

VIGOR SECURITY & ALLIED SERVICES, INC. AND ALEXANDER GO, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (FOURTH DIVISION) AND JOSEPH M. MAGRAMO, RESPONDENTS.

Ponente: DIMAAMPAO, J.

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DIMAAMPAO, J.:

This Petition for Certiorari[1] filed under Rule 65 of the Revised Rules of Civil Procedure ascribes grave abuse of discretion on the part of the National Labor Relations Commission (NLRC) in rendering the Decision[2] dated 28 August 2013 and Resolution[3] dated 11 November 2013, which affirmed the Labor Arbiter's judgment[4] that private respondent was constructively dismissed and ordered petitioners to pay his separation pay, backwages and service incentive leave pay (SILP), and which denied petitioners' Motion for Reconsideration[5] thereof, respectively, in NLRC LAC Case No. 06-001740-13.

The salient facts of the case are uncomplicated.

Petitioner Alexander Go (Go) is the President of petitioner Vigor Security and Allied Services, Inc. (Vigor), a corporation engaged in the business of providing security and allied services. We refer to them collectively as petitioners. To carry out its business, Vigor employed security guards, one of whom was private respondent Joseph Magramo (Magramo).

Magramo was hired on 2 May 2009 and was posted in Vassar Industries, Inc. (Vassar) located in Taguig City. In a Memorandum[6] dated 4 January 2012, Vigor, through its Operations Department, informed Magramo that he was being relieved from his assignment in Vassar effective 6 January 2012.

Availing that he was illegally dismissed, Magramo filed a Complaint for Illegal Dismissal[7] with monetary claims. He asseverated that he was relieved from his post without any valid reason. Thereafter, he was not anymore given any work assignment. He claimed that the salary he received was below the amount he was supposed to get, and he was deducted, more or less, P1,200.00 per payday from his salaries purportedly for Cash Bond and other expenses. Likewise, he was not paid his 13th month pay and SILP.[8]

As expected, petitioners proffered a different version of the facts,[9] maintaining that Magramo was not dismissed. Rather, it was Vassar which decided to reduce its number of guards by two, and Magramo was among those relieved from his post. Thus, a Memorandum was issued to him ordering his relief effective 6 January 2012 and directing him to report to the office for further instruction. Later, on 16 January 2012, an Assignment Order No. 12-0295[10] was issued by Vigor ordaining him to report to Lily[11] Foods Processing Corporation. However, he refused to accept the assignment saying "magpahinga muna ako." [12]

Subsequently, before Magramo left, he borrowed his 201 file containing original copies of clearances and other employment documents to photocopy the same. Vigor's Operation Officer, George Agoot (Agoot), required him to leave the original copy of his Security License. Thence, when Magramo did not return back his 201 files, Agoot made an annotation to that effect on the photocopy of the said license.[13]

Anent his monetary claims, petitioners controverted the assertion. Like the other security guards, Magramo was not deducted P1,000.00 for other expenses and P200.00 for cash bond. Only mandatory deductions like the Social Security System were made. Moreover, he received the correct amount of wages as well as the 13th month pay and SILP.

Ploughing through the respective postures of the parties, the Labor Arbiter rendered a Decision dated 23 April 2013, the fallo of which reads:

“WHEREFORE, premises considered, judgment is here-by rendered ordering VIGOR SECURITY AND ALLIED SERVICES, INC. to pay complainant the following:

1. Separation Pay in the amount of P76,440.00;
2. Backwages in the amount of P197,098.42;
3. SILP (2011) in the amount of P3,185.00;

All other claims are DISMISSED for lack of merit.

SO ORDERED.” [14]

Dissatisfied, petitioners filed a partial Appeal[15] before the NLRC anchored on the following grounds:

- “1. With due respect, the Labor Arbiter committed grave and serious error in ruling that complainant-appellee was constructively dismissed despite evidence that the latter was offered an assignment but declined it.
2. With due respect, the Labor Arbiter committed grave and serious error in awarding complainant-appellee back-wages and separation pay despite (the fact that) he was not constructively dismissed.”[16]

Nonetheless, the NLRC denied petitioners' Appeal and affirmed the Labor Arbiter's Decision in the challenged Decision. When petitioners' moved for the reconsideration, their plea fell on deaf ears as the labor tribunal denied the same in the assailed Resolution.

Through the present recourse, petitioners raise the following grounds:

I

THE HONORABLE COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN AFFIRMING THE DECISION OF THE LABOR ARBITER THAT COMPLAINANT-APPELLEE WAS CONSTRUCTIVELY DISMISSED DESPITE (THE FACT THAT) HE WAS OFFERED A POST AT LIIP FOODS PROCESSING CORPORATION.

