

DR. ERNESTO I. MAQUILING, PETITIONER, VS. PHILIPPINE TUBERCULOSIS SOCIETY, INC., RESPONDENT.

G.R. NO. 143384. February 04, 2005

Ponente: TINGA, J.

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TINGA, J.:

Before this Court is a Petition for Review on Certiorari of the Decision[1] of the Court of Appeals dated 28 March 2000 and its Resolution dated 22 May 2000, which reversed the decision of the National Labor Relations Commission (NLRC) dated 15 December 1997[2] and that of the Labor Arbiter dated 16 September 1993,[3] which both found the dismissal from service of Dr. Ernesto I. Maquiling (Dr. Maquiling) illegal.

The factual antecedents are as follows:

On 16 April 1968, petitioner Dr. Maquiling was employed by respondent Philippine Tuberculosis Society, Inc. (PTS). On 8 June 1991, Dr. Maquiling, then earning a monthly salary of thirteen thousand nine hundred pesos (P13,900.00) was dismissed from service as Deputy Executive Director after serving PTS for twenty-three (23) years. Dr. Maquiling filed a complaint against PTS for reinstatement or, in the alternative, for payment of full backwages and separation pay in accordance with Article 279 of the Labor Code, as well as moral damages in the amount of five hundred thousand pesos (P500,000.00) and exemplary damages in the amount of one hundred thousand pesos (P100,000.00).[4]

The complaint was assigned to Labor Arbiter Salimathar V. Nambi. After PTS failed to appear despite having requested for several postponements, Dr. Maquiling was allowed to present his evidence ex parte consisting of his testimony on direct examination and documentary proof. On 31 August 1992, Dr. Maquiling moved for submission of the case for resolution, which motion was granted.[5]

The records disclose that Dr. Maquiling received a memo dated 2 April 1991 from the PTS OIC-Executive Director Andres B. Soriano (Soriano) directing him to submit within five (5) days from notice a written explanation on the following matters:

- The delayed GSIS remittances;
- The reported deficit of P7.3 million appearing in our financial statement for 1990;
- The expenses you approved and incurred in connection with the Dale Carnegie and Silva Mind Control Seminar;
- The P3.7 million miscellaneous expenses appearing in our financial statement; and
- Your reasons for renewing our service contract with Ultra.[6]

Dr. Maquiling submitted his explanatory letter dated 11 April 1991 inviting attention to PTS Finance Manager's Report. On 15 April 1991, Dr. Maquiling had a thirty (30) minute conversation with Soriano at the latter's instance. No further related proceedings were undertaken before Dr. Maquiling received a letter-notice dated 8 June 1991 informing him that the PTS Executive Committee approved Soriano's findings and recommendations calling for his dismissal effective immediately, without any retirement benefits.[7]

Despite Soriano's instruction for him not to report for work, Dr. Maquiling manifested, through a letter to the OIC-Executive Director, his intention to continue performing his duties as Deputy Executive Director. Dr. Maquiling continued to report for work at the PTS daily. In the meantime, he elevated his case to the PTS Board of Directors through a memorandum dated 28 June 1991 which sought to point out the illegality of his dismissal from office and prayed for a resolution upholding his position.[8]

On 17 July 1991, Dr. Maquiling, protesting non-payment of his salary for the period of 15 July 1991, wrote the OIC Finance Department and formally demanded the release of his earned wages. PTS reacted through Soriano by informing Dr. Maquiling that there are no wages forthcoming inasmuch as the latter's service had been terminated for cause since 7 June 1991.[9]

In an effort to exhaust the remedies within PTS, Dr. Maquiling wrote the President of PTS a letter dated 5 August 1991 saying, among others: my counsels agree with me that if your Board does not act on my 28 June 1991 Memorandum within fifteen (15) days from receipt of this letter, such omission will mean a confirmation of Soriano's notice of my alleged termination from the service a dismissal which is referable to the proper outside forum." [10]

Receiving no response from the PTS, Dr. Maquiling stopped reporting for work at the PTS in the last week of September 1991. Then, on 10 October 1991, Dr. Maquiling filed his complaint with the Labor Arbiter.

