PEPSI-COLA PRODUCTS PHILIPPINES INCORPORATED, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND MARCIAL R. DE LIRA, RESPONDENTS.

G.R. No. 121324. September 30, 1999

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This special civil action for certiorari seeks to annul the decision of public respondent promulgated on January 19, 1995 in NLRC Case No. V-0217-93 and its resolution dated July 18, 1995 which denied petitioner's motion for reconsideration.

Petitioner is a domestic corporation engaged in the business of manufacturing, bottling and distribution of softdrink products. Private respondent was employed by petitioner as route manager at its sales office/warehouse in Borongan, Eastern Samar.

On April 26 and 27, 1991, an audit at the Borongan warehouse was conducted by petitioner's plant finance manager, Gaudencio Omaña, and the district manager, Wilfredo Portula. Their audit report cited irregularities committed by private respondent in the giving of complimentary products and retrieval of empty bottles, as follows:

> "1. In our confirmation of deals given, the owner of Bonita Store at Maydulong, Eastern Samar informed us that they received only 16 cases of the 59 cases deals reported under CI # 358377 dated August 30, 1990. According to Mrs. Delia Baldono and the wife of Mr. Daniel Baldono, owner, they were told that the reported 59 cases involved in their store were to be shared by two other customers.
>
> 2. Messrs. M. de Lira (RM) and J. Alcido (Salesman) pulled out 176 cases of loaned empties from customer Marcela Cabanatan (Oras, Eastern Samar) on July 12, 1990 without issuing acknowledgment document. This was confirmed by both Mr. and Mrs. Cabanatan during our visit on April 27, 1991. Mr. J. Alcido reported this matter only recently while following up for his clearance. This is an indication that both RM M. de Lira and J. Alcido had connived in an undertaking inimical to the interest of the company.
>
> 3. M. de Lira had negotiated for the extension of one-shot product deal to a certain Elisa R. Añosa, reported owner of Añosa Store. The deal amounting to P1,200 (20 cases P-8) under Complimentary Slip (CS) # 022 dated March 9, 1990 was confirmed as received by Mrs. E. Añosa. Our verification, however, disclosed that this outlet has no store at all."[1]

Subsequently, private respondent was asked to explain why no disciplinary action should be taken against him. He was placed on preventive suspension without pay for 11 days from May 7 to 18, 1991.

In his written explanation, private respondent clarified that:

> "Finding No. 1 It is true that 16 cases of the 59 cases deal were given to Mr. Daniel Baldono (Bovitan's Store) at his store in Maydolong, Eastern Samar. The remaining 43 cases were converted to cash amounting to P3,000

> plus and handed by the undersigned to Mrs. Naring Picardal, Administrative Officer of the Borongan Emergency Hospital, the biggest hospital in Eastern Samar. As her incentive of helping us to penetrate hospital cooperative canteen with 200 cases potential monthly volume.
>
> x x x x x
> Finding No. 2. It is also admitted that we pulled out 176 cases of loaned empties from Marcela Cabanatan. This we did since Mrs. Cabanatan had been delinquent in her account which amounted then to P17,000.00, more or less, for not less than 3 months. Hence, no delivery to her could as yet be made, thereby resulting in these loaned empties becoming merely idle.
>
> x x x x x
> Finding No. 3. I admit I negotiated for extension of a one shot deal with Mrs. Elisa Añosa involving worth of stocks P1,200.00. Mrs. Añosa is an employee in the Borongan Treasurer office assigned as Market Collector. Through her, the mentioned office become Pepsi exclusive with 2 cases daily consumption, although they are buying Pepsi products in Batinga's Store which is also Pepsi exclusive x x x."[2]

During the administrative investigation, private respondent allegedly uttered veiled threats and used foul language against his superiors. He was correspondingly charged for this behavior.

Subsequently, pending resolution of the charges, private respondent's preventive suspension without pay was extended for an additional eighteen (18) days from May 18 to June 5, 1991 and for the third time for an additional twenty-five (25) days from June 6 to June 30, 1991 but this time with pay.

