedly submitted to the Father. Based on the report for school year 2007-2008, there was no remittance of booksale for the PC Med books. As claimed by the librarians, the PC Med books were sold and were part of the booksale. According to [Garcia], she made follow ups with the librarians regarding the money from the sales of the PC Med books but the school year ended having not received the remittance. The following school year, 2008-2009, the report reflected no remittance again for the PC Med books. A rough estimate of Php 300,000.00 per school year from the sales of the PC Med books were not remitted to the Accounting office.

Such big amount is hard to go unnoticed by the accountant if indeed there was a yearly booksale report prepared by the accountant and a detailed report of booksale by the cashier. If the effort to make a follow up for the unremitted amount was in vain, it is a solid ground for the accountable people not to be cleared in their clearance at the end of the school year. Unlike the other employees with small accountability, those accountable people from the booksale with big accountability were cleared by all the accounting people. Such negligence happened in consecutive years. There was a failure to establish a system to safeguard the revenue of the school from the remittance of the PC Med books.

In the booksale status report for school year 2009-2010, the school is guaranteed a sure income of Php1,922,682.32 from the commission for the books without yet the mark-up price. The report reflected of a gross profit of only Php1,301,955.92. There was a deficiency of Php620,726.40. Because there was still an additional income from the mark-up price for the books, thus the school's deficiency is more than what is missing.

In the tentative booksale status report for school year 2010-2011, the guaranteed income of the school from the commission is Php1,740,992.41. The gross profit was only Php 1,432,331.81. There was a deficiency of Php308,660.60. However, based on the admission of Mrs. De Leon, she recorded and computed their "daily share" from the booksale this school year and it amounted to Php649,220. Upon checking the daily share, the committee computed that the total daily share was actually Php683,830.00. The committee could safely assume that the school could have gained a gross profit of Php2,116,161.81 from the booksale. The excess amount from the amount of commission could be assumed as the total money from the mark-up price.

The big deficiency in the gross profit for two years is again hard to go unnoticed by the accountant if there was indeed a yearly report and if there was a sound accounting system for the booksale remittance. The big deficiency in the booksale happened in consecutive years.

The above negligence of duty resulting to loss of income is prejudicial to the economic interest of the school.

3. Divulging highly confidential information

The advice of [Garcia] to Mrs. De Leon to sign all pages of her narrative report, put the letter in a sealed envelope and sign the flap of the envelope explicitly identifies the document as bearing confidential information. It was clear to [Garcia] that the letter is intended to Father

Tony Ala, thus her advice again to forward the sealed letter through the secretary, Mrs. Bucalig.

[Garcia's] admission of providing Mr. Lanuzo the narrative statement of Mrs. De Leon was a clear act of divulging confidential information.

Mr. Lanuzo disclaimed being a confidant to [Garcia] for him to be entrusted with the confidential document. He further disclaimed that the apparent issue has nothing to do with the scope of his duty and responsibility as the OIC security of the school. Furthermore, he takes orders from his immediate heads regarding security matters/concerns and would act according to the protocol of security. He acknowledged the absence of a security threat to the school based on his discernment on the confidential document. Thus, Mr. Lanuzo considered the case not a security concern.

4. Tampering information

[Garcia] admitted having offered Mrs. De Leon help specifically in the narrative report as the latter allegedly approached her for help. [Garcia] cited that her idea of helping Mrs. De Leon was to verify the consistency of her story as told to her with the narrative report prepared. In the draft of the narrative report, a certain portion was deleted as instructed by [Garcia] which the latter also admitted. Though Mrs. De Leon consented with [Garcia's] instruction, such act is tantamount to tampering. Mrs. De Leon's testimony should have been allowed to stand and be presented as it was written based on her personal account of what she did and got into for it is only her who could truly say the truth behind everything. The intrusion of [Garcia] in the narrative report of Mrs. De Leon is unprecedented because she is a party involved in the same case. Least to say, a person possible of accountability for the fraud that happened. If the concern is only about consistency in the versions told and written as cited by [Garcia], it would be the job of the investigating body to verify.¹³

