

CIELITO D. LIM, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (NLRC), PAPERTECH, INC., MR. ALEXANDER WONG, MS. JOAN MAGLAYA-BALDE, AND MS. MARISSA ANGELES, RESPONDENTS.D E...

Ponente: LANTION, J.A.C., J.

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LANTION, J.A.C., J.:

Before Us is a Petition for Certiorari[1] filed by Petitioner Cielito D. Lim (hereinafter “Petitioner”) assailing the Decision[2] dated 21 February 2014 issued by the National Labor Relations Commission (“NLRC”), Fourth Division, in NLRC LAC No. 12-003383-13, NLRC NCR-04-04862-13. The fallo of the challenged Decision reads:[3]

WHEREFORE, the assailed Decision dated 27 September 2013 of Labor Arbiter Remedios T. Capinig is REVERSED and SET ASIDE. The Complaint of Cielito D. Lim is DISMISSED for lack of merit. The respondents are however, mandated to notify the complainant not later than ten (10) days from receipt hereof the latter's reinstatement, but without requiring the respondents to pay complainant his backwages, there being no illegal dismissal.

SO ORDERED.

The Resolution[4] dated 08 April 2014 of the NLRC denying Petitioner's Motion for Reconsideration,[5] is likewise assailed.

THE FACTS

On 16 August 2000, Private Respondent Papertech, Inc. (“Private Respondent”) hired Petitioner as an Inventory Clerk in Pasig City. In 2005, Petitioner was promoted to Logistic Dispatcher earning a salary of P468.00 with P28.00 as daily allowance.[6]

On 05 November 2012, Private Respondent notified Petitioner via a Memorandum of Transfer[7] that the latter will be reassigned from his post in Pasig City to the warehouse located in Cagayan de Oro due to the urgency of the business. This was caused by the untimely resignation of one of Private Respondent's employees, namely a certain Dennis L. Casiño.[8] The benefits, allowances, or subsidies that Private Respondent gave to Petitioner were enumerated in a Memorandum of Transfer dated 12 November 2012, as follows:[9]

P 4,500.00

– Meal Subsidy (P150.00 per day)

2,000.00

– Bed Space

3,069.68

– Airline Ticket

400.00

– Transportation (Pasig to Airport)

Subsequently, Petitioner assumed his duties at his new post. However, on 05 January 2013, Petitioner was informed that his transfer to Cagayan de Oro will be made permanent and, further, that he will no longer be entitled to housing and meal subsidies as financial assistance.[10] This prompted Petitioner to write a letter to Private Respondent requesting to be transferred back to his original assignment in Pasig City.[11]

On 20 March 2013, Petitioner filed an application for leave to visit his family, which was subsequently approved.[12] Nonetheless, the following month, Private Respondent received two (2) incident reports stating that Petitioner had not reported for work upon the lapse of his leave.[13]

In view of Petitioner's unauthorized absences, on 08 April 2013, Private Respondent issued a Memorandum directing Petitioner to report for work, which he refused to sign.[14] On 20 April 2013, Private Respondent sent Petitioner a Notice directing the latter to explain his absences from work under the penalty of administrative charges.[15] Again, Petitioner refused to sign the same.[16] Thus, on 26 April 2013, Private Respondent dismissed Petitioner from employment for “abandonment of job and insubordination.”[17]

On 01 April 2013, Petitioner filed a Complaint against Private Respondent and its officers[18] before the NLRC for Unfair Labor Practices, Illegal Dismissal - Constructive, Moral and Exemplary Damages, and Attorney's Fees.[19] Since the parties did not amicably settle, they were directed to file their respective position papers and their responsive pleadings as well.

In his Position Paper,[20] Petitioner alleged that he was illegally dismissed from employment. Petitioner opined that after his reassignment to Cagayan de Oro, he was unduly prejudiced when Private Respondent subsequently revoked his housing and meal subsidies amounting to P6,500.00. Also, Petitioner accused Private Respondent of harassment because the underlying reason for his transfer was based on the former's membership and participation in the Papertech Employees Association-ALU-TUCP and Private Respondent was keen on busting the said union. Moreover, from the time he was unlawfully terminated, Petitioner suffered anxiety and sleepless nights. Thus, Petitioner prayed for the award of backwages, reinstatement, moral damages, and attorney's fees.

