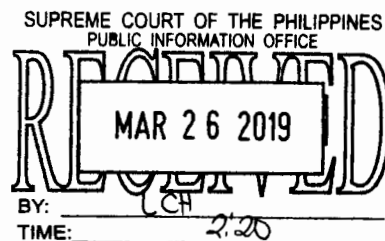




Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION



**EDGARDO M. AGUILAR,**  
Petitioner,

**G.R. No. 232806**

**Present:**

- versus -

CARPIO, *J.*, Chairperson,  
PERLAS-BERNABE,  
CAGUIOA,  
REYES, J. JR., and  
HERNANDO, \* *JJ.*

**ELVIRA J. BENLOT and**  
**SAMUEL L. CUICO,**  
Respondents.

**Promulgated:**

**21 JAN 2019**

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**DECISION**

**REYES, J. JR., J.:**

For this Court's consideration is the Petition for Review on *Certiorari*<sup>1</sup> under Rule 45 of the Rules of Court, assailing the Resolutions<sup>2</sup> of the Court of Appeals-Cebu City (CA) dated February 7, 2017 and June 14, 2017 in CA-GR. SP No. 10219. The CA dismissed Edgardo M. Aguilar's appeal from the September 30, 2015 Order<sup>3</sup> of the Office of the Ombudsman-Visayas (Ombudsman) due to procedural infirmities, and subsequently denied reconsideration.

The facts follow.

Edgardo M. Aguilar (petitioner) was elected and had served as *Punong Barangay* of *Barangay Bunga*, Toledo City, Cebu, for three

\* Additional Member per S.O. No. 2630 dated December 18, 2018.

<sup>1</sup> *Rollo*, pp. 3-16.

<sup>2</sup> Penned by Associate Justice Pablito A. Perez, with Associate Justices Pamela Ann Abella Maxino and Gabriel T. Robeniol, concurring; *id.* at 20, 22-26.

<sup>3</sup> *Id.* at 78-85.

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consecutive terms prior to the October 25, 2010 *barangay* elections where he was elected *Barangay Kagawad* and ranked third. During the same elections, petitioner's sister, Emma Aguilar-Arias (Arias), was elected *Punong Barangay*, while Leonardo Oralde (Oralde) and Emiliana Mancao (Mancao) were elected *Barangay Kagawads* and ranked first and second, respectively.<sup>4</sup> They took their oaths of office on December 1, 2010.

On December 2, 2010, Arias, Oralde, and Mancao resigned from their respective positions, citing personal reasons and inability to concurrently fulfill official and familial obligations.<sup>5</sup> Their resignations were accepted and approved by the Mayor of Toledo City on the same day. Being third in rank, petitioner succeeded as *Punong Barangay*. Five days after, or on December 7, 2010, petitioner was re-elected as President of the Association of *Barangay* Captains of Toledo City, by which he once more earned a seat in the City Council.<sup>6</sup>

Subsequently, Oralde and Mancao were appointed back as *Barangay Kagawads* by the Mayor of Toledo City on January 1, 2011.<sup>7</sup> Arias, on the other hand, was hired as an employee of the city government after her resignation.<sup>8</sup>

Convinced that Arias, Oralde, and Mancao resigned from their respective positions to pave the way for petitioner's succession as *Punong Barangay*, Elvira J. Benlot and Samuel L. Cuico (herein respondents) filed a Complaint<sup>9</sup> on January 31, 2012 before the Ombudsman against the former for violation of Republic Act No. 6713 or *The Code of Conduct and Ethical Standards for Public Officials and Employees* and Dereliction of Duty. According to respondents, the concerted resignations were part of a ruse to enable petitioner to serve a fourth consecutive term in circumvention of the three-term limit. For this reason, petitioner was subsequently included as one of the respondents in the complaint.<sup>10</sup>

During the intervening October 28, 2013 *barangay* elections, petitioner was re-elected as *Punong Barangay*, while Arias and Oralde were re-elected as *Barangay Kagawads*. Treating this development as a condonation by the electorate of their previous misconduct, the Ombudsman, in a Decision<sup>11</sup> dated February 23, 2015, dismissed the administrative complaint against Arias, Oralde and petitioner for being moot and academic pursuant to the *Aguinaldo Doctrine*,<sup>12</sup> also known as the doctrine of condonation. The administrative case was dismissed for lack of jurisdiction as against Mancao, who was, by then, no longer in government service.