On January 11, 2011, Fr. Acuin furnished Garcia with a copy of the results conducted by the two committees and directed her to submit a written explanation on why she should not be dismissed from service.¹⁴

In compliance, Garcia submitted her written explanation. As to the oversupply of notebooks, she countered that she was the one who discovered the excessive supply of notebooks and had its delivery and payment stopped; and it was but Fr. Ala and Angelito "Peter" Salas (*Salas*) who were responsible for the requisition, purchase and payment of notebooks.¹⁵ Anent the irregularity in the sale of textbooks, she contended that: she was the one who found out that there was under-remittance in book sale, which she promptly reported to Fr. Ala; the persons involved with the Official Receipts (*OR*) admitted that they did not monitor the retrieval of the *ORs*; she is not

¹³ *Id.* at 121-124, 627-630.

¹⁴ *Id.* at 116, 125, 155, 622, 631, 661.

¹⁵ *Id.* at 117, 156, 623, 662.



responsible for the book sale since her job did not involve the requisition, receiving, and sale of books; she had not divulged any highly confidential information to anyone obtained in the course of her work; and she had not tampered with information as whatever corrections made in the draft narrative report of Marifi De Leon (*De Leon*), in the course of its finalization, is her privilege, including the right to be corrected.¹⁶ On both cases, Garcia emphasized that she was the one who gave way to the establishment of an accounting system, bank loan payment, systematic payroll implementation, budgeting, accounting manual, and development of accounting personnel, among others.

On February 21, 2011, Garcia was placed under a 30-day preventive suspension with pay.¹⁷ She protested her suspension, treating it as constructive dismissal, at the very least, and demanding her immediate reinstatement.¹⁸

Fr. Acuin then formed a fact-finding committee to receive evidence on the two administrative cases. Pursuant to his March 3, 2011 letter,¹⁹ the committee was chaired by Atty. Sabino Padilla, Jr. (member of LSQC Board of Trustees), Maria Corazon Yap (RDO Head), and Marietta del Prado (chosen by the employees under investigation, except Garcia who did not participate in the selection process). The initial and only hearing of the committee was held on March 9, 2011.²⁰ All respondents, excluding Garcia who did not file a motion or request for postponement, personally appeared without a counsel.²¹

Beginning March 23, 2011, Garcia was again made to serve a 30-day preventive suspension with pay.²² She received Fr. Acuin's memorandum under protest.

On April 8, 2001, the fact-finding committee submitted its report to Fr. Acuin.²³ The relevant portion of which are quoted below:

B.1 The misleading reports on the inventory of notebooks.

The Chairman invited the attention of the respondents to the findings and recommendations of the investigating committee, copies of which had already been furnished to them when they were given letters to submit written explanations as to why the recommended sanctions should not be

¹⁶ *Id.* at 126, 632.
¹⁷ *Id.* at 132-133, 638-639.
¹⁸ *Id.* at 134, 157, 640, 663.
¹⁹ *Id.* at 158-159, 664-665.
²⁰ *Id.* at 138, 161, 644, 667.
²¹ *Id.*
²² *Id.* at 135, 641.
²³ *Id.* at 137-142, 160-165, 643-648, 666-671.

imposed on them, and asked if they wished to submit any evidence or additional explanation for the consideration of the Committee.

Only Mr. Angelito Salas submitted additional documentary evidence, consisting of Exh. 1- Salas to show that he was appointed cashier on May 20, 2010 to show that at the time he was charged, he was already a cashier and not the property custodian, and Exhs. 2, 2-A to 2-1, which are the "Fund Requisition Form" of the Treasurer's Office, to show that he only requests for funds for the purchase of notebooks, but these requests have to be approved by Fr. Tony Ala, OFM Cap., the school treasurer.

Mr. Salas reiterated that when he told Fr. Tony about the need to place orders for the purchase of notebooks, he really did not know how many notebooks were still in stock or inventory, and that he was not able to monitor the size of the inventory because of his additional workload in the canteen. Neither did he really know the actual number of notebooks in stock when he and [Garcia] went back to Fr. Tony and informed him that there was still a sizeable stock of notebooks and therefore the purchase order given to the new supplier of notebooks should be drastically reduced.