After considering the evidence adduced by the parties, the Labor Arbiter rendered a decision ordering PTS to immediately reinstate Dr. Maquiling to the position of Deputy Executive Director or its equivalent in rank and pay, without loss of seniority rights inclusive of all benefits attached to said position at the time of his dismissal, and to pay Dr. Maquiling backwages computed from the time of his dismissal on 7 June 1991 until his actual reinstatement but not to exceed three (3) years at the rate of thirteen thousand nine hundred pesos (P13,900.00) per month or three hundred seventy-eight thousand seven hundred seventy-five pesos (P378,775.00).[11] He likewise ordered PTS to pay Dr. Maquiling five hundred thousand pesos (P500,000.00) as moral damages and one hundred thousand pesos (P100,000.00) as exemplary damages and to pay attorney's fees equivalent to ten (10%) percent of the total amount due the complainant.

Upon appeal by PTS to the NLRC, the Commission upheld the decision of the labor arbiter and dismissed the appeal.[12] However, PTS appealed the decision to the Court of Appeals which reversed the decisions of the NLRC and Labor Arbiter by ordering the dismissal of the complaint and declaring that his dismissal from employment as legal and valid. It, however, ordered PTS to pay Dr. Maquiling the amount of ten thousand pesos (P10,000.00) as damages or indemnity for violation of his right to procedural due process and separation pay in the amount of one hundred fifty-nine thousand eight hundred fifty pesos (P159,850.00) in the interest of social justice.[13] Hence, this petition for review on certiorari.

Dr. Maquiling argues that the appellate court should have applied the case of *Serrano v. NLRC*[14] which was decided on 27 January 2000 since the assailed decision of the appellate court was promulgated subsequently on 28 March 2000. He avers that PTS must pay him full backwages from the time his employment was terminated on 7 June 1991 up to the time the decision becomes final.[15] In addition to backwages, he also prays that he be awarded separation pay for every year of service, at the rate of one month pay for every year of service,[16] as

well as thirteenth month pay, sick leave and vacation leave and all monetary benefits including moral damages and attorney's fees.[17] Further, Dr. Maquiling points out that the appellate court gravely abused its discretion by changing the rules on pleadings before the administrative body since it considered the position paper of PTS though unverified.[18] PTS should have considered the twenty-three (23) years of service of petitioner[19] and should not have ruled that the dismissal from service of Dr. Maquiling was for just cause.[20] He further contends that the appellate court did not show any degree of clarity of causal connection between Dr. Maquiling's acts and the supposed damage to PTS.[21]

Moreover, Dr. Maquiling raised in his petition that the appellate court, which agreed with the findings of the labor arbiter and the NLRC that the twin requirements of notice and hearing are wanting, erred in adopting an abandoned doctrine by merely imposing a fine of ten thousand pesos (P10,000.00) against PTS and in disregarding the present doctrine on termination of employment and monetary benefits accorded by law to Dr. Maquiling, and in concluding with grave abuse of discretion that the dismissal of Dr. Maquiling, who had served PTS for twenty-three (23) years, was for just cause.[22]

In its Comment[23] dated 9 October 2000, PTS contends that the dismissal of Dr. Maquiling was based on a just cause, supported as it was by the evidence, law and jurisprudence. The termination of Dr. Maquiling's employment was allegedly due to loss of trust and confidence.[24] It avers that for gross mismanagement, for acts inimical to the interest of PTS, and also for reason that PTS has lost its trust and confidence in him, PTS terminated his services without any retirement benefit.[25]

PTS, however, alleges that it complied with the two-notice rule required for termination of employment. According to PTS, the first notice was sent by Soriano to Dr. Maquiling by means of confidential memorandum[26] dated 2 April 1991 requiring him to explain in writing, within five days from notice, the matters stated therein. Dr. Maquiling honored the first notice by submitting on 11 April 1991 a written reply to Soriano. The second notice which allegedly informed Dr. Maquiling of the decision to terminate his employment, stating reasons therefor, was sent to him by Soriano on 8 June 1991.[27]

A review of the factual milieu of the instant labor controversy and the jurisprudence on the subject leads us to modify the assailed decision of the appellate court.

We agree with the appellate court that Dr. Maquiling was dismissed from employment for just cause consisting of loss of trust and confidence. The records reveal that he was Deputy Executive Director of PTS, a responsible position, at the time of his dismissal. The following defines the extent of the power and responsibility attached to the position he occupied:

- Directs, supervises, coordinates, and controls the general administrative, finance and regional operations of PTS.
- Formulates and executes plans and policies for operations activities under his charge.
- Signs corresponden[ce] and other documents relative to operational activities under his charge, within specified limits.
- Authorizes the hiring, promotion, transfer and termination of all PTS personnel below the supervisory level in accordance with the policies prescribed by the Board of Directors.

