

REGINA P. TORRES, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, SEVENTH (7TH) DIVISION AND ARMED FORCES AND POLICE MUTUAL BENEFIT ASSOCIATION, RESPONDENTS.

Ponente: INGLES, G. T., J.

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INGLES, G. T., J.:

This is a Petition for Certiorari under Rule 65 of the Rules of Court assailing the Decision[1] dated August 24, 2012 and the Resolution[2] dated November 29, 2012, all issued by the respondent National Labor Relations Commission in NLRC Case No. VAC-06-000397-2012.

The case for the petitioner

Petitioner Torres had been an employee of respondent AFPMBAI since March 1, 1988. Prior to this controversy, petitioner was the Regional Supervisor of AFPMBAI Regional Office VI located at Camp Delgado, Iloilo City.

As Regional Supervisor, Torres' job mainly consists of overseeing the smooth flow of operations in the office, submission of reports, investigation of claims and processing of salary loans, among others.

Before her preventive suspension on June 3, 2011, petitioner had been receiving a total amount of P35,000.00 representing her monthly salary, allowances, commissions and other benefits.

The controversy in the instant case started when Rafael V. Dacanay was appointed as Head, ROG sometime in 2010. After such appointment, a hostile environment was created, even up to the extent of uttering defamatory and insensitive remarks to the employees.

On May 31, 2011, a Memorandum was issued by (Ret.) Bgen Ricardo C. Morales to petitioner Torres, requiring her to explain her misconduct of allowing the discounting of AFPMBAI checks inside the Iloilo Regional Office. She was given five (5) calendar days to explain the administrative charge against her, and meanwhile, she was placed under preventive suspension for thirty (30) days pending investigation of the offense.

Pursuant to said Memorandum, which was received by Torres on June 3, 2011, she did not report for work and instead filed her explanation letter dated June 8, 2011, controverting the accusations made against her and questioning her preventive suspension as the requisites for the same were not met by the respondents.

On June 30, 2011, Torres attended the administrative hearing at the AFPMBAI head office in Quezon City.

On July 4, 2011, Torres reported for work as her preventive suspension had already ended. Instead of allowing her back, private respondent, through its President, Ricardo Morales, issued another Memorandum extending the period of Torres' preventive suspension for another thirty (30) calendar days upon receipt of said memorandum.

Torres thereafter filed a case for constructive dismissal against respondents.

On August 3, 2011, when Torres again reported for work following the end of her extended preventive suspension, Torres again received a third Memorandum from the AFPMBAI President ordering her transfer to the

Office of the Head, Regional Office Visayas, Regional Operations Group.

At the time of filing of Torres' position paper, the administrative investigation concerning the alleged violation committed by the complainant was still pending resolution by the administrative body concerned.

The case for the respondent AFPMBAI

AFPMBAI is a non-stock, non-profit corporation. Petitioner Torres is an employee of AFPMBAI, who at the time of the filing of the complaint, occupied the position of Supervisor, Iloilo Regional Office. Petitioner now reports as Supervisor, Office of the Head, Regional Office Visayas – occupying the same rank and enjoying the same salary and other benefits.

This petition stems from a Disposition Form dated April 27, 2011 issued by Commo Rafael V. Dacanay, then Head, Regional Operations Group, to the Human Resources Division (HRD) which reported the incidents of discounting of AFPMBAI checks allegedly committed and tolerated inside the premises of the Iloilo Regional Office. The report/DF is supported by an affidavit executed by one Ellen Importado dated May 19, 2011.

At the time of the alleged discounting of AFPMBAI checks, the Iloilo Regional Office was under the control and supervision of petitioner Torres.

Since the discounting of AFPMBAI checks is among the prohibited acts under the AFPMBAI Employees Code of Conduct, a Notice to Explain was issued to the petitioner on May 31, 2011.

Considering the nature and gravity of the offenses leveled against her, and by virtue of her position as Supervisor of the AFPMBAI Iloilo Regional Office which gives her considerable access to Iloilo personnel, confidential files and documents, AFPMBAI was constrained to put petitioner under preventive suspension for thirty (30) days.

On June 8, 2011, petitioner submitted her Explanation denying all the allegations/ offenses against her.

Thereafter, the Investigation Board (IB) commenced their administrative investigation and issued two Memoranda dated June 24, 2011 and June 27, 2011 requesting petitioner to appear before the IB and present her defenses. Other witnesses and Iloilo Regional staff including the Head, Regional Operations – Visayas, were likewise invited to explain and shed light on the matter.

