

DELFIN G. VILLARAMA, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND GOLDEN DONUTS, INC., RESPONDENTS.

G.R. No. 106341. September 02, 1994

Ponente: PUNO, J.

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PUNO, J.:

Sexual harassment abounds in all sick societies. It is reprehensible enough but more so when inflicted by those with moral ascendancy over their victims. We rule that it is a valid cause for separation from service.

First, the facts. On November 16, 1987, petitioner DELFIN VILLARAMA was employed by private respondent GOLDEN DONUTS, INC., as its Materials Manager. His starting salary was P6,500.00 per month, later increased to P8,500.00.

On July 15 1989, petitioner Villarama was charged with sexual harassment by Divina Gonzaga, a clerk-typist assigned in his department. The humiliating experience compelled her to resign from work. Her letter-resignation, dated July 15, 1989, reads:

"MR. LEOPOLDO H. PRIETO

President

Golden Donuts, Inc.

Dear Sir:

I would like to tender my resignation from my post as Clerk Typist of Materials Department effective immediately.

It is really my regret to leave this company which has given me all the opportunity I long desired. My five (5) months stay in the company have been very gratifying professionally and financially and I would not entertain the idea of resigning except for the most shocking experience I have had in my whole life.

Last Friday, July 7, 1989, Mr. Delfin Villarama and Mr. Jess de Jesus invited all the girls of Materials Department for a dinner when in (sic) the last minute the other three (3) girls decided not to join the group anymore. I do (sic) not have second thought(s) in accepting their invitation for they are my colle(a)gues and I had nothing in mind that would in any manner prompt me to refuse to what appeared to me as a simple and cordial invitation. We went to a restaurant along Makati Avenue where we ate our dinner. Mr. Villarama, Mr. Olaybar and Mr. Jess de Jesus were drinking while we were eating and (they) even offered me a few drinks and when we were finished, they decided to bring me home. While on my way, I found out that Mr. Villarama was not driving the way to my house. I was wondering why we were taking the wrong way until I found out that we were entering a motel. I was really shock(ed). I did not expect that a somewhat reputable person like Mr. Villarama could do such a thing to any of his subordinates. I should have left the company without any word but I feel that I would be unfair to those who might be similarly situated. I hope that you would find time

to investigate the veracity of my allegations and make each (sic) responsible for his own deed. (emphasis ours)

Thank you very much and more power.

Very respectfully yours,

DIVINA GONZAGA"

The letter prompted Mr. Leopoldo Prieto, President of Golden Donuts, Inc., to call petitioner to a meeting on August 4, 1989. Petitioner was then required to explain the letter against him. It appears that petitioner agreed to tender his resignation. Private respondent moved swiftly to separate petitioner. Thus, private respondent approved petitioner's application for leave of absence with pay from August 5-28, 1989. It also issued an inter-office memorandum, dated August 4, 1989, advising "all concerned" that petitioner was no longer connected with the company effective August 5, 1989.[1] Two (2) days later, or on August 7, 1989, Mr. Prieto sent a letter to petitioner confirming their agreement that petitioner would be officially separated from the private respondent. The letter reads:

"Dear Mr. Villarama:

This is to officially confirm our discussion last Friday, August 4, 1989, regarding your employment with us. As per our agreement, you will be officially separated from the company effective August 23, 1989.

May I, therefore, request you to please submit or send us your resignation letter on or before the close of business hours of August 22, 1989.

Please see the Personnel & Industrial Relations Office for your clearance.

Very truly yours,

(SGD). LEOPOLDO H. PRIETO, JR.

President"

In the interim, petitioner had a change of mind. In a letter dated August 16, 1989, petitioner sought reconsideration of the management's decision to terminate him, viz:

"DEAR SIR:

MAY I REQUEST FOR A RECONSIDERATION ON THE DECISION HANDED DURING OUR MEETING OF AUGUST 4, 1989, TERMINATING MY SERVICES WITH THE COMPANY EFFECTIVE AUGUST 5, 1989.

THE SIGNIFICANT CONTRIBUTION OF THE MATERIALS DEPARTMENT, WHICH I HAD BEEN HEADING FOR THE PAST 21 MONTHS, TO THE PERFORMANCE OF THE COMPANY FAR OUTWEIGHS THE ERROR THAT I HAD COMMITTED. AN ERROR THAT MUST NOT BE A BASIS FOR SUCH A DRASTIC DECISION.

AS I AM STILL OFFICIALLY ON LEAVE UNTIL THE 29th, OF THIS MONTH, MAY I EXPECT THAT I WILL RESUME MY REGULAR DUTY ON THE 29th?

ANTICIPATING YOUR FAVORABLE REPLY.

VERY TRULY YOURS,

(SGD.) DELFIN G. VILLARAMA"

For his failure to tender his resignation, petitioner was dismissed by private respondent on August 23, 1989.

Feeling aggrieved, petitioner filed an illegal dismissal case[2] against private respondent.