On the other hand, Private Respondent averred in its Position Paper[21] that the point of contention is not unfair labor practice because the members of Papertech Employees Association-ALU-TUCP had filed a voluntary petition to dissolve the same before the Department of Labor and Employment, which had already been granted by the said agency.[22] Furthermore, Private Respondent argued that the reassignment of Petitioner to Cagayan de Oro was in good faith and was a valid exercise of its management prerogative to transfer employees where they will be most needed. Moreover, Private Respondent highlighted that Petitioner's dismissal was valid due to the fact that the latter abandoned his duties. In fact, Petitioner was duly informed to return to work on a number of occasions, yet he failed to do so. Thus, Private Respondent prayed for the dismissal of the Complaint.

Following the exchange of responsive pleadings, on 27 September 2013, Labor Arbiter Remedios Tirad-Capinig (“Labor Arbiter”) rendered a Decision[23] in favor of Petitioner finding that the latter was unlawfully dismissed. The Labor Arbiter reasoned that the permanent transfer of Petitioner from Pasig City to Cagayan de Oro coupled with the withdrawal of his housing and meal subsidies led to his prejudice and diminution of pay and benefits, which amounted to constructive dismissal. The dispositive portion of the Labor Arbiter's Decision decreed:[24]

WHEREFORE, premises considered, judgment is hereby rendered ordering respondent [Papertech, Inc.] to pay Complainant the amount of TWO HUNDRED FIFTY ONE THOUSAND SIX HUNDRED SEVENTY ONE

PESOS and thirty-seven centavos (P251,671.37) as follows:

1.

BACKWAGES - - - - -

P 71,088.12

4/1/13 – 9/27/13 = 5.26

P466.58 x 26 x 5.86

2.

SEPARATION PAY - - - - -

P157,704.04

P228,792.16

8/16/2000 – 9/27/13 = 13 yrs.

P466.58 x 26 x 13 yrs.

3.

10% ATTORNEY'S FEES - - - - -

P 22,879.21

TOTAL

P 251,671.37

SO ORDERED.

Unsatisfied, Private Respondent filed a Memorandum of Appeal[25] questioning the aforesaid Decision. According to Private Respondent, the transfer of Petitioner to Cagayan de Oro was not motivated by discrimination or bad faith, nor did the same cause a demotion in the rank, salary, or privileges of Petitioner. Private Respondent emphasizes that the housing and meal subsidies were merely temporary benefits given to Petitioner to help the latter adjust to his new work area.[26] Furthermore, Private Respondent insisted that Petitioner's dismissal from employment was valid as the latter essentially abandoned his employment when he failed to report for work.

On 21 February 2014, the NLRC issued the assailed Decision in favor of Private Respondent. Firstly, the NLRC ruled that the act of Private Respondent in transferring Petitioner to Cagayan de Oro was a valid exercise of management prerogative; it was not a form of harassment amounting to constructive dismissal. In fact, the NLRC found no evidence to support Petitioner's allegations that he was harassed by Private Respondent for his union membership and participation. The NLRC continued that Petitioner's change of station was necessitated by the resignation of one Dennis L. Casiño. Secondly, the NLRC opined that the withdrawal of Petitioner's subsidies was not unlawful since “they are not part of his wage and are not legally demandable and enforceable.”[27] Finally, considering the instances when Petitioner took unauthorized leaves of absence coupled with his defiance of the return to work notices issued by Private Respondent, the NLRC concluded that Petitioner was guilty of abandonment. Thus, the said Commission dismissed Petitioner's Complaint.

Aggrieved, Petitioner filed a Motion for Reconsideration[28] of the above Decision, but the same was denied by

the NLRC in a Resolution[29] dated 08 April 2014.

Hence, this Petition.

ISSUE

Petitioner raises the following lone assigned error:[30]

THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT ISSUED THE ASSAILED DECISION AND RESOLUTION HOLDING THAT PETITIONER WAS NOT ILLEGALLY TERMINATED.