- Reports regularly to the Executive Director on the individual operations and activities of departments and branches under his charge.
- Executes and administers directives issued by the Executive Director.
- Assists the Executive Director in the preparation of the [annual] budget and operational plan of the Society.
- Prepares and submits reports required by the Board of Directors, government entities and other interested parties.
- Performs related functions as may be assigned by the Executive Director.[28]

PTS imputes the delayed GSIS remittances to Dr. Maquiling's failure to follow his duties as prescribed by law. The records disclose that Dr. Maquiling was aware of the problem but he failed to give priority thereto. This non-remittance was partially brought about by a Guideline on the Releasing of Checks he issued, which placed the GSIS account as a last priority.[29] The security of workers' compensation was undermined by his act which patently transgressed the constitutional injunction that workers should be afforded full protection in their employment. Subsumed in said mandate is the protection of the right to workmen's compensation to which a lowly worker may be entitled. To rule otherwise would frustrate the policy that the State shall promote and develop a tax-exempt employees' compensation program whereby employees and their dependents, in the event of work-connected disability or death, may promptly secure adequate income benefit, and medical or related benefits.[30]

On the other hand, we are inclined to attribute the P7.3 million deficit in PTS' 1990 financial statements to Dr. Maquiling's failure to consider the realities of the financial condition of the institution. Dr. Maquiling even aggravated such omission by insisting on the salary increase of both managerial and non-managerial personnel despite the financial conundrum that puzzles the future fiscal stability of PTS. The records show that he made representations during the Board meeting that sufficient funds existed to meet the salary upgrading despite the presence of financial strains.[31] Such a course of action falls short of his responsibility to safeguard the financial stability of the institution he leads. Said responsibility cannot be outweighed by any magnanimous motive for the institutional existence will be rendered illusory if the very foundation of its financial stability will be ignored. We are solicitous of the primordial goal sought to be achieved by Dr. Maquiling but the wisdom of the timing is questionable.

The renewal of the Ultra Clean contract with the PTS for janitorial services also evinces a bad managerial move on the part of Dr. Maquiling. By reason of the contract, PTS was dragged into a labor controversy for illegal dismissal which eventually made it liable for backwages and differentials to employees of Ultra Clean.[32] Worse is the renewal of the said contract despite the unsatisfactory performance of Ultra Clean without the approval of the Board or the Executive Committee or any subsequent request for its ratification. The unnecessary expending of funds in the administration and operation of PTS is evidently an act of mismanagement which could bring PTS to severe financial distress. These acts if committed by a responsible officer with the trust and confidence lodged in him by his superior and may serve as a valid and sufficient basis to impose disciplinary sanctions to an erring employee which may even result to dismissal from employment if the gravity of the offense warrants as in the instant case.

Recent decisions of this Court distinguish the treatment of managerial from that of rank-and-file personnel insofar as the application of the doctrine of loss of trust and confidence is concerned. Thus, with respect to rank-and-file personnel, loss of trust and confidence as ground for valid dismissal requires proof of involvement in the alleged events in question and that mere uncorroborated assertions and accusations by the employer will not suffice.[33] But as regards a managerial employee, mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal.[34]

After careful perusal of the factual backdrop of the case, we rule that Dr. Maquiling was indeed validly dismissed for just cause. However, PTS was remiss in its duty to observe procedural due process in effecting the dismissal of Dr. Maquiling.

Under this second requirement, two notices must be sent to the employee who is the subject of an investigation for acts which may warrant his eventual dismissal from employment. The notices required before an employee may be validly dismissed are: (a) a written notice served on the employee specifying the grounds for termination and giving the employee reasonable opportunity to explain his/her side; (b) a hearing or conference wherein the employee, with the assistance of counsel if so desired, is given opportunity to respond to the charge, present his evidence or rebut evidence presented against him/her; and (c) written notice of termination served on the employee indicating that upon due consideration of all the circumstances, grounds have been established to justify termination.[35] The twin requirements of notice and hearing constitute elements of due process in cases of employee's dismissal; the requirement of notice is intended to inform the employee concerned of the employer's intent to dismiss and the reason for the proposed dismissal; upon the other hand the requirement of hearing affords the employee an opportunity to answer his employer's charges against him and accordingly to defend himself therefrom before dismissal is effected.[36]

Clearly, the first notice must inform outright the employee that an investigation will be conducted on the charges particularized therein which, if proven, will result to his dismissal. Such notice must not only contain a plain statement of the charges of malfeasance or misfeasance but must categorically state the effect on his employment if the charges are proven to be true.

