MERCURY DRUG CORPORATION, PETITIONER VS. ARACELI DOMINGO, RESPONDENT.

G.R. No. 143998. April 29, 2006

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision[1] of 22 March 2000 and the Resolution of 10 July 2000 of the Court of Appeals in CA-G.R. SPNo. 49227. The appellate court set aside and reversed the Decision[2] of the National Labor Relations Commission (NLRC), Third Division, dated 30 April 1 998. and reinstated the Decision[3] of the Labor Arbiter dated 30 October 1996 in NLRC NCR 00-07-03639-92 with modifications. The case before the Labor Arbiter was for illegal suspension, constructive dismissal and nonpayment of wages, with the latter ruling in favor of the respondent herein.

The Fads of the Case

On 18 April 1977. herein respondent Araceli Domingo started working for herein petitioner Mercury Drug Corporation as a Sales Clerk Trainee at its Padilla Arcade branch in Greenhills, San Juan. On 01 January 1978. the respondent became a regular Sales Clerk until her promotion and transfer as a Pharmacy Assistant at the petitioner's Pasig-Rosario branch on 01 February 1982. Finally, on 01 July 1985, until she was preventively suspended on 1 0 June 1992. the respondent occupied the position of Cashier at the petitioner's Cubao-Romulo branch.

On the day of 09 June 1992. the respondent was ordered to report to the Assistant Vice-President for Chainstore Operations, Mr. Angelito Dizon, in the main office. Upon her arrival at the said office, she was confronted by three of her supervisors, namely. Monette de la Cruz. Olivia Reotutar and Artemio Tolilio, and Rico Marasigan and Eladio Sioson. both Senior Pharmacy Assistants at the Cubao-Romulo branch. The respondent, along with Mr. Eladio Sioson. her co-worker, were being accused of leaking confidential information or data to outsiders. As quoted in the Decision[4] of the Labor Arbiter, Mr. Dizon verbally accused the respondent of divulging confidential information to her husband. Gene Domingo, who was at one time a Branch Manager of the petitioner at its Paco-Paz branch, but who was at that time the current Operations Manager of Shoe Mart's drugstore business, to wit:

> Traydor Ka! Dahil sa kabalbalan n 'yo ng asawa mo, maraming taong matatanggal sa Irabaho; kaya mabuti pang mag-resign ka na lang at magsama na kayo sa Shoe Mart, llong kasama mong si Boy Sioson, tatanggalin ko na sa Irabaho dahil ginagamil ninyo sa kabalbalan ninyo.[5]

The respondent then asked what wrong she committed and Mr. Dizon angrily remarked:

> Marami! Kahit anong kaso ibibintang ko sa iyo matanggal ka sa kompanyang Ho. Kahil na abut in tayo ng sampu (10) hanggang dalawampung (20) taon sa korte, lalabanan kita.[6]

Thereafter, the respondent was asked to sign a letter[7] putting her on preventive suspension from 10 June 1992 until further notice. Eladio Sioson was also served with same Memorandum[8] placing him on preventive suspension from 10 June 1992 until further notice.

A Special Investigating Committee was subsequently created by the petitioner to investigate the matter. The committee, composed of three rank-and-file employees and three managerial employees, was tasked to conduct a formal investigation.

Aggrieved, the respondent, as well as Sioson, filed on 06 July 1992 a complaint for illegal preventive suspension, constructive dismissal and nonpayment of wages against the petitioner company, with the NLRC National Capital Region (NCR) Arbitration Branch, docketed as NLRC NCR 00-07-03639-92.

On 10 July 1992. with the investigation still ongoing, the petitioner informed both the respondent and Sioson that they could start getting their salaries again but their suspension would still be in effect until such time that the committee comes out with its findings.[9]

The parties failed to reach an amicable settlement before the Labor Arbiter, hence, they were required to submit their respective position papers.

Petitioner Mercury Drug Corporation, through its District Manager. Mrs. Elena Martin, denied that the respondent was treated badly during the said confrontation. She alleged that the confrontation was done in a civil, interrogative manner and not accusatory "'with bombardment of wild accusations and uncharitable remarks: . . . that there were strong evidence to support a suspicion that complainant Domingo was supplying-confidential information, thus, abetting business competitors."