OUR RULING

Prefatorily, in order for a petition for certiorari to prosper, the petitioner must show that the tribunal concerned has acted without or in excess of its jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction.[31] The phrase “grave abuse of discretion” has been defined by jurisprudence as “the arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or capricious exercise of power that amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law. For an act to be struck down as having been done with grave abuse of discretion, the abuse of discretion must be patent and gross.”[32]

Petitioner opines that the NLRC committed grave abuse of discretion in dismissing his Complaint for illegal dismissal. It is argued that the transfer of Petitioner to Cagayan de Oro and the subsequent denial of his housing and meal allowance subsidies caused Petitioner not only a diminution of his pay and benefits, but also undue prejudice. Petitioner contends that these acts committed by Private Respondent constitute constructive dismissal, which is proscribed by law and jurisprudence. As he was unlawfully terminated from employment, Petitioner avers that he is entitled to the monetary benefits due an illegally dismissed employee. Thus, Petitioner prays that the assailed Decision and Resolution of the NLRC be set aside.

The Petition is meritorious.

Jurisprudence recognizes the right of an employer to conduct and regulate its own affairs to achieve its purpose, which is otherwise known as management prerogative.[33] Should an employer decide to transfer one of its employees, such act is valid as it falls within management prerogative.[34] However, the reassignment of an employee amounts to constructive dismissal when “the transfer is unreasonable, inconvenient, or prejudicial to the employee, and it involves a demotion in rank or diminution of salaries, benefits and other privileges.”[35] In *Verdadero v. Barney Autolines Group of Companies Transport, Inc.*, the Supreme Court defines “constructive dismissal” as:[36]

Constructive dismissal exists where 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 forego his continued employment.

Herein Petitioner was given housing and meal subsidies in the total amount of P6,500.00[37] upon his reassignment to Private Respondent's warehouse in Cagayan de Oro, which he enjoyed for approximately two (2) months until the same were revoked by Private Respondent.[38] However, a close examination of the evidence on

record reveals that, at the time the housing and meal allowances were offered to Petitioner, no express stipulation was made as to whether the same were permanent or temporary in nature. In fact, the Memorandum of Transfer dated 05 November 2012 issued by Private Respondent plainly states, “[l]ikewise, the Company will shoulder your lodging and accommodation.”[39] Additionally, the subsequently issued Memorandum of Transfer dated 12 November 2012 merely enumerates the benefits that Petitioner was entitled to.[40]

Considering that doubt exists as to the nature of the housing and meal subsidies given by Private Respondent to Petitioner, the same must be resolved in favor of the latter. Verily, no less than the 1987 Constitution itself protects the welfare of laborers.[41] Conformably with jurisprudence which states that “doubts reasonably arising from the evidence are resolved in favor of the laborer in any controversy between a laborer and his master,”[42] the housing and meal allowances are considered permanent. As such, the revocation of such subsidies by Private Respondent clearly prejudiced Petitioner as it resulted a diminution of his benefits. Indeed, the withdrawal by Private Respondent of the said subsidies amounted to constructive dismissal for it became unbearable for Petitioner to resume working in Cagayan de Oro. Therefore, since Petitioner was unlawfully dismissed from employment, the NLRC's Decision decreeing the dismissal of Petitioner's Complaint was not rendered in accordance with law.

In *Golden Ace Builders v. Talde*, the Supreme Court explained the reliefs accorded to an illegally dismissed employee, in this wise:[43]

xxx

[A]n illegally dismissed employee is entitled to two reliefs: backwages and reinstatement. The two reliefs provided are separate and distinct. In instances where reinstatement is no longer feasible . . . separation pay is granted. In effect, an illegally dismissed employee is entitled to either reinstatement, if viable, or separation pay if reinstatement is no longer viable, and backwages.

xxx

The accepted doctrine is that separation pay may avail in lieu of reinstatement if reinstatement is no longer practical or in the best interest of the parties. Separation pay in lieu of reinstatement may likewise be awarded if the employee decides not to be reinstated. (Emphasis supplied)

xxx

Guided by the above jurisprudence, since We find that Petitioner herein was illegally dismissed, he is entitled to backwages and reinstatement. However, this Court notes that reinstatement of Private Respondent to his former position may not be in the best interest of the parties due to the strain the dismissal proceedings placed on their relationship. Thus, the award of separation pay in lieu of reinstatement is but proper.

