KAMS INTERNATIONAL INC., ESVEE APPAREL MFG. INC., AND/OR THANWARDASH JESWANI AND KAMLESH JESWANI, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION, FIRST DIVISION, AND MERCE...

G.R. No. 128806. September 28, 1999

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

Once again we are tasked to settle a basic dispute involving the legality of the dismissal of an employee.

Petitioner Kams International, Inc. (KAMS), and petitioner Esvee Apparel Manufacturing, Inc. (ESVEE), are sister companies engaged in garments manufacturing located at 201-E De La Paz Street, Mandaluyong City. Both are managed by petitioner Thanwardash Jeswani and his son, his co-petitioner Kamlesh Jeswani.

On 21 July 1991 petitioner ESVEE hired private respondent Mercedita T. Torrejos as a utility worker in the factory. Torrejos performed her assigned task dutifully, and the Jeswanis were very much pleased with her work.[1]

Sometime in December 1993 management discovered a shortage in the inventory of KAMS. Consequently, stricter security measures were implemented and each employee was thoroughly inspected before leaving company premises.

Private respondent's personal travails started in August of 1994 when she bought six (6) yards of fabric from petitioners. In order to bring the purchased fabric out of the factory she had to secure a gate pass and present it to the security guard on duty at the gate. When security guard Nena Blancaflor inspected the fabric and measured it using her arms, she estimated the length to be eight (8) yards instead of six (6) yards as indicated in the gate pass.[2] Torrejos was then made to sign the security logbook which stated that “Mercy Torrejos tried to bring-out two (2) yards of tela.”[3] However, both parties gave conflicting versions of the events that happened after.

According to petitioners, Torrejos admitted to Thanwardash Jeswani that she had made a mistake in measuring the fabric and promised to pay for the difference. Thereafter, Thanwardash Jeswani accompanied Torrejos to the gate and instructed the security guard to permit her to leave the premises.[4]

On the other hand, Torrejos asseverated that there was really no excess yardage in the fabric she bought. According to her, after the fabric was re-measured, it was confirmed that it was only six (6) yards. Thus, Thanwardash Jeswani eventually allowed her to go home.[5]

Nonetheless, what stands out in the records of the case is the fact that security guard Nena Blancaflor admitted before the Labor Arbiter that her measurement of the fabric was inaccurate considering that she used only her arms, instead of an actual yardstick.[6] Moreover, no disciplinary action was ever taken by management against Torrejos with regard to the purported pilferage.

Thus, Torrejos continued performing her duties and responsibilities even after the alleged misdemeanor. But on 3 October 1994 she failed to report for work because she had “sore eyes.” She instructed her sister Antonia, who also worked for petitioners, to inform the Jeswanis that she would be absent that day. When Antonia arrived from work later that day, she told private respondent that management had decided to terminate her services. To verify this, Torrejos called up Kamlesh Jeswani at his office. The latter instructed her to talk to his father instead. It was Thanwardash Jeswani who later confirmed through the telephone that she had indeed been terminated because of abandonment of work.

The following day, 4 October 1994, Torrejos decided to go to petitioners’ office, but she was barred by the security guard from entering the company premises. The Jeswanis refused to talk to her personally; they only informed her through the telephone that she had been terminated effective 3 October 1994 for abandonment of work.

Thus, on 24 November 1994 Torrejos filed a complaint for illegal dismissal against petitioners with the arbitration branch of the National Labor Relations Commission (NLRC) in Manila. She prayed for the payment of salary differential, service incentive leave pay, 13th month pay for 1994, moral and exemplary damages, and attorney’s fees. The case was docketed as NLRC NCR CASE NO. 00-11-08456-94, and assigned to Labor Arbiter Manuel M. Manansala.

Petitioners contended that contrary to the assertions of Torrejos, she was hired on 21 July 1991, not as utility worker in ESVEE, but as a domestic helper of the Jeswanis. That it was only on 21 January 1993 that she was absorbed into the labor force by ESVEE.[7]

Petitioners likewise averred that Torrejos was never dismissed. According to petitioners, when private respondent was caught trying to smuggle out two (2) yards of fabric in August of 1994, management decided to restrict her activities within ESVEE only.[8] Torrejos reportedly resented this. Thereafter, malicious rumors allegedly spread in the work place concerning the private affairs of petitioners. Torrejos was singled out as the source of such rumors and her attention was called by the Jeswanis.[9] Instead of being apologetic, Torrejos allegedly offered to resign for a price, and when petitioners refused to give in to her demands, she walked out on them on 3 October 1994.[10] Since then, she never reported back for work. Thus, petitioners declare that they could not in any way be liable for illegal dismissal.