II

THE HONORABLE COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN BLAMING PETITIONERS FOR NOT EXERTING EFFORT IN SERVING THE ASSIGNMENT ORDER TO THE PRIVATE RESPONDENT AND EQUATING SUCH FAILURE TO OVERT ACTS OF CONSTRUCTIVE DISMISSAL.

III

GRANTING WITHOUT ADMITTING THAT CONSTRUCTIVE DISMISSAL TOOK PLACE, THE HONORABLE COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN SUSTAINING THE LABOR ARBITER AWARD OF BACKWAGES IN THE AMOUNT OF P197,098.42 AS CONSTRUCTIVELY DISMISSED SECURITY GUARD IS ENTITLED ONLY TO SEPARATION PAY.

The Petition is devoid of merit.

First off, it bears emphasis that the special civil action for certiorari is a limited form of review. We do not assess

and weigh the sufficiency of evidence upon which the Labor Arbiter and the NLRC based their conclusion.[17] The query in this proceeding is limited to the determination of whether or not the respondent court or tribunal acted in capricious, whimsical, arbitrary or despotic manner in the exercise of its jurisdiction as to be equivalent to lack of jurisdiction. Grave abuse of discretion, which needs to support petitions for certiorari, then has a specific meaning, viz—

“An act of a court or tribunal can only be considered as with grave abuse of discretion when such act is done in a "capricious or whimsical exercise of judgment as is equivalent to lack 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 and hostility." Furthermore, the use of a petition for certiorari is restricted only to "truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void." From the foregoing definition, it is clear that the special civil action of certiorari under Rule 65 can only strike an act down for having been done with grave abuse of discretion if the petitioner could manifestly show that such act was patent and gross. .”[18]

In the case at bench, petitioners avouch that the NLRC committed grave abuse of discretion when it affirmed the Labor Arbiter's disposition that Magramo (now, private respondent) was constructively dismissed and as such was entitled to the payment of backwages.

We are not persuaded.

A scrutiny of the instant Petition shows that petitioners would like Us to calibrate anew its evidence and to make Our own factual findings. This, We cannot do. As adumbrated above, a review of the NLRC's evaluation of the evidence and factual findings is outside the ambit of a petition for certiorari. The issuance of a writ of certiorari is warranted only if the labor tribunal acted without or in excess of its jurisdiction or with grave abuse of discretion. Indeed, under the factual milieu, We find no whimsicality or capriciousness on the part of the NLRC in holding that private respondent was constructively dismissed.

It is primal that in illegal dismissal cases, the burden of proof is upon the employer to show that the employee's termination from service is for a just and valid cause. The employer's case succeeds or fails on the strength of its evidence and not the weakness of that adduced by the employee, in keeping with the principle that the scales of justice should be tilted in favor of the latter in case of doubt in the evidence presented by them. Often described as more than a mere scintilla, the quantum of proof is substantial evidence which is understood as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other equally reasonable minds might conceivably opine otherwise.[19]

Here, petitioners asseverate that on 16 January 2012 while private respondent was reporting at the office, Assignment Order No. 12-1295 was issued to the former, directing him to report to Liip Processing Corporation. However, it was private respondent who refused to accept such assignment.[20] Upon the other hand, private respondent denies having received any assignment. Rather, after being relieved from his post, he was not anymore given any assignment.

After a perspicacious review of the record, We rule and so hold that the NLRC unerringly adjudged that petitioners failed to discharge the quantum of proof necessary to support their contention. A mere presentation of the document showing the annotation, “Refused to Accept Post Assignment,”[21] failed to pass muster. On its face, it is but a self-serving allegation which deserves scant consideration. The purported facts that private respondent was reporting to the office up to 16 January 2012 and that the latter had his 201 File photo-copied, even if true, are implausible. If at all, the alleged circumstances simply established that private respondent was at the office on 16 January 2012 and that he had photocopied his 201 File.

Given that private respondent was not given assignment after six months, We hold that he was deemed constructively dismissed. Temporary displacement or temporary off detail of security guard is, generally, allowed in a situation where a security agency's client decided not to renew their service contract with the agency and no post is available for the relieved security guard. Such situation does not normally result in a constructive dismissal. Nonetheless, when the floating status lasts for more than six (6) months, the employee may be considered to have been constructively dismissed.[22] As it happened, from the time private respondent was relieved from his post up to the time of the filing of the Complaint, more than six months had already elapsed.

