TRISTAN G. NIOG, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (SEVENTH DIVISION), REV. MEQUIAS R. CAMBA, JR., BISHOP REUEL NORMAN O. MARIGZA AND VISAYAS COMMUNITY MEDICAL...

Ponente: LAGURA-YAP, J.

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LAGURA-YAP, J.:

Before Us is a Petition[1] for Certiorari under Rule 65 of the 1997 Rules of Civil Procedure seeking to reverse and set aside the Decision[2] dated December 29, 2011 and Resolution[3] dated February 29, 2012 of the National Labor Relations Commission (NLRC) in NLRC Case No. VAC-08-000625-2011.

The December 29, 2011 Decision affirmed the ruling of the Labor Arbiter in RAB Case No. VII-09-1984-2010, finding petitioner Dr. Tristan Niog to have been validly suspended and validly dismissed from service. The dispositive portion of the Decision reads:

> "WHEREFORE, premises considered, We find no compelling reason to depart from the findings of the Labor Arbiter. The decision appealed from is hereby AFFIRMED IN TOTO.
>
> SO ORDERED."

The facts of the case are narrated as follows:

On March 22, 2010, Tristan Niog (petitioner) was appointed as Human Resource Development (HRD) Manager of the Visayas Community Medical Center (private respondent VCMC) pursuant to Memorandum No. 16, Series of 2010.[4] He worked as a probationary managerial employee, receiving a monthly salary of P20,000.00.

As HRD manager, petitioner was the chairman of the Task Force on Discipline and Conflict Resolution, a committee in the hospital which conducts investigations and recommends appropriate sanctions on employees in administrative cases.

On April 14, 2010, an organizational diagnosis among top management personnel of the Administrative Council, as well as the rank-and-file employees and the supervisors of other departments. Petitioner supervised the workshop, in his capacity as HRD Manager.[5]

On July 2, 2010, Rev. Joe Steven Berdin, Conference Minister of Cebu Conference of the United Church of Christ in the Philippines and member of the Board of Trustees of VCMC, sent a letter to Jonathan De Rosas Jr., the accounting supervisor at that time, asking the latter to provide him copies of VCMC trial balance, financial statements and details of expenses for the last two years. On July 4, 2010, De Rosas furnished to Rev. Berding copies of the requested documents.[6]

Subsequently, Alisa Inoc, the then OIC-Finance, recommended to VCMC's CEO, Rev. Camba Jr., a reshuffling of VCMC's personnel. This included the transfer of De Rosas as Accounting Section Head to the position of PhilHealth Head.

On July 19, 2010, petitioner sent a letter to Rev. Camba Jr. with respect to the reshuffling, and suggested alternative options to save on costs. However, petitioner proceeded to draft the appointments of new personnel on the basis of CEO Memo. No. 42 Series of 2010 issued by Rev. Camba Jr. De Rosas strongly opposed his transfer and argued that his performance was satisfactory. Thereafter, De Rosas frequented the HRD Office and engaged in long talks with the petitioner.

On August 2, 2010, Rev. Camba issued CEO Memorandum No. 48.[7] The said memorandum came as a reminder and reprimand to petitioner, stating that petitioner was already encroaching on other aspects of hospital administration.[8] The next day, petitioner sent his reply[9] to the above memorandum. Petitioner explained his side and argued that the accusations against him were false and without basis. On August 9, 2010, De Rosas resigned from the hospital.[10]

Then, on August 14, 2010, Bishop Reuel Norman Marigza, chairman of the Board of the VCMC, issued a 30-day suspension order[11] against petitioner, upon recommendation of the CEO. The suspension was based on the affidavits of five VCMC employees who are close to Rev. Camba Jr.[12]

On August 17, 2010, petitioner sent his letter-reply[13] to the suspension order, to Bishop Marigza via the Cebu City post office, with the following reply address: Tormis Extension, Sambag 2, Cebu City 6000.

On September 13, 2010, petitioner filed a Complaint[14] before the NLRC-RAB VII, Cebu City for illegal suspension against Bishop Marigza, Rev. Camba Jr., and VCMC. On the same day, Rev. Camba Jr. issued CEO Memorandum No. 55[15] Series of 2010, terminating petitioner as HRD Manager. The termination order was based on the September 8, 2010 termination notice issued by Bishop Marigza.