In the meantime, both the respondent and Sioson were informed in writing that the Special Investigating Committee found them innocent of the charges filed against them. Accordingly, all charges filed against them have been dropped and the preventive suspension lifted.

Both employees were then notified to return to work. However, the petitioner company "perceived that animosity had arisen between respondent and Mr. Sioson, and the employees in the Cubao-Romulo Branch who testified against them,"[10] thus, Sioson was directed to report to his new assignment at the Murphy branch of the petitioner whilst the respondent was told to report for work at the Divisoria or Baclaran branch, at her option. The petitioner company likewise filed a Manifestation"[11] with the Labor Arbiter stating that the respondent can no longer be reinstated to her former position as Cashier in its Cubao-Romulo branch because it already filled up said position during the preventive suspension of the respondent and the only vacant position at that time was in its Divisoria and Baclaran branches.

Sioson accepted the new assignment and thereafter desisted from further prosecuting the complaints earlier filed. The respondent, however, objected to being "thrown away" to another branch "to deliberately inconvenience and harass her for filing and prosecuting her complaint" against the petitioner,[12] thus, she refused to report for work. One year later, or in August 1994, the respondent was again ordered to report to the petitioner's San Juan branch within ten days, otherwise, she would be considered to have abandoned her job.

The Labor Arbiter, in his disputed Decision[13] of 30 October 1996. adjudged:

WHEREFORE, the foregoing premises considered, judgment is hereby rendered declaring the suspension of complainant Araceli C. Domingo starting June 10. 1992 up to the present as illegal; that suspension in perpetuta constituted as an illegal (constructive) dismissal of the said complainant; and hereby order respondent Mercury Drug Corporation to:

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> a) reinstate immediately complainant Araceli C. Domingo to her former position as a cashier in Mercury Cubao-Romulo Branch, Quezon City, with full backwages until her actual reinstatement, less than total basic salaries paid to her during the period of her payroll reinstatement, without loss of seniority right and other benefits, including average merit increase which up to this writing is in the amount of PI 1 1,960.30:
>
> b) pay complainant Domingo the accumulated amount for rice subsidy since 1992 computed at the rate of P700.00 every other month or in the total amount of P18,200.00:
>
> c) pay complainant Domingo the appropriate unpaid anniversary bonuses since 1992;
>
> d) pay complainant Domingo moral and exemplary damages in the total amount of P250.000.00: and
>
> e) pay complainant Domingo the amount equivalent to 10% of the total awards as attorney's fees or in the total amount of P69.755.11.

Aggrieved by the said decision, herein petitioner company filed an appeal with the NLRC. On 30 April 1 998. the NLRC, Third Division, promulgated its judgment[14] modifying the decision of the Labor Arbiter. The NLRC held that:

> We are not in full accord with the conclusions of the Labor Arbiter.
>
> We agree that complainant was placed under preventive suspension illegally. Complainants alleged actuation of taking home empty medicine boxes already thrown to garbage did not pose a serious-and imminent threat to the life and property of the respondent company nor to her co-employees. That complainant took the empty medicine boxes for her husband's use in a seminar at respondent's competitor company had not been duly established; Complainant positively stated that she took the boxes for her children.
>
> We disagree, however, that complainant was constructively dismissed when she was given another assignment after she was cleared of the charges. For such transfer was justified. Complainant had actually exceeded the five year assignment policy adopted by respondent and that her return to old assignment would create animosity therein as her co-employees testified against her. We then uphold respondent's prerogative to transfer complainant to another assignment at her option... [W]e cannot also fault complainant for insisting on her reinstatement to same position in the belief that she was constructively dismissed. Hence, complainant need not refund the salaries received for it was voluntarily given by respondent. She is not however, entitled to other benefits decreed in the Decision.
>
> **XXX**
>
> **XXX**
>
> **XXX**
>
> PREMISES CONSIDERED, the Decision of October 30, 1996 is hereby MODIFIED by deleting the award of balance of backwages, other benefits, moral/exemplary damages and attorney's fees as decreed in the Decision. The other findings stand affirmed. Respondent is directed to assign complainant as Cashier in a different branch at her option without loss of seniority rights and benefits.

Both parties moved to have the above-quoted decision reconsidered.

