

CARITAS HEALTH SHIELD, INC./GEOFFREY M. MARTINEZ, PETITIONERS, V. NATIONAL LABOR RELATIONS COMMISSION AND ARSENIO D. ALCANTARA, RESPONDENTS.

Ponente: LOPEZ, J.

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LOPEZ, J.:

Private respondent Arsenio D. Alcantara (Alcantara) filed a complaint[1] for constructive dismissal, damages and attorney's fees against petitioner Caritas Health Shield, Inc. (Caritas) and its president, Geoffrey M. Martinez (Martinez). He alleged that he started to work as Corporate Marketing Officer for Caritas in 2001 after passing the Physician Licensure Board Examination. After a few months, he was promoted as Branch Manager in the company's branch office in Legazpi City, Albay. In 2003, he was again promoted as Senior Manager for the Provider Relations & Claims Department. Sometime in 2007, he was assigned to work as Senior Manager of the Member's Care and Medical Services in which he supervised thirteen (13) staff personnel, called Members' Care Assistants (MCAs), including more than eighty (80) personnel in other branches.

During the company's management meeting on May 20, 2011, Martinez ordered that all MCAs under the supervision of Alcantara will now report to Arlene Aberilla, who was then the Manager of Member Relations Assistance Department and Luzon Medical Availments. Alcantara inquired with Edmund Salvacion, the Assistant Vice-President for Human Resources, as to what his functions would now be considering that he had no more staff personnel to supervise. Salvacion replied, "Eh di diyan ka na lang, marami naman diyan na wala din naman ginagawa." He advised Alcantara to write a letter of apology to Martinez on account of the argument that ensued between them regarding the non-assistance to outpatient members availing of the company's services. Heeding Salvacion's advice, Alcantara wrote a letter of apology and personally handed it to Martinez on May 31, 2011. In the letter, Alcantara expressed his willingness to be assigned to other departments, but Martinez turned him down.

Despite the incident, Alcantara made himself productive by assisting Aberilla in her tasks. In another management meeting sometime in September 2011, Martinez brought up the complaint by one member who was not admitted in one hospital due to unavailability of rooms. Alcantara explained that the assigned MCA failed to attend to the call for fear that it would be charged to him since the company's line is limited to Caritas' loop. Martinez described Alcantara's explanation as "mababaw" and said, "Hindi ba inalis na kita dyan sa MCA? Bakit bumalik ka pa?" Deeply embarrassed, Alcantara left the meeting. After the incident, Alcantara still regularly reports to the office despite doing nothing. He eventually resigned on the ground that he was reduced to a mere "nonentity" inside an empty office.[2]

Caritas denied that Alcantara was actually, or constructively dismissed. As senior manager, Alcantara failed to supervise and direct the performance of the MCAs which resulted in several complaints from the company's members-patients. Thus, exercising its management prerogative, Caritas assigned another person to perform his tasks to avoid disruption of the company's services. Alcantara, however, remained in the employ of Caritas as senior manager and continued to receive the same wages and benefits.[3]

In a Decision[4] dated November 22, 2012, Labor Arbiter Pablo A. Gajardo, Jr. declared that Alcantara was constructively dismissed, to wit:

WHEREFORE, premises considered, judgment is hereby rendered declaring that complainant was constructively dismissed. Consequently, respondents are ordered to pay jointly and severally complainant is (sic) full backwages in the amount of P823,550.00 (computed till promulgation only), separation pay in the sum of P504,000.00 and P132,755.00 as 10% attorney's fees.

All other claims are dismissed for lack of merit.