This notice will afford the employee an opportunity to avail all defenses and exhaust all remedies to refute the allegations hurled against him for what is at stake is his very life and limb his employment. Otherwise, the employee may just disregard the notice as a warning without any disastrous consequence to be anticipated. Absent such statement, the first notice falls short of the requirement of due process. One's work is everything, thus, it is not too exacting to impose this strict requirement on the part of the employer before the dismissal process be validly effected. This is in consonance with the rule that all doubts in the implementation and interpretation of the provisions of the Labor Code, including its implementing rules and regulations, shall be resolved in favor of labor.[37]

It is worthy to note that the Labor Arbiter, the NLRC and the Court of Appeals all agree in concluding that procedural due process in the instant case was not observed. As revealed by the evidence on record, a confidential memorandum FN dated 2 April 1991 was sent to Dr. Maquiling by Soriano requiring him to explain in writing the matters contained therein. The text of the memorandum reads as follows:

02 April 1991

CONFIDENTIAL MEMORANDUM FOR: DR. ERNESTO I. MAQUILING

Pursuant to the directive of the Board of Directors issued in its meeting on March 25, 1991, you are hereby instructed to report and explain in writing to this office, within five (5) days from notice hereof, on the following matters:

- The delayed GSIS remittances;
- The reported deficit of P7.3 million appearing in our financial statement for 1990;
- The expenses you approved and incurred in connection with the Dale Carnegie and Silva Mind Control Seminar;
- The P3.7 million miscellaneous expenses appearing in our financial statement; and
- Your reasons for renewing our service contract with Ultra.

For immediate compliance.

(SGD.) ATTY. ANDRES B. SORIANO

OIC-Executive Director

On 11 April 1991, Dr. Maquiling submitted his written reply. The second notice which informs Dr. Maquiling of the decision to terminate his employment was sent to him on 8 June 1991. It must be noted that the first notice dated 2 April 1991 is a mere instruction to explain the matters enumerated therein. It did not apprise Dr. Maquiling of any investigation to be conducted or being conducted that will warrant his dismissal from service if found guilty of charges specified therein. Thus, such notice fell short of the requirement of law that an employee must be afforded the benefit of the two-notice rule in dismissal cases that will allow the employee to substantiate the charges specified in the notice with full knowledge at the outset that the investigation to be conducted may result in his dismissal or suspension from employment.

Dr. Maquiling invokes our ruling in Serrano as basis for appropriate relief. The Serrano ruling awarded full backwages and separation pay to the employee who was dismissed for just cause but without the observance of the procedural due process requirement. However, in *Agabon v. NLRC*,^[38] this Court modified the Serrano ruling and awarded nominal damages in the amount of thirty thousand pesos (P30,000.00) including holiday pay, service incentive leave and thirteenth month pay to the petitioners in the said case. This case clarified the criticisms and answered the questions created by the Serrano ruling.

The Agabon doctrine enunciates the rule that if the dismissal is for just cause but statutory due process was not observed, the dismissal should be upheld. While the procedural infirmity cannot be cured, it should not invalidate the dismissal. However, the employer should be held liable for non-compliance with the procedural requirements of due process.^[39]

Where the dismissal is for just cause, as in the instant case, the lack of statutory due process should not nullify the dismissal, or render it illegal, or ineffectual. However, the employer should indemnify the employee for the violation of his statutory rights. The indemnity to be imposed should be stiffer to discourage the abhorrent practice of “dismiss now, pay later,” which we sought to deter in the Serrano ruling. The sanction should be in the nature of indemnification or penalty and should depend on the facts of each case, taking into special consideration the gravity of the due process violation of the employer.^[40]

The violation of the petitioners’ right to statutory due process by the private respondent warrants the payment of indemnity in the form of nominal damages. The amount of such damages is addressed to the sound discretion of the court, taking into account the relevant circumstances.^[41] Considering the prevailing circumstances in the case

at bar, we deem it proper to fix it at thirty thousand pesos (P30,000.00). We believe this form of damages would serve to deter employers from future violations of the statutory due process rights of employees. At the very least, it provides a vindication or recognition of this right granted to employees under the Labor Code and its Implementing Rules.[42]

It may be also argued that actual or compensatory damages may be recovered in employment termination cases. Actual or compensatory damages are not available as a matter of right to an employee dismissed for just cause but denied statutory due process. The award must be based on clear factual and legal bases and correspond to such pecuniary loss suffered by the employee as duly proven. Evidently, there is less degree of discretion to award actual or compensatory damages.