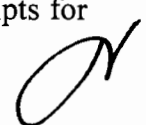
This convincing or at least plausible explanation of Mr. Salas was shown to be untrue when Mr. Jeffrey Bonalos told the committee, in front of Mr. Salas, that every month, he and Mr. Salas conducted an actual count of the stock of notebooks and submitted a written report thereof to [Garcia]. The committee asked the Accounting Office for copies of these reports. All these reports, from May 31, 2009 to April 30, 2010 were "Taken by Angelito Salas and Jeffrey [Bonalos]" and "Noted by Luz V. Garcia." Mr. [Bonalos] informed the committee, in front of Mr. Salas who kept quiet, that Mr. Salas did the actual physical count of the notebooks every month, while he recorded the count made by Mr. Salas, and that the signatures in the report were his and that of Mr. Salas and [Garcia].

The testimony of Mr. Jeffrey Bonalos on the monthly inventory-taking and the monthly reports on the inventory of notebooks shows beyond any reasonable doubt that at the time Mr. Salas and [Garcia] were giving information to Fr. Tony as School Treasurer as to the amount of notebooks to be ordered (a large amount when the order was to be placed by the usual supplier, and a very low amount when the order was instead placed with another supplier who was quoting a lower price and better quality notebook), they knew what was the correct amount to be ordered but withheld such readily available information from Fr. Tony.

The other conclusion to be drawn from this regrettable disinformation practiced on the School Treasurer is that Mr. Salas and [Garcia] were giving Fr. Tony false information, with the intention of confining to Benopit Printing the lucrative business of supplying notebooks to the School. It was obviously to the advantage and benefit of Mr. Salas and [Garcia] to have Benopit Printing retain the business of supplying notebooks to the School.

B-2. Theft in the sale of textbooks.

Mrs. Marifi de Leon, the School Librarian, has given a detailed report and confession on how she and Mrs. Josephine Costales, the former School Librarian, defrauded the School by the hundreds of thousands, through the simple use of two sets of official receipts: the current official receipts for



book sales to be turned over to the cashier and another set of official receipts, supplied by Mrs. Costales, for book sales that they were to keep to themselves. Mrs. De Leon reiterated and affirmed before the Committee the report and confession she had made, together with the transcription of the text messages between her and Mrs. Costales.

Unfortunately, the theft or irregularity could not be limited to Mrs. De Leon and Mrs. Costales. The Investigating Committee, after interviewing not only Mrs. De Leon and Mrs. Costales but also other employees, including [Garcia]. Mr. Angelito Salas, Mrs. Penny Pelayo and Mr. Jeffrey Bonalos, recommended that aside from Mrs. De Leon and Mrs. Costales, four other employees be subjected to disciplinary action:

x x x x

2. The responsibility of [Garcia]

And what about [Garcia]? If [Garcia] as Chief Accountant had caused an inventory to be made of the unused official receipts before turning them over to the care and custody of Mr. Salas, then it would have been easy to hold Mr. Salas accountable for their loss while in his custody, and for their subsequent illegal use by Mrs. De Leon and Mrs. Costales. But [Garcia] did not undertake this simple and elementary precaution. Could this be the reason why she instructed Mrs. De Leon to say that the booklets of unused official receipts which she used to hide what she was stealing was “printed outside” by her and/or Mrs. Costales?

What is more significant is that [Garcia], as Chief Accountant, knew how much the School was expected to earn from the sales of the textbooks. After enrollment, when the sale of textbooks had come to an end, [Garcia] was in a position to determine, and in fact had a duty to determine, how much the School had earned from the sale of textbooks. A simple comparison between reported sales of textbooks against the amounts paid to the publishers for these textbooks (sales versus cost of goods sold) should have alerted (and must have alerted her) (*sic*) that there was something very fishy in the reporting of textbook sales. But she did not raise any alarm. Why?