On 22 June 1998. the NLRC promulgated a Resolution[15] denying the Motion for Reconsideration filed by herein petitioner company for lack of merit. Subsequently, on 17 July 1998, the commission resolved[16] to dismiss the motion filed by herein respondent Domingo as there was "no cogent reason or sufficient justification to disturb the same which is substantially supported by evidence on record as well as applicable law and

jurisprudence."

Herein respondent Domingo filed a Petition for Certiorari with the Court of Appeals assailing the decision and resolution of the Commission.

On 22 March 2000, the Court of Appeals rendered its questioned decision, the dispositive portion of which states that:

IN LIGHT OF ALL THE FOREGOING, the Decision of the Public Respondent, Annex "S" of the Petition, and its Resolution, Annex "V" of the Petition, are hereby SET ASIDE and REVERSED. Another Decision is hereby rendered affirming the Decision of the Labor Arbiter, with MODIFICATIONS, ordering the Private Respondent to:

> a) Reinstate immediately complainant Araceli C. Domingo to her former position as a cashier in Mercury Cubao-Romulo Branch, Quezon City, with full backwages until her actual reinstatement, less the total basic salaries paid to her during the period of her payroll reinstatement, without loss of seniority right and other benefits, including average merit increase:
>
> b) Pay Petitioner the accumulated amount for rice subsidy since 1992 computed at the rate of P700.00 every other month;
>
> c) Pay Petitioner the appropriate unpaid anniversary bonuses since 1992;
>
> b) Pay Petitioner moral damages P50,000.00 and exemplary damages P50,000.00; [and]
>
> e) Pay Petitioner the amount equivalent to total award for backwages as attorney's fees.[17]

Its motion for reconsideration having been denied, petitioner company filed this instant petition.

> The Issue

In its Memorandum before us, the petitioner imputes the following errors to the appellate court:

A

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT RULED THAT PETITIONER CANNOT LAWFULLY EMPLOY ANOTHER BY WAY OF REPLACEMENT OF THE RESPONDENT BEFORE THE TERMINATION OF ADMINISTRATIVE INVESTIGATION AGAINST THE LATTER.

B

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT RULED THAT RESPONDENT JUSTIFIABLY REJECTED HER NEW ASSIGNMENT.

C

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT APPLIED THE RULING IN THE CASE OF REMEDIOS ASIS VS. NLRC (252 SCRA 379).

D

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT REFUSED TO UPHOLD PETITIONER'S PREROGATIVE TO TRANSFER RESPONDENT FROM CUBAO-ROMULO BRANCH. SUCH TRANSFER BEING (sic).

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E

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN NOT RULING THAT RESPONDENT HAS NO VESTED RIGHT IN HER PREVIOUS PLACE OF ASSIGNMENT AND THAT HER WISHES CANNOT PREVAIL OVER PETITIONER'S PREROGATIVE.

F

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT DID NOT RULE THAT RESPONDENT WAS NOT DISMISSED. ACTUALLY OR CONSTRUCTIVELY.

G

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN APPLYING THE RULING OF THIS HONORABLE COURT IN GLOBE-MACKAY CABLE IS. NLRC. (206 SCRA 701).

H

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN TOTALLY REINSTATING THE LABOR ARBITER'S DECISION.

I

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT DID NOT DECLARE RESPONDENT TO HAVE LOST HER EMPLOYMENT STATUS.

J

ON THE ASSUMPTION THAT RESPONDENT CANNOT BE DECLARED TO HAVE LOST HER EMPLOYMENT STATUS. THE HONORABLE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN NOT ORDERING PAYMENT TO HER OF SEPARATION PAY IN LIEU OF REINSTATEMENT.[18]

In sum. the following issues can be stated in one concise statement, that is. whether or not the petitioner's order to transfer respondent Domingo from its Cubao-Romulo branch to its Divisoria or Baclaran branch was a valid exercise of its management prerogative and. thus, did not amount to constructive dismissal.