In the instant case, the records fail to show that Dr. Maquiling suffered pecuniary loss by reason of his dismissal from service. It must be noted that he was dismissed for just cause but the procedural aspect of dismissal was not complied with. Such non-compliance did not automatically result to any pecuniary loss. Any such loss must be proved by Dr. Maquiling to be entitled to an award for actual damages. Besides, the two-notice rule was not at all disregarded although it was observed defectively by PTS. Thus, actual damages may not be awarded.

Neither will an award for moral damages nor exemplary damages prosper. The instant controversy fails to show that the dismissal of the employee was attended by bad faith, fraud, or was done in a manner contrary to morals, good customs or public policy, or that the employer committed an act oppressive to labor to warrant an award for moral damages. Exemplary damages may avail if the dismissal was effected in a wanton, oppressive or malevolent manner to warrant an award for exemplary damages. Hence, Dr. Maquiling shall only be entitled to an award for nominal damages.

On the other hand, Dr. Maquiling argues that PTS should have considered his twenty-three (23) years of service in the institution before he was dismissed from service. Such ratiocination is not quite convincing. The jurisprudential law[43] is not bereft of cases which disregarded length of service of an employee for breach of trust and confidence. Although length of service may be considered in reaching a decision in employment termination cases, the same alone is not controlling for other considerations must be taken into account such as the nature of the position he was holding, performance of an employee, quality of work, character and work attitude. Worth stressing is the fact that Dr. Maquiling is holding a managerial position being a Deputy Executive Director. Hence, trust and confidence is an essential factor in determining his eligibility to continue holding his position. The crucial nature of his position in PTS is exacting as to such qualification which cannot be outweighed by any length of service he earned.

WHEREFORE, in view of the foregoing, the Decision of the Court of Appeals dated 28 March 2000 is hereby MODIFIED pursuant to the Agabon ruling as the latest jurisprudential rule on the matter. For the dismissal from employment of Dr. Maquiling with a just cause but without observing procedural due process, PTS is ORDERED to pay Dr. Maquiling nominal damages in the amount of thirty thousand pesos (P30,000.00). No costs.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Callejo, Sr., and Chico-Nazario, JJ., concur.

[1] Penned by Justice P. Velasco, and concurred in by Justices S. Montoya and B. Salas.

[2] Rollo, p. 60.

[3] Id. at 48.

[4] Id. at 275.

[5] Id. at 46.

[6] Id. at 133.

[7] Id. at 276.

[8] Ibid.

[9] Id. at 276-277.

[10] Id. at 51.

[11] Id. at 277.

[12] In a Decision dated 15 December 1997, penned by Commissioner V. Veloso and concurred in by Commissioner A. Quimpo.

[13] Id. at 302.

380 Phil. 416 (2000).

[15] Id. at 29.

[16] Id. at 31.

[17] Id. at 32.

[18] Id. at 33.

[19] Id. at 36.

[20] Id. at 39.

[21] Id. at 40.

[22] Id. at 14.

[23] Id. at 112.

[24] Id. at 122.

[25] Id. at 125-126.

[26] Id. at 133.

[27] Id. at 143.

[28] Rollo, p. 88-89.

[29] Id. at 91.

[30] Art. 166 of the Labor Code of the Philippines.

[31] Rollo, p. 93.

[32] Id. at 93.

[33] Asia Pacific Chartering (Phils.) Inc. v. Farolan, G.R. No. 151370, December 4, 2002, 393 SCRA 454, 465

citing *Caoile v. NLRC*, 299 SCRA 76; *Coca-Cola Bottlers Phils. Inc. v. NLRC*, G.R. No. 82580, April 25, 1989; *San Miguel Corporation, et. al. v. NLRC, et. al.* G.R. No. 100168, July 8, 1992.

[34] *Ibid.*

[35] Section 2, Book V, Rule XXIII, Omnibus Rules Implementing the Labor Code.

[36] *Century Textile Mills, Inc., et. al. v. NLRC, et. al.*, G.R. No. 77859, May 25, 1988, 161 SCRA 528.

[37] Art. 4, Labor Code of the Philippines.

[38] G.R. No. 158693, November 17, 2004.

[39] *Ibid.*

[40] *Ibid.*

[41] *Ibid* citing *Savellano v. Northwest Airlines*, G.R. No. 151783, July 8, 2003.

[42] *Supra* note 35.

[43] *Pampanga II Electric Cooperative Inc., et. al. v. NLRC, et. al.*, 320 Phil. 81, (1995); *Patna-an v. NLRC, et. al.*, GR No. 42878, March 6, 1992; *Inter-Capitol Marketing Corp., et. al. v. NLRC, et. al.*, G.R. No. 90745 October 10, 1991.

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