Eventually, on July 1, 1991, a notice of termination was sent to private respondent finding him guilty of the three irregularities and an additional offense of uttering threats committed during the investigation, as follows:

> "RE: NOTICE OF TERMINATION
>
> A perusal of the evidence presented during the administrative investigation on May 7, 1991 clearly shows that you have committed several infractions of the Company's rules and regulations particularly described as follows:
>
> 1.
>
> Under Charge Invoice No. 358377 dated August 30, 1990, you made it appear that deals in the quantity of Fifty nine (59) cases were given to Bonita Store. However, upon confirmation, Ms. Delia Baldono, proprietor of the said sari-sari store, confirmed that only 16 cases of deals were actually given to them.
>
> x x x
>
> 2.
>
> On July 12, 1990, you retrieved 176 cases of loaned empties from customer Ms. Marcela Cabanatan without issuing any acknowledgment receipt. You allegedly lent the same to Gloria Omega and Laling Ong but the records of both customers do not reflect the claimed loan on empties. Further, you alleged that the said 176 cases of empties had been returned to Ms. Cabanatan, a claim Ms. Cabanatan has denied.
>
> 3.
>
> You extended a one-shot deal amounting to P1,200.00 as per Complimentary slip No. 022 dated March 9, 1990 to Mrs. Elisa Añosa. Upon verification it was revealed that contrary to the Deal Proposal you negotiated, no Añosa Store existed and that it was only in September, 1990 that Añosa started buying PCPPI products as per our records which were marginal purchases.

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4.

During the Administrative Investigation Hearing scheduled last May 7, 1991 the proceedings as recorded on tape revealed that you used foul language when you uttered 'Di puta ka!' and even came up with veiled threats against a Company Officer by uttering 'puede kitang ipapatay' and 'Magpamisa ka na lang Boy'.

The undisputed foregoing acts are violations of the following company rules and regulations:

G-8

-

Falsification of Company documents.

H-4

-

Stealing and other forms of dishonesty

H-20

-

Commission of a crime as defined in the Revised Penal Code and other laws within company premises.

In view of the above, we have no other recourse but to terminate your services for cause effective July 1, 1991 without prejudice to the filing of the appropriate criminal action should you fail to return to the company the amount you have allegedly appropriated for your personal gain."[3]

Aggrieved, private respondent filed on July 16, 1991, a complaint for illegal dismissal before the NLRC Regional Arbitration Branch VIII in Tacloban City.

In a decision dated March 31, 1993, the labor arbiter ruled that there was no valid and just cause for private respondent's dismissal.[4] The labor official noted that the ground for dismissal was not sufficiently proven. In ruling in favor of private respondent, the labor arbiter decreed as follows:

"WHEREFORE, judgment is hereby rendered ORDERING respondent PEPSI-COLA PRODUCTS PHILIPPINES, INC., with its plant Office at Barangay Sto. Niño, Tanauan, Leyte, and its main office at Makati, Metro Manila, to immediately reinstate complainant, MARCIAL DE LIRA, to his former position as Route Manager at Borongan, Eastern Samar, without loss of seniority rights and to pay his backwages and other benefits from the date of his dismissal on July 1, 1991 until March 31, 1993.

Respondent is hereby likewise ORDERED to pay complainant his backwages for twenty-four (24) days covering the period he was preventively suspended without pay in excess of thirty (30) days.

Finally, attorney's fees equivalent to ten (10%) percent of the total award are hereby assessed against respondent.

In sum, respondent, PEPSI-COLA PRODUCTS PHILIPPINES, INC., is hereby ORDERED to pay complainant MARCIAL DE LIRA the following:

1. Backwages from July 1, 1991 to March 31, 1993 - - - - - -P 170,100.00

2. Backwages for 24 days suspension - - - - - - - - - - - - - - 6,480.00

3. Attorney's fees - - - - - - - - - - - - - - ---------- 17,658.00

TOTAL P194,238.00

SO ORDERED."[5]

Dissatisfied with the abovequoted decision, petitioner appealed to the National Labor Relations Commission which, however, affirmed the labor arbiter's decision. Its motion for reconsideration having been denied, petitioner filed this instant petition anchored on the following grounds:

I.
"PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION IN SUBSTITUTING ITS JUDGMENT FOR THAT OF THE EMPLOYER AS TO WHAT ACT OR ACTS ARE INIMICAL TO THE BUSINESS AND INTERESTS OF THE EMPLOYER.