On September 14, 2010, petitioner's mother, Mrs. Norma Niog, received a letter[16] for conference dated August 24, 2010. The letter was received at Mrs. Niog's address at 260 Macopa St., Bayugan, Agusan del Sur. The letter stated, in part, that petitioner is summoned to appear for a conference on September 3, 2010 at 10 A.M. in the Board Room of VCMC.

After the lapse of the 30-day suspension, petitioner attempted to return to the hospital premises, but the security guards stationed at VCMC barred him from entering the place. On October 5, 2010, petitioner filed an Amended Complaint[17] for illegal dismissal, reinstatement and backwages, 13th Month Pay, Service Incentive Leave, Allowances and Damages.

On November 25, 2010, petitioner filed a criminal complaint[18] for perjury against Christy Lapinid, one of the VCMC employees who executed an affidavit against him, alleging that the statements in Lapinid's affidavit are completely fabricated.

In their Position Paper,[19] private respondents averred that petitioner was appointed as a probationary Personnel Manager for a period of 6 months, from March 22, 2010 until September 22, 2010. For failing to pass his probationary employment and having committed several infractions, his probationary employment was recommended terminated.

Acting on the recommendation, private respondent VCMC sent petitioner a show-cause notice dated August 14, 2010, enumerating therein the specific infractions he committed and to explain why he should not be terminated as probationary employee of the hospital.[20]

Private respondents' act of suspending petitioner for 30 days was warranted considering that petitioner posed a serious and imminent threat to the property of VCMC. Likewise, private respondents argued that the dismissal of petitioner was valid. The long list of offenses committed by petitioner were duly proven, as shown by the

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affidavits[21] executed by Er Maro Giducos, Adeline Raganas, Alisa Inoc, Christy Lapinid and Rey Javier.

On April 15, 2011, Labor Arbiter Amelia Docena rendered a Decision,[22] the dispositive portion whereof reads:

> "WHEREFORE, judgment is hereby rendered declaring that complainant was validly dismissed. Accordingly, complainant's claim for reinstatement and backwages have no legal basis.
>
> Other claims are also dismissed for lack of merit.
>
> SO ORDERED."

Aggrieved, petitioner appealed[23] the above Decision to the NLRC. In its December 29, 2011 Decision,[24] public respondent affirmed the findings of the Labor Arbiter. Petitioner filed a Motion for Reconsideration[25] thereto, but it was denied in the February 29, 2012 Resolution.[26]

Petitioner now comes before Us, raising the following assignments of error:

> "THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION, SEVENTH DIVISION, COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN AFFIRMING IN TOTO THE DECISION OF THE LABOR ARBITER AMELIA B. DOCENA AND IN AFFIRMING THE LABOR ARBITER'S FINDING THAT PETITIONER-COMPLAINANT'S PREVENTIVE SUSPENSION WAS VALID.
>
> THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION, SEVENTH DIVISION, COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN AFFIRMING THE LABOR ARBITER'S FINDING THAT PETITIONER-COMPLAINANT'S DISMISSAL FROM EMPLOYMENT WAS VALID.
>
> THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION, SEVENTH DIVISION, COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN RULING THAT PETITIONER-COMPLAINANT IS NOT ENTITLED TO REINSTATEMENT, BACKWAGES AND OTHER MONETARY CLAIMS."

Private respondents argue that both the suspension and dismissal of petitioner were valid, and that consequently, petitioner's claim for reinstatement, backwages and other benefits must be denied.

In the first place, petitioner's suspension was valid as it was based on the following grounds: For challenging the authority of the administration despite the repeated instructions that petitioner should limit his work to the human resources framework; for uttering obscene or profane language in addressing an employee, patient, co-employee or supervisor by saying, "Unsa na siya, praning?," (Is he out of his mind?) referring to Rev. Camba Jr. as someone who is crazy; for sending the minutes of the seminar workshop to the National Council without the knowledge and consent of the Administrator; making intrigues and instilling in the minds of the employees that the administrator is inept, loose, disorganized, and under the command of his wife when it comes to VCMC administration; for issuing a certification and/or memorandum without the knowledge of the administrator or allowing the HR staff to issue such certification and memorandum; for influencing employees to develop animosity against the administration; for telling the participants in the seminar workshop that petitioner will facilitate the formation of the union; and for asking a copy of the minutes of the July 22, 2010 Execom meeting despite its being confidential and for giving highly irregular instructions to fellow employees by obtaining from them a copy of the minutes without the knowledge and consent of the Administrator.[27]

THE RULING OF THE COURT

The issues involved in this petition are whether petitioner was validly suspended and corollarily, whether he was validly terminated from service. Since the above issues are essentially based on the same facts, a joint discussion is necessary.

