

EASTERN OVERSEAS EMPLOYMENT CENTER, INC., PETITIONER, VS. CECILIA BEA, RESPONDENT.

G.R. No. 143023. November 29, 2005

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before us is a petition for review on certiorari under Rule 45 of the Rules of Court assailing the January 5, 2000 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 51312 which affirmed the Resolutions of the National Labor Relations Commission (NLRC) dated November 28, 1997 and January 22, 1998 in POEA ADJ (L) CN. 93-05-827/CA NO. 009966-95; and the CA Resolution[2] of April 24, 2000, denying petitioner's motion for reconsideration.

The factual and procedural antecedents of the case, as narrated by the CA in its assailed Decision, are as follows:

On February 11, 1992, private respondent Bea was hired as Senior Head Staff Nurse by Elbualy Group/Sultan Qaboos University Hospital (SQUH), the principal employer through its placement agency in the Philippines, petitioner Eastern Overseas Employment Center, Inc. (Eastern). Her contractual employment was for two (2) years, the same to end on February 11, 1994 with a basic monthly salary of US\$1,456.00. Private respondent Bea's placement with SQUH was subject to a three-(3) month probationary period during said contractual employment.

Private respondent Bea's probationary status ended on May 1992 but she still continued being in the employ of SQUH. She, like all other employees of the hospital, was also periodically subjected to performance evaluation.

After an alleged poor evaluation of private respondent Bea's performance as a nurse, she was transferred to the Neo-Natal Unit on December 26, 1992 and her performance was supposedly under observation until January 23, 1993.

On February 24, 1993, the Director of Nursing Services notified private respondent Bea that her contract would be terminated on May 24, 1993. Because of this, she wrote a letter dated March 7, 1993 addressed to H.E. Yahyah Mahfoudh Al-Mantheir, Vice Chancellor of SQUH, requesting for a reconsideration of the decision to terminate her.

In the Memorandum dated June 8, 1993, the Acting Director of Nursing Services explained how the decision to terminate private respondent Bea was arrived at. It stated the following:

TO : Personnel Officer

Through : Nasser Al Lamki
Acting Hospital Director

From : Helen Macilwaine
Acting Director of
Nursing Services

Subject : Termination of Cecilia
Bea. I.D. No. 2644

Date : 8[th] June 1993

The above named was terminated from this hospital on the recommendation of the Department of Nursing Services after three very poor evaluations. After her second poor evaluation, she was given intensive management assistance through a specialized training plan from 26[th] December 1992 to 23[rd] January 1993, but she did not improve. She was unable to function as a Senior Head Staff Nurse on the Neonatal Unit and therefore a recommendation was made on February 17, 1993 that she should be terminated since she could not fulfill her contractual obligations within Nursing Services.

(Sgd.) Helen Macilwaine
Acting Director of Nursing Services

(Annex 'D' of Petition)

Consequently, private respondent Bea's contractual employment was terminated and she was repatriated to the Philippines on April 21, 1993.

Private respondent Bea thereafter filed a case of illegal dismissal against instant petitioner before the POEA Adjudication Office on December 7, 1993, docketed as POEA Case No. 93-05-827.

In the Decision dated August 8, 1995, the POEA Administrator held that private respondent Bea herein was illegally dismissed...

...

Unsatisfied with this Decision, petitioner Eastern appealed to the NLRC. The NLRC affirmed the Decision of the POEA Administrator, ...

...[3]

Eastern Overseas Employment Center, Inc. (Eastern) filed a motion for reconsideration of the NLRC Resolution but the same was denied.

Aggrieved, Eastern appealed to this Court via a petition for certiorari under Rule 65 of the Rules of Court. After the Office of the Solicitor General filed its Comment to the petition, this Court referred the case to the CA pursuant to the ruling in *St. Martin's Funeral Homes vs. National Labor Relations Commission, et al.*[4] On January 5, 2000, the CA promulgated herein assailed Decision. On April 24, 2000, the CA denied petitioner's motion for reconsideration.

Hence, the herein petition based on the sole ground that the CA committed grave abuse of discretion in denying the petition filed with it.[5] Petitioner claims that the CA gravely abused its discretion when it blindly adhered to the patently erroneous findings and conclusions of the NLRC that Bea was illegally dismissed.

We are not persuaded.

The question of whether or not Bea was illegally dismissed from her employment is a question of fact. The Philippine Overseas Employment Administration (POEA) Adjudication Office ruled that Bea was indeed illegally dismissed. The settled rule is that the factual findings of quasi-judicial agencies like the POEA, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect, but, at times, even finality if such findings are supported by substantial evidence.[6] This is especially so

in the present case where the findings of the POEA were affirmed by both the NLRC and the CA.

