

PHILIPPINE SUGAR INSTITUTE, PETITIONER, VS. COURT OF INDUSTRIAL RELATIONS AND INSUREFCO & PAPER PULP PROJECT WORKERS’ UNION, RESPONDENTS.

G.R. No. L-13475. September 29, 1960

Ponente: PADILLA, J.

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PADILLA, J.:

Appeal by certiorari under Rule 44, in relation to Commonwealth Act No. 103, as amended, to review an order of the Court of Industrial Relations dated 9 December 1957, directing the petitioner—

* * * to reinstate Policemen Marcos Rarang, Alfredo Abañó, Martiniano C. Abuton and Margarito Villamar, to their previous positions in the police force, with back wages from October 11, 1954, until actually reinstated, without loss of seniority and other privileges they had hitherto enjoyed as of March 31, 1954, (Annex D)

and the resolution of the Court in banc dated 17 January 1958, denying its motion for reconsideration (Annex G), in CIR Case No. 283-V(6).

The case and the facts, as stated and narrated by the Court, are:

This is an amended petition for reinstatement with back wages of four members of the police force of respondent who were among those laid off on March 31, 1954, as a result of the directive of the Office of the Economic Coordinator (OEC) dated March 5, 1954, reducing personnel "to the indispensable minimum", the same to be effective immediately but not later than May 1, 1954.

It is alleged by petitioner that the lay-off of said policemen and their non-reinstatement when respondent resumed operation, was in order to prevent the execution of the judgment of this Court rendered in the main case granting six members of the police force night work compensation and other privileges, and constitute discriminatory acts against said employees. Petitioner therefore asks that these policemen be reinstated to their previous positions with back wages from October 11, 1954, the date the company resumed operation, and that respondent be adjudged in contempt of court for allegedly obstructing or preventing the execution of said judgment.

Respondent, however, contends that the lay-off was in pursuant of the OEC directive ordering retrenchment of personnel, that it was under no obligation, nor could it be compelled to reinstate the four policemen in view of the losses it incurred and is still incurring, and that it did not commit any act of contempt in laying off and refusing to reinstate said policemen.

From the pieces of evidence adduced by the parties in this case, which are rather voluminous, the following facts have been proven:

As a result of the paralyzation of the company activities due to a pending work stoppage, the Office of Economic Coordination issued a directive dated March 5, 1964. ordering reduction of the plantilla And expenses to the "indispensable minimum" (Ex. X). Pursuant to this directive, six members of the police force, Leopoldo Lanuza, Alfredo Abano. Martiniano C Abuton, Marcos Rarang, Margarito Villamor and Ireneo

Nuqui, were given separation notices. The lay-off order states that "upon resumption of the operation of the Refinery your reinstatement may be given due consideration should circumstances demand" (Exh. W). By virtue of these separation notices, which were effective on date of notice, the policemen received one month's pay, and their services were terminated as of March 31, 1954. (Leopoldo Lanuza is not herein involved, as he is included in another incident in this case, while Irineo Nuqui filed a separate complaint for reinstatement in the Court of First Instance of Manila.)

After the issue of the strike was decided by this Court and the strikers were ordered to return to work except 39 workers were declared responsible for the strike, and our decision was confirmed by the Supreme Court, the respondent resumed operations on October 11, 1954. Upon resumption of operations, the four laid-off policemen applied for reinstatement but they were refused. Counsel for the policemen, Atty. Sisenando Villaluz, on October 20, 1954, addressed a letter to the Acting General Manager of the Philippine Sugar Institute, now operating the refinery, requesting favorable action on the request for reinstatement. No answer was received. Counsel wrote another letter on November 2, 1954, reiterating his previous request. On November 3, 1954, the Acting General Manager of the Philippine Sugar Institute, Mr. C. R. Cloracruz, replied to Atty. Villaluz stating that—

"With reference to Messrs. Marcos Rarang, Alfredo Abano, Martiniano Abuton, and Margarito Villamor, referred to in your said letter, you were right in your statement that 'as a result of the retrenchment policy when the Magsaysay (O.E.C) Administration took over they were laid off, and as a matter of fact their positions have already been abolished.'" (Exh. EE)

The record also shows that these policemen availed of the good offices and intervention of Senate Majority,, Floor Leader Cipriano P. Primicias who wrote the Administrator of Economic Coordination on April 2, 1954, requesting reconsideration of their separation. The administrator of Economic Coordination, then Hon. Sotero B. Cabahug, who was the author of the retrenchment directive, in his 1st Indorsement dated April 6, 1954, referred the letter of the Senator to the General Manager and the Chairman of the Board of Directors, Philippine Sugar Institute, stating that should the information that the services of the police are necessary be correct, "it is recommended that they be reinstated rather than hire new personnel to take their place" (Exh. Y). It does not appear, however, that this recommendation of the OEC was given any favorable consideration. So on December 9, 1954, or barely two months after the refinery resumed operation, the four policemen filed the present petition.