The kindest conclusion is that she was grossly negligent in the performance of her duties as Chief Accountant. The reasonable inference, however, is that she knew (and could not help but know) the massive cheating and misappropriation of textbook sales, but she knowingly kept quiet. Why?²⁴

The committee recommended the dismissal of Garcia “*for serious misconduct for knowingly misleading the School Treasurer as to how many notebooks were to be purchased, with a view to favoring a supplier of notebooks, and for knowingly allowing (at the very least) the massive theft in the sale of textbooks.*”²⁵ Fr. Acuin agreed with the findings, conclusions, and recommendations of the committee. In his letter dated April 14, 2011, Garcia was terminated from employment.²⁶ She received the same under protest on

²⁴ *Id.* at 138-140, 161-163, 644-646, 667-669.

²⁵ *Id.* at 165.

²⁶ *Id.* at 136, 166, 642, 672.

April 18, 2011.²⁷ Thereafter, she filed a case for illegal dismissal and damages against LSQC, Fr. Acuin, Fr. Ala, and the three-member committee.

According to petitioner, Garcia and Salas exactly knew how much the inventory of notebooks at any given time and yet they repeatedly gave false information to Fr. Ala in order to manipulate its purchase in favor of a supplier. As chief accountant, it was Garcia's duty to know and to be able to inform the school treasurer how many notebooks were still in stock and whether it was time to place an order. She had the means to determine such. All she had to do was to check the existing stock or inventory of notebooks in the school's bodega or ask for the monthly report or inventory and give the exact information needed. But she did not. Garcia relied solely on Salas, her subordinate, who was burdened with other duties related to the school canteen operation.

As to the irregularities in the book sale, petitioner asserted that Garcia obviously knew about the *modus operandi* of De Leon and Costales. Costales got her supply of OR booklets from Salas, who was the custodian of the unused ORs and was directly under Garcia. Salas, however, was placed in charge thereof without first conducting an inventory of the OR booklets placed under his custody. Consequently, there was no way of holding him responsible in the same way that a cashier could not be held liable for any cash shortage if there was no actual cash count made at the time the cash was placed under his charge. Considering that Garcia is an experienced accountant, the logical conclusion is that she saw to it that there would be no way of determining where Costales got the ORs for the theft committed. Moreover, as narrated by De Leon in her Incident Report²⁸ dated June 22, 2011, she was instructed by Garcia to tell school authorities that the reports on booksales in the previous years were missing and that the unauthorized ORs used for the textbook sales were printed outside. Finally, it took Garcia more than a year to discover and be alarmed of the discrepancy between what the school was supposed to earn and what it actually received from the booksale. She submitted the report to Fr. Ala only on October 7, 2010 after the theft had been committed during enrollment time in April, May, and June 2009 for school year (SY) 2009-2010. By the end of June or by July 2009 at the latest, the Accounting Office already had the exact data on how many textbooks were sold by the school and how much it earned from the sale, *i.e.*, total billings by (and payment to) the publishers plus discount agreed upon equals proceeds from the sale of textbooks. When she prepared the financial statements for the SY 2009-2010, which ended on March 31, 2010, there was no longer any excuse for Garcia not to become aware of the massive theft committed.

After the parties filed their respective pleadings, the LA dismissed the complaint for lack of merit. It was opined that Garcia's denial of the

²⁷ *Id.*

²⁸ *Id.* at 228-230, 734-736.

accusations against her was strongly demolished by the testimonies of Fr. Ala, Jeffrey Bonalos, and De Leon, who all testified during the administrative investigation. The conclusion was that the Accounting Office was truly negligent in the performance of its functions.

The NLRC sustained the LA ruling. It held:

The Labor Arbiter could not have erred in his finding that [Garcia] was negligent in her function as Chief Accountant. While there is no credible evidence establishing that [Garcia] joined [Salas] in specifically recommending the purchase of some 44,000 thin and thick notebooks which resulted in oversupply, it is undisputed that [Garcia] joined [Salas] in telling Fr. Ala in February 2010 of the need to purchase notebooks in anticipation of the forthcoming school year. The inventory reports adduced in evidence (p.176 Rollo) which bear [Garcia's] signature however suggest that as of January 31, 2010, [LSQC] still had in stock 7,336 thick notebooks and 19,055 thin notebooks. [Garcia] could have prevented an oversupply of notebooks had she advised Fr. Ala of the stock on hand.

