

AMOR CONTI AND LEOPOLDO CRUZ, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (THIRD DIVISION), CORFARM HOLDINGS CORPORATION, CARLITO J. RABANG AND CIPRIANO Q. BARAYANG, RE...*G.R. No. 119253. April 10, 1997*

Ponente: PADILLA, J.

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In this petition for certiorari under Rule 65 of the Rules of Court, petitioners Amor Conti and Leopoldo Cruz seek to annul 1) the decision, dated 24 November 1994, of the National Labor Relations Commission (NLRC) in NLRC-NCR-CA-007367-94 (NCR 00-02-00834-93) entitled "Amor Conti and Leopoldo Cruz v. Corfarm Holdings Corporation, et. al.", setting aside the labor arbiter's decision, dated 20 June 1994, declaring that herein petitioners were illegally dismissed from employment, and; 2) the resolution, dated 26 January 1995, denying petitioners' motion for reconsideration of said NLRC decision.

Private respondent Corfarm Holdings Corporation (Corfarm, for brevity) is a duly organized domestic corporation that operates and manages the Manila Electric Company (MERALCO) Commissary for the benefit of MERALCO employees. Private respondents Carlito J. Rabang and Cipriano Q. Barayang are the President and Vice President, respectively, of said corporation.

Petitioner Amor Conti was employed by respondent Corfarm as cashier on 2 February 1991. Petitioner Leopoldo Cruz was employed by the same respondent corporation as a warehouseman on 16 May 1991. Both Amor Conti and Leopoldo Cruz were subsequently promoted to the positions of Head of Commissary and Store Supervisor, respectively. In their respective employment contracts with Corfarm, it was stipulated that their employment shall be coterminous with the effectivity of the contract executed by and between Corfarm and MERALCO for the management of the latter's commissary (hereinafter referred to as the "management contract").

On 31 December 1992, said management contract between Corfarm and MERALCO expired. However, Corfarm continued to operate the MERALCO commissary despite the non-renewal of said contract.

On 13 January 1993, petitioners received a memorandum, dated 12 January 1993, from private respondents terminating their services effective on said date, allegedly for two reasons: 1) the expiration of their employment contracts, these being coterminous with the management contract between Corfarm and MERALCO, and; 2) the on-going evaluation of their past performances, and investigation of the internal auditor of Corfarm of certain anomalous transactions involving them (petitioners).

On 2 February 1993, petitioners filed with the arbitration branch of the NLRC a complaint for illegal dismissal against private respondents. On 20 June 1994, Labor Arbiter Facundo L. Leda rendered a decision, the dispositive part of which reads:

"Wherefore, decision is hereby rendered declaring the complainants to have been illegally dismissed and the

respondents ordered to reinstate them immediately to their former or substantially equivalent positions and to pay them jointly and severally, the total amount of One Hundred Thirty-three Thousand Four Hundred Sixty Pesos and 70/100 (P133,460.70) representing backwages and attorney's fees.

So ordered."^[1]

Private respondents appealed the aforementioned decision of the labor arbiter. On 24 November 1994, the NLRC promulgated a decision setting aside the labor arbiter's order and dismissing herein petitioners' complaint for lack of merit. Petitioners filed a motion for reconsideration of the NLRC decision, which motion was denied in a resolution dated 26 January 1995.

Hence, this petition where petitioners allege that public respondent NLRC gravely abused its discretion in 1) reversing the labor arbiter's decision finding the petitioners' dismissal to have been illegal for lack of due notice and hearing as required by law, and; 2) "in ignoring the documents and testimony contained in the record which support the labor arbiter's decision finding the petitioners without fault on the alleged acts attributed to them."

We find merit in this petition.

At the outset, it will be noted that the Office of the Solicitor General (OSG), in its "Manifestation and Motion in lieu of Comment", dated 19 June 1995, agreed with the findings of the labor arbiter that the petitioners were illegally dismissed, and prayed of this Court that the questioned NLRC decision dated 24 November 1994 and resolution dated 26 January 1995, be set aside.

Petitioners contend that they were denied due process when they were dismissed without a written notice (specifying the particular charges constituting the grounds for their dismissal), and a hearing, as required by law. They further contend that the memorandum dated 11 January 1993, supposedly issued by Corfarm to petitioners directing them "to explain why they should not be dismissed for alleged acts of negligence and carelessness" was never received by them. Besides, said memorandum did not specify the particular acts or omissions of petitioners. It merely stated that based on the results of the investigation conducted by Corfarm's internal audit staff, petitioners were found to have been negligent in the performance of their duties.

Petitioners' contentions are meritorious.