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<sup>4</sup> Id. at 39.

<sup>5</sup> Id. at 41-43.

<sup>6</sup> Id. at 44.

<sup>7</sup> Id. at 46-49.

<sup>8</sup> Id. at 155.

<sup>9</sup> Id. at 27 and 36-38.

<sup>10</sup> Id. at 50-52.

<sup>11</sup> Id. at 71-77.

<sup>12</sup> *Aguinaldo v. Hon. Santos*, 287 Phil. 851 (1992).

On motion by the respondents, the Ombudsman reconsidered its Decision through an Order<sup>13</sup> dated September 30, 2015. It reasoned that petitioner and Arias could not benefit from the condonation doctrine because they were not re-elected in 2013 to the same positions that they were elected for in the 2010 *barangay* elections. Petitioner and Arias were thus found liable for Grave Misconduct and meted the penalty of dismissal from the service, with forfeiture of benefits and perpetual disqualification to hold public office. As regards Oralde, however, the Decision was affirmed. The condonation doctrine was viewed as applicable to Oralde, who was elected as *Barangay Kagawad* and served as such in both the 2010 and 2013 elections.

Petitioner and Arias separately moved for reconsideration of the adverse order. Through a Joint Order<sup>14</sup> on January 26, 2016, the Ombudsman denied the motions for failure to introduce any new issue or evidence.

When petitioner sought a review of his case before the CA, it dismissed the petition for failure to allege the date when the September 30, 2015 Order of the Ombudsman was received, as well as for lack of explanation why the petition was neither personally filed before the CA nor personally served to the parties.<sup>15</sup>

In his Motion for Reconsideration<sup>16</sup> before the CA, petitioner explained that another lawyer previously handled the case, and that there was no stamp as to petitioner's date of receipt on the certified true copy of the Ombudsman Order. Petitioner himself could not remember when he personally received a copy as it was just handed to him by a *barangay* staff. He further argued that the CA could infer that he received his copy of the Order on the same date as Arias did, and that the Ombudsman having jointly entertained their motions for reconsideration should be regarded in his favor on the matter of the timeliness of his appeal.

On his failure to explain why the petition was not personally filed and served, petitioner merely invoked honest mistake. Counsel's office messenger allegedly ran out of time, so the petitions were mailed, even though the affidavit accompanying the petition averred personal filing and service.

In the exercise of its discretion on procedural defects, the CA did not find the reasons advanced by the petitioner compelling, particularly the belated explanation why the petitions were mailed. The CA declared that personal filing and service would have been more practicable than mailing copies of the petition, considering that the Ombudsman, the CA, and

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<sup>13</sup> Supra note 3.

<sup>14</sup> *Rollo*, pp. 98-101.

<sup>15</sup> Supra note 2.

<sup>16</sup> *Rollo*, pp. 134-140.

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counsels of the parties all have offices in close proximity with each other within Cebu City.

Aggrieved, petitioner now seeks relief before this Court, raising three grounds:

A

The Honorable Court of Appeals gravely erred in dismissing outright the petition and in failing to decide the case on its merit.

B

The Office of the Ombudsman (Visayas) gravely erred in failing to apply the condonation doctrine.

C

The Office of the Ombudsman (Visayas) gravely erred in finding conspiracy to circumvent the three-term limit.<sup>17</sup>

On October 18, 2017, respondents filed their Comment<sup>18</sup> on the present petition, essentially echoing the rulings of the CA and the Ombudsman.

In response, petitioner filed a Reply<sup>19</sup> on November 7, 2017, arguing this time that he did not violate the three-term rule when he accepted his appointment and succeeded as *Punong Barangay* to serve a fourth term.

We resolve.

At the threshold is the CA's dismissal of petitioner's appeal based on procedural infirmities, which we address first.

In citing *Tible & Tible Company, Inc. v. Royal Savings and Loan Association*,<sup>20</sup> the petitioner essentially concedes that the application of the rules must be upheld, and the suspension, or even mere relaxation of its application is the exception. Petitioner contends that his case falls within the exception.