Notwithstanding the defense proffered by petitioners, Labor Arbiter Manansala rendered a decision on 2 March 1996 holding that private respondent Mercedita T. Torrejos was illegally dismissed by petitioners. He ordered ESVEE to reinstate Torrejos to her former position or to give her separation pay of P9,425.00 if reinstatement was not possible. He also directed ESVEE to pay the dismissed employee P64,090.00 as back wages, P23,075.00 as differential pay, P1,855.00 as service incentive leave pay, P9,683.91 as 13th month pay, and 10% of the total monetary award as attorney's fees. The charges against petitioners KAMS International, Kamlesh Jeswani and Thanwardash Jeswani were dismissed for lack of merit.[11]

Petitioners appealed to the NLRC which dismissed their appeal in the assailed Decision of 8 April 1996.[12] Petitioners forthwith moved for reconsideration, and on 7 February 1997 the NLRC issued the questioned Resolution[13] modifying its earlier decision by reducing the award of salary differential to P18,603.00.

Petitioners now allege before this Court through a petition for certiorari that the NLRC committed grave abuse of discretion when it affirmed the Labor Arbiter’s decision holding that private respondent Torrejos was illegally dismissed. Two issues need to be addressed: whether Torrejos was illegally dismissed and whether the monetary award for salary differential was correctly computed by the NLRC.

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Petitioners submit that Torrejos abandoned her work; thus they could not be held liable for illegal dismissal since Torrejos was never dismissed in the first place.

For abandonment to exist, it is essential that (a) the employee must have failed to report for work or must have been absent without valid or justifiable reason; and, (b) there must have been a clear intention to sever the employer-employee relationship manifested by some overt acts.[14] In De Paul/King Philip Customs Tailor, and/or Milagros Chuakay and William Go v. NLRC[15] we held -

> Abandonment, as a just and valid ground for dismissal means the deliberate and unjustified refusal of an employee to resume his employment. The burden of proof is on the employer to show unequivocal intent on the part of the employee to discontinue employment. The intent cannot be lightly inferred or legally presumed from certain ambivalent acts. For abandonment to be a valid ground for dismissal, two elements must be proved: the intention of an employee to abandon, coupled with an overt act from which it may be inferred that the employee has no more intent to resume his work.

However, in the case before us, petitioners failed to adduce evidence on any overt act of Torrejos showing an actual intent to abandon her employment. In fact, the evidence on record belies this contention.

According to petitioners, the intent to abandon work could be inferred from Torrejos' failure to file a motion for reinstatement pending appeal of the decision of the Labor Arbiter, and to assert her right to be reinstated after a writ of execution was issued by the Labor Arbiter. This contention is quite presumptuous being based merely on conjecture and speculation. In fact, the only reason why Torrejos did not file a motion for reinstatement pending appeal was that she had opted for separation pay in lieu of reinstatement, and not because she had given up her work.[16]

Besides, petitioners cannot deny the fact that Torrejos filed a complaint for illegal dismissal against them on 24 November 1994. This alone negates any intention on the part of the employee to forsake her work. It is a settled doctrine that the filing of a complaint for illegal dismissal is inconsistent with the charge of abandonment, for an employee who takes steps to protest his dismissal cannot by logic be said to have abandoned his work.[17]

It cannot be overly emphasized that the dismissal of an employee should be for any of the just and authorized causes enumerated in the Labor Code.[18] And since petitioners utterly failed to justify Torrejos' discharge on the basis of abandonment of work, we do not hesitate to strike it down as illegal. Furthermore, it must be stressed that abandonment of work does not per se sever the employer-employee relationship. It is merely a form of neglect of duty, which is in turn a just cause for termination of employment. The operative act that will ultimately put an end to this relationship is the dismissal of the employee after complying with the procedure prescribed by law.[19]

As frequently held by the Court, the termination of an employee must be effected in accordance with law. Therefore the employer must furnish the worker or employee sought to be dismissed with two (2) written notices, i.e., (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.[20] Rule XIV, Sec. 2, of the Omnibus Rules Implementing the Labor Code provides -

> Sec. 2. Any employer who seeks to dismiss a worker shall furnish him a written notice stating the particular acts or omission constituting the grounds for his dismissal. In case of abandonment of work, the notice shall be served at the worker's last known address (emphasis supplied).

