

JOHNNY BUSTILLOS, PETITIONER, VS. AMADO INCIONG, IN HIS CAPACITY AS ACTING SECRETARY OF LABOR AND CUMMINS DIESEL SALES & SERVICE CORP. OF THE PHILIPPINES, RESPONDENTS.

G.R. No. L-45396. January 27, 1983

Ponente: FERNANDO, C.J.

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FERNANDO, C.J.:

The security of tenure provision[1] is the basis of this suit for certiorari to nullify and set aside an order of the then Secretary of Labor on an appeal from a National Labor Relations Commission ordering private respondent Cummins Diesel Sales & Service Corporation to pay complainant, now petitioner, "his separation pay, equivalent to one-half month salary for every year of service. The application for clearance to dismiss is granted." [2] It is to be noted that as set forth in the above order, petitioner was not involved in the alleged pilferage, nonetheless his dismissal was sought on the basis that he no longer enjoys "the trust and confidence reposed upon him by [private respondent] as service supervisor," although admitting that such separation from the service was not "for justified cause" petitioner being only "entitled to separation pay." [3]

There is no dispute that petitioner was employed by private respondent as service supervisor in its La Trinidad, Benguet branch as far back as 1961. Sometime in 1972 there was a discovery of gross anomalies in such branch office. In the investigation conducted by private respondent, the finding was to the effect that he acted with gross negligence and that he was involved in such irregularities. Thereafter, in 1973, in accordance with the Presidential Decree therein enforced, there was an application for a clearance to dismiss seven of the employees at its La Trinidad, Benguet branch, one of whom was the petitioner, for misconduct in the performance of his duties. As a result, he was informed that his services with the company were terminated for cause. A complaint was thereafter filed by him with the National Labor Relations Commission at Baguio City branch praying for reinstatement as service supervisor with backwages. He was heard by a labor arbitrator whose decision ordered respondent company to reinstate him to his former position and to pay him backwages from October 23, 1972. From such decision private respondent appealed to the National Labor Relations Commission which affirmed the same. Hence, the matter was elevated to then Secretary of Labor with the aforesaid result.

This petition is impressed with merit.

- Meracap v. International Ceramics Mfg. Co., Inc. [4] explains why the appeal should be disposed in that manner. Thus: "In a number of decisions, Philippine Air Lines, Inc. v. Philippine Airlines Employees Association, Almira v. B.F. Goodrich Philippines, Central Textile Mills v. National Labor Relations Commission, and Genconsu Free Workers Union v. Inciong, this Court has sought to vitalize the constitutional mandate of security of tenure as an aspect of the protection accorded labor." [5] We do so again in this case.

- The decision reached not only by a labor arbitrator who heard the case but also by the National Labor Relations Commission was the reinstatement of petitioner with back pay. The challenged order reversed it. Thus: "In effect,

complainant has no involvement in the alleged pilferage. However, since complainant no longer enjoys the trust and confidence reposed upon him by respondent as a Service Supervisor, and hence, a managerial employee, respondent has every right to terminate him. Since the termination is not for a justifiable cause, complainant is entitled to separation pay." [6] No case has gone that far. Moreover, the ruling in *Central Textile Mills, Inc. v. National Labor Relations Commission* [7] is squarely in point. Thus: "The weakness of the petition to repeat, is thus indisputable. Petitioner, [management] however, would try to impart a semblance of plausibility by alleging that even on the assumption that no theft was committed, still there was loss of confidence sufficient to cause his dismissal. In the *Philippine Air Lines* decision referred to, the accusation that theft was committed by the employee was likewise not borne out by the evidence. To justify a dismissal, management relied on the allegation that there was breach of trust, a ground analogous to loss of confidence. The Court of Industrial Relations did not agree. Neither did this Court. Reinstatement was ordered. So it must be in this case." [8] The above ruling is reinforced by a case decided last December 15, 1982, Justice de Castro speaking for the Court in *Acda v. Minister of Labor*. [9] Thus: "The findings of the Labor Arbiter on this point, as upheld by the National Labor Relations Commission, are quite clear, and We find no reversible error therein the same being substantiated by evidence of record, aside from the fact that said findings had already attained the character of finality by the non-perfection of a proper appeal." [10] The opinion goes on to state: "With the charges against petitioner found to be unsubstantiated, We are left with no other alternative but to hold that the so-called 'loss of confidence' is without basis and may not be successfully invoked as ground for dismissal which requires some basis therefor, such ground never having been intended to afford an occasion for abuse by the employer of its prerogative, as it can easily be subject to abuse because of its subjective nature, to dismiss employees in contravention with the 'protection of labor' clause of the Constitution. It is this Constitutional guaranty that accords even to employees employed on a probationary basis the protection that their services 'may be terminated only for a just cause or when authorized by existing laws, or when he fails to qualify as a regular employee in accordance with reasonable standards prescribed by the employer.'" [11]

