

**ELIZABETH C. BASCON AND NOEMI V. COLE, PETITIONERS, VS.
HONORABLE COURT OF APPEALS, METRO CEBU COMMUNITY
HOSPITAL, INC., AND GREGORIO IYOY, RESPONDENTS.***G.R. No. 144899. February 05, 2004*

Ponente: QUISUMBING, J.

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This petition for review on certiorari assails the Court of Appeals' Decision[1] in CA-G.R. SP No. 51690, dated March 13, 2000, which set aside the decision of the National Labor Relations Commission (NLRC), 4th Division, dated November 25, 1998, in NLRC Case No. V-00234-97. The NLRC had reversed the judgment of the Labor Arbiter, dated April 24, 1997, in NLRC-RAB-VII Case No. 07-0828-96, which held valid herein petitioners' dismissal from employment. Petitioners also challenge the appellate court's Resolution,[2] dated August 9, 2000, which denied their motion for reconsideration.

The petitioners in the instant case were employees of private respondent Metro Cebu Community Hospital, Inc. (MCCH) and members of the Nagkahiusang Mamumuo sa Metro Cebu Community Hospital (NAMA-MCCH), a labor union of MCCH employees. Petitioner Elizabeth C. Bascon had been employed as a nurse by respondent MCCH since May 1984. At the time of her termination from employment in April 1996, she already held the position of Head Nurse. The other petitioner, Noemi V. Cole, had been working as a nursing aide with MCCH since August 1974. Both petitioners were dismissed by the respondent hospital for allegedly participating in an illegal strike.

The instant controversy arose from an intra-union conflict between the NAMA-MCCH and the National Labor Federation (NFL), the mother federation of NAMA-MCCH. In November 1995, NAMA-MCCH asked MCCH to renew their Collective Bargaining Agreement (CBA), which was set to expire on December 31, 1995. NFL, however, opposed this move by its local affiliate. Mindful of the apparent intra-union dispute, MCCH decided to defer the CBA negotiations until there was a determination as to which of said unions had the right to negotiate a new CBA.

Believing that their union was the certified collective bargaining agent, the members and officers of NAMA-MCCH staged a series of mass actions inside MCCH's premises starting February 27, 1996. They marched around the hospital putting up streamers, placards and posters.

On March 13 and 19, 1996, the Department of Labor and Employment (DOLE) office in Region 7 issued two (2) certifications stating that NAMA-MCCH was not a registered labor organization. This finding, however, did not deter NAMA-MCCH from filing a notice of strike with the Region 7 Office of the National Conciliation and Mediation Board (NCMB). Said notice was, however, disregarded by the NCMB for want of legal personality of the union.

Meanwhile, the MCCH management received reports that petitioners participated in NAMA-MCCH's mass actions. Consequently, notices were served on all union members, petitioners included, asking them to explain in

writing why they were wearing red and black ribbons and roaming around the hospital with placards. In their collective response dated March 18, 1996, the union members, including petitioners, explained that wearing armbands and putting up placards was their answer to MCCH's illegal refusal to negotiate with NAMA-MCCH.

Subsequently, on March 28, 1996, MCCH notified the petitioners that they were to be investigated for their activities in the mass actions, with the hearings being scheduled on March 28, 1996 and April 1, 1996. Petitioners, however, denied receiving said notices. In a notice dated April 8, 1996, MCCH ordered petitioners to desist from participating in the mass actions conducted in the hospital premises with a warning that non-compliance therewith would result in the imposition of disciplinary measures. Petitioners again claimed they did not receive said order. Petitioners Bascon and Cole were then served notices terminating their employment effective April 12, 1996 and April 19, 1996, respectively.

The dismissal of petitioners did not deter NAMA-MCCH from staging more mass actions. The means of ingress to and egress from the hospital were blocked. Employees and patients, including emergency cases, were harassed, according to MCCH management, which also complained that mass actions held inside the hospital had created an atmosphere of animosity and violence, aggravating the condition of ailing patients. Furthermore, the hospital also suffered heavy losses brought about by a notable decline in the patient admission rates and the refusal of suppliers to extend credit. To address its labor problems, MCCH sought an injunction from the NLRC on July 9, 1996 in Injunction Case No. V-0006-96.

Meanwhile, on July 1, 1996, Bascon and Cole filed a complaint for illegal dismissal, docketed as NLRC-RAB-VII Case No. 07-0828-96. They denied having participated in said mass actions or having received the notices (1) enjoining them from wearing armbands and putting up placards, with warning that disciplinary measure would be imposed, and (2) informing them of the schedule of hearing. They admit, however, to wearing armbands for union identity while nursing patients as per instruction of their union leaders.

On July 16, 1996, a Temporary Restraining Order (TRO) was duly issued in Injunction Case No. V-0006-96.

On August 27, 1996, the local government of Cebu City ordered the demolition of the picket staged by the members of NAMA-MCCH for being both a public nuisance and a nuisance per se.

On September 18, 1996, the injunction was made permanent by an NLRC Resolution in Injunction Case No. V-0006-96, the fallo of which reads:

WHEREFORE, premises considered, the petition for injunction is hereby GRANTED enjoining respondents in the course of their strike/picket from committing the illegal acts mentioned in Article 264 (e) of the Labor Code more particularly the blocking of the free ingress to and egress from petitioner hospital and from committing threats, coercion and intimidation of the non-striking/picketing employees/workers reporting for work, vehicles/patients desiring to enter for the purpose of seeking admission/confinement in petitioner hospital and for such other lawful purpose.

SO ORDERED.[3]

In a Decision[4] dated April 24, 1997, the Labor Arbiter found the termination complained of in NLRC-RAB-VII Case No. 07-0828-96 to be valid and legal, and dismissed the complaint. The Labor Arbiter held that petitioners were justly dismissed because they actually participated in the illegal mass action. It also concluded that petitioners received the notices of hearing, but deliberately refused to attend the scheduled investigation.

Petitioners then appealed the Labor Arbiter's ruling to the NLRC, 4th Division, which docketed the appeal as NLRC Case No. V-00234-97.

In its Decision[5] dated November 25, 1998, the NLRC, 4th Division reversed the ruling of the Labor Arbiter and ordered the reinstatement of petitioners with full backwages. First, it found that petitioners merely wore armbands for union identity