SO ORDERED.[5]

The NLRC dismissed respondents' appeal for lack of merit.[6] Hence, petitioners filed the instant petition for certiorari (With an Extremely Urgent Motion for the Issuance of a Writ of Preliminary Injunction and/or a Temporary Restraining Order)[7] ascribing grave abuse of discretion on the part of the NLRC:

I. WHEN IT DISREGARDED ABUNDANT AND RELEVANT EVIDENCE ON RECORD THAT WOULD JUSTIFY THE LEGITIMATE EXERCISE BY PETITIONERS AS EMPLOYER OF THEIR MANAGEMENT PREROGATIVE AND INSTEAD RELIED HEAVILY ON THE BARE AND SELF-SERVING ALLEGATIONS OF COMPLAINANT SUPPORTED BY CONJECTURES AND RATIONALIZATION;

II. WHEN IT FAILED AND/OR REFUSED TO APPLY IN THIS CASE IN VIOLATION OF APPLICABLE JURISPRUDENCE THE LEGAL DICTUM THAT HE WHO ASSERTS AND NOT ONE WHO DENIES HAS THE BURDEN OF PROOF AND THEREFORE MUST PROVE HIS CLAIM.[8]

In Our Resolution dated September 16, 2013,[9] We directed petitioners to rectify the defects of the petition and denied their prayer for the issuance of an injunctive relief for lack of justifiable ground. On October 4, 2013, We received private respondent's comment[10] to the petition. Then, on February 26, 2014, petitioners filed a Very Urgent Manifestation and Motion Reiterating [their] Prayer for a TRO[11] stating that, on February 25, 2014, they received a motion for execution[12] filed by private respondent. Meanwhile, on March 31, 2014, We received private respondent's Compliance/Manifestation[13] stating that he is adopting his Position Paper dated November 18, 2011 and Comment dated October 1, 2013 as his memorandum. On April 2, 2014, We received petitioners' memorandum.

This Court will treat petitioners' Manifestation and Motion Reiterating [their] Prayer for a TRO as motion for reconsideration of Our September 16, 2013 Resolution denying their previous prayer for a TRO. Considering that the required pleadings have been submitted, the case is ripe for decision.

The main issue is whether Alcantara was constructively dismissed.

Constructive dismissal is an involuntary resignation resorted to when continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank and/or a diminution in pay; or when a clear discrimination, insensibility or disdain by an employer becomes unbearable to the employee.[14] In termination cases, the burden of proof rests upon the employer to show that the dismissal is for a just and valid cause, and failure to do so would necessarily mean that the dismissal was illegal.[15] Should an employer interpose the defense of resignation, it is still incumbent upon respondent company to prove that the employee voluntarily resigned.[16] Verily, contrary to petitioners' asseveration, the burden to show that private respondent's resignation was voluntary belongs to it.

Petitioners insist that Alcantara voluntarily resigned. The assignment of another person to perform his tasks is a legitimate exercise of management prerogative to protect the interest of the company. He was neither stripped of

his duties nor was he demoted in rank, or in pay. Consequently, he was not constructively dismissed. We do not agree.

The circumstances that Alcantara did not suffer demotion in rank, or diminution in pay as he continues to hold the position of senior manager and receives the same wages and benefits equivalent to his position do not negate the existence of constructive dismissal. Constructive dismissal does not always take the form of demotion in rank, or diminution in pay because the act of a clear discrimination, insensibility or disdain by an employer may become so unbearable for the employee as to foreclose any choice on his part, except to resign from such employment.[17] This instance would amount to constructive dismissal.

In this case, Alcantara was effectively demoted to a non-functioning office without duties and responsibilities that are equivalent to his position as senior manager and as a licensed physician. He was reduced to performing mundane functions such as assisting Aberilla, a registered nurse, in the approval of the availment by the members-patients of the company's services. He lost the people working under his direction and supervision. He had no staff, and was relegated to a mere rank and file employee with no one to supervise. As correctly observed by the NLRC:

As the Labor Arbiter in his appealed decision found, complainant was constructively dismissed, thus:

xxx In other words, respondents had assigned another person to perform the task of the complainant. Respondents claim that they had to resort to his move because the complainant failed to supervise, monitor and direct the performance of the MCA's respective job functions and responsibilities result in several complaints from members-patients. However, respondents utterly failed to substantiate that complainant indeed failed to perform his assigned tasks and duties. The records are bereft of any document showing that complainant was not in fact performing well as Senior Manager xxx. Neither is there proof that several complaints from members-patients were ever received by the respondents. Clearly, respondents' act of assigning another person to perform complainant's duties and assigning another person to perform complainant's duties and responsibilities is wanting of a valid and legitimate reason. Simply put, respondents(sic) failed to discharge the onus probandi that their said move was grounded on a valid reason. Mere allegations are not synonymous with proof. xxx

As correctly pointed out by the complainant, he was effectively stripped of his duties, and without to man and supervise, his position which is managerial in nature turned out to be a hollow office. Faced with such predicament, it cannot be gainsaid that complainant was indeed in a very difficult situation which had become so unbearable on his part that he was left with no other option but to tender his resignation. xxx

Needless to state, the transfer of Alcantara is not a justifiable management prerogative. The exercise of management prerogative is not absolute. By its very nature, encompassing as it could be, management prerogative must be exercised in good faith and with due regard to the rights of labor — with the principles of fair play at heart and justice in mind.[18] This was not observed in this case.

Petitioner points to the alleged complaints of several member-patients of the company as proof of Alcantara's failure to supervise the performance of the MCAs who work under his supervision. However, petitioner did not prove the existence of these complaints by identifying the complainants and specifying the subject matter of their complaints. The allegation is too general and unsubstantiated.

Also, We cannot attribute admission of incompetence to Alcantara's letter of apology submitted to Martinez, to wit:

I value the tasks that you have entrusted to us, that is, to take care of both in-patient and out-patient availments. We fell short of your expectations in the out-patient part. We will now institute more effective steps to have a

closer monitoring of this aspect of our work. xxx

Indeed, if Alcantara's performance did not live up to the expectations of the company, petitioner should have transferred him to another equivalent position in which he may be effective. While petitioner alleged that the management was already studying its options with regard to Alcantara's new duties, it did not present any supporting evidence of such study. What is evident is the transfer of Alcantara's duties to Arlene Aberilla on May 20, 2011 until his resignation on November 23, 2011. During that period, Alcantara was doing nothing and had no staff to supervise.

It is well-settled that the original and exclusive jurisdiction of this Court in the review of decision of the NLRC is limited to the issue of jurisdiction or grave abuse of discretion amounting to lack of jurisdiction. Grave abuse of discretion is committed only when the judgment is rendered in a capricious, whimsical, arbitrary or despotic manner.[19] This is not present in this case.

ACCORDINGLY, the petition is DISMISSED.

SO ORDERED.

Reyes, Jr., (Chairperson) and Inting, JJ., concur.

[1] Rollo, p. 142.

[2] Id., pp. 31-41. Position Paper for complainant.

[3] Id., pp. 42-47. Position Paper for respondents.

[4] Id., pp. 50-64.

[5] Id., pp. 63-64.

[6] Id., pp. 166-177. Resolution dated May 27, 2013.

[7] Id., pp. 3-30.

[8] Id., pp. 11-12.

[9] Id., pp. 210-211.

[10] Id., pp. 215-224.

[11] Id., pp. 255-264.

[12] Id., pp. 265-267.

[13] Id., p. 270.

[14] *Eliseo B. Tan v. NLRC, et al.*, G.R. No. 128290, November 24, 1998.

[15] *Ma. Finina E. Vicente v. Court of Appeals, et al.*, G.R. No. 175988, August 24, 2007.

[16] Id. citing *Mobile Protective & Detective Agency v. Ompad*, G.R. No. 159195, May 9, 2005.

[17] *Ricardo Portugal v. GSIS Family Bank, et al.*, G.R. No. 169570, March 2, 2007.

[18] *Unicorn Safety Glass, Inc., et al. v. Rodrigo Basarte, et al.*, G.R. No. 154689, November 25, 2004.

[19] Singa Ship Management Philippines, Inc. v. NLRC, April 14, 1998 G.R. No. 119080.

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