To find out if the four laid-off policemen had been victims of discrimination on the part of respondent, as petitioner alleges, it is proper to look into the conduct and actuations of the respondent with reference to its personnel before and after March 31, 1954, the date of the lay-off.

There is no question that the lay-off of the six policemen was in accordance with an order from the OEC under which the refinery, as a government-owned and controlled enterprise, falls. But it is significant that of all the seventeen members of the police force who served when the strike was declared on June 14, 1953, and continued serving after the strike when the company's operation was completely paralyzed, only six policemen, Leopoldo Lanuza, Marcos Rarang, Alfredo Abano, Martiniano Abuton, Margarito Villamor and Irineo Nuqui, received separation notices. These policemen, with the exception of Irineo Nuqui, constituted a group which, with Sabas Camacho, prosecuted a claim against the company for additional night work compensation and other privileges not enjoyed by the rest of the members of the police force. In a judgment dated August 2, 1954, this Court ordered the respondent to pay "policemen Sabas Camacho, Leopoldo Lanuza, Alfredo Abano, Martiniano C. Abuton, Marcos Rarang and Margarito Villamor 25% additional compensation for night work from 6:00 p.m. to 12:00 a.m., and 50% from 12:00 a.m. to 6:00 a.m. and 25% additional compensation for work performed on Sundays and legal holidays, all of which additional compensation to begin from March 22, 1959 up to the time they are in the service of the company together with all the privileges and facilities hitherto enjoyed by them at the time the partial award of June 20, 1951 was made effective" (Exh. L). This claim was an offshoot of a petition filed by all the 17 members of the police but while the rest of the police agreed to the

company's proposals to settle the case, the six policemen above named did not choose to be bound by the agreement and continued the case (Exh. I). As a result of said judgment, respondents paid the six policemen P8,098.68 for additional night work compensation and for Sundays and legal holidays, but the privileges and facilities consisting of one pair of shoes and two khaki suitings every 6 months, one helmet, and two days off with pay every month (Exh. K), could not be executed because the benefited policemen were no longer in the service. These privileges were not enjoyed and are not being enjoyed by other members of the police force. There is, therefore, ample justification in attaching significance to the fact that of all the 17 members of the police force then serving at the time, only those who had a pending case against the respondent and subsequently obtained a judgment against the latter (with the exception of Sabas Camacho who was retired and Leopoldo Lanuza who was involved in the case of the 39 dismissed strikers), received separation notices, while those who agreed with the company's proposals regarding night work and Sunday and holiday compensation were not touched. Except for Sabas Camacho who was retained and who was subsequently retired on December 5, 1954, the treatment accorded to this group of policemen by the respondent was markedly distinct from that accorded the rest of the police personnel, and it would be really more than mere coincidence that not one of the police who agree to the company's proposals in Case No. 283-V was laid off.

That the services of these laid-off policemen were needed before and after their forced separation from the service on March 31, 1954, can be gathered from the following proven facts and circumstances:

(1) Although as a result of the strike declared on June 14, 1952, the company's operation was completely paralyzed, not a single member of the police for fee was laid off or dispensed with. So that from June 14, 1952 to March 31, 1954, or a period of nearly two years, during which the company did not operate, the full complement of the police force remained in the service. This shows that the need of safeguarding and ensuring the respondent's machinery, equipment and installations in the refinery premises and the security of its personnel necessitated the retention of the full police force.

(2) After the six policemen were laid off on March 31, 1954, and with the refinery still at a complete standstill, the duties and functions of the laid off policemen, particularly the night duties corresponding to the second and third shifts, were taken over by specially assigned guards taken from other departments (Exh. Z). Some of these specially assigned guards were holding positions alien to police duty, but they were, assigned to the second and third shifts. The testimony of Sabas Camacho who stayed in the service until December 5, 1954, on this point has not been refuted or controverted. It is obvious that if the services of the laid-off policemen were not needed, there would have been no necessity of assigning personnel from other departments to take their places or to perform police duties.

(3) When the refinery resumed operations on October 11, 1954, the temporarily assigned guards taken from other departments were sent back to their proper departments, but four of these security guards performing police duty, namely, Manuel Pablo, Alejandro Italan, Armando Ramos and Vivencio Sanchez, were retained on the police force. The Time Book and Payrolls of respondent marked in evidence as Exhs. KK, KK-1, KK-2, HH, show that these persons were designated as "Security Guards" with a daily wage of P6.00, with the exception of Vivencio Sanchez who received P5.50.

It is proven by the Monthly and Daily Payrolls (Exhs. HH and KK) that almost all of the 78 employees and workers who were laid off on March 31, 1954 who applied for reinstatement after the respondent resumed operations, were reinstated, while the four policemen herein involved were not. It is likewise shown from the same that after the lay-offs on March 31, 1954, the refinery personnel was reduced to 57, but after it resumed operations it increased to 89, until, as of November 15, 1954, the total personnel reached 112 (Exh. 11), indicating an increase in personnel to cope with its needs of normalizing business and operation. If, during the period when the refinery was not producing anything, the services of those laid-off policemen were needed, it is hardly credible that their services could be dispensed with at the time that the refinery is in operation.