Along this grain, We find no whimsicality or capriciousness on the part of the NLRC in enunciating that—

“Respondent insists that there is no basis in ruling that complainant was constructively dismissed considering the issuance of Assignment Order No. 12-0295 on 16 January 2012 which complainant refused to accept. They argue that the lack of complainant's signature signifying receipt thereof does not at all prove that the said assignment order was not served upon him. Respondent stresses that the complainant has the habit of not formally acknowledging any written orders or memoranda issued to him as the case of Relieve Order dated 4 January 2012 marked as Annex “A” of his Position Paper. A fact that despite admitting that the same was served to him, it does not contain his acknowledgment receipt thereof.

We find the contention unmeritorious.

The respondent agency failed to provide evidence showing that they exerted effort and utilized all possible means to properly serve the said assignment order to complainant. Proof of receipt of said assignment order is very vital in the case at bar, without which, constructive dismissal is clear and convincing. The Supreme Court ruled that:

'Before the Labor Arbiter, petitioner's sole basis in claiming that it had required private respondent to explain in writing why he was not reporting for duty was a memorandum dated 22 November 1995, which, however, was not found in the records. That petitioner later attached the alleged memo in its appeal memorandum filed with the NLRC does not cure the fact that it was not among those annexed to the petitioner's pleadings filed with the Labor Arbiter. Too, from the face of the memorandum appears the written notation: 'Refuse (sic) to receive on 30 November 1995.' That private respondent refused to receive the memorandum is to us, too self-serving a claim on the part of petitioner in the absence of any showing of the signature or initial of the proper serving officer. Moreover, petitioner could have easily remedied the situation by the expediency of sending the memorandum to private respondent by registered mail at his last known address as usually contained in the Personal Data Sheet or any personal file containing his last known address.'xxx

Complainant was placed on off-detailed status. While such status is allowed, the same must not continue beyond a reasonable time which is more than six (6) months.

In a related case, the Honorable Supreme Court, said: “(Temporary “off-detail” or “floating status” as applied to security guards, refers to the period of time they are made to wait until they are transferred or assigned to a new post or client. It does not constitute constructive dismissal. However, such status of “off-detail” or “floating status” should not continue beyond a reasonable time,xxx”[23]

Anent petitioners' theory that security guards who are constructively dismissed are only entitled to separation pay, suffice it to state that the rule is settled that an employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges; to his full backwages, inclusive of allowances; and to other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.[24] In this case, since reinstatement was no longer feasible, the Labor Arbiter appropriately awarded separation pay.

Invariably, We quote with approbation the disquisition of the Labor Arbiter which the NLRC affirmed—

“Complainant have been (sic) off-detailed for more than six (6) months is deemed constructively dismissed and as such is entitled to separation pay at the rate of one (1) month salary for every year of service from May 2, 2009 up to the date of this decision. Likewise, complainant is entitled to backwages from July 12, 2012 up to the date of this decision. July 12, 2012 is the date after the lapse of six (6) months from January 11, 2012 up to July 11, 2012.”[25]

WHEREFORE, the instant Petition is hereby DISMISSED.

SO ORDERED.

Diamante, and Salandanan-Manahan, JJ., concur.

[1] Rollo, pp. 3-14.

[2] Id., pp. 15-21.

[3] Id., pp. 22-23.

[4] Id., pp. 151-158.

[5] Id., pp. 186-192.

[6] Rollo, p. 37.

[7] Id., pp. 24-25.

[8] Id., pp. 122-130.

[9] See Position Paper and Respondents' Reply (To Complainant's Position Paper), Id., pp. 27-31 and 32- 35.

[10] Id., p. 38.

[11] Petitioners' allegation that it should be Liip Food Processing Corporation and not Lily Food Processing Corporation, Id., p. 7.

[12] Rollo, p. 33.

[13] Id., p. 39.

[14] Id., p. 158.

[15] Id., pp. 159-166.

[16] Rollo, p. 162.

[17] See *Rio v. Colegio de Sta. Rosa-Makati*, G.R. No. 189629 (6 August 2014).

[18] See *BCDA v. Pulido-Tan*, G.R. No. 209219 (2 December 2014), citing *Malayang Manggagawa ng Stayfast Phils., Inc. v. NLRC*, 704 SCRA 24, 38 (28 August 2013).

[19] See *Gamboa, Jr. v. Villegas*, G.R. No. 179654 (22 September 2014).

[20] Rollo, p. 38.

[21] Ibid.

[22] See *Reyes v. RP Guardians Security Agency, Inc.*, 695 SCRA 620, 624-625 (10 April 2013).

[23] Rollo, pp. 18-20.

[24] See *Nationwide Security and Allied Services, Inc. v. Valderama*, 644 SCRA 299, 311 (23 February 2011).

[25] Rollo, p. 155.

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