

NELLY P. COO, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, EXPRESSCASH INC. AND MIRASOL DEPANO, RESPONDENTS.

Ponente: CRUZ, R.A., J.

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CRUZ, R.A., J.:

THE CASE

This is a Petition for Certiorari under Rule 65 of the Rules of Court seeking to annul and set aside the Decision dated February 15, 2012 dismissing petitioner's appeal and the Resolution dated March 16, 2012 denying petitioner's motion for reconsideration, both issued by the National Labor Relations Commission (NLRC) in NLRC LAC NO. 01-000313-12 (NLRC-NCR- 05-07429-1).

THE ANTECEDENTS

This case stemmed from the Complaint filed by Petitioner Nelly P. Coo against Respondents Expresscash Inc. and Mirasol Depano for illegal dismissal – constructive and damages.

Petitioner alleged in her position paper that she served as a consultant in Respondent Company Expresscash Inc. from December 2006 to January 2007. By February 2007, she was designated as Loan Manager of the company and served as such for four (4) years. She also took on the task of a Desk Relations Officer in October 2010 when two (2) of the employees went on maternity leave.

On February 23, 2011, she took a leave of absence for health reasons as she was advised to undergo an operation. On March 7, 2011, petitioner informed Respondent Mirasol Depano, who was the Manager of respondent company, that she was not cleared for the procedure due to her thyroid problem. On April 16, 2011, she notified Mirasol Depano that she is ready to report for work as she only needed to undergo medication but the latter refused petitioner's return and insisted that she first undergo surgery before she could resume work. Petitioner made several attempts to go back to work but she was always denied access which led her to file a complaint for constructive illegal dismissal.

For their part, private respondents averred that they hired the petitioner as Loan Manager on November 30, 2006. On February 24, 2011, she failed to report for work without prior notice. Three (3) days later, petitioner informed the office, through a phone call, that she will undergo a major operation due to Myoma in her ovary. She asked that she be given a cash advance and be allowed to take a leave from work as the procedure would be taking place in March 2011. The company approved her request and directed her to file a formal leave of absence, but petitioner failed to do so. Despite the company violation, petitioner was still given a cash advance of P35,000.00 intended for her operation. Private respondents then found out that petitioner never underwent surgery. She was absent from work for almost two (2) months until she filed a leave of absence on April 16, 2011. The office then issued a memorandum requesting her to report for work and submit a written explanation with a duly notarized medical certificate issued by the hospital where she was allegedly confined, along with other documents that

would justify her long absence. Petitioner never reported for work. Respondent Mirasol Depano was surprised when she received a Notice of Conference from the National Conciliation and Mediation Board (NCMB)-NCR on April 29, 2011.

Private respondents maintain that petitioner was never dismissed but was merely directed to comply with the office memorandum. If they indeed terminated her, they would not have granted her request for cash advance. If only she would be able to comply with the office memorandum and also prove her fitness to work, they are very much willing to accept her back to work.

In her reply, petitioner controverted Respondent Mirasol Depano's allegation regarding her failure to notify the company of her leave of absence. She properly informed the latter of her ordeal and that as a consequence, she would be on leave from her post. No proof was given regarding Respondent Mirasol Depano's supposed instruction for her to file a sickness notification form. She never disobeyed any directive requiring her to return to work. It was Respondent Mirasol Depano who refused to accept her upon her return on April 16 and 18 of 2011.

Private respondents also argued that the act of requiring proof of petitioner's surgery and fitness to work cannot be interpreted as proof of their intent to terminate the petitioner. It was merely done to assure that the job would not pose danger to the worker's health.

On November 29, 2011, the Labor Arbiter rendered a Decision finding no fault on the part of the private respondent, the dispositive portion of which reads:

X X X

“WHEREFORE PREMISES CONSIDERED, judgment is rendered dismissing the case for lack of merit.

“SO ORDERED.”

X X X

The Labor Arbiter declared that petitioner was not illegally dismissed for failure of petitioner to prove the fact of dismissal itself. It found that petitioner was not terminated but simply required to submit a written explanation for her two months of absence and to submit medical documents relative to her alleged hospital confinement due to surgical operation, which petitioner failed to comply. The Labor Arbiter did not accord any probative value to the Affidavits of petitioner's co-employees for being self-serving.

The petitioner filed a Memorandum of Appeal with the NLRC but the NLRC Third Division rendered a Decision, the dispositive portion of which reads:

X X X

“WHEREFORE, the appeal is hereby DISMISSED.

“SO ORDERED.”

X X X

On March 16, 2012, the NLRC denied the Motion for Reconsideration filed by petitioner. Hence, this petition.

THE ISSUES BEFORE US

Petitioner raises the following issues for resolution, to wit:

I

WHETHER OR NOT THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN RULING OUT THE ILLEGAL DISMISSAL OF HEREIN PETITIONER.

II

WHETHER OR NOT THE PETITIONER IS ENTITLED TO HER MONETARY CLAIMS.

OUR RULING

The petition lacks merit.