II
PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION IN JUSTIFYING THE ADMITTED VIOLATIONS OF COMPANY RULES AND REGULATIONS COMMITTED BY PRIVATE RESPONDENT.

III
PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION IN IGNORING THE RULINGS OF THIS HONORABLE COURT ON THE RIGHT AND PREROGATIVE OF THE EMPLOYER TO DISMISS ERRING EMPLOYEES FOR VIOLATION OF WORKING RULES AND REGULATIONS.

IV
PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION IN ORDERING REINSTATEMENT AND PAYMENT OF BACKWAGES DESPITE ITS FINDING THAT PRIVATE RESPONDENT (A MANAGERIAL EMPLOYEE) DELIBERATELY VIOLATED PETITIONER'S WORKING POLICIES AND REGULATIONS.

V
PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION IN JUSTIFYING THE THREATENING AND OBSCENE LANGUAGE DIRECTED BY PRIVATE RESPONDENT TO HIS EMPLOYERS."[6]

The fundamental issue to be resolved now is whether or not public respondent committed grave abuse of discretion amounting to lack of jurisdiction in affirming the labor arbiter's decision which found private respondent's dismissal illegal.

In essence, petitioner contends that private respondent committed fraudulent and deplorable acts which constitute serious misconduct and willful breach of trust reposed in him by petitioner.[7] Petitioner anchors the validity of private respondent's dismissal on the following charges: (1) falsification of company documents; (2) stealing and other forms of dishonesty, and; (3) commission of a crime within company premises. Said charges, if amply proven, constitute just causes for termination of employment under Article 282 (a), (c), and (d) of the Labor Code.[8]

It must be noted that a charge of dishonesty involves serious misconduct on the part of the employee, a breach of trust reposed by the employer upon him. But the right of an employer to dismiss employee on the ground that it has lost its trust and confidence in him must not be exercised arbitrarily and without just cause. For loss of trust and confidence to be valid ground for an employee's dismissal, it must be substantial and not arbitrary, and must be founded on clearly established facts sufficient to warrant the employee's separation from work.[9] Otherwise put, loss of confidence must arise from particular proven facts.[10]

In the present case, petitioner alleges that private respondent falsified company documents when the latter

reported that fifty nine (59) cases of softdrinks were given to Bonita Store when in fact only sixteen (16) cases were delivered. The labor arbiter found that private respondent did not falsify the document because it was private respondent's salesman, Jovencio Alcido, who signed the invoice. Apparently, private respondent's fault was merely to sanction the trade development plan initiated by his salesman. While it would appear that there was a misrepresentation in the issuance of the sales invoice, the perpetrator was not private respondent but his salesman.

Likewise, petitioner claims that private respondent retrieved one hundred seventy six (176) cases of empty bottles from Marcela Cabanatan and then lent these to other clients without issuing an official receipt. Again, the labor arbiter observed that the lending of empty bottles was proposed and done by private respondent's salesman. The recourse was resorted to because the empty bottles had become idle as no new delivery of softdrinks could be made yet to Cabanatan in view of her unpaid account. Anyway, the empty bottles were eventually returned to Cabanatan and petitioner did not suffer any loss or damage. Private respondent's fault was in approving his salesman's proposal which is not in accord with petitioner's policy. Yet, in labor arbiter's view, private respondent's act hardly qualify as stealing or dishonesty.

Next, petitioner insists that private respondent made it appear that complimentary products were given to Elisa Anosa store when no such store existed. Private respondent explained that he might have inadvertently written "store" instead of "canteen". The labor arbiter concluded that there was nothing unlawful about the deal as Anosa affirmed having received the mentioned products.