What is more significant is that it is undisputed that [Garcia] turned over to her subordinate, [Salas], the custody of unused receipts without an inventory of what were so turned over. [Garcia] notably failed to ensure accountability over booklets of unused receipts. The laxity in accountability control and monitoring on the part of [Garcia] had rendered the situation conducive to pilferage [of] unused official receipts and to financial irregularities. As it turned out, [pilfered] official receipts were used by [De Leon] and [Costales] in defrauding [LSQC] to the tune of P620,726.40 in proceeds from sale of textbooks in May and June 2010 during enrollment period. To make matters worse, it took more than one year for [Garcia] to discover the shortage in anticipated proceeds from sale of textbooks. While [Garcia's] negligence may not be considered as habitual, the grossness of her negligence is evident from the extent of the damage caused to [LSQC]. Under Article 382 of the Labor Code, gross and habitual neglect of duties by an employee is considered as a just cause for termination of employment. While the element of habituality must ordinarily be present to justify dismissal, [it] is settled that the element of habituality may be disregarded where the actual loss of (*sic*) suffered by the employer as a consequence of the employee's negligence is substantial in amount.

Moreover, [Garcia] held the exalted position of Chief Accountant. Managerial and supervisory employees are tasked to perform key and sensitive functions and are bound by more exacting work ethics, and thus are subject by the trust and confidence rule. x x x. In the case of [Garcia] who is considered as managerial or supervisory employee and held a position of trust and confidence her dismissal does not require proof of actual involvement in the theft of proceeds from the sale of textbooks. The mere existence of a basis for believing that a managerial employee has breached the trust of his/her employer would suffice for his/her dismissal. x x x. The negligence of [Garcia] which gave opportunity for fraud to be committed against [LSQC] had rendered her unworthy of the trust and




confidence demanded by her position. Succinctly put, respondents were justified in terminating the employment of [Garcia].²⁹

Garcia moved to reconsider the NLRC Decision, but it was denied.³⁰

When the case was elevated to the CA, the petition was granted. For the appellate court, there is grave abuse of discretion on the part of the NLRC as its findings of fact upon which its conclusion was based are not supported by substantial evidence.

On the oversupply of notebooks, it does not appear from the records that Garcia recommended the purchase of 44,000 thin and thick notebooks which resulted in its oversupply. While she told Fr. Ala that it was time to order notebooks as the enrollment was nearing, she did not suggest the number of notebooks to be ordered for the next school year. Rather, it was Salas who furnished the figures. It was he alone who was responsible for misleading Fr. Ala. Garcia could not have prevented an oversupply of notebooks because inventory preparation and reporting were the tasks of Salas. The specific school policy, rules or regulations or manual stating that it was her duty to advise Fr. Ala as to the correct number of books to be ordered was neither furnished nor presented. The mere fact that Fr. Ala "trusted" her does not vest her the responsibility of doing a job that is not included in her job description. Since the financial data and relevant reports in connection with the supply and procurement of notebooks were readily available, Fr. Ala could have easily examined and referred to them before making a decision.

As regards the alleged laxity of Garcia in accountability control and monitoring, which made way to the pilferage of unused ORs and caused the irregularities in the book sale, the CA found no definitive proof that the receipts used by De Leon and Costales were the unused ORs printed by LSQC but which had not been turned over. The transfer of custody of the unused ORs printed by the school from Garcia to Salas and from Salas to the perpetrators, as well as Garcia's willful participation or knowledge of the scheme of theft or that she benefited from it, were not established. Her acts of bringing the matter to the attention of Fr. Ala and asking De Leon to explain the discrepancy in the book sale and to find the missing funds hardly indicate gross negligence. While there may be some lapses in judgment on the way she handled the status report on the book sale, it does not amount to habitual neglect in the absence of other similar shortcomings. The lapse or inaction could only be regarded as a single or isolated act of negligence that cannot be categorized as habitual.



