

**ZAMBOANGA CITY ELECTRIC COOPERATIVE, INC. (ZAMCELCO),
PETITIONER, VS. HON. MUSIB M. BUAT, IN HIS CAPACITY AS
PRESIDING COMMISSIONER, HON. OSCAR N. ABELLA AND HON.
LEON G. GONZAG...**

G.R. No. 100514. March 29, 1995

Ponente: QUIASON, J.

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QUIASON, J.:

This is a petition for certiorari under Rule 65 of the Revised Rules of Court to reverse and set aside the Resolution dated March 21, 1991 of the National Labor Relations Commission (NLRC) in Case No. RAB-09-04-00080-89.

We grant the petition.

I

Petitioner is an electric cooperative organized pursuant to Presidential Decree No. 269, as amended by P.D. No. 1645, under the general supervision and control of the National Electrification Administration (NEA).

The management of petitioner is vested on the board of directors whose members are elected by district. The general manager of petitioner is appointed by the board of directors to whom he is responsible.

Private respondent was employed by petitioner in 1974, starting as an ordinary rank-and-file employee and rising from the ranks until he became the general manager on November 14, 1984.

On June 25, 1986, petitioner's board of directors, acting upon a complaint by some members, held a special meeting and passed Board Resolution No. 16-A-86, creating a fact-finding committee to investigate charges of unlawful disbursement or misappropriation of cooperative funds committed by certain officers of the electric cooperative. Among those charged with committing the alleged irregularities was private respondent.

Subsequently, three audit teams conducted inquiries into the financial operation of petitioner. The first audit team found private respondent to have incurred unliquidated cash advances and recommended his dismissal if he failed to liquidate the same. The Committee also recommended that he be suspended for 15 days for alleged non-compliance with the hold-in-abeyance order of the Director for Engineering of NEA.

The second audit team recommended strict implementation by petitioner of financial measures to reduce systems loss and the streamlining of its structural organization. The report of the second audit team was accompanied by a cover letter from the NEA Administrator directing private respondent to submit an explanation within 15 days why he should not be suspended or summarily dismissed for alleged mismanagement of company funds.

The third audit team recommended the dismissal of private respondent as general manager in view of his disregard of NEA guidelines, bulletins or instructions, and for his mismanagement of the operation of the electric cooperative.

On April 13, 1988, the NEA Administrator directed private respondent to explain why he should not be summarily dismissed for the irregularities allegedly committed by him. In the meantime, he suspended private respondent.

On May 10, 1988, private respondent submitted his written explanation, answering in detail the charges contained in the third team report.

On July 15, 1988, petitioner's board of directors passed Resolution No. 21A-88 terminating the services of private respondent on the grounds of mismanagement and loss of trust and confidence.

On July 18, 1988, private respondent tendered his resignation as General Manager. Later, he claimed that he was strongly pressured to do so by the board of directors (Rollo, p. 47).

On April 3, 1989, private respondent filed a complaint against petitioner for illegal dismissal before the NLRC Regional Arbitration Branch, Branch IX, Zamboanga City, docketed as NLRC Case No. RAB-09-04-00080-89. He alleged:

- (1) that petitioner failed to observe the procedural requirements of due process before dismissing him; and
- (2) that he was entitled to unpaid back wages from August 1988 to January 1989, the money value of his accumulated leave credits, retirement pay, moral and exemplary damages and attorney's fees. However, he prayed for payment of separation pay in lieu of reinstatement.

In his Decision dated October 27, 1989, Labor Arbiter Harun B. Ismael upheld private respondent's dismissal from the service (Rollo, pp. 26-59).

Private respondent appealed the decision to the Fifth Division of NLRC in Cagayan de Oro City. In its Resolution promulgated on March 21, 1991, NLRC reversed and set aside the decision of Labor Arbiter Ismael (Rollo, pp. 40-58).

Petitioner filed a Motion for Reconsideration dated April 8, 1991 to set aside the NLRC resolution. In its Resolution promulgated on April 30, 1991, NLRC denied the motion (Rollo, pp. 90-95).

Hence, this petition.

II

Petitioner raised the following issues:

- 1) The NLRC had no jurisdiction to entertain the petition of private respondent since the power and authority to discipline, suspend or dismiss general managers of electric cooperatives organized and operating under P.D. No. 269 as amended by P.D. No. 1645 rest upon the cooperative's board duly reviewed and approved by the NEA Administrator.
- 2) Private respondent's dismissal from service was legal.

III

The dismissal of private respondent arose from a labor dispute, which falls within the original and exclusive jurisdiction of NLRC. Article 217 of the Labor Code of the Philippines provides:

"Jurisdiction of Labor Arbiters and the Commission. — (a) Except as otherwise provided under this Code, the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide, within thirty (30) calendar days after the submission of the case by the parties for decision without extension, even in the absence of

stenographic notes, the following cases involving all workers, whether agricultural or non--agricultural:

1. Unfair labor practice cases;
2. Termination disputes;

xxx xxx xxx."

Even assuming arguendo that NLRC had no jurisdiction over the complaint of private respondent, still petitioner is estopped from raising that issue. We agree with the public respondent's contention that:

"xxx petitioner cannot anymore raise the issue of jurisdiction, under the principle of estoppel. Petitioner participated in the proceedings from start to finish. It filed its position paper with the Labor Arbiter. When the decision of the Labor Arbiter decided in its favor, petitioner said nothing about jurisdiction. It was only when the Resolution of the NLRC was adverse to the petitioner that it raised the issue of jurisdiction. As the NLRC stated, citing *Soco vs. Merco*, 140 SCRA 526, the Supreme Court frowns upon the undesirable practice of a party submitting his case for decision and then accepting the judgment, only if favorable, and attacking it for lack of jurisdiction when adverse" (Memorandum of Public Respondent, p. 16; Rollo, p. 238).

On the second issue, the posture of petitioner is that private respondent was holding a position of trust and confidence.

Loss of trust and confidence is one of the just causes for termination (*Pepsi Cola Bottling Co. v. National Labor Relations Commission*, 210 SCRA 277 [1992]).

Before private respondent was dismissed from the service, petitioner created a committee to investigate the charges against him. The committee was composed of highly respectable members of the community. Private respondent was given an opportunity to answer all the charges against him, which he did. After almost one year of investigation, the committee recommended that private respondent be dismissed from service.

The NEA, on its part, sent three audit teams, which came out with a unanimous finding that private respondent be suspended and eventually be dismissed from service.

Petitioner passed Board Resolution No. 21A-88 terminating the employment of the private respondent on the grounds of mismanagement and loss of trust and confidence. This resolution was approved by NEA on July 17, 1988.

Private respondent's dismissal from the service based on loss of trust and confidence had basis. Therefore, his dismissal was not attended by bad faith.

Private respondent is not entitled to the recovery of moral damages since these are recoverable only where the dismissal of the employee was attended by bad faith or fraud, or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs or public policy (*Spartan Security & Detective Agency, Inc. v. National Labor Relations Commission*, 213 SCRA 528 [1992]).

WHEREFORE, the petition is GRANTED and the decision of the NLRC is REVERSED. The decision of the Labor Arbiter in Case No. RAB-09-04-00080-89 is REINSTATED.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., Bellosillo, and Kapunan, JJ., concur.

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