This Court has consistently held that the twin requirements of notice and hearing constitute essential elements of due process in the dismissal of employees.^[2] As to the requirement of notice, it has been held that the employer must furnish the worker with two written notices before termination of employment can be legally effected: (a) notice which apprises the employee of the particular acts or omissions for which his dismissal is sought, and; (b) subsequent notice which informs the employee of the employer's decision to dismiss him.^[3]

With regard to the requirement of a hearing, this Court has held that the essence of due process is simply an opportunity to be heard,^[4] and not that an actual hearing should always and indispensably be held.^[5]

In the case at bar, neither notice nor hearing was afforded the petitioners. The records show that respondent Cipriano Barayang (Corfarm Vice-President), in his testimony, admitted that petitioners were not given written notice of the specific charges against them, but were only orally informed thereof.^[6]

Furthermore, the records show that the audit report which contained the alleged acts or omissions of petitioners were submitted to respondent Carlito Rabang (Corfarm President) only on 13 January 1993, notably the very same date when petitioners were dismissed.^[7] Thus, the testimony of one Salvador Ayes (Internal Auditor of Corfarm) reads as follows:

"x x x x x

Atty. Espinas: Did you know whether the President confronted these two persons?

Witness: I know that the two persons were confronted.

Atty. Espinas: When?

Witness: On January 11.

Atty. Espinas: With this audit report dated January 13?

Witness: No, not with the audit report.

Atty. Espinas: I was asking with this audit report dated January 13, where [sic] they confronted with that audit report.

Witness: No, they were not confronted."^[8]

Since petitioners were not furnished with a copy of said audit report prior to their dismissal, they were thus not given an opportunity to refute the findings stated therein.^[9]

It is logical that, as petitioners contend, their dismissal was without cause, since the private respondents failed to substantiate their allegations of negligence and carelessness (in the procurement of certain supplies) on the part of petitioners. Indeed, the records show that private respondents failed to controvert petitioners' testimony that they were never apprised of any policy on procurement; nor their testimony that the questioned orders were first checked by the auditor, the accountant, and respondent Vice President Barayang himself; nor petitioners' allegation that no payment could be made without the signatures of the above-mentioned officers.

Thus, the labor arbiter correctly ruled that:

"In fine, the evidence adduced tend to show that the complainants have not committed any irregularity to warrant their dismissal x x x ".^[10]

In order that the willful disobedience (herein interpreted to include negligence in carrying out company policies) by the employee may constitute a just cause for terminating his employment, the orders, regulations, or instructions of the employer or his representative must be: 1) reasonable and lawful; 2) sufficiently known to the employee; and 3) in connection with the duties which the employee has been engaged to discharge.^[11] (underscoring supplied).

And then, assuming arguendo that petitioners had indeed violated a company policy, still, this cannot justify so harsh a penalty as dismissal. It has been held that the dismissal of an employee due to an alleged violation of a company policy, where it was found that the violation was acquiesced in by said employee's immediate superiors and the policy violated had not always been adhered to by the management, is an act not amounting to a breach of trust; therefore, it is not a justification for said employee's dismissal.^[12] (underscoring supplied).

In the case at bar, petitioner Amor Conti, during her direct examination, testified that since the time of her employment with Corfarm, no written policies governed their purchasing activity, nor was she required to prepare a canvass sheet for every purchase. Furthermore, as earlier noted, the fact that said questioned purchase orders had been approved and signed by petitioners' immediate superiors, including respondent Barayang himself, remains uncontroverted. Therefore, respondents' allegations of negligence and violation of company policy, made without substantial proof, cannot justify the dismissal of petitioners.

On the other hand, respondents contend that the termination of petitioners' services was likewise due to the expiration of their respective employment contracts, these being coterminous with the management contract

between Corfarm and MERALCO which supposedly expired on 31 December 1992. This contention is untenable, as the evidence clearly shows otherwise. During his direct examination, respondent Barayang testified that even without the formal renewal of the contract between Corfarm and MERALCO, Corfarm continued to operate the latter's commissary. Thus,

" x x x

Atty. Espinas: In the memorandum of January 12, 1993 address(ed) to the complainant Conti, you stated that the contract between MERALCO and CHC was expired [sic] on December 31, 1992?

Witness: That's right.

Atty. Espinas: Has this contract renewed after December 12, 1992? (sic)

Witness: It has not been renewed.

Atty. Espinas: But are you still operating the commissary?

Witness: We are still operating the commissary."[13]

Therefore, the labor arbiter correctly ruled that:

"Evidence adduced from the records and during the formal hearings show that the contract between respondent Corfarm and MERALCO for the management of the MERALCO Commissary has been extended, albeit without formal renewal. Thus, the allegation of respondents that the employment of both complainants, being co-terminous with said management contract, had already expired is completely false. The termination memo addressed to both complainants dated Jan. 12, 1993 stated in part, to wit:

'considering that said contract expired on Dec. 31, 1992 and has not been officially renewed, your employment with CHC is considered terminated effective the same date.'