We find that while the CA had good reason to find petitioner's belated explanation unsatisfactory, the present case merits the relaxation of the rules.

This Court has often emphasized that the liberal interpretation of the rules applies only to justifiable causes and meritorious circumstances.<sup>21</sup> As mandated by Section 11, Rule 13 of the Rules of Court, personal filing and

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<sup>17</sup> Id. at 8.

<sup>18</sup> Id. at 147-159.

<sup>19</sup> Id. at 163-167.

<sup>20</sup> 574 Phil. 20 (2008).

<sup>21</sup> *Turks Shawarma Company/Gem Zeñarosa, v. Pajaron*, 803 Phil. 315, 317 (2017).

personal service of pleadings remain the preferred mode. In *Aberca v. Ver*,<sup>22</sup> this Court reiterated *Domingo v. Court of Appeals*,<sup>23</sup> as follows:

Section 11, Rule 13 of the Rules of Court states:

SEC. 11. *Priorities in modes of service and filing.* Whenever practicable, the service and filing of pleadings and other papers shall be done personally. Except with respect to papers emanating from the court, a resort to other modes must be accompanied by a written explanation why the service or filing was not done personally. A violation of this Rule may be cause to consider the paper as not filed.

Section 11 is **mandatory**. In *Solar Team Entertainment, Inc. v. Judge Ricafort*, the Court held that:

Pursuant x x x to Section 11 of Rule 13, *service and filing of pleadings and other papers must, whenever practicable, be done personally; and if made through other modes, the party concerned must provide a written explanation as to why the service or filing was not done personally.* x x x

Personal service and filing are preferred for obvious reasons. Plainly, such should expedite action or resolution on a pleading, motion or other paper; and conversely, minimize, if not eliminate, delays likely to be incurred if service or filing is done by mail, considering the inefficiency of postal service. Likewise, personal service will do away with the practice of some lawyers who, wanting to appear clever, resort to the following less than ethical practices: (1) serving or filing pleadings by mail to catch opposing counsel off-guard, thus leaving the latter with little or no time to prepare, for instance, responsive pleadings or an opposition; or (2) upon receiving notice from the post office that the registered parcel containing the pleading or other paper from the adverse party may be claimed, unduly procrastinating before claiming the parcel, or, worse, not claiming it at all, thereby causing undue delay in the disposition of such pleading or other papers.

If only to underscore the **mandatory nature** of this innovation to our set of adjective rules requiring personal service whenever practicable, Section 11 of Rule 13 then gives the court the discretion to consider a pleading or paper as not filed if the other modes of service or filing were resorted to and no written explanation was made as to why personal service was not done in the first place. The exercise of discretion must, necessarily, consider the practicability of personal service, for Section 11 itself begins with the clause “whenever practicable.”

We thus take this opportunity to clarify that under Section 11, Rule 13 of the 1997 Rules of Civil Procedure, personal service and filing is the general rule, and resort to other modes of service and filing, the exception. Henceforth, whenever personal service or filing is practicable, in light of the circumstances of time, place and person, personal service or filing is **mandatory**. Only when personal service or filing is not practicable may resort to other modes be had, which must then be accompanied by a written explanation as to why personal service or filing was not practicable to begin with. In adjudging the plausibility of an explanation, a

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<sup>22</sup> 684 Phil. 207, 223-225 (2012).

<sup>23</sup> 625 Phil. 192, 203-204 (2010).

court shall likewise consider the importance of the subject matter of the case or the issues involved therein, and the [*prima facie*] merit of the pleading sought to be expunged for violation of Section 11. This Court cannot rule otherwise, lest we allow circumvention of the innovation introduced by the 1997 Rules in order to obviate delay in the administration of justice.

x x x x

x x x [F]or the guidance of the Bench and Bar, **strictest compliance with Section 11 of Rule 13 is mandated.** (Emphases in the original; italics supplied)

Here, the CA had judicial notice of the proximity of the counsels' offices to the CA, to the Ombudsman, and with each other. It could not, thus, be faulted for not finding merit in petitioner's belated explanation. Nonetheless, the CA should have also considered the *prima facie* merit of petitioner's case. As it even pointed out in its challenged June 14, 2017 Resolution, citing *Pagadora v. Ilao*.<sup>24</sup>

In adjudging the plausibility of an explanation, the court shall consider not only the circumstances, the time and the place but also the importance of the subject matter of the case or the issues involved therein, and the *prima facie* merit of the pleading involved.

