

**ROMEO DABUET, GAMIK BARTOLOME, SALVADOR ABESAMIS AND
MARIANO MALONZO, AND ROCHE PRODUCTS LABOR UNION,
PETITIONERS, VS. ROCHE PHARMACEUTICALS, INC., ERIC MENTHA,
REYNALDO FORMELO...**

G.R. No. L-45402. April 30, 1987

Ponente: PADILLA, J.

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PADILLA, J.:

This is a petition for review of the decision of the Office of the President in NLRC Case no. C-5190, ordering the respondent Roche Pharmaceuticals, Inc. to pay the individual petitioners separation pay, in lieu of reinstatement with back wages.

The facts of the case which led to the filing of this petition are, as follows:

On 1 March 1973, herein individual petitioners who were all officers of the Roche Products Labor Union, the labor organization existing in the firm, and with whom the respondent company had a collective bargaining agreement which was due for re-negotiation that month, wrote the respondent company expressing the grievances of the union and seeking a formal conference with management regarding the previous dismissal of the union's president and vice-president. A meeting was, accordingly, arranged and set for 12 March 1973. At said meeting, however, instead of discussing the problems affecting the labor union and management, Mr. Eric Mentha the company's general manager, allegedly berated the petitioners for writing said letter and called the letter and the person who prepared it as "stupid."

Feeling that he was the one alluded to, since he had prepared the letter, counsel for the labor union filed a case for grave slander against Mr. Mentha. The charge was based on the affidavit executed by the petitioners. The company and Mentha, in turn, filed a complaint for perjury against petitioners alleging that their affidavit contained false statements.

The respondent company, furthermore, construed the execution by petitioners of the affidavit as an act of breach of trust and confidence and inimical to the interest of the company, for which they were suspended. Subsequently, the respondent company filed with the NLRC a petition for clearance to terminate their employment. The petitioners filed an opposition thereto and, at the same time, filed charges of unfair labor practice, union busting, and harassment against the company, Eric Mentha, and Reynaldo Formeloza, the company's Finance/Administrative Manager.[1]

After due proceedings, the compulsory arbitrator found that the petitioners' dismissal was without justifiable cause, but that there was no unfair labor practice committed and directed that petitioners be paid separation pay.[2]

Petitioners filed a motion for reconsideration and/or appeal to the NLRC which agreed with the findings of the arbitrator that the petitioners' dismissal was without just and valid cause. However, it disagreed with the arbitrator

on the relief granted. The NLRC ordered the reinstatement of the petitioners with two (2) months salary as back wages.[3]

Both parties appealed to the Secretary of Labor who set aside the decision of the NLRC and entered another one ordering the payment of severance pay only.[4]

The petitioners appealed to the Office of the President, and on 27 April 1976, the latter rendered a decision finding the respondents guilty of unfair labor practice and directing the reinstatement of the petitioners with back wages from the time of their suspension until actually reinstated, without loss of seniority rights. The respondent company was, likewise, ordered to extend to the petitioners all fringe benefits to which they are entitled had they not been dismissed.[5] The respondent company filed a motion for reconsideration of the decision, and on 16 November 1976, the Office of the President granted the motion and reversed its previous decision of 27 April 1976. It ruled that, while the petitioners' dismissal was not for just and valid cause, no unfair labor practice had been committed. Consequently, it directed that petitioners be paid only separation pay in an amount double those awarded by the compulsory arbitrator and Secretary of Labor.[6]

Hence, the present recourse to this Court.

The determinative issue raised in the petition is whether or not the respondent company, in terminating the employment of the petitioners without just and lawful cause, committed an unfair labor practice.

We have carefully examined the records of the case and we are convinced that the respondent company had committed unfair labor practice in dismissing the petitioner without just and valid cause.

In *Republic Savings Bank vs. CIR*,[7] where the dismissed employees had written a letter decried by the Bank as patently libelous for alleging immorality, nepotism and favoritism on the part of the Bank president, thus amounting to behavior necessitating their dismissal, the Court declared:

x x x Assuming that the workers acted in their individual capacities when they wrote the letter-charge they were nonetheless protected for they were engaged in concerted activity, in the exercise of their right to self-organization that includes concerted activity for mutual aid and protection, interference with which constitutes an unfair labor practice under section 4 (a) (1). This is the view of some members of this Court. For, as has been aptly stated, the joining in protests or demands, even by a small group of employees, if in furtherance of their interests as such, is a concerted activity protected by the Industrial Peace Act. It is not necessary that union activity be involved or that collective bargaining be contemplated."

Where, as in this case, the letter written by and for the union addressed to management referred to employee grievances and/or labor-management issues and the employees concerned were all officers of the union, then seeking a renegotiation of the collective bargaining agreement, a fact which respondent company does not deny, there should, all the more, be a recognition of such letter as an act for the mutual aid, protection and benefit of the employees concerned. This recognition, in turn, should extend to petitioners' execution of an affidavit in support of the charge of slander against private respondent, Eric Mentha, for calling the union's lawyer, who prepared the letter, and the contents thereof as "stupid."

Breach of trust and confidence, the grounds alleged for herein petitioners' dismissal, "must not be indiscriminately used as a shield to dismiss an employee arbitrarily. For who can stop the employer from filing all the charges in the books for the simple exercise of it, and then hide behind the pretext of loss of confidence which can be proved by mere preponderance of evidence." [8] Besides, there is nothing in the record to show that the charge of perjury filed by private respondents against the petitioners has prospered in any conclusive manner.

