

DOMINGO F. BONDOC, PETITIONER, VS. PEOPLE'S BANK AND TRUST COMPANY, BANK OF THE PHILIPPINE ISLANDS (SUR-VIVING BANK) AND JACOBO C. CLAVE (AS PRESIDENTIAL EXECUTIVE ASSISTANT), R...*G.R. No. L-43835. March 31, 1981*

Ponente: AQUINO, J.

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This certiorari case involves the issue of whether respondent Presidential Executive Assistant committed a grave abuse of discretion amounting to lack of jurisdiction in confirming the abolition of petitioner's position as a department manager in a bank and the payment to him of separation pay instead of reinstating him with backwages.

Domingo F. Bondoc, who used to be an assistant of Jaime C. Velasquez in the Ayala Securities Corporation (p. 116, Rollo), joined the People's Bank and Trust Company on October 1, 1966 upon the recommendation of Velasquez, a director, to Roman Azanza, the bank president (p. 35, Rollo).

He replaced Ariston Estrada, Jr. (p. 37, Rollo). Bondoc was chosen by the bank's board of directors on February 21, 1967 as the first manager of the bank's department of economic research and statistics which was organized in January, 1967 (Exh. 4 and 5).

That department had only four employees: a stenographer and three clerks who were formerly employed in the comptroller's office, accounting department and office of the corporate secretary (p. 117-118, Rollo).

Every year, from 1968 to 1973, Bondoc was elected to the position of department manager and assistant vice-president by the bank's board of directors at its annual organizational meeting (Exh. 1-B to 1-F).

On May 15, 1973, Bondoc reported in writing to Manuel Chuidian, a bank director, certain anomalies committed by the officers of the bank. The Central Bank found that some officers of the bank utilized its funds for their own interests. Because of those anomalies, the Monetary Board suspended Benito R. Araneta, a director and vice-president, and reprimanded the other officers involved, namely, Severino Coronation, Nicanor O. Corpus, Guillermo D. Teodoro, Feldres G. San Pedro, Carlos Villaluz, Godofredo Galindez, Fernando Macalanlay and Manuel P. Elepaño (pp. 6-8, Rollo).

On September 19, 1973, the board of directors of the People's Bank, in the course of its deliberation on the bank's projected merger with the Bank of the Philippine Islands, resolved to abolish its department of economic research and statistics which, as already noted, was headed by Bondoc (p. 35, Rollo).

The board regarded the said department as a redundant unit whose functions could be performed by other departments. The Bank of P. I., like twenty-three other commercial banks, has no such department (p. 117, Rollo). Bondoc's four subordinates were absorbed by the accounting department.

Bondoc was advised of the abolition of his department in the later part of September, 1973. He asked the personnel manager to compute his separation pay. Bondoc was told that his separation pay was equivalent to seventy-five percent of his salary for every year of service. It amounted to P10,481.25. However, he was indebted to the bank in the sum of P13, 493.33 under its car financing plan. (p. 118, Rollo).

Bondoc allegedly told the personnel manager that he would use his separation pay to liquidate his debt and issue a check for P3,012.08 to cover the balance of his debt. He requested the personnel manager to expedite the preparation of the bill of sale for the Toyota car so that he could get the document on the following day. But he did not show up that day. (p. 118, Rollo).

It is relevant to state that the merger of the two banks was effected in compliance with the Central Bank's require-ment that commercial banks should increase their capital stock to a minimum of one hundred million pesos through mergers and consolidations or other lawful means. The merger was approved by the Monetary Board and the Securi-ties and Exchange Commission. The merger agreement was signed in January, 1974. It was consummated on June 1, 1974.

On November 2, 1973, the People's Bank, pursuant to section 11 of Presidential Decree No. 21 (creating the ad hoc National Labor Relations Commission), applied with the Secretary of Labor for clearance to terminate Bondoc's services effective on November 16 (p. 112, Rollo).

On that same day, November 2, the bank president, Vicente C. Aquino, formally notified Bondoc of the termi-nation of his services and of the application for clearance. Bondoc received the notice on November 5 (p. 35, Rollo).

He lost no time in filing with the NLRC his opposi-tion to the termination of his services. He alleged in his opposition that he was dismissed without cause (p. 114, Rollo).

As all efforts for the amicable settlement of the case were fruitless, it was submitted for compulsory arbitration.

During the hearing, Bondoc tried to prove that the abolition of his position was a reprisal for his aforemen-tioned exposure of some anomalies in the bank which resulted in the suspension or reprimand by the Monetary Board of cer-tain senior officers of the bank headed by Benito R. Araneta, a nephew of J. Antonio Araneta, the chairman of the board (p. 48, Rollo).

After hearing, the NLRC arbitrator recommended to the Secretary of Labor the denial of the application to ter-minate Bondoc' s employment and ordered the People's Bank to reinstate him with backwages from November 16, 1973 and with allowances and other benefits guaranteed by law and without loss of status and seniority rights (pp. 42-43, Rollo).