On June 30, 2011, an Extension of Preventive Suspension effective July 4, 2011 was issued to petitioner since the administrative investigation is still on-going and the IB had yet to submit its findings and recommendations to the President.

Pending investigation, petitioner filed a complaint for illegal/constructive dismissal, illegal suspension, non-payment of wages, harassment, damages and attorney's fees on July 8, 2011 at the NLRC Sub-Regional Arbitration Branch 6, Iloilo City.

Meanwhile, in the exercise of its management prerogative, AFPMBAI issued a Transfer Order dated August 1, 2011 to petitioner, directing her to report from Iloilo Regional Office to the Office of the Head, Regional Office Visayas in Cebu City.

Ruling of the Labor Arbiter

In a Decision dated February 9, 2012, the Labor Arbiter ruled in petitioner's favor – declared the petitioner was constructively dismissed, directed her reinstatement and the payment by AFPMBAI of backwages and attorney's fees totaling P300,300.00. The Labor Arbiter hinged the finding of constructive dismissal primarily on the preventive suspension imposed upon petitioner, which suspension the Labor Arbiter found to be without basis.

The decretal portion of the Labor Arbiter's decision is hereby quoted, to wit:

“WHEREFORE, premises considered. We render judgment finding complainant to have been constructively dismissed, and direct respondent Armed Forces and Police Mutual Benefit Association, Incorporated liable to the said complainant in the aggregate amount of Php300,300.00, comprising the latter's backwages and attorney's fees. Respondent is also directed to reinstate the complainant back to her former position, without loss of seniority rights and other privileges. Finally, respondent is ordered to deposit the foregoing sum with the Cashier of this Arbitration Branch and to submit written proof of complainant's reinstatement within ten (10) days from receipt of this Decision.

All other claims are dismissed for lack of merit.

SO ORDERED.”

Ruling of the NLRC

In a Decision dated August 24, 2012, the public respondent NLRC reversed and set aside the disposition of the Labor Arbiter. The NLRC found that there is no constructive dismissal and that petitioner is thus not entitled to her money claims. The NLRC ruled that the petitioner's filing of an illegal dismissal case was premature as there was still an ongoing administrative investigation. The NLRC likewise opined that the extension of Torres' preventive suspension pending the completion of the administrative investigation was an act which was “legally within the authority of the respondents to do so”[3]. However, the NLRC refused to rule on the transfer order issued by the private respondent AFPMBAI stating that the same is a non-issue since “what is being contested was the extended preventive suspension made by the respondents, and not the transfer order given.”[4]

The dispositive portion of the assailed NLRC Decision is hereunder quoted, as follows:

“WHEREFORE, premises considered, the Decision of the Labor Arbiter is hereby REVERSED and SET ASIDE, and a new one entered, declaring that complainant was not constructively dismissed, hence, not entitled to her money claims.

Per transfer order issued by respondents, complainant is thus directed to report for work within ten (10) days from receipt of this Decision. Her failure to comply will be construed as lack of interest to resume working for respondents tantamount to resignation from work.

SO ORDERED.”

Petitioner sought reconsideration of the abovequoted Decision, but the NLRC denied Torres' motion in its Resolution dated November 29, 2012.

This petition[5] was filed before this Court on March 8, 2013. The private respondent AFPMBAI filed its Comment[6] on July 10, 2013. In a Resolution dated March 26, 2014, this Court declared the petition submitted for decision[7].

ISSUES

The petitioner raises the following issues – whether or not the respondent NLRC acted with grave abuse of discretion amounting to lack or excess of jurisdiction:

- In ruling that there was no valid ground for the filing of the complaint;
- In ruling that the transfer order is a non-issue therefore not ruling on its validity and legality;
- In ruling that complainant was not constructively dismissed; and

- In implementing an otherwise invalid and illegal transfer order and ordering the complainant to report for work as per transfer order issued by private respondent.

RULING OF THIS COURT

The petition is bereft of merit.

Certiorari lies where a court or any tribunal, board, or officer exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction or with grave abuse of discretion[8]. By grave abuse of discretion is meant capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction[9]. It is defined as capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction[10]. After a careful consideration of all the arguments raised by both parties herein and after an independent review of all records of this case, the Court finds that grave abuse of discretion amounting to lack or excess of jurisdiction is not attendant in this case.