In the exercise of the CA's discretion in such matters, it should have viewed petitioner's procedural blunder in conjunction with the *prima facie* merit of the case, disclosing as it does that a relaxation of the rules is warranted.

Petitioner is guilty of Grave Misconduct, but stood to benefit from the doctrine of condonation prevailing at that time.

Certainly, cases should be decided only after giving all parties the chance to argue their causes and defenses.<sup>25</sup> Technicality and procedural imperfection should not serve as basis of decisions.<sup>26</sup> Although petitioner's appeal should not have been dismissed outright on procedural grounds, petitioner cannot claim that it did not have ample opportunity to present evidence in the proceedings before the Ombudsman. The Ombudsman's September 30, 2015 Order even quoted and adopted the findings in the criminal aspect of the case (OMB-V-C-14-0333) as basis in finding petitioner and Arias guilty of Grave Misconduct.

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<sup>24</sup> 678 Phil. 208, 225 (2011).

<sup>25</sup> *Bank of the Philippine Islands v. Spouses Genuino*, 764 Phil. 642, 650 (2015).

<sup>26</sup> *Id.*

In this regard:

[I]t is settled that “findings of fact by the Office of the Ombudsman are conclusive when supported by substantial evidence” — or “such relevant evidence as a reasonable mind may accept as adequate to support a conclusion. The requirement is satisfied where there is reasonable ground to believe that the petitioner is guilty of the act or omission complained of, even if the evidence might not be overwhelming.” On this note, it is well to emphasize that the Ombudsman’s factual findings are generally accorded great weight and respect, if not finality by the courts, by reason of their special knowledge and expertise over matters falling under their jurisdiction.<sup>27</sup>

Furthermore, in a petition for review under Rule 45 of the Rules of Court, only questions of law can be raised.<sup>28</sup> For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them.<sup>29</sup>

For a thorough disposition, however, it may be noted that the facts support the Ombudsman’s conclusion that there was conspiracy among the three individuals who resigned and petitioner. The resignations are peculiar, undertaken as they were on the day immediately following Arias, Oralde, and Mancao’s oaths of office. They wasted no time in filing their resignations and did not even serve a day in the positions they were elected for. Personal reasons were cited, which beg the question why these were not considered before they filed for candidacy and actively campaigned. Then, just barely a month after petitioner succeeded as *Punong Barangay*, Oralde and Mancao accepted appointments as *Barangay Kagawads* in a surprising change of heart and despite personal reasons they invoked in their resignation letters. Even Arias took a contractual position with the city government despite the familial and personal limitations she cited in her resignation letter. We are, thus, not inclined to disregard as mere conjecture the Ombudsman’s conclusion, that the resignations were concerted acts to give way to petitioner’s appointment and enable him to circumvent the three-term limit. Conspiracy is sufficiently established when the concerted acts show the same purpose or common design and are united in its execution.<sup>30</sup>

Without a doubt, Arias, Oralde, and Mancao acted in concert to circumvent the law and give unwarranted benefit to the petitioner, to enable the latter to retain power which the law requires of him not to perpetuate. The concerted acts of petitioner, Arias, Oralde, and Mancao amount to Grave Misconduct. As defined:

Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the

<sup>27</sup> *Office of the Deputy Ombudsman for Luzon v. Dionisio*, G.R. No. 220700, July 10, 2017, 830 SCRA 501, 514.

<sup>28</sup> *Office of the Ombudsman v. De Villa*, 760 Phil. 937, 949 (2015).

<sup>29</sup> *Id.*

<sup>30</sup> *People v. Angelio*, 683 Phil. 99, 105 (2012).

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.<sup>31</sup>

Calling the Court's attention to *Mayor Abundo, Sr. v. COMELEC*,<sup>32</sup> petitioner argues in his Reply that, because he was re-elected in 2010 as *Barangay Kagawad* and merely succeeded as *Punong Barangay* to fill the vacancy caused by the resignations, his serving a fourth term as *Punong Barangay* was not a violation of the three-term limit. This line of argument, however, overlooks the fact that petitioner was made to answer administratively for conspiring to make a mockery of our laws for his own benefit. This was not a disqualification case, to begin with.