²⁹ *Id.* at 349-351. (Citations omitted)

³⁰ *Id.* at 353-386.

With respect to Garcia's alleged breach of trust and confidence, the appellate court acknowledged that her position involved a high degree of responsibility requiring trust and confidence, but it ruled that there was failure to establish with certainty the facts upon which the loss of trust and confidence could be based. While the school lost some funds, Garcia's responsibility therefor was not supported by substantial evidence. She did not commit any act that was dishonest, deceitful or morally perverse. She did not use her authority to misappropriate the proceeds of the sale of notebooks and derive benefits therefrom. She did not alter or tamper financial data. Her financial analyses and evaluations were based on those supplied by her subordinates. Moreover, it made no sense for her to engage in anomalous transactions after spending 25 years in service wherein she had not been charged by the school with any infraction or complaint as regards the quality of her work.

The CA disposed as follows:

WHEREFORE, the petition is **GRANTED**. The Decision dated February 29, 2012 and the Resolution dated April 18, 2012 of the Fourth Division of the National Labor Relations Commission are **REVERSED** and **SET ASIDE** and a new one entered declaring the dismissal of Luz Garcia as illegal and consequently ordering Lourdes School, Inc./Lourdes School Quezon City to pay her full backwages inclusive of allowances and other benefits or their monetary equivalent, from the time of her dismissal up to the finality of the decision, and separation pay in lieu of reinstatement equivalent to one month salary for every year of service, computed from the time of her engagement up to the finality of this decision, as well as attorney's fees equivalent to Ten Percent (10%) of the monetary award. The case is **REMANDED** to the labor arbiter for the purpose of computing the monetary awards.

SO ORDERED.³¹

Petitioner's motion for reconsideration was denied;³² hence, this petition.

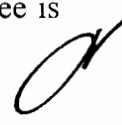
We deny.

The CA did not err in ruling that petitioner failed to comply with the requisites of valid dismissal based on loss of trust and confidence.

It must be noted that in termination cases, the burden of proof rests upon the employer to show that the dismissal of the employee is for just cause and failure to do so would mean that the dismissal is not justified. This is in consonance with the guarantee of security of tenure in the Constitution and elaborated in the Labor Code. A dismissed employee is

³¹ *Id.* at 51-52, 540-541. (Emphasis in the original)

³² *Id.* at 64-65.



not required to prove his innocence of the charges leveled against him by his employer. The determination of the existence and sufficiency of a just cause must be exercised with fairness and in good faith and after observing due process.

As firmly entrenched in our jurisprudence, loss of trust and confidence, as a just cause for termination of employment, is premised on the fact that an employee concerned holds a position where greater trust is placed by management and from whom greater fidelity to duty is correspondingly expected. This includes managerial personnel entrusted with confidence on delicate matters, such as the custody, handling, or care and protection of the employer's property. The betrayal of this trust is the essence of the offense for which an employee is penalized.

It must be noted, however, that in a plethora of cases, this Court has distinguished the treatment of managerial employees from that of rank-and-file personnel, insofar as the application of the doctrine of loss of trust and confidence is concerned. Thus, with respect to rank-and-file personnel, loss of trust and confidence, as ground for valid dismissal, requires proof of involvement in the alleged events in question, and that mere uncorroborated assertions and accusations by the employer will not be sufficient. But as regards a managerial employee, the mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal. Hence, in the case of managerial employees, proof beyond reasonable doubt is not required, it being sufficient that there is some basis for such loss of confidence, such as when the employer has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein renders him unworthy of the trust and confidence demanded of his position.

On the other hand, loss of trust and confidence as a ground of dismissal has never been intended to afford an occasion for abuse because of its subjective nature. It should not be used as a subterfuge for causes which are illegal, improper, and unjustified. It must be genuine, not a mere afterthought intended to justify an earlier action taken in bad faith. Let it not be forgotten that what is at stake is the means of livelihood, the name, and the reputation of the employee. To countenance an arbitrary exercise of that prerogative is to negate the employees constitutional right to security of tenure.