The case for illegal dismissal prematurely filed

The records of this case reveal the following timeline:

- On April 27, 2011, a Disposition Form detailing incidents of discounting of AFPMBAI checks inside the Iloilo Regional Office, which office was headed by petitioner Torres was addressed to the Human Resource Division of AFPMBAI;
- On May 31, 2011 a Notice to Explain was issued to the petitioner detailing the offenses charge against her and directing her submit a written explanation within five (5) calendar days. In the same memorandum, the private respondent AFPMBAI also notified Torres of her preventive suspension within thirty (30) days.
- On June 8, 2011, petitioner submitted her written explanation denying all allegations made against her;
- On June 24, 2011, private respondent issued a Memorandum requiring the presence of petitioner Torres in an Administrative Investigation at the AFPMBAI head office in Quezon City;
- On June 30, 2011, the preventive suspension of petitioner was extended to another thirty (30) days since the administrative investigation had yet to be investigated;
- On July 8, 2011, the petitioner filed a case for illegal preventive suspension, constructive dismissal and money claims before the Labor Arbiter.

As the foregoing sequence of events clearly shows, the case for constructive dismissal filed by petitioner was premature. In *Jo Cinema Corporation, et. al. vs. NLRC, et. al.*[11], the Supreme Court ruled that dismissal connotes a permanent severance or complete separation of the employee from service upon the initiative of the employer regardless of the reasons therefor. Based on this definition, a complainant cannot be said to have been dismissed from service if she was merely placed under preventive suspension during the pendency of an administrative investigation.

In this case, Torres' suspension cannot be construed as a dismissal since the cessation from work is only temporary. The petitioner could not have been dismissed when the complaint was filed on July 8, 2011 since the respondent AFPMBAI had yet to make a final disposition of the administrative investigation regarding the alleged discounting of AFPMBAI checks committed by Torres within the premises of Iloilo office of AFPMBAI.

The preventive suspension and its extension are valid

The petitioner scores the propriety of her preventive suspension for having neither legal nor factual basis. Citing

Article I, Department Order No. 09, Series of 1997, particularly Sections 8 and 9, Rule XXIII, Book V, petitioner submits that an employee's preventive suspension is valid "only if his continued employment poses a serious and imminent threat to the life or property of the employer or of his co-workers". The attendant serious and imminent threat required under the rules do not exist in the case at bar, the petitioner argues.

The petitioner contends that she "poses no threat on the life of the employer simply because the employer is a juridical entity, and there is no threat on the life of co-workers as her position as Supervisor does not put her in a position to carry weapons that can be a threat to life. Moreover, petitioner, a lady and a mother at that, had been in the service of the private respondent for more than twenty years and there was absolutely no incident during those more than twenty years that she had been a threat to life of her co-workers." [12]

However, petitioner's literal interpretation of the rules, does not persuade Us. In this case, petitioner Torres is no ordinary rank and file employee. As supervisor, Torres had control and supervision over the Iloilo Regional Office of AFPMBAI where the prohibited discounting of checks allegedly occurred.

This Court finds doctrinal guidance in the ruling of the Supreme Court in *Dayan vs. Bank of the Philippine Islands, et. al.* [13] where the high tribunal ruled that the policy of preventively suspending an employee under investigation is an acceptable precautionary measure in order to preserve the integrity of vital papers and documents that may be material and relevant to the case and to which, otherwise, such suspended employee would have access by virtue of his position.

As correctly ruled by the respondent NLRC, the 30-day preventive suspension imposed upon Torres and its subsequent extension for another thirty (30) days are both valid.

Citing the Supreme Court's ruling in *Genesis Transport Service, Inc., et. al. vs. Unyon ng Malayang Manggagawang Genesis Transport, et. al.* [14], the respondent NLRC ruled that what the Rules require is that the employer act on the suspended worker's status of employment within the 30-day period by concluding the investigation either by absolving him of the charges, or meting the corresponding penalty if liable, or ultimately dismissing him. If the suspension exceeds the 30-day period without any corresponding action on the part of the employer, the employer must reinstate the employee or extend the period of suspension, provided the employee's wages and benefits are paid in the interim.

In this case, AFPMBAI extended Torres' preventive suspension for another 30 days, pending the final disposition of the administrative investigation. The records reveal that Torres was paid her salaries and benefits [15] during the extended period of her preventive suspension making it compliant with the rules.