Even if we were to consider this Court's pronouncement that assumption of office by operation of law should not be counted for purposes of the three-term limit rule,<sup>33</sup> this jurisprudential authority is based on the fact that running for an elective position presupposes voluntariness. To be counted as service for a full term for purposes of determining term limits, the elective official must have also been elected to the same position for the same number of times.<sup>34</sup> Assumption of office by operation of law is generally involuntary because the elective official ran for a position different from that which he was subsequently called to serve. Granting that the petitioner was able to serve a fourth term as *Punong Barangay*, not by virtue of election, but by succession, the willful act of conspiring to circumvent our laws indicate voluntariness. It is as if petitioner himself had run for the position of *Punong Barangay*, instead of *Barangay Kagawad*.

The foregoing issue is nonetheless mooted by the petitioner's re-election as *Punong Barangay*, an event which precludes the imposition of the penalty of dismissal, following the doctrine of condonation. In *Ombudsman Carpio Morales v. Court of Appeals*,<sup>35</sup> this Court pronounced the abandonment of the doctrine of condonation for having no legal authority in this jurisdiction, but was also explicit that the ruling is prospective in its application.

As the events in this case took place before *Ombudsman Carpio Morales*, petitioner argued that he should benefit from the prospective application of the doctrine, such that his subsequent re-election precludes

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<sup>31</sup> *Office of the Deputy Ombudsman for Luzon v. Dionisio*, supra note 27, at 514-515.

<sup>32</sup> 701 Phil. 135 (2013).

<sup>33</sup> *Borja, Jr. v. COMELEC*, 356 Phil. 467, 478 (1998).

<sup>34</sup> Id.

<sup>35</sup> 772 Phil. 672, 775 (2015).

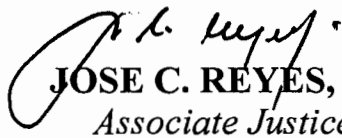


the imposition and execution of the penalty for Grave Misconduct. On the other hand, the Ombudsman and the respondents share the view that the condonation doctrine is inapplicable because petitioner was not elected for the same position in the 2010 and 2013 *barangay* elections.

This Court had already clarified that the doctrine can be applied to a public officer who was elected to a different position provided that it is shown that the body politic electing the person to another office is *the same*.<sup>36</sup> It is not necessary for the official to have been re-elected to exactly the same position; what is material is that he was re-elected by the same electorate.

**WHEREFORE**, the petition is **GRANTED**. The February 7, 2017 and June 14, 2017 Resolutions of the Court of Appeals in CA-G.R. SP No. 10219 are hereby **REVERSED** and **SET ASIDE**. The act committed by petitioner Edgardo M. Aguilar is deemed **CONDONED**.

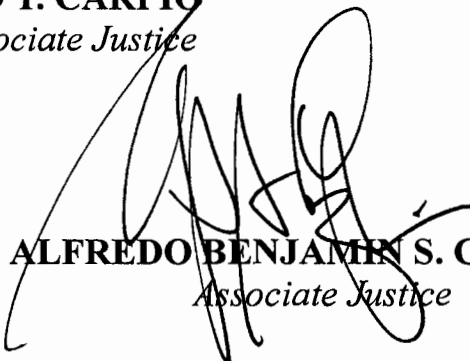
**SO ORDERED.**

  
**JOSE C. REYES, JR.**  
*Associate Justice*

**WE CONCUR:**

  
**ANTONIO T. CARPIO**  
*Senior Associate Justice*

  
**ESTELA M. PERLAS-BERNABE**  
*Associate Justice*

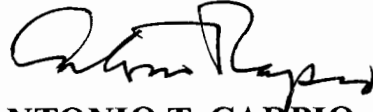
  
**ALFREDO BENJAMIN S. CAGUIOA**  
*Associate Justice*

  
**RAMON PAUL L. HERNANDO**  
*Associate Justice*

<sup>36</sup> *Almario-Templonuevo v. Office of the Ombudsman*, G.R. No. 198583, June 28, 2017, 828 SCRA 283, 297.

**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**  
*Senior 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.



**LUCAS P. BERSAMIN**  
*Chief Justice*

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