The amount of separation pay that should be awarded in favor of Petitioner shall be equivalent to one (1) month salary per year of service rendered, with a fraction of at least six (6) months of service considered as one (1) whole year, from the time he was engaged by Private Respondent on 16 August 2000 up to the finality of the decision.[44]

All told, We find that the NLRC committed grave abuse of discretion in issuing the questioned Decision and Resolution. The reversal of the same is warranted.

WHEREFORE, premises considered, the Petition for Certiorari is hereby GRANTED. The challenged Decision dated 21 February 2014 and Resolution dated 08 April 2014 issued by the NLRC, Fourth Division, in NLRC LAC No. 12-003383-13, NLRC NCR-04-04862-13 are SET ASIDE. ACCORDINGLY, the Decision dated 27 September 2013 of Labor Arbiter Remedios Tirad-Capinig in NLRC-NCR CASE NO. 04-04862-13 is REINSTATED.

The case is REMANDED to the Labor Arbiter for the purpose of computing Petitioner's full backwages, inclusive of allowances and other benefits, reckoned from the date of his dismissal on 01 April 2013 up to the finality of the decision, and separation pay in lieu of reinstatement equivalent to one month salary for every year of service, computed from the time of his engagement by Private Respondent on 16 August 2000 up to the finality of this decision.

SO ORDERED.

Veloso, V.S.E., (Chairperson) and Antonio-Valenzuela, N.G., JJ., concur.

[1] Rollo, pp. 3-15.

[2] Id. at 19-28.

[3] Id. at 27.

[4] Id. at 32-33.

[5] Id. at 34-37.

[6] Id. at 43.

[7] Id. at 83.

[8] Id. at 89.

[9] Id. at 82.

[10] Id. at 56.

[11] Id. at 44-45.

[12] Id. at 91 in connection with Rollo, p. 72.

[13] Id. at 92-93.

[14] Id. at 94.

[15] Id. at 95.

[16] Id. at 95.

[17] Id. at 96-97.

[18] Namely, Alexander Wong, Joan Maglaya-Balde, and Marissa Angeles.

[19] Rollo, pp. 39-40.

[20] Id. at 42-49.

[21] Id. at 70-79.

[22] Id. at 100-101.

[23] Id. at 159-166.

[24] Id. at 166.

[25] Id. at 121-130.

[26] See Rollo, p. 127, 56.

[27] Rollo, p. 24.

[28] Id. at 34-37.

[29] Id. at 32-33.

[30] Id. at 10.

[31] See 1997 Rules of Civil Procedure, rule 65, § 1.

[32] Reyes v. Commission on Elections, G.R. No. 207264, June 25, 2013 citing Beluso v. Commission on Elections, G.R. No. 180711, June 22, 2010.

[33] See Aguanza v. Asian Terminal, Inc., G.R. No. 163505, August 14, 2009.

[34] See OSS Security & Allied Services, Inc. v. NLRC, G.R. No. 112752, February 9, 2000.

[35] Ibid.

[36] G.R. No. 195428, August 29, 2012.

[37] Comprising P4,500.00 and P2,000.00 as meal and housing subsidies, respectively (Rollo, p. 82).

[38] Rollo, p. 56.

[39] Id. at 83.

[40] See Rollo, p. 82.

[41] See Phil. CONST. art. XIII, § 3.

[42] Masing and Sons Development Corp. v. Rogelio, G.R. No. 161787, July 27, 2011. See also An Act to Ordain and Institute the Civil Code of the Philippines [Civil Code], Republic Act No. 386, art. 1702.

[43] Golden Ace Builders v. Talde, G.R. No. 187200, May 5, 2010 citing Macasero v. Southern Industrial Gases Philippines, G.R. No. 178524, January 30, 2009, and Velasco v. National Labor Relations Commission, G.R. No. 161694, June 26, 2006.

[44] See Escario v. NLRC, G.R. No. 160302, September 27, 2010; Century Canning Corp. v. Ramil, G.R. No. 171630, August 9, 2010. See also A Decree Instituting a Labor Code, Thereby Revising and Consolidating Labor and Social Laws to Afford Protection to Labor, Promote Employment and Human Resources Development and Ensure Industrial Peace Based on Social Justice [LABOR CODE], Presidential Decree No. 442, art. 289 (1974), as amended.

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