The validity of the transfer order was timely raised by petitioner

This Court takes exception to the ruling of the respondent NLRC on the issue of petitioner's transfer from the Iloilo Regional Office to the Regional Office of AFPMBAI in Cebu City. The NLRC ruled that the transfer order is a non-issue since, at the time the complaint for constructive dismissal was filed before the Labor Arbiter on July 8, 2011, the respondent AFPMBAI had yet to issue the transfer order. The transfer order was issued only on August 1, 2011. Otherwise stated, the NLRC ruled that petitioner's cause of action arising from the transfer order issued of AFPMBAI was not included in the complaint, hence the NLRC could not rule on the same.

However, a perusal of the petitioner's Position Paper [16] submitted before the Labor Arbiter shows that the validity of the transfer was raised as an issue. The respondent NLRC should not have merely relied on the face of the complaints, but also on the position papers submitted before the Labor Arbiter in determining the causes of action raised by the complainant.

In *Tegimenta Chemical Phils. , et. al. vs. Rolan E. Buensalida*[17] and in the more recent case of *Samar-Med Distribution vs. NLRC, et. al.*[18], the Supreme Court ruled that the complaint is not the only document from which the complainant's cause of action is determined in a labor case. Any cause of action that may not have been included in the complaint or position paper can no longer be alleged after the position paper is submitted by the parties. In other words, the filing of the position paper is the operative act which forecloses the raising of the matters constitutive of the cause of action. This necessarily implies that the cause of action is finally ascertained only after both the complaint and position paper are properly evaluated.

The transfer order is a valid exercise of management prerogative

Nevertheless, this court finds the transfer order dated August 1, 2011 issued by private respondent AFPMBAI to be a valid exercise of management prerogative.

Affirming its earlier ruling in *Philippine Japan Active Carbon Corp. vs. NLRC*[19] the Supreme Court, in *Jenny F. Peckson vs. Robinsons Supermarket Corporation, et. al.*[20], ruled, to wit:

It is the employer's prerogative, based on its assessment and perception of its employees' qualifications, aptitude and competence, to move them around in the areas of its business operations in order to ascertain where they will function with maximum benefit to the company. An employee's right to security of tenure does not give him such a vested right in his position as would deprive the company of its prerogative to change his assignment or transfer him where he will be most useful. When his transfer is not unreasonable, nor inconvenient, nor prejudicial to him, and it does not involve a demotion in rank or a diminution of his salaries, benefits, and other privileges, the employee may not complain that it amounts to a constructive dismissal.

In this case, Torres' transfer from the Iloilo Regional Office to the Office of the Head, Regional Office Visayas in Cebu City was not unreasonable as it did not involve a demotion in rank nor a diminution in pay, benefits and privileges. Petitioner is likewise entitled to receive a relocation allowance as provided for under AFPMBAI's company policies. In short, the transfer did not constitute a constructive dismissal.

WHEREFORE the petition is hereby DENIED for lack of merit. The Decision[21] dated August 24, 2012 and the Resolution[22] dated November 29, 2012, all issued by the respondent National Labor Relations Commission Seventh Division in NLRC Case No. VAC-06-000397-2012 are hereby AFFIRMED.

SO ORDERED.

Maxino, P.A.A., and Francisco, R.C., JJ., concur.

[1] Pages 31-42, rollo.

[2] Pages 178-184, rollo.

[3] Pages 7-9 of NLRC Decision dated August 24, 2012, pp. 38-40 of rollo.

[4] Pages 9-10 of NLRC Decision dated August 24, 2012, pp. 40-41 of rollo.

[5] Page 4, rollo.

[6] Page 291, rollo.

[7] Page 337, rollo.

[8] *Amora, Jr. vs. Commission on Elections*, 640 SCRA 473, 2011.

[9] University of Mindanao, Inc. vs. Court of Appeals, 643 SCRA 562, 2011.

[10] Pahila-Garrido vs. Tortogo, 655 SCRA 553, 2011.

[11] 360 SCRA 142.

[12] Pages 12-13 of Petition, pp. 16-17 of rollo.

[13] G.R. No. 140692, November 20, 2001.

[14] G.R. NO. 182114, April 5, 2010.

[15] See pages 8-9 of the NLRC Decision dated August 24, 2012, pp. 39-40, rollo.

[16] See pages 19-24 of Complainant's Position Paper, pp. 75-80 of rollo.

[17] G.R. No. 176466, June 17, 2008.

[18] G.R. No. 162385, July 15, 2013.

[19] G.R. No. 83239, March 8, 1989.

[20] G.R. No. 198534, July 3, 2013.

[21] Pages 31-42, rollo.

[22] Pages 178-184, rollo.

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