Petitioner contends that it only exercised its management prerogative when it ordered the transfer of the respondent from the Cubao-Romulo branch to one of its branches in Divisoria or Baclaran. According to the petitioner, the use of said prerogative was perfectly justified by the following circumstances: (1) its hiring of another person to perform the work of an employee under preventive suspension; (2) its company policy of transferring employees every five years: and (3) to avoid animosity that is likely [to] arise between the respondent and the employees in the Cubao-Romulo branch who testified against her, and to its judgment and perception, it would not be conducive to a healthy working condition.[19]

Conversely, the respondent argues that the Court of Appeals correctly held that the petitioner was mandated to reinstate her to her former position as Cashier at the Cubao-Romulo branch as a result of her being exonerated of the administrative charges for which she was investigated.

The Ruling of the Court

The petition has no merit.

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The resolution of the basic issue of the case at bar depends upon a determination of the validity of the petitioner's order of transfer and the respondent's subsequent refusal to obey said transfer. To put an end to this controversy between the parties. the scope and limits of the exercise of management prerogative must be balanced against the security of tenure given to labor. At the outset, we have recognized that management has a wide latitude to regulate, according to its own discretion and judgment. all aspects of employment, including the freedom to transfer and reassign employees according to the requirements of its business.[20]

But of course, like other prerogatives, the right to transfer or reassign is subject to limitations arising under the law. contract or general principles of fair play and justice.[21] Jurisprudence proscribes transfers or reassignments of employees when such acts are unreasonable and cause inconvenience or prejudice to them.[22]

The petitioner avers that the order of transfer was well within its managerial prerogative to make and that there was never any agreement that private respondent had to be assigned at a fixed place.

The appellate court, on the other hand, explains that the order of transfer was effected with bad faith, as it was issued in response to the illegal dismissal case filed by the respondent.

The records of the present case sustain the findings of the appellate court.

The petitioner advances the claim that it had already employed a replacement for the position left vacant by the respondent when the latter was preventively suspended. It further justifies the said transfer by an alleged existing company policy that an employee who has stayed at a certain branch or place of assignment for five years is already due for transfer to another place.

Basically, the foregoing assertions are well and good if such were really the basis for the transfer. Considering the factual circumstances of the case at bar. however, such claims are nothing more, than specious arguments or mere afterthought advanced to put credence to the order of transfer. In its memorandum submitted before us. the petitioner explicitly stated that its main reason for ordering the transfer of the respondent was "to avoid animosity that is likely (to) arise between the respondent and the employees in the Cubao-Romulo branch who testified against her. and to its judgment and perception, it would not be conducive to a healthy working condition."[23] In other words, the petitioner's foremost concern was the anticipated animosity that would arise in the workplace and not because of any company policy or lack of vacant position.

Moreover, if indeed, the company policy was being strictly followed, or if there was one in the first place, the respondent should have been transferred long before the controversy ever started or sometime in 1989 or 1990 upon her reaching five years in the same branch. On the contrary, the respondent continued working at the petitioner's Cubao-Romulo branch from 1985 up to 1992 when the controversy began. Verily, it was only in 1993. while the legal controversy was in progress, that the respondent was informed of the order of transfer.

In the case at bar. we find no compelling reason to justify the petitioner's order of transfer. The petitioner's bare assertion that the transfer or reassignment was done in anticipation of the ill feelings that will permeate the workplace at its Cubao-Romulo branch does not convince. The Court of Appeals hit it squarely on the head when it stated that:

> . . . while a friction may be. in the interim, expected between the Petitioner and the said employees, as an aftermath of the investigation, however, the same does not justify the transfer of the Petitioner to another Branch of the Private Respondent, prejudicial to her. For if it were, reinstatement can never be possible simply because some hostility is invariably engendered between the Petitioner and said employees or even the officers of the Private Respondent concerned, for that matter, as a result of the investigation. The principle of animosity or strained relations cannot be applied indiscriminately:

> Obviously, the principle of "strained relations" cannot be applied indiscriminately. Otherwise, reinstatement can never be possible simply because some hostility is invariably engendered between the parties as a result of litigation. That is human nature.
>
> Besides, no strained relations should arise from a valid and legal act of asserting one's right; otherwise an employee who shall assert his right could be easily separated from the service, by merely paying his separation pay on the pretext that his relationship with his employer had already become strained. (Globe-Mackay Cable and Radio Corp. v. NLRC. G.R. No. 8251 1. 03 March 1992. 206 SCRA 701, 7 12)[24]

Admittedly, the petitioner has the right, conformably with its power of control over its employees, to transfer the latter from one place of assignment to another. Nonetheless, as earlier stated, the prerogative right of management is not absolute. It is subject to limitations.