On appeal, the NLRC (Commissioners Castro, Borro-meo and Seno) in its decision of January 21, 1975 reversed the decision of the arbitrator, approved the clearance for Bondoc' s dismissal and ordered the People's Bank to pay him seventy-five percent (75%) of his monthly salary for every year of service in lieu of the one-half month salary for every year of service fixed in the Termination Pay Law, Republic Act No. 1052, as amended by Republic Act No. 1787 (p. 45, Rollo).

The NLRC adduced as reasons to justify the aboli-tion of Bondoc's position (1) the fact that his position as manager being confidential in character, the bank had the prerogative to terminate his employment anytime; (2) Bondoc's department was no longer necessary to the efficient operation of the bank in view of the merger; (3) the ma-nagement is not precluded from undertaking a reorganiza-tion or making changes to meet the demands of the present and (4) in case of mergers, departments or positions may be abolished or new ones created, as the

necessity for them requires (p. 44-45, Rollo).

Bondoc appealed to the Secretary of Labor. That high official in his resolution of September 29, 1975 re-versed the NLRC's decision on the grounds that the motivation for the termination of Bondoc's services was not taken into account by the NLRC and that the People's Bank should not have abolished Bondoc's department without prior clearance. He denied the application for clearance to dismiss Bondoc. (p. 50, Rollo).

He ordered the People's Bank to reinstate Bondoc to his former position or to any substantially equivalent position with backwages equivalent to his salary for six months, it being understood that the Bank of the P. I. has assumed all the liabilities and obligations of the People's Bank. The Secretary denied the application for clearance to dismiss Bondoc, (pp. 48-50, Rollo).

From that resolution, the Bank of the P. I., as successor of the People's Bank, appealed to the President of the Philippines.

One of the grounds relied upon in that appeal was that Bondoc was convicted of bigamy, a crime involving moral turpitude (Criminal Case No. 7185, Manila CFI, Exh. 1). The Bank of the P. I. cited Central Bank Circular No. 356, which disqualifies a person convicted of a crime involving moral turpitude from becoming an officer of a bank (pp. 213-4, Rollo).

In a decision dated May 17, 1976, Presidential Executive Assistant Jacobo C. Clave set aside the decisions of the arbitrator and the Secretary and confirmed in toto the NLRC's decision (p. 54, Rollo).

The Office of the President held that under the Termination Pay Law an employment without a definite period may be terminated with or without cause, that the abolition of Bondoc's position was a necessary incident of the merger of the two banks and that his services were no longer indispensable to them. Hence, the clearance for his removal was authorized. (pp. 52-54, Rollo).

The review of the Presidential decision was sought by Bondoc in the petition which he filed in this Court on May 27, 1976. This is the fifth decision to be rendered in his case.

We hold that under the peculiar or particular facts of this case the termination of Bondoc's employment was lawful and justified and that no grave abuse of discretion amounting to lack of jurisdiction was committed by the Presidential Executive Assistant in affirming the NLRC's decision sustaining the termination of his employment.

Bondoc was not employed for a fixed period. He held his position of department manager at the pleasure of the bank's board of directors. He occupied a managerial position and his stay therein depended on his retention of the trust and confidence of the management and whether there was any need for his services.

Although some vindictive motivation might have impelled the abolition of his position, yet, it is undeniable that the bank's board of directors possessed the power to remove him and to determine whether the interest of the bank justified the existence of his department.

Under the old Termination Pay Law, it was held that in the absence of a contract of employment for a specific period the employer has the right to dismiss his employees at anytime with or without just cause (*De Dios vs. Bristol Laboratories (Phils.), Inc.*, L-25530, January 29, 1974, 55 SCRA 349, 358; *Jaguar Transportation Co., Inc. vs. Cornista*, L-32959, May 11, 1978, 83 SCRA 77).

It may be noted that under Policy Instructions No. 8 of the Secretary of Labor "the employer is not required to obtain a previous written clearance to terminate managerial employees in order to enable him to manage effectively". (See *Associated Citizens Bank vs. Ople*, L-4896, February 24, 1981.)

The petitioner invokes the policy of the State to assure the right of "workers" to security of tenure (Sec. 9, Art. II, Constitution).

That guarantee is an act of social justice. When a person has no property, his job may possibly be his only possession or means of livelihood. Therefore, he should be protected against any arbitrary and unjust deprivation of his job.

Article 280 of the Labor Code has construed security of tenure as referring to regular employment and as meaning that "the employer shall not terminate the services of an employee except for a just cause or when authorized by" the Code.

As already noted above, the facts of this case do not warrant the conclusion that Bondoc's right to security of tenure was oppressively abridged. He knew all along that his tenure as a department manager rested in the discretion of the bank's board of directors and that at anytime his services might be dispensed with or his position might be abolished.

On equitable considerations, we hold that Bondoc should be paid as separation pay his salary and allowances, if any, for seven months.

WHEREFORE, the decision of respondent Presidential Executive Assistant is affirmed with the modification that the Bank of the P. I. should pay to the petitioner separation pay equivalent to his salary and allowances (if any) for seven months. No costs.

SO ORDERED.

Barredo, (Chairman), Concepcion, Jr., Fernandez, and De Castro, JJ., concur.
Abad Santos, J., abroad.

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