Stated differently, the loss of trust and confidence must be based not on ordinary breach by the employee of the trust reposed in him by the employer, but, in the language of Article 282 (c) of the Labor Code, on willful breach. A breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It must rest on substantial grounds and not on the employers arbitrariness, whims, caprices or suspicion; otherwise, the employee would eternally remain at the mercy of the employer. It should be genuine and not simulated; nor should it appear as a mere afterthought to justify earlier action taken in bad faith or a subterfuge for causes which are improper, illegal or unjustified. There must, therefore, be an actual breach of duty committed by the employee which must be established by substantial evidence.

Moreover, the burden of proof required in labor cases must be amply discharged.³³

In this case, the evidence submitted, both testimonial and documentary, fail to convince Us that Garcia had malice aforethought at the time the alleged oversupply of notebooks and theft in the textbook sale were being committed.

On the excessive order of notebooks, there is no substantial evidence on record of the exact figures that Garcia incorrectly furnished to Fr. Ala; the frequency of giving the wrong information; how the numbers provided were disproportionate relative to the actual need of the students taking into account the existing school inventory; how and why a specific supplier was favored while the others were rejected; the difference in the prices they offered; and the benefit that Garcia received from the oversupply. Petitioner always connects her name with that of Salas and attribute the latter's act as hers as well. However, no evidence was shown that there was collusion between them. In fact, Salas never alleged that Garcia connived with him when he gave the inaccurate data to Fr. Ala.

Also, based on De Leon's written confession dated October 13, 2010,³⁴ while she admitted the theft she and Costales perpetrated on the proceeds of textbook sales, she did not implicate Garcia in whatever way. Like Salas, she did not allege that Garcia participated with them or allowed them to commit the same despite her prior knowledge. Truth be told, De Leon even revealed that she was confronted by Garcia when the latter discovered the discrepancy (between the net amount of the booksale and the amount of what the school was supposed to earn as commission) and that she was asked to immediately find supporting documents to justify the missing amount. Since conspiracy was not clearly established, the ineluctable conclusion is that Garcia was dismissed on the bases of petitioner's mere suspicions, surmises, and speculations.

The Court agrees with petitioner that Garcia was somehow remiss in her duties as Chief Accountant of LSQC. Admittedly, she should have been more circumspect in closely supervising Salas, particularly in monitoring and counter-checking his job with respect to the inventory-taking of notebooks and the safekeeping of unused school-issued OR booklets. Nevertheless, for lack of malicious intent or fraud, her negligence or carelessness is not a justifiable ground to impose the ultimate penalty of dismissal from employment. Loss of trust and confidence stems from a breach of trust founded on a dishonest, deceitful or fraudulent act.³⁵ In the absence of substantial evidence to prove otherwise, We are constrained to find that Garcia did not commit the accusations against her. Neither did she

³³ *Lima Land, Inc., et al. v. Cuevas*, 635 Phil. 36, 47-50 (2010).

³⁴ *Rollo*, pp. 168-173, 194-199, 674-679, 700-705.

³⁵ *Lima Land, Inc., et al. v. Cuevas*, *supra* note 33, at 51.

knowingly use her authority to misappropriate school fund or property nor did she abuse the trust reposed in her by petitioner with respect to her responsibility to implement school policies on accounting matters. The most that can be attributed to Garcia is that she was simply remiss in the performance of her duties. As this does not automatically demonstrate moral perverseness, it does not constitute dishonest or deceitful conduct that would justify loss of trust and confidence.

Further, We do not agree with petitioner that Garcia was grossly and habitually negligent in the performance of her duties. She has not committed prior infractions in her more than two decades of service with LSQC. There is no allegation or proof that she had been previously subjected to disciplinary proceedings for violation of established school rules and regulations or found guilty of any misconduct. Her negligence cannot also be characterized as gross in character. "Gross negligence implies a want or absence of or failure to exercise slight care or diligence or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them."³⁶ The evidence does not show that Garcia had any reason to distrust Salas, De Leon or Costales. As they have not been involved in any misdeed in the past, she had reasonably assumed that they would conduct themselves well within the regular performance of their respective duties. Until the investigation was initiated, there was not the slightest reason to suspect that they would commit any irregularity or illegal act. At most, Garcia's misplaced trust constitutes error of judgment but not gross negligence. While petitioner is not mistaken to argue that, although not habitual, gross neglect of duty is sufficient cause to dismiss an employee,³⁷ such is definitely not the case here.