However, it must be mentioned that no written notice was ever sent by petitioners informing Torrejos that she had been terminated due to abandonment of work. This failure on the part of petitioners to comply with the twin-notice requirement indeed underscored the irregularity surrounding Mercedita T. Torrejos' dismissal.

As to the issue of salary differential, petitioners plead that the underpayment (salary differential) was computed when Torrejos was then a housemaid and not an industrial worker. Consequently, the NLRC gravely abused its discretion when it ruled that Torrejos was an industrial worker when she was still a housemaid.[21] Petitioners cite the resolution of the NLRC dated 7 February 1997 where it held that anent the amount of salary differential due Torrejos, there being evidence that she worked as an alternate from January to May 1993, salaries received being in accord with the rates prescribed by law corresponding to that period, a reduction of the claim was thus justified under such circumstances.[22] This indicates that before January 1993 Torrejos was indeed hired as a domestic employee and not an industrial employee, as she pretended to be. Thus, according to petitioner, the minimum wage law cannot be applied to Torrejos before January 1993 since at that time she was still a domestic employee.

We do not agree. Contrary to what petitioners claim, the only conclusions that can be gleaned from the NLRC Resolution of 7 February 1997 are: (a) that Torrejos only worked two (2) to four (4) days a week from January 1993 to May 1993; (b) that during this period she was paid the legal minimum wage; and, (c) that, consequently, the earlier award of salary differential of P23,075.00 must accordingly be reduced to P18,603.00. Indeed, there is nothing in the Resolution from which we can logically infer that Torrejos was truly a domestic helper prior to January of 1993.

As the employer of private respondent, petitioner ESVEE had the burden of proving that Torrejos was hired only as a domestic helper on 21 July 1991 and that it was only on 21 January 1993 that she was absorbed by petitioner ESVEE as an industrial employee. However, petitioners failed to discharge such burden. The records are bereft of any evidence showing that Torrejos was initially hired by petitioners as a domestic helper so as to preclude the application of the minimum wage law.

WHEREFORE, the petition is DISMISSED. The assailed Resolution of public respondent National Labor Relations Commission dated 7 February 1997 modifying its Decision of 2 March 1996 in NLRC NCR Case No. 010730-96 is AFFIRMED. Consequently, petitioner Esvee Apparel Manufacturing, Inc., is ORDERED to pay private respondent Mercedita T. Torrejos: (a) separation pay of P9,425.00; (b) salary differential of P18,603.00; (c) service incentive leave pay of P1,855.00; (d) 13th month pay of P9,683.91; (e) back wages of P64,090.00; and, (f) attorney’s fees equivalent to ten percent (10%) of the total monetary award. Costs against petitioner Esvee Apparel Manufacturing, Inc.

SO ORDERED.

Mendoza, Quisumbing, and Buena, JJ., concur.

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[1] Records, vol. 1, p. 17.

[2]2 TSN, 25 July 1995, pp. 25-26.

[3] Rollo, p. 55.

[4] Rollo, p. 200.

[5] Rollo, p. 176.

[6] TSN, 25 July 1995, pp. 25-26.

[7] Records, vol. 1, p. 17.

[8] Id., p. 18.

[9] Ibid.

[10] Records, vol. 1, p. 18.

[11] Id., pp. 231-233.

[12] Decision penned by Presiding Commissioner Bartolome S. Carale, concurred in by Commissioner Vicente S.E. Veloso and Commissioner Alberto R. Quimpo, NLRC First Division, Quezon City, NLRC NCR CA NO. 010730-96, 20 November 1996; Rollo, p. 38.

[13] Resolution penned by Presiding Commissioner Bartolome S. Carale, concurred in by Commissioner Vicente S.E. Veloso and Commissioner Alberto R. Quimpo, NLRC First Division, Quezon City, NLRC NCR CA NO. 010730-96, 7 February 1996; Rollo, p. 50.

[14] Golden Thread Knitting Industries v. NLRC, G.R. No. 119157, 11 March 1999.

[15] G.R. No. 129824, 10 March 1999.

[16] Rollo, p. 149.

[17] See C. Planas Commercial and Marcial Cohu v. NLRC and Ramil de los Reyes, G.R. No. 121696, 11 February 1999; Hagonoy Rural Bank v. NLRC, G.R. No. 122075, 28 January 1998.

[18] See Kiamco v. NLRC, G.R. No. 129449, 29 June 1999.

[19] De Paul/King Philip Customs Tailor, v. NLRC, G.R. No. 129824, 10 March 1999.

[20] See Note 18.

[21] Rollo, p. 15.

[22] Id., p. 52.

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