In the case before us. it has not been shown that if the respondent is reinstated to her old position in her old place of work, there may well be strained relations between her and her co-employees. For this reason, the order of transfer is tinged with bad faith.

To reiterate, we have long stated that "the objection to the transfer being grounded on solely upon the personal inconvenience or hardship that will be caused to the employee by reason of the transfer is not a valid reason to disobey an order of transfer."[25] Be that as it may. if the said order is one identical to what was issued in the case at bar. we have no alternative but to strike it down as being one made in bad faith in order to make life difficult for a perceived undesirable employee. The resultant effect would be that of constructive dismissal.

In case of a constructive dismissal, the employer has the burden of proving that the transfer of an employee is for valid and legitimate grounds such as genuine business necessity. Particularly, for a transfer not to be considered a constructive dismissal the employer must be able to show that such transfer is not unreasonable, inconvenient, or prejudicial to the employee; nor does it involve a demotion in rank or a diminution of his salaries, privileges and other benefits. Failure of the employer to overcome this burden of proof, the employee's transfer shall no doubt be tantamount to unlawful constructive dismissal.

To reiterate, the bare assertions offered by the petitioner company to justify the assailed orders of transfer of the respondent reeked with bad faith, and as such, was rightly declared by the Labor Arbiter as one that resulted in the unlawful constructive dismissal of the respondent.

Finally, while it may be true that the award of moral and exemplary damages is discretionary upon the courts, the amount thereof must be reasonable and justified. In the present case, we find the award of damages excessive and unconscionable. Consequently, we reduce the award of P-50,000 for moral damages and P-50,000 for exemplary damages to P-20,000 each.

WHEREFORE, the instant petition is DENIED. The assailed 22 March 2000 Decision and 10 July 2000 Resolution of the Court of Appeals are hereby AFFIRMED subject to the following modifications: 1) that in the event that reinstatement can no longer be effected in view of the long passage of time as this case has been in litigation for thirteen years, more or less, plus the fact that the respondent appears to have relocated to Cabanatuan City, Nueva Ecija,26 separation pay be paid in the amount of one month salary for every year of service; and 2) that the award for moral damages is reduced to P20.000.00 and the award for exemplary damages is likewise reduced to P-20,000.00. The ten percent (1 0%) awarded for attorney's fees shall accordingly be based on the amounts as herein modified.

No costs.

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SO ORDERED.

Puno (Chairman), Austria-Martinez, and Tinga, JJ, concur.

Callejo, Sr., J., no part.

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[1] Penned by Associate Justice Romeo J. Callejo. Si. with Associate Justices Cancio C Garcia and Martin S. Villarama. Jr.. concurring. Rolln. p. 49.

[2]CA Rollo. p. 98.

[3] CA Rollo. p. 65.

[4] Rollo. p. 179.

[5] Ibid., p. 51.

[6] Ibid., p. 87.

[7] CA Rollo. p. 47.

[8] CA Rollo. p. 46.

[9] CA Rollo. pp. 66-67.

[10] Rollo. p. 13.

[11] CA Rollo. pp. 90-9l.

[12] CA Rollo. pp. 88-89.

[13] Rollo. pp. 176-188.

[14] Rollo. pp. 225-234. Penned by Commissioner Lourdes C. Javier and concurred in by Commissioner Ireneo B. Bernnardo

[15] Rollo. p. 255

[16] Rollo. p. 258.

[17] Rollo. p. 61.

[18] Rollo. pp. 406-408.

[19] Rollo. p. 412,

[20] Benguet Electric Cooperative and Versoza v. Fianza. G.R. No. 158606. 09 March 2004.

[21] Abbott Laboratories (Phils.) Inc. v. NLRC. G.R. No. L-76959. 12 October 1987. 154 SCRA 713.

[22] Philippine Japan Active Carbon Corp. v. NLRC. G.R, No. 83239. 08 March 1989. 171 SCRA 164. 1989.

[23] Rollo. p. 412.

[24] Rollo. pp. 59-60.

[25] Phil. Telegraph and Telephone Corp. v. Laplana, Gr. No. 76645. 23 July 1991, 1991 SCRA 485.

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[26] 26 Rollo, p. 463.

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