Moreover, in a petition for review on certiorari, the scope of the Supreme Court's judicial review of decisions of the CA is generally confined only to errors of law; questions of fact are not entertained.[7] This doctrine applies with greater force in labor cases inasmuch as factual questions are mainly for the labor tribunals to resolve.[8] In the present case, the POEA Adjudication Office and the NLRC have already determined the factual issues. Their findings, which are supported by substantial evidence, were affirmed by the CA. Thus, they are entitled to great respect and are rendered conclusive upon this Court, absent a clear showing of palpable error or arbitrary disregard of evidence.[9]

We find no cogent reason to disturb the findings and conclusions of the POEA Adjudication Office as affirmed by the NLRC and the CA.

Petitioner argues that it has complied with the twin requirements imposed by law for an employee's dismissal to be considered valid, to wit: (1) the dismissal must be for a valid or authorized cause; and (2) the employee must be afforded due process.

As to the question of whether Bea was afforded due process, petitioner contends that Bea's work performance was evaluated three times and that she was even given intensive management assistance through a specialized training plan but she still did not improve. Petitioner further contends that after Bea was informed of her termination in February 1993, she was given a chance to ask for a reconsideration of her case; that after re-evaluation, her employer found no merit in her request for reconsideration; that only then was her termination implemented in April 1993.

Procedural due process in labor law requires the employer to give the employee two notices.[10] The first is the notice which apprises the employee of the particular acts or omissions for which his dismissal is being sought along with the opportunity for the employee to air his side, while the second is the subsequent notice of the employer's decision to dismiss him.[11] More particularly, Book VI, Rule I, Section 2(d) of the Omnibus Rules Implementing the Labor Code provides for the standards of due process to be substantially observed in cases of termination of employment, to wit:

(d) In all cases of termination of employment, the following standards of due process shall be substantially observed:

For termination of employment based on just causes as defined in Article 282 of the Labor Code:

(i) A written notice served on the employee specifying the ground or grounds for termination, and giving the said employee reasonable opportunity within which to explain his side.

(ii) A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires is given opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him.

(iii) A written notice of termination served on the employee, indicating that upon consideration of all the circumstances, grounds have been established to justify his termination.

For termination of employment as defined in Article 283 of the Labor Code, the requirement of due process shall be deemed complied with upon service of a written notice to the employee and the appropriate Regional Office of the Department of Labor and Employment at least thirty days before effectivity of the termination, specifying the ground or grounds for termination.

If the termination is brought about by the completion of a contract or phase thereof, or by failure of an employee to meet the standards of the employer in the case of probationary employment, it shall be sufficient that a written

notice is served the employee within a reasonable time from effective date of termination.

In the present case, since Bea's termination was based on her alleged poor performance, the procedure to be followed should be that outlined for termination of employment based on just causes as defined under Article 282 of the Labor Code. However, the POEA Adjudication Office found that the only notice given to Bea was a letter informing her that she was already terminated. Petitioner did not give Bea the first notice apprising her of the particular acts or omissions for which her dismissal was based together with the opportunity for her to explain her side. Nonetheless, petitioner contends that Bea was afforded due process because she herself admitted in her position paper that she was given all the opportunity to explain her side and refute the evaluation and findings of her employer. Bea, on the other hand, counters in her Memorandum submitted to this Court that she was given the chance to air her side only after she was notified of her termination from work.

The essence of due process is simply an opportunity to be heard, or as applied to administrative proceedings, a fair and reasonable opportunity to explain one's side.[12] It is also an opportunity to seek a reconsideration of the action or ruling complained of.[13] It is not the denial of the right to be heard but denial of the opportunity to be heard that constitutes violation of due process of law.[14] In the case at bar, while it was established that Bea was not given prior notice apprising her of the particular acts or omissions for which her dismissal is being sought, she, however, admits that she was subsequently able to explain her side and refute the findings of her employer when she was given the chance to ask for a reconsideration of her employer's decision to terminate her. Hence, such opportunity to seek reconsideration cured the procedural defect of lack of prior notice to Bea.

The foregoing notwithstanding, we agree with the findings of the POEA Adjudication Office that Bea's termination was illegal for failure of petitioner to prove the existence of a just or authorized cause for terminating her. Petitioner maintains that Bea was terminated from her employment because of her poor performance and lack of enthusiasm in doing her duties and responsibilities as a nurse. Contending that the CA erred in ruling that the alleged poor performance of respondent is not a just or authorized cause as it is not one of the valid grounds for termination enumerated under Articles 282 and 283 of the Labor Code, petitioner posits that an analytical evaluation of the phrase "poor performance" would show that it would mean the same as gross and habitual neglect by an employee of his duties, which is a just cause to terminate an employee under Article 282(b) of the Labor Code. Insisting that poor performance is the result and effect of gross and habitual neglect of duty, petitioner concludes that it is considered as a lawful cause for termination of employment.