- There is likewise this excerpt from *Meracap* which calls for the reversal of the assailed order of the Secretary of Labor. Thus: "In this suit for certiorari to review the dismissal of an appeal from a decision of the then Acting Secretary of Labor Amado G. Inciong by respondent Ronaldo Zamora, Presidential Assistant on Legal Affairs, ordering the dismissal of petitioner Faustino Meracap, the relevance of such a provision becomes apparent. It was alleged by petitioner that while the termination of his services was based on his unauthorized absences, the real reason was due to his union activities. Respondent Zamora ruled otherwise. Such a finding of fact must be accorded deference. Nonetheless, considering that petitioner Meracap has been in the employ of the International Ceramics Manufacturing Company, Inc. for eighteen years, it would appear that the punishment was much too severe. Dismissal was not warranted. Suspension would suffice. To that extent, certiorari lies." [12] Dismissal, as pointed out in the latest case in point, decided fourteen days after *Acda*, in the ponencia of Justice Melencio-Herrera in *Visperas v. Inciong*, [13] "is too harsh a penalty. A penalty less punitive should have been proper." [14] In this case, upon mere suspicion, later found to be unsubstantiated, he was immediately suspended. A two-year suspension, would have sufficed, not the loss of his job. The length of service was accorded due consideration in decisions of this Tribunal ordering reinstatement, twenty years in *De Leon v. National Labor Relations Commission* [15] and *Reyes v. Philippine Duplicators* [16] and twenty-two years in *Union of Supervisors v. Secretary of Labor*. [17] Here he was in the service for eleven years when suspended.

WHEREFORE, the petition for certiorari is granted and the order of the Secretary of Labor set aside. The Court hereby orders the reinstatement of petitioner Johnny Bustillos to the last position he occupied or any other similar position of the same category and the same compensation, if another employer has in the meanwhile been appointed as service supervisor and is still in occupancy of such position. A back pay for three years is hereby

ordered. This decision is immediately executory. No costs.

Makasiar, Aquino, Guerrero, Abad Santos, De Castro, and Escolin, JJ., concur.

Concepcion Jr., J., took no part.

[1] According to Article II, Section 9 of the Constitution: "The State shall afford protection to labor, promote full employment and equality in employment, ensure equal work opportunities regardless of sex, race, or creed, and regulate the relations between workers and employers. The State shall assure the right of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work. The State may provide for compulsory arbitration."

[2] Petition, Annex E.

[3] Ibid.

[4] L-48235-36, July 30, 1979, 92 SCRA 412.

[5] Ibid, 413-414. Philippine Air Lines, Inc. v. Philippine Airlines Employees Association, L-24626, June 28, 1974, 57 SCRA 489; Almira v. B.F. Goodrich Philippines, L-34974, July 25, 1974, 58 SCRA 120; Central Textile Mills v. National Labor Relations Commission, L-50150, May 3, 1979, 90 SCRA 9 and Genconsu Free Workers Union v. Inciong, L-48687, July 2, 1979, 91 SCRA 311.

[6] Petition, Annex E, 3.

[7] L-50150, May 3, 1979, 90 SCRA 9.

[8] Ibid, 13-14. Philippine Air Lines, Inc. v. Philippine Airlines Employees Association, a 1974 decision, is reported in 57 SCRA 489.

[9] G.R. No. 51607.

[10] Ibid, 5.

[11] Ibid.

[12] L-48235-36, July 30, 1979, 92 SCRA 412, 414.

[13] L-51299, December 29, 1982.

[14] Ibid, 6.

[15] L-52056, October 30, 1980, 100 SCRA 691.

[16] L-54996, November 27, 1981, 109 SCRA 489.

[17] L-39889, November 12, 1981, 109 SCRA 139.

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