The pertinent law governing the present case is Article 281 of the Labor Code which provides as follows:

> Art. 281. Probationary employment. — Probationary employment shall not exceed six months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. The services of an employee who has been engaged in a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. An employee who is allowed to work after a probationary period shall be considered a regular employee. (Underscoring supplied)

There is probationary employment where the employee upon his engagement is made to undergo a trial period during which the employer determines his fitness to qualify for regular employment based on reasonable standards made known to him at the time of engagement.[28] The probationary employment is intended to afford the employer an opportunity to observe the fitness of a probationary employee while at work, and to ascertain whether he will become an efficient and productive employee. While the employer observes the fitness, propriety and efficiency of a probationer to ascertain whether he is qualified for permanent employment, the probationer, on the other hand, seeks to prove to the employer that he has the qualifications to meet the reasonable standards for permanent employment. Thus, the word probationary, as used to describe the period of employment, implies the purpose of the term or period, not its length.[29]

On the basis of the aforequoted provisions and definition, there is no dispute that petitioner's employment with private respondent VCMC was probationary in character. This fact was sufficiently proven in Memo. No. 16 Series of 2010, and was likewise stated in the job description which was made known to the petitioner at the start of his employment.[30] As a probationary employee, his employment status was only temporary. Although a probationary or temporary employee with a limited tenure, he was still entitled to a security of tenure.

It is settled that even if probationary employees do not enjoy permanent status, they are accorded the constitutional protection of security of tenure. This means they may only be terminated for a just cause or when they otherwise fail to qualify as regular employees in accordance with reasonable standards made known to them by the employer at the time of their engagement.[31] In Mercado v. AMA Computer College-Paranaque City, Inc.,[32] the Supreme Court clearly stressed that:

> "Labor, for its part, is given the protection during the probationary period of knowing the company standards the new hires have to meet during the probationary period, and to be judged on the basis of these standards, aside from the usual standards applicable to employees after they achieve permanent status. Under the terms of the Labor Code, these standards should be made known to the [employees] on probationary status at the start of their probationary period, or xxx during which the probationary standards are to be applied. Of critical importance in invoking a failure to meet the probationary standards, is that the [employer] should show – as a matter of due process – how these standards have been applied. This is effectively the second notice in a dismissal situation that the law requires as a due process guarantee supporting the security of tenure provision, and is in furtherance, too, of the basic rule in employee dismissal that the employer carries the burden of justifying a dismissal. These rules ensure compliance with the limited security of tenure guarantee the law extends to probationary employees.[33](Emphases supplied)

It is well-settled that factual findings of quasi-judicial agencies such as the NLRC are generally accorded not only respect but, at times, even finality. However, the rule is not absolute and admits of certain well-recognized

exceptions, such as when the findings of fact of the NLRC are not supported by substantial evidence.[34] In this case, while the Labor Arbiter and the NLRC uniformly ruled that petitioner was validly suspended and terminated, We find that such pronouncement is not supported by substantial evidence, for the reasons stated below.

First, petitioner's 30-day suspension which commenced on August 14, 2010 was based solely on the affidavits of the five employees of private respondent VCMC. For preventive suspension to be valid, the employer must comply with Sections 8[35] and 9[36] of Rule XXIII, Book V of the Implementing Rules. The Rules are explicit that preventive suspension is justified where the employee's continued employment poses a serious and imminent threat to the life or property of the employer or of the employee's co-workers. Without this kind of threat, preventive suspension is not proper.[37] In this case, private respondent VCMC failed to prove that petitioner's continued employment as HRD manager poses a serious threat to his employer and co-workers. While the suspension order states that petitioner holds a key and sensitive position in the hospital, there was absolutely no evidence which indicates that petitioner was meddling with the records of VCMC. In view of this, the preventive suspension is clearly unjustified.