In a decision dated January 23, 1991, Labor Arbiter Salimar V. Nambi held that due process was not observed in the dismissal of petitioner and there was no valid cause for dismissal. Private respondent GOLDEN DONUTS, INC. was ordered to: (1) reinstate petitioner DELFIN G. VILLARAMA to his former position, without loss of seniority rights, and pay his backwages at the rate of P8,500.00 per month from August 1989, until actual reinstatement; (2) pay petitioner the amount of P24,866.66, representing his unused vacation leave and proportionate 13th month pay; (3) pay petitioner P100,000.00, as moral damages, and P20,000.00, as exemplary damages; and (3) pay the attorney's fees equivalent to ten percent of the entire monetary award.

Private respondent appealed to the National Labor Relations Commission. On July 16, 1992, public respondent reversed the decision of the labor arbiter. The dispositive portion of its Resolution reads:

"WHEREFORE, premises considered, the decision appealed from is hereby set aside and a new one entered declaring the cause of dismissal of complainant as valid; however, for the procedural lapses, respondent (Golden Donuts, Inc.) is hereby ordered to indemnify complainant (petitioner) in the form of separation pay equivalent to two month's (sic) pay (for his two years of service, as appears (sic) in the records), or the amount of P17,000.00.

"SO ORDERED."

Hence, this petition where the following arguments are raised:

THE ALLEGED IMMORALITY CHARGED AGAINST PETITIONER IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE ON RECORD.

THE MERE ADMISSION OF THE VIOLATION OF DUE PROCESS ENTITLES PETITIONER TO REINSTATEMENT.

IN ANY EVENT, PETITIONER IS ENTITLED TO HIS SALARIES FROM RECEIPT BY PRIVATE RESPONDENT OF THE DECISION OF THE LABOR ARBITER ON 4 FEBRUARY 1991 TO (sic) AT LEAST THE PROMULGATION OF THE ASSAILED RESOLUTION ON (sic) 16 JULY 1992.

IN ANY EVENT, PETITIONER IS ALSO ENTITLED TO HIS UNUSED VACATION LEAVE AND PROPORTIONATE 13TH MONTH PAY IN THE TOTAL AMOUNT OF P24,866.66, ADJUDGED BY THE LABOR ARBITER.

THE AWARD OF MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES BY THE LABOR ARBITER IS JUSTIFIED.

We affirm with modification the impugned Resolution.

At the outset, we note that the Petition was not accompanied by a certified true copy of the assailed July 16, 1992 NLRC Resolution,[3] in violation of Revised Circular No. 1-88. Neither was there any certification under oath that "petitioner has not commenced any other action or proceeding involving the same issues in the Supreme Court, the Court of Appeals or different Divisions thereof, or any other tribunal or agency, and that to the best of his knowledge, no such action or proceeding is pending in the Supreme Court, the Court of Appeals, or different Divisions thereof or any other tribunal or agency," as required under Circular No. 28-91. It is settled, that non-compliance with the provisions of Revised Circular No. 1-88 and Circular No. 28-91, would result in the outright dismissal of the petition.[4]

In addition, under Rule 65 of the Revised Rules of Court, the special civil action for certiorari is available in cases where the concerned "tribunal, board or officer exercising judicial functions had acted without or in excess of its

jurisdiction, or with grave abuse of discretion and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law." In *Antonio v. National Labor Relations Commission*,^[5] we held that the plain and adequate remedy expressly provided by law is a motion for reconsideration of the assailed decision, and the resolution thereof, which is not only expected to be but would actually have provided adequate and more speedy remedy than a petition for certiorari. The rationale for this requirement is to enable the court or agency concerned to pass upon and correct its mistakes without the intervention of a higher court.^[6] In this case, the assailed July 16, 1992 Resolution of the National Labor Relations Commission was received by petitioner's counsel on July 23, 1992.^[7] Petitioner did not file a motion for reconsideration, instead, he commenced this special civil action for certiorari. Be that as it may, we allowed the petition to enable us to rule on the significant issues raised before us, viz: (1) whether or not petitioner's right to procedural due process was violated, and (2) whether or not he was dismissed for a valid or just cause.

The procedure for terminating an employee is found in Article 277 (b) of the Labor Code, viz:

"x x x

"(b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Article 283 of this Code the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his counsel if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer. xxx" (emphasis supplied)

This procedure protects not only rank-and-file employees but also managerial employees. Both have the right to security of tenure as provided for in Section 3, Article XIII of the 1987 Constitution. In the case at bench, petitioner decided to seek reconsideration of the termination of his service thru his August 16, 1989 letter. While admitting his error, he felt that its gravity did not justify his dismissal. Considering this stance, and in conformity with the aforequoted Article 277 (b) of the Labor Code, petitioner should have been formally charged and given an opportunity to refute the charges. Under the facts in field, we hold that petitioner was denied procedural due process.

We now come to the more important issue of whether there was valid cause to terminate petitioner.