We are not convinced.

We take cognizance of the fact that in any given workplace, not all of the employees perform in accordance with what is expected of them. As such, it is not uncommon that an employee's work performance is found to be unsatisfactory. As a general concept, "poor performance" is equivalent to inefficiency and incompetence in the performance of official duties.[15] Under Article 282 of the Labor Code, an unsatisfactory rating can be a just cause for dismissal only if it amounts to gross and habitual neglect of duties.[16] The fact that an employee's performance is found to be poor or unsatisfactory does not necessarily mean that the employee is grossly and habitually negligent of his duties. Gross negligence implies a want or absence of or failure to exercise slight care or diligence, or the entire absence of care.[17] It evinces a thoughtless disregard of consequences without exerting any effort to avoid them.[18]

In the present case, petitioner failed to present substantial evidence to prove that Bea's alleged poor performance in her duties as Senior Head Staff Nurse amounted to gross and habitual neglect. In the first place, the POEA Adjudication Office found that aside from the Memorandum dated June 8, 1993 issued by the Acting Director of Nursing Services of Sultan Qaboos University Hospital where Bea was deployed, petitioner failed to present any

other evidence to prove that Bea's work performance was indeed poor. Although petitioner contends that three separate evaluations of Bea's work performance were conducted; that after the first evaluation, Bea was notified about the poor quality of her work; that following the second evaluation, she was given an intensive management assistance through a specialized training program; and, that only after the third evaluation was made that Bea was advised that her employment would be terminated, we find no error in the findings of the POEA and the NLRC that these claims of petitioner remain to be allegations since no substantial evidence was presented to prove them.

In termination cases, the burden of proving just and valid cause for dismissing an employee from his employment rests upon the employer, and the latter's failure to discharge that burden would result in a finding that the dismissal is unjustified.[19] In the instant case, we agree with the CA that the just cause relied upon by the petitioner in dismissing the private respondent was not proved.

WHEREFORE, the instant petition is DENIED and the assailed Decision and Resolution of the Court of Appeals dated January 5, 2000 and April 24, 2000, respectively, are AFFIRMED.

SO ORDERED.

Puno, Callejo, Sr., and Tinga, JJ., concur.
Chico-Nazario, J., on leave.

[1] Penned by Associate Justice Artemio G. Tuquero and concurred in by Justices Ramon U. Mabutas, Jr. and Mercedes Gozo-Dadole.

[2] Penned by Associate Justice Mercedes Gozo-Dadole and concurred in by Justices Ramon U. Mabutas, Jr. and Eugenio S. Labitoria.

[3] CA Rollo, pp. 61-64.

[4] *Id.*, p. 57.

[5] Rollo, p. 26.

[6] *Philsa International Placement and Services Corporation vs. The Hon. Secretary of Labor and Employment, et al.*, G.R. No. 103144, April 4, 2001, 356 SCRA 174, 185.

[7] *DMA Shipping Philippines, Inc., et al. vs. Cabillar*, G.R. No. 155389, February 28, 2005, citing *Alfaro vs. Court of Appeals*, G.R. No. 140812, August 28, 2001, 363 SCRA 799.

[8] *MTM Garment Manufacturing Inc. vs. Court of Appeals*, G.R. No. 152336, June 9, 2005.

[9] *PNB vs. Cabansag*, G.R. No. 157010, June 21, 2005.

[10] *Santos vs. San Miguel Corporation*, G.R. No. 149416, March 14, 2003, 399 SCRA 172, 185.

[11] *Roquero vs. Philippine Airlines, Inc.*, G.R. No. 152329, April 22, 2003, 401 SCRA 424, 429.

[12] *NFD International Manning Agents vs. NLRC*, G.R. No. 116629, January 16, 1998, 284 SCRA 239, 246.

[13] *Ibid.*

[14] *Ibid.*

[15] *Miranda vs. Carreon*, G.R. No. 143540, April 11, 2003, 401 SCRA 303, 309.

[16] Mitsubishi Motors Phils. Corp. vs. Chrysler Phil. Labor Union, G.R. No. 148738, June 29, 2004, 433 SCRA 206, 219.

[17] Union Motor Corporation vs. NLRC, G.R. No. 159738, December 9, 2004, 445 SCRA 683, 694-695.

[18] *Id.*, p. 695.

[19] Me-Shurn Corporation, et al. vs. Me-Shurn Workers Union, et al., G.R. No. 156292, January 11, 2005, 448 SCRA 41, 50.

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