Second, petitioner's subsequent termination was based on the same affidavits which served as the basis for his suspension. It must be recalled that the letter for conference was never received by petitioner because it was sent to his mother's address in Agusan del Sur. As to why private respondents chose to send the notice there instead of sending it to petitioner's address in Cebu City at Tormis Extension, Sambag 2, Cebu City 6000, escapes Us. Private respondent VCMC ought to know that petitioner was residing in Cebu City at the time of his employment. Undeniably, petitioner worked at the hospital for five (5) days every week and it is highly unlikely, if not downright impossible, for him to travel all the way from Surigao every working day. Furthermore, the letter was received by Mrs. Niog only on September 14, 2010, or eleven (11) days after the scheduled hearing. Consequently, petitioner cannot be expected to attend the conference as he was never notified of it.

Lastly, the affidavits of the employees are not sufficient to prove that the charges leveled against petitioner are true. To recall, the persons who executed the affidavits were all employees of VCMC. The statements in those affidavits appear to have been specifically worded to pin the blame on petitioner. Petitioner vehemently denies the allegations in the affidavits and claims that the charges are all fabricated to justify his termination. We agree with petitioner. The allegations seem too good to be true and appear to have been meticulously crafted to make it appear that petitioner committed several infractions against the company. To rule that petitioner's dismissal is valid based solely on the affidavits of private respondent VCMC's employees would set a dangerous precedent. It bears stressing that a worker's employment is property in the constitutional sense.[38] Moreover, the allegations in the affidavits viz-a-viz petitioner's vehement denials thereto cast serious doubts on the evidence of the parties. In this light, We affirm the time-honored rule that in any controversy between a laborer and his master, doubts reasonably arising from the evidence are resolved in favor of the laborer.[39]

As a general rule, in certiorari proceedings under Rule 65 of the 1997 Rules of Civil Procedure, the appellate court does not assess and weigh the sufficiency of evidence upon which the Labor Arbiter and the NLRC based their conclusion. The query in this proceeding is limited to the determination of whether or not the NLRC acted without or in excess of its jurisdiction or with grave abuse of discretion in rendering its decision. However, as an exception, the appellate court may examine and measure the factual findings of the NLRC, if the same are not supported by substantial evidence.[40] It is sometimes necessary to delve into factual issues in order to resolve allegations of grave abuse of discretion as a ground for the special civil action of certiorari and prohibition.[41]

In Cocomangas Hotel Beach Resort v. Visca,[42] the Supreme Court ruled that the Court of Appeals (CA) can take cognizance of a petition for certiorari if it finds that the NLRC committed grave abuse of discretion by

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capriciously, whimsically, or arbitrarily disregarding evidence which are material to or decisive of the controversy. The CA cannot make this determination without looking into the evidence presented by the parties. The appellate court needs to evaluate the materiality of the evidence, which are alleged to have been arbitrarily disregarded by the NLRC, in relation to all other evidence on record. In this case, We rule that the public respondent committed grave abuse of discretion when it issued the assailed Decision and Resolution, because these are not supported by substantial evidence.

Considering that the dismissal of petitioner is without just or authorized cause, the petitioner is entitled to reinstatement without loss of seniority rights and other privileges and full backwages, inclusive of allowances, and other benefits or their monetary equivalent computed from the time the compensation was not paid up to the time of actual reinstatement as provided under Article 279 of the Labor Code.[43]

Due to the peculiar circumstances of this case, We award separation pay in lieu of reinstatement. Under the doctrine of strained relations, the payment of separation pay is considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable. On one hand, such payment liberates the employee from what could be a highly oppressive work environment. On the other hand, it releases the employer from the grossly unpalatable obligation of maintaining in its employ a worker it could no longer trust.[44]

WHEREFORE, the Petition is GRANTED. The December 29, 2011 Decision and February 29, 2012 Resolution in NLRC Case No. VAC-08-000625-2011 are REVERSED and SET ASIDE. A new decision is rendered declaring the illegal suspension and dismissal of the petitioner and ordering private respondents to pay the petitioner the following: (i) separation pay, in the amount equivalent to one (1) month pay for every year of service; and (ii) backwages, computed from September 8, 2010, the time compensation of petitioner was withheld from him up to the time of payment thereof.

REMAND the records of this case to the Labor Arbiter for determination of the amounts that petitioner is entitled to in the above. On the other monetary claims of petitioner for 13th Month Pay, Service Incentive Leave, and Allowances, the Labor Arbiter is also directed to determine if there is substantial evidence to support such claims, and if so, how much petitioner is entitled thereto.