Petitioner claims that his alleged immoral act was unsubstantiated, hence, he could not be dismissed. We hold otherwise. The records show that petitioner was confronted with the charge against him. Initially, he voluntarily agreed to be separated from the company. He took a leave of absence preparatory to his separation. This agreement was confirmed by the letter to him by Mr. Prieto dated August 7, 1989. A few days after, petitioner reneged on the agreement. He refused to be terminated on the ground that the seriousness of his offense would not warrant his separation from service. So he alleged in his letter to Mr. Prieto dated August 16, 1989. But even in this letter, petitioner admitted his "error" vis-a-vis Miss Gonzaga. As a manager, petitioner should know the evidentiary value of his admissions. Needless to stress, he cannot complain there was no valid cause for his separation.

Moreover, loss of trust and confidence is a good ground for dismissing a managerial employee. It can be proved by substantial evidence which is present in the case at bench. As further observed by the Solicitor General:

"x x x assuming arguendo that De Jesus and Gonzaga were sweethearts and that petitioner merely acceded to the request of the former to drop them in the motel, petitioner acted in collusion with the immoral designs of De Jesus and did not give due regard to Gonzaga's feeling on the matter and acted in chauvinistic disdain of her honor, thereby justifying public respondent's finding of sexual harassment. Thus, petitioner not only failed to act accordingly as a good father of the family because he was not able to maintain his moral ascendancy and authority over the group in the matter of morality and discipline of his subordinates, but he actively facilitated the commission of immoral conduct of his subordinates by driving his car into the motel."

(Comment, April 29, 1993, p. 9)

As a managerial employee, petitioner is bound by a more exacting work ethics. He failed to live up to this higher standard of responsibility when he succumbed to his moral perversity. And when such moral perversity is perpetrated against his subordinate, he provides a justifiable ground for his dismissal for lack of trust and confidence. It is the right, nay, the duty of every employer to protect its employees from over sexed superiors.

To be sure, employers are given wider latitude of discretion in terminating the employment of managerial employees on the ground of lack of trust and confidence.[8]

We next rule on the monetary awards due to petitioner. The public respondent erred in awarding separation pay of P17,000.00 as indemnity for his dismissal without due process of law. The award of separation pay is proper in the cases enumerated under Articles 283 and 284 of the Labor Code,[9] and in cases where there is illegal dismissal (for lack of valid cause) and reinstatement is no longer feasible. But this is not to state that an employer cannot be penalized for failure to give formal notice and conduct the necessary investigation before dismissing an employee.[10] Thus, in *Wenphil vs. NLRC*[11] and *Pacific Mills, Inc. vs. Alonzo*,[12] this Court awarded P1,000.00 as penalty for non-observance of due process.

Petitioner is not also entitled to moral and exemplary damages. There was no bad faith or malice on the part of private respondent in terminating the services of petitioner.[13]

Petitioner is entitled, however, to his unused vacation/sick leave and proportionate 13th month pay, as held by the labor arbiter. These are monies already earned by petitioner and should be unaffected by his separation from the service.

WHEREFORE, premises considered, the assailed resolution of public respondent is hereby **AFFIRMED WITH MODIFICATION** that the award of separation pay is **DELETED**. Private respondent is ordered to pay petitioner the amount of P1,000.00 for non-observance of due process, and the equivalent amount of his unused vacation/sick leave and proportionate 13th month pay. No pronouncement as to costs.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Regalado, and Mendoza, JJ., concur.

[1] The effectivity of petitioner's separation was August 23, 1989, but he was no longer considered connected with private respondent effective August 5, 1989, as per the office memorandum.

[2] Docketed as NLRC Case No. 00-01-04771-89.

[3] Petitioner, however, submitted a certified xerox copy of the "Notice of Decision or Resolution Entered," (re: Resolution dated July 16, 1992).

[4] *Gallardo v. Rimando*, G.R. No. 91718; Adm. Mat. No. RTJ?90-577, *Gallardo v. Quintos*, 18 April 1991, En

Banc, Minute Resolution; Imperial Textile Mills Inc., v. National Labor Relations Commission, et al., First Division, January 13, 1993, Minute Resolution.

[5] G.R. No. 101755, Minute Resolution, January 27, 1992.

[6] Zurbano vs. National Labor Relations Commission, et al, G.R. No. 103679, December 17, 1993.

[7] Rollo, p. 2.

[8] Dolores vs. NLRC, G.R. No. 87673, January 24, 1992; SMC vs. NLRC, G.R. No. 88088, January 24, 1992, 205 SCRA 348.

[9] In Del Monte Philippines, Inc. vs. NLRC, G.R. No. 87371, August 6, 1990, 188 SCRA 370, 375, we reiterated the rule that "separation pay shall be allowed as a social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character."

[10] Aurelio vs. NLRC, G.R. No. 99034, April 12, 1993, 221 SCRA 443.

[11] G.R. No. 80587, February 8, 1989, 170 SCRA 69.

[12] G.R. No. 78090, July 26, 1991, 199 SCRA 617.

[13] Suarion vs. BPI and NLRC, G.R. No. 50459, August 25, 1989 176 SCRA 689; Dolores vs. NLRC, G.R. No. 87673, January 24, 1992; SMC vs. NLRC, G.R. No. 88088, January 24, 1992, 205 SCRA 348.

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