Lastly, petitioner accuses private respondent of threatening a superior and uttering foul language during the administrative inquiry. The labor arbiter opined that these should be viewed with reasonable leniency as these were done in an emotionally charged atmosphere considering that private respondent felt that his lifetime career is at stake. Besides, private respondent's family at that time has also suffered financially. Furthermore, the labor arbiter viewed the alleged threat not serious as the person to whom it was directed did not even take any action against private respondent.

Now, it must be stressed that the issue whether or not there is just and valid dismissal of an employee is a question of fact, the determination of which is the statutory function of the labor arbiters and the NLRC. And it is almost trite to state that factual findings of labor arbiter, when affirmed by NLRC, are accorded not only respect but even finality, when these findings are supported by substantial evidence, and devoid of any unfairness or arbitrariness.[11]

Besides, resort to judicial review of the decisions of National Labor Relations Commission by way of a special civil action for certiorari under Rule 65 is confined only to issues of want or excess of jurisdiction and grave abuse of discretion on the part of the labor tribunal. It does not include an inquiry as to the correctness of the evaluation of evidence which was the basis of the labor agency in reaching its conclusion. Neither is it for this Court to re-examine conflicting evidence, re-evaluate the credibility of witnesses nor substitute the findings of fact of an administrative body which has gained expertise in its specialized field. Arguably, there may even be some error in judgment. This, however, is not within the ambit of the extraordinary remedy of certiorari.[12]

In the case at bar, the labor arbiter ruled that there is no clear and convincing proof to support the existence of a just and valid cause to dismiss private respondent from employment. The aforementioned conclusion was reached after an exhaustive assessment and evaluation of evidence adduced by the contending parties. The NLRC, in turn, found that ruling of the labor arbiter to be amply supported by evidence and pertinent jurisprudence.[13] Thus, we have to concede that the labor tribunal has good and justifiable reason in sustaining the judgment of the labor arbiter. In sum, public respondent cannot be faulted for grave abuse of discretion in affirming the judgment of the labor arbiter. Accordingly, we uphold the finding of the labor arbiter and the NLRC that private respondent's

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dismissal was not for a just cause.

Under the law, 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.[14] It must be emphasized, though, that recent judicial pronouncements[15] distinguish between employees illegally dismissed prior to the effectivity of Republic Act No. 6715 on March 21, 1989, and those whose illegal dismissals were effected after such date. Thus, employees illegally dismissed prior to March 21, 1989, are entitled to backwages up to three (3) years without deduction or qualification, while those illegally dismissed after are granted full backwages inclusive of allowances and other benefits or their monetary equivalent from the time their actual compensation was withheld from them up to the time of their actual reinstatement. Considering that private respondent was terminated from the service on July 1, 1991, he is entitled to full backwages on the basis of his last monthly salary or pay.

WHEREFORE, the petition is DENIED for lack of merit. The assailed decision of the NLRC is hereby AFFIRMED with MODIFICATION. Petitioner is directed to reinstate the private respondent to his position held at the time of the complained dismissal. Petitioner is likewise is ordered to pay private respondent his full backwages, to be computed from the date of dismissal until his actual reinstatement. The award of backwages during private respondent's suspension stands, while the award of attorney's fees is reduced to 5% of the total award. Costs against petitioner.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, and Buena, JJ., concur.

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[1] Rollo, p. 5.

[2] Id. at 6.

[3] Id. at 41-42.

[4] Id. at 58.

[5] Id. at 59.

[6] Id. at 12-13.

[7] Id. at 14-19.

[8] Art. 282. Termination by employer.—An employer may terminate an employment for any of the following reasons:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

(e) Other causes analogous to the foregoing.

[9] Labor vs. NLRC, 248 SCRA 183, 199-200 (1995).

[10] Del Val vs. NLRC, G.R. 121806, September 25, 1998, p. 5.

[11] Pono vs. NLRC, 275 SCRA 611, 616-617 (1997).

[12] Comsavings Bank vs. NLRC, 257 SCRA 307, 317-318 (1996).

[13] Rollo, p. 28.

[14] Article 279, Labor Code.

[15] Bustamante vs. NLRC, 265 SCRA 61 (1996); Highway Copra Traders vs. NLRC, 293 SCRA 350 (1998).

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