For a Writ of Certiorari to issue, the rule is that petitioner must show that the court or tribunal acted with grave abuse of discretion amounting to lack or excess of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility.[1]

As a precept, We cannot undertake a re-assessment of the evidence presented in the case in certiorari proceedings under Rule 65 of the Rules of Court,[2] unless the NLRC's conclusions are not supported by substantial evidence, in which case a finding of grave abuse of discretion is justified.[3]

The NLRC made the following factual findings, to wit:

x x x

“The records show that complainant went on sick leave beginning February 24, 2011 and sick leave was granted by respondent Depano who signed complainant's application for leave dated February 24, 2011 without indicating the period covered by such leave. We note that complainant never denied that when she requested for leave and cash advance, she told respondent Depano that she would undergo surgery. Also, there is no evidence that complainant already submitted to the respondent company her medical records prior to her return at work on April 16, 2011. In fact, the medical certification and radiographic reports relating to complainant's illnesses were not presented during the proceedings before the Labor Arbiter, but were only submitted by the complainant on appeal. Under these circumstances, We find justifiable respondent Depano's act of not accepting the complainant back to work when she reported on April 16, 2011 without having undergone surgery and without a medical clearance from her doctor. Respondent Depano did not dismiss the complainant nor unreasonably prevented her from reporting for work, but only wanted her to undergo the surgery recommended by her doctor. That a surgical procedure was necessary for the complainant was confirmed by the medical certificate dated April 18, 2011 presented by the complainant herself wherein the doctor stated that surgery is advised which will require a 30-day leave after operation.”

x x x

The petitioner's cause of action indicated in her Complaint[4] was for constructive illegal dismissal. She alleged that the continued refusal of private respondents to accept her request to return to work showed that she was being discriminated because of her sickness so she would be forced to resign.

Then as now, constructive dismissal exist when there is cessation of work, because continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank or a diminution in pay and other benefits. Aptly called a dismissal in disguise or an act amounting to dismissal but made to appear as if it were not, constructive dismissal may, likewise, exist if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forgo his continued employment.[5]

Before the employer must bear the burden of proving that the dismissal was legal, the employee must first establish by substantial evidence the fact of his dismissal from service. Bare allegations of constructive dismissal, when uncorroborated by the evidence on record, cannot be given credence.[6]

An act, to be considered as amounting to constructive dismissal, must be a display of utter discrimination or insensibility on the part of the employer so intense that it becomes unbearable for the employee to continue with his employment.[7] The act of Respondent Mirasol Depano in refusing to admit petitioner back to work without having undergone surgery or submitting any medical clearance from her doctor does not amount to utter discrimination or insensibility. It is a valid exercise of management prerogative for private respondents to require petitioner to present a medical clearance before she be allowed to report back for work. It was for health reasons that petitioner took a leave from work so that she could undergo an operation. The management allowed her to take a leave and even granted her a cash advance of P35,000.00 to use for her operation. Management is justified in making sure that the petitioner had resolved her health problems before she be allowed to return to work. Petitioner's claim that she should not be forced to undergo an operation that she does not need is belied by the medical certificate she presented before the NLRC dated April 18, 2011 stating clearly that petitioner needed a surgery.[8]

Petitioner failed to show that she was terminated from work in the first place. As already discussed, private respondent's act of requiring her to present a medical clearance is not an act of dismissal. It is likewise not an act of discrimination that would drive petitioner to cease her employment with the private respondent. There is no basis to hold petitioner to be illegally dismissed, actually or constructively. The NLRC therefore did not commit grave abuse of discretion when it denied petitioner's appeal.

WHEREFORE, premises considered, the petition is DENIED for lack of merit.

SO ORDERED.

Abdulwahid (Chairperson) and Barza, JJ., concur.

[1] *Intestate Estate of Carmen de Luna v. Intermediate Appellate Court*, G.R. No. 72424, February 13, 1989, 170 SCRA 246.

[2] *Kaisahan at Kapatiran ng mga Manggagawa at Kawani sa MWC-East ZOne Union, et al., v. Manila Water Co. Inc.*, citing *Protacio v. Laya Mananghaya & Co.*, G.R. No. 168654, March 25, 2009, 582 SCRA 417, 427.

[3] *Mercado v. AMA Computer College-Parañaque City, Inc.*, G.R. No. 183572, April 13, 2010, 618 SCRA 218.

[4] *Rollo*, p. 18.

[5] *Gemina, Jr. v. Bankwise, Inc.*, G.R. No. 175365, October 23, 2013, citing *Verdadero v. Barneys Autolines Group of Companies Transport, Inc.*, G.R. No. 195428, August 29, 2012, 679 SCRA 545, 555, citing *Morales v. Harbour Centre Port Terminal, Inc.*, G.R. No. 174208, January 25, 2012, 664 SCRA 110, 117-118.

[6] *Id.*, citing *Philippine Rural Reconstruction Movement (PRRM) v. Pulgar*, G.R. No. 169227, July 5, 2010, 623 SCRA 244, 256.

[7] *Id.*

[8] *Rollo*, p. 67.

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