99 Phil. 902

[G.R. No. L-9565. September 14, 1956]

YUKI LAM, ET AL,, PETITIONERS, VS. NENA MICALLER, ET AL., RESPONDENTS.

D E C I S I O N

BAUTISTA ANGELO, J.:

On November 30, 1953, Nena Micaller was dismissed by the Scoty's Department Store owned and managed by petitioners herein, from her position as salesgirl. Contending that her dismissal was unjustified, Micaller sued her employers in the Court of Industrial Relations which, after trial, rendered judgment finding petitioners guilty of unfair labor practice and ordering them to reinstate her to her former position and to pay her wages in arrears (Case No. 135-ULP). This case was appealed to the Supreme Court (G. R. No. L-8116).

On March 30, 1955, Nena Micaller obtained a writ of execution of the judgment which orders her reinstatement, but petitioners instead of giving her back her former position as salesgirl, set her to work as canvasser of prices outside of the store. On the same date, March 30, 1955, petitioner tendered to Nena Micaller a check in the amount of P124.80 corresponding to her salary for one month, and advised her in writing that her employment was terminated pursuant to the provisions of Republic Act No. 1052.

Without losing time, Nena Micaller filed a petition with the Court of Industrial Relations in the same case praying that the manager Yu Ki Lam be declared in contempt of court and, after due hearing, the court, in an order entered on May 10, 1955, while declining to punish him for contempt, ordered him "to readmit Nena Micaller to her. former employment under the same conditions of employment existing before the dispute arose; and if he fails to do so, he will be committed to jail until he complies with this order, upon proper motion." After their motion for reconsideration was denied, petitioners appealed to this Court by way of certiorari disputing the validity of the aforesaid order of the Court of Industrial Relations.

The questions for determination is whether an employee, who has been dismissed by an employer and who has been ordered reinstated pursuant to a judgment finding in guilty of unfair labor practice, can again be dismissed under the provisions of Republic Act No. 1052.

Section 1 of.said Act provides:

> "Sec. 1. In cases of employment, without a definite period, in a commercial, industrial, or agricultural establishment or enterprise, neither the employer nor the employee shall terminate the employment without serving notice on the order at least one month in advance.
>
> "The employee, upon whom no such notice was served, shall be entitled to one month's compensation from the date of termination of his employment."

Does the above provision apply to the present case? Commenting on the applicability of said law to the case at bar, the industrial court said: "It is the unanimous opinion, among the members of the Supreme Court, that Republic Act No. 1052 authorizes the employer, under some conditions, to terminate relationship with his employee, *when the dismissal is not prohibited by law.* But, when the employee is dismissed because of Union activities, like the case of Nena Micaller, or in violation of express statutory provisions, the employer cannot take refuge in Republic Act No. 1052 to justify or legitimate such dismissal."

We agree to this point of view. While Republic Act No. 1052 authorizes a commercial establishment to terminate the employment of its employee by serving notice on him one month in advance, or, in the absence thereof, by paying him one month compensation from the date of the termination of his employment, such Act does not give to the employer a blanket authority to terminate, the employment regardless of the cause or purpose behind such termination Certainly, it cannot be made use of as a cloak to circumvent a final order of the court or as a scheme to trample upon the right of an employee who has been the victim of an unfair labor practice. In other words, the privilege given by that Act to an employer cannot be resorted to if to do so would infringe the law that Congress had enacted to protect labor as against the abuses of capital. One of such abuses which our law condemns and which has given rise to the many social problems which mark the relationship of labor and capital is unfair labor practice, and this is the act of which said petitioners were condemned. To allow them to take refuge under that Act and obtain

by indirect action what they had been expressly enjoined by an express order of the Court would be a mockery of law and a travesty of justice. Such cannot be the intent of Congress. This is in keeping with the social policy that "The relations between capital and labor are not merely contractual. They are so impressed with public interest that labor contracts must yield to the common good' (Article 1700, New Civil Code).

The behavior observed by petitioners in connection with the reinstatement of Nena Micaller, far from being within the purview of said Act, is contemptuous. On March 30, 1955, the court decreed that she be reinstated, but she was not. As the industrial court found, "She was told that she could not come inside the store, and she was ordered to work outside, to canvass for prices of articles and to report to the management in the evening after everybody was out of the store. Micaller tried to comply with that instruction, but at the close of business, hours of that same date, March 30, she was again dismissed", invoking the provisions of Republic Act No-1052. It is for this reason that the court warned manager. Yu Ki Lam that if he should fail to reinstate her immediately, he will be committed to jail until he complies with the order. We find this injunction justified.

Wherefore, petition is denied, with costs against petitioners.

Paras, C. J., Bengzon, Labrador, Concepcion, Reyes, J. B. L., Endencia, and *Felix, JJ.,* concur.

CONCURRING:

MONTEMAYOR, J.,

While I agree with the majority when through Mr. Justice Bautista it says that the provisions of Republic Act No. 1052 may not be invoked or used by an employer as a cloak or a means to circumvent the final order of the Court of Industrial Relations, I feel that clarification or explanation of said ruling is advisable, even necessary, for the information and benefit of both employer and employee. The question involved in the present case is correctly stated by the majority as follows:

> "The question for determination is whether an employee, who has been dismissed by an employer and who has been ordered reinstated pursuant to a judgment finding him guilty of unfair labor practice, can again be dismissed under the provisions of Republic Act No. 1052."

The majority practically answers the question in the negative. It seems to me that said answer would be productive of confusion and future misunderstanding. The majority itself states that "Republic Act No. 1052 authorizes a commercial establishment to terminate the employment of its employee by serving notice on him one month in advance, or, in the absence thereof, by paying him one month compensation from the date of the termination of his employment" However, the above statement or interpretation of the law is practically nullified and rendered vain in that, when an employee has been dismissed from the service because of his union affiliation or activities and so must be reinstated, with back pay, the majority says, without any limitation or qualification, that the benefits of the provisions of Republic Act No. 1052 are no longer available to the employer.

But it seems clear that such a ruling is not and cannot be absolute because, if after reinstatement and after the payment of the back salary, the employer, later, and in good faith finds the services of the said employee to be no longer needed and necessary, or even prejudicial to the interest of the employer, the latter, by complying with the provisions of Republic Act No. 1052, may validly and properly terminate his services, specially if the interval pr period of time between the original dismissal constituting the unfair labor practice and the second dismissal, is sufficiently ample and long to remove all suspicion. or possibility that said second or last dismissal had any relation whatsoever with union activity, past or present. For this reason, I believe and I am sure that majority will agree with me that, for the sake of clarity, and to avoid misunderstanding, we should state for the benefit and information of labor and management, that when an employee is improperly dismissed because say, of union activity and affiliation, constituting unfair labor practice, he must be reinstated, even with back pay; But that such reinstatement does not give him a permanent and vested claim to the employment because later if through his Inefficiency or because his services are no longer needed, he may properly and validly be dismissed m accordance with the provisions of Republic Act No. 1052,, unless said dismissal is made again due to union affiliation or activities.

Padilla, J., concurs.

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