Respondent, however, while admitting in its memorandum that around the middle of November, 1954, it had

reinstated some of its former employees who were laid off on April 1, 1954, "due to its precarious financial position/the respondent Corporation was not able to recall all its laid-off employees, among them, afore-named special police guards, who were not recalled for duty" (p. 2, Memorandum, Jan. 17, 1957). The Monthly and Daily Payrolls, however, show that as of October 11-31, 1954, the 78 employees, listed in Exh. JJ, which is admitted by respondent, except those who did not report, who voluntarily resigned or were retired, had returned to their previous positions, showing that upon resumption of operation their reinstatement, as stated in the lay-off order, had been given "due consideration". We do not see any valid reason why the reinstatement of the four policemen was not favorably considered when the circumstances demanded it.

Considering now the reasons advanced by respondent for refusing to reinstate these policemen, the Court finds that respondent itself was not definite or unequivocal as to them. Whereas, according to its Acting Manager in his letter of November 3, 1954, to counsel for said policemen, the positions of these policemen, "have already been abolished", its answer to the amended petition states that "their former positions * * are still vacant and unfilled", and that "as a matter of fact there are about seventy more positions still vacant and unfilled." The abolition of their positions was put forth by the Acting General Manager presumably to justify his non-employment of these policemen, but it was proven later that, as stated in the respondent's answer, the positions are still vacant and unfilled, this Court sees no reason why these policemen should not be taken back to occupy their previous positions.

With reference to the issue of losses, which respondent attempted to prove during the trial, this issue is of no controlling importance in this case since even during the period when the refinery was not operating and the corporation was incurring losses, respondent did not think of cutting down the personnel of the police force, because although there was no operation the company's machinery, equipment, installations and property had to be safeguarded and secured and preserved until it was ready to operate again. The issue of losses likewise cannot be of any substantial value in the face of the fact that after respondent resumed operations it took in its old personnel and increased the working force to its normal level. If the respondent, after resuming operations, took back its old personnel, including those who were laid off during the off season, the question of reinstating the four policemen was merely a question of choice and selection.

From the service records of these four policemen (Exhs. S, T, V, V), it appears that they have worked in the refinery since 1948 receiving promotions for their faithful and satisfactory service which had been continuous until March 31, 1954. Except for the claim they prosecuted in Case No. 283-V, they have had no case affecting their service, and had had no record of any disciplinary action imposed against them.

This Court is not persuaded that the reasons interposed by respondent in refusing to consider the reinstatement of these four policemen, which was urged upon them by the Administrator of Economic Coordination himself, is justified by the circumstances of this case. On the contrary, the Court believes that the refusal of the respondent to take back these employees was an intimate and necessary connection with the case they have prosecuted against the company and with the judgment they had obtained from this Court, which would undoubtedly have placed them in a more advantageous position than the rest of the members of the police force. This conduct of the employer is one form of retaliatory discrimination which has been looked with disfavor by this Court. Both Commonwealth Act 103 and Republic Act No. 875 have provided remedial and penal sanctions against discrimination committed by employers against employees who bring actions against their employers under the Minimum Wage Law or the Eight-Hour Labor Law, or who assert rights under laws designed for their protection.

The Court, however, finds no merit in petitioners' contention that respondent has committed contempt of court in laying off the said policemen and refusing to reinstate them to obstruct the execution of the judgment. Said policemen being no longer in the service when the judgment became final, the judgment cannot be executed, for the privileges and facilities they obtained are only demandable if they are in the service.

These findings are not disputed by the herein petitioner. Nevertheless, it argues that because of financial losses

which prompted the Office of the Economic Coordinator to issue to the petitioner the directive to reduce the plantilla and expenses to an "indispensable minimum" the failure to recall and reinstate the four laid-off security guards to their position is justifiable. It appearing, however, that to guard, keep and preserve the petitioner's machinery, equipment and installation in the refinery premises, all the members of the police force or security guards were recalled during the time the refinery stopped its operation, except the four members whose reinstatement is herein sought, and other employees from other departments were assigned or detailed to perform police work, the excuse for its failure to recall and reinstate the four members of the police force cannot be justified.

The finding that they were discriminated against may be inferred from the fact that they, together with other members of the police force, had filed a complaint and secured judgment against the herein petitioner for work performed during night and Sunday and legal holidays; that the six members of the police force would not agree to the petitioner's proposal; and that for that reason their service was terminated.

By accepting the benefits of their separation the petitioner argues that they are in estoppel. The separation thrust upon them and the acceptance of the benefits thereof cannot constitute estoppel.

The fact that the petitioner was not afforded the opportunity to be heard in oral argument on its motion for reconsideration by the court in banc does not constitute a grave abuse of discretion nor does it amount to an excess thereof. The petitioner already had the benefit of a written motion for reconsideration (Annex E) and arguments in support thereof (Annex F).

The judgment under review is affirmed, with costs against the petitioner.

Paras, C. J., Bengzon, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Gutierrez David, Paredes, and Dizon, JJ., concur.

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