It also bears to point out that the severance from employment of Garcia invites suspicion of ill motive on the part of petitioner. Notably, De Leon was not dismissed from service despite her admission of guilt; rather, she was recommended to be retained in a position that does not involve the handling of money.³⁸ Also, Salas was totally exonerated from any involvement in the theft on textbook sales.³⁹ Unfortunately, the same understanding and compassion was not extended to Garcia, who, despite her more than 20 years of loyal and untarnished service, was terminated.

A lesser penalty should have been imposed by petitioner to Garcia, considering that she has no history of previous infractions. It bears stressing that while an employer enjoys a wide latitude of discretion in the promulgation of policies, rules, and regulations on work-related activities of the employees, those directives, however, must always be fair and

³⁶ *Cebu Filvener Corp. v. NLRC*, 350 Phil. 197, 205 (1998).

³⁷ See *Fuentes v. National Labor Relations Commission*, 248 Phil. 980 (1988); *PAL v. NLRC*, 271 Phil. 962 (1991); *School of the Holy Spirit of Q.C. And/or Sr. Tolentino v. Taguiam*, 580 Phil. 203 (2008); and *LBC Express - Metro Manila, Inc., et al. v. Mateo*, 607 Phil. 8 (2009).

³⁸ *Rollo*, pp. 142, 165, 648, 671.

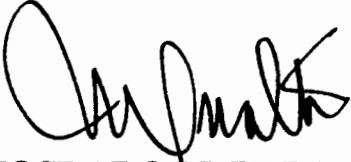
³⁹ *Id.*

reasonable, and the corresponding penalties, when prescribed, must always be commensurate to the offense involved and to the degree of the infraction.⁴⁰

As a final note, the Court is wont to reiterate that while an employer has its own interest to protect, and pursuant thereto, it may terminate a managerial employee for a just cause, such prerogative to dismiss or lay off an employee must be exercised without abuse of discretion. Its implementation should be tempered with compassion and understanding. The employer should bear in mind that, in the execution of the said prerogative, what is at stake is not only the employees position, but his very livelihood, his very breadbasket. Indeed, the consistent rule is that if doubts exist between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter. The employer must affirmatively show rationally adequate evidence that the dismissal was for justifiable cause. Thus, when the breach of trust or loss of confidence alleged is not borne by clearly established facts, as in this case, such dismissal on the cited grounds cannot be allowed.⁴¹

WHEREFORE, the petition for review on *certiorari* is **DENIED**. The January 29, 2014 Decision and June 18, 2014 Resolution of the Court of Appeals in CA-G.R. SP No. 125316, which reversed and set aside the February 29, 2012 Decision and April 18, 2012 Resolution of the National Labor Relations Commission, affirming with modification the August 25, 2011 Decision of the Labor Arbiter, are **AFFIRMED**.

SO ORDERED.


DIOSDADO M. PERALTA
Associate Justice

⁴⁰ *Sunrise Holiday Concepts, Inc. v. Arugay*, 664 Phil. 222, 232 (2011).

⁴¹ *Lima Land, Inc., et al. v. Cuevas*, *supra* note 33, at 53-54.

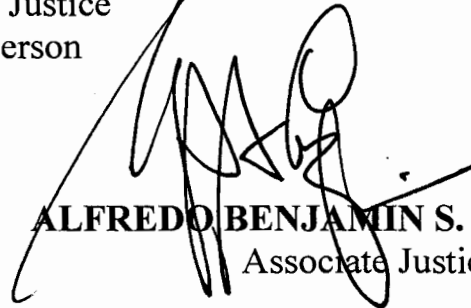
WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson



ESTELA M. PERLAS-BERNABE
Associate Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



ANDRES B. REYES, JR.
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.



ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

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.



MARIA LOURDES P. A. SERENO
Chief Justice