We, thus, hold that respondent company's act in dismissing the petitioners, who then constituted the remaining

and entire officialdom of the Roche Products Labor Union, after the union's president and vice-president had been earlier dismissed, and when the collective bargaining agreement in the company was about to be renegotiated, was an unfair labor practice under Sec. 4 (a) (1) of the Industrial Peace Act. Their dismissal, under the circumstances, amounted to interference with, and restraint or coercion of, the petitioners in the exercise of their right to engage in concerted activities for their mutual aid and protection.

As the respondent company was guilty of unfair labor practice, reinstatement of the dismissed employees should follow as a matter of right. It is an established rule that an employer who commits an unfair labor practice may be required to reinstate, with full back wages, the workers affected by such act, the amount not to exceed back wages for three (3) years.[9]

The respondents claim, however, that the Supreme Court has no jurisdiction to take cognizance of the instant petition. They contend that pursuant to Art. 222, (should be Art. 223) of the Labor Code, the Office of the President is the final appellate authority within the adjudicative machinery for handling labor disputes and no law, order or regulation provides for any appeal therefrom to the Supreme Court.

To be sure, Art. 223 of the Labor Code, while providing expressly that decisions of the Secretary of Labor may be appealed to the Office of the President, does not provide for review of the decisions of the Office of the President by the Supreme Court. This does not mean, however, that the power of judicial review does not extend to decisions of the Office of the President. In *San Miguel Corp. vs. Secretary of Labor*,^[10] where the same issue was raised, the Court categorically declared that there is an underlying power in the courts to scrutinize the acts of agencies exercising quasi-judicial or legislative power on questions of law and jurisdiction even though no right of review is given by the statute. The Court therein said:

"Yanglay raised a jurisdictional question which was not brought up by respondent public officials. He contends that this Court has no jurisdiction to review the decisions of the NLRC and the Secretary of Labor' under the principle of separation of powers' and that judicial review is not provided for in Presidential Decree No. 21.

"That contention is a flagrant error. 'It is generally understood that as to administrative agencies exercising quasi-judicial or legislative power there is an underlying power in the courts to scrutinize the acts of such agencies on questions of law and jurisdiction even though no right of review is given by statute' (73 C.J.S. 506, note 56).

"The purpose of judicial review is to keep the administrative agency within its jurisdiction and protect substantial rights of parties affected by its decisions' (73 C.J.S. 504, Sec. 165). It is part of the system of checks and balances which restricts the separation of powers and forestalls arbitrary and unjust adjudications.

"Judicial review is proper in case of lack of jurisdiction, grave abuse of discretion, error of law, fraud or collusion (*Timbancaya vs. Vicente*, 62 O.G. 9424; *Macatangay vs. Secretary of Public Works and Communications*, 63 O.G. 11236; *Ortua vs. Singson Encarnacion*, 59 Phil. 440)."

In *Macailing vs. Andrada*,^[11] the Court also ruled that judicial review of administrative decisions is available even if the statute does not provide for judicial review. The Court said:

"In the matter of judicial review of administrative decisions, some statutes especially provide for such judicial review; other are silent. Mere silence, however, does not necessarily imply that judicial review is unavailable. Modes of judicial review vary according to the statutes; appeal, petition for review or a writ of certiorari. No general rule applies to all the various administrative agencies. Where the law stands mute, the accepted view is that the extraordinary remedies in the Rules of Court are still available."

Accordingly, we restate that this Court, in the exercise of its power of judicial review, may review decisions of the Office of the President on question of law and jurisdiction, when properly raised. This does not mean judicial

supremacy over the Office of the President but the performance by this Court of a duty specifically enjoined upon it by the Constitution,[12] as part of a system of checks and balances.

The checkered circumstances under which the decisions in this case were made, notably, that two varying rulings were rendered by different officials of the Office of the President, within a short period of time, also constrained us to review the case on a question of law.

WHEREFORE, the judgment appealed from should be, as it is, hereby reversed and set aside and another one entered, ordering the respondent company to reinstate the petitioners to their former positions, with three (3) years back wages and without loss of seniority rights. The respondent company is further directed to extend to said petitioners fringe benefits they are entitled to had they not been dismissed. In the event that reinstatement is no longer feasible, the respondent company should pay, in addition, severance pay of one (1) month for every year of service based upon the highest salary received.

SO ORDERED.

Fernan, (Chairman), Gutierrez, Jr., Paras, Bidin, and Cortes, JJ., concur.

[1] Rollo, pp. 20-21

[2] Id., pp. 21-22

[3] Id., pp. 22-23

[4] Id., p. 23

[5] Id., p. 34

[6] Id., p. 38

[7] 128 Phil. 230

[8] Callanta vs. Carnation (Phil) Inc., G.R. No. 70615, October 28, 1986

[9] National Federation of Labor Unions (NAFLU) vs. Ople, G.R. No. 68661, July 22, 1986, 143 SCRA 124 and other cases cited therein.

[10] G.R. No. L-39195 May 16, 1975, 64 SCRA 56,60

[11] G.R. No. L-21607, Jan. 30, 1970, 31 SCRA 126,129

[12] ART. VIII, Sec. 1, 1987 Constitution

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