SO ORDERED.

Delos Santos, J., Chairperson, and Lopez, JJ., concur.

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[1] Rollo, pp. 3-28.

[2] Penned by Commissioner Violeta Ortiz-Bantug; Rollo, pp. 34-49.

[3] Rollo, pp. 51-52.

[4] Rollo, pp. 5-6.

[5] Id. at 6-7.

[6] Id.

[7] Annex H of petitioner's Position Paper; Rollo, pp. 142-144.

[8] Rollo, p. 9.

[9] Annex I of petitioner's Position Paper; Rollo, pp. 145-151.

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[10] Rollo, p. 9.

[11] Annex J of petitioner's Position Paper; Rollo, pp. 152-156.

[12] Id. at 10.

[13] Annex K of petitioner's Position Paper; Rollo, pp. 166-168.

[14] Rollo, p. 53.

[15] Annex L of petitioner's Position Paper; Rollo, p. 169.

[16] Annex M of petitioner's Position Paper; Rollo, p. 170.

[17] Rollo, p. 54.

[18] Annex S of petitioner's Position Paper; Rollo, pp.

[19] Rollo, pp. 189-205.

[20] Id. at 190.

[21] Id. at 224-231.

[22] Rollo, pp. 233-245.

[23] Memorandum of Appeal; Rollo, pp. 330-342.

[24] Vide footnote 2.

[25] Rollo, pp. 287-310.

[26] Vide footnote 3.

[27] Rollo, pp. 190-193.

[28] Robinsons Galleria/Robinsons Supermarket Corporation and/or Jess Manuel v. Ranchez, G.R. No. 177937, January 19, 2011, 640 SCRA 142, citing Omnibus Rules Implementing the Labor Code, Book VI, Rule I, Sec. 6.

[29] Magis Young Achievers' Learning Center v. Manalo, G.R. No. 178835, February 13, 2009, 579 SCRA 421, 431-432, citing International Catholic Migration Commission v. NLRC, 251 Phil. 560, 567 (1989).

[30] Annex A and B of Petitioner's Position Paper; Rollo, 89-93.

[31] Alcira v. National Labor Relations Commission, G.R. No. 149859, June 9, 2004, 431 SCRA 508, citing Agoy v. National Labor Relations Commission, 322 Phil. 636, 645 (1996).

[32] G.R. No. 183572, April 13, 2010, 618 SCRA 218.

[33] Mercado v. AMA Computer College-Paranaque City, Inc., G.R. No. 183572, April 13, 2010, 618 SCRA 218, 240-241.

[34] Pepsi-Cola Distributors of the Philippines, Inc. v. National Labor Relations Commission, G.R. No. 106831, 6 May 1997, 272 SCRA 267.

[35] Section 8. Preventive suspension. --- The employer may place the worker concerned under preventive suspension if his continued employment poses a serious and imminent threat to the life or property of the employer or his co-workers.

[36] Section 9. Period of Suspension --- No preventive suspension shall last longer than thirty (30) days. The employer shall thereafter reinstate the worker in his former or in a substantially equivalent position or the employer may extend the period of suspension provided that during the period of extension, he pays the wages and other benefits due to the worker. In such case, the worker shall not be bound to reimburse the amount paid to him during the extension if the employer decides, after completion of the hearing, to dismiss the worker.

[37] Maricalum Mining Corporation V. Decorion, G.R. No.158637, April 12, 2006.

[38] Asuncion v. National Labor Relations Commission, 414 Phil. 329, 336 (2001).

[39] Masing and Sons Development Corp. v. Rogelio. G.R. No. 161787, April 27, 2011.

[40] Danzas Intercontinental, Inc. vs. Daguman, G.R. No. 154368, 15 April 2005, 456 SCRA 382, 395-396

[41] United Coconut Planters Bank vs. Looyuko, G.R. No. 156337, September 28, 2007, see also Rosemarie Balba vs. Peak Development Inc., et. al., G.R. No. 148288. August 12, 2005

[42] G.R. No. 167045, August 29, 2008, 563 SCRA 705.

[43] ART. 279. Security of Tenure. - In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. And employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

[44] Golden Ace Builders and Arnold U. Azul v. Jose A. Talde, G.R. No. 187200, May 5, 2010, 620 SCRA 283, 289-290.

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