It is very obvious that the respondents are resorting to a trial and error method in determining what would justify an otherwise illegal dismissal of herein complainants - because while the above-quoted portion of the termination memo indicated that the complainants were deemed terminated as of December 31, 1992, the truth of the matter is that the complainants were still employed as of January 12, 1993 and that the effectivity of the termination of their employment as indicated in the handwritten notes in both memo to complainants was Jan. 13, 1993."[14]

The settled rule is that factual findings of labor officials are conclusive and binding on the Supreme Court when supported by substantial evidence.[15] Here, the labor arbiter relied not only on documentary evidence, but on the testimonies of witnesses taken during the formal hearings; and since he had the advantage of personally observing the deportment of witnesses while they were testifying,[16] his findings thereon should not only be accorded great respect, but also given the stamp of finality absent any arbitrariness in the process of their deduction from the evidence adduced.[17]

Considering therefore, the validity of the labor arbiter's finding that the management contract between MERALCO and Corfarm has been extended, i.e., it continues to have force and effect, it necessarily follows that petitioners' respective employment contracts with Corfarm likewise remain in force.

There is thus merit in petitioners' contention that they have become regular employees of respondent Corfarm. Accordingly, they are entitled to security of tenure guaranteed by the Constitution and the Labor Code. Article 280 of the Labor Code, in part, provides:

"The provisions of written agreement to the contrary notwithstanding, and regardless of the oral agreement of

the parties, an employment shall be deemed regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, x x x. Provided, That, any employee who has rendered at least one year of service whether such service is continuous or broken, shall be considered as a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists." (underscoring supplied).

In the case at bar, petitioners had been employed with private respondent Corfarm since 1991. They had been discharging their functions as head of commissary and store supervisor, respectively, for more than one (1) year. Under the law therefore, they are deemed regular employees and thus entitled to security of tenure, as provided in Article 279 of the Labor Code:

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. An 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.

This Court has held that if the employee has been performing the job for at least one (1) year, even if the performance is not continuous but intermittent, the law deems the repeated and continuing need for its performance as sufficient evidence of the necessity if not indispensability of that activity to the business of his employer. Hence, the employment is also considered regular, but only with respect to such activity, and while such activity exists.[18] The law does not provide the qualification that the employee must first be issued a regular appointment or must first be formally declared as such before he can acquire a regular employee status. Obviously, where the law does not distinguish, no distinction should be drawn.[19]

Under the above circumstances, the private respondents may not terminate the services of petitioners except for just cause or when authorized under the Labor Code. This Court has held that it is not difficult to see that to uphold, in all cases, the contractual arrangement between the employer and the employee would in effect be to permit employers to avoid the necessity of hiring regular or permanent employees indefinitely, by hiring them on a temporary or casual status, thus denying them security of tenure in their jobs.[20]

WHEREFORE, based on the foregoing, the decision of public respondent National Labor Relations Commission in NLRC-NCR-CA No. 007367-94 (NCR 00-02-00834-93) dated 24 November 1994 is hereby SET ASIDE and the decision of Labor Arbiter Facundo L. Leda, dated 20 June 1994, finding petitioners to have been illegally dismissed, is REINSTATED with the modification that full backwages, to be computed from the date of dismissal up to the time of their actual reinstatement, without any deductions, be awarded to petitioners.[21]
SO ORDERED.

Bellosillo, Vitug, and Kapunan, JJ., concur.
Hermosisima, Jr., J., on leave.

[1] Rollo, p. 33.

[2]Corral v. NLRC, G.R. No. 96795, 11 May 1993, 221 SCRA 693; Marcelo v. NLRC, G.R. No. 113458, 31 January 1995, 240 SCRA 782.

[3]Jones v. NLRC, G.R. No. 107729, 6 December 1995, 250 SCRA 668.

[4] Roces v. Apatadera, Administrative Case No. 2936, 31 March 1995, 243 SCRA 108.

[5]Pamantasan ng Lungsod ng Maynila v. CSC, G.R. No. 107590, 21 February 1995, 241 SCRA 506.

- [6]Rollo, p. 18.
- [7] Rollo, p. 72.
- [8]Rollo, p. 19.
- [9] Rollo, p. 73.
- [10] Rollo, pp. 31-32.
- [11] Department of Labor Manual, Sec. 4343.01 (2).
- [12] Tide Water Associated Phil. Company v. Victory Employees and Laborers' Association, et. al., SC G.R. No. L-2936, 23 December 1949, 85 Phil. 166.
- [13] Rollo, p. 69.
- [14] Rollo, pp. 30-31.
- [15] Philippine National Construction Corporation v. National Labor Relations Commission, G.R. No. 112629, 7 July 1995, 245 SCRA 668.
- [16]Falguera v. Linsangan, G.R. No. 114848, 14 December 1995, 251 SCRA 364.
- [17] Morales v. National Labor Relations Commission, G.R. No. 100133, 6 February 1995, 241 SCRA 103.
- [18] De Leon v. National Labor Relations Commission, G.R. No. 70705, 21 August 1989, 176 SCRA 615.
- [19] Kimberly Independent Union for Solidarity v. National Labor Relations Commission, G.R. No. 78791, 9 May 1990, 185 SCRA 190.
- [20] Philippine Geothermal, Inc. v. National Labor Relations Commission, et. al., G.R. No. 82643-47, 30 August 1990, 189 SCRA 211.
- [21]Bustamante, et. al. v. NLRC, G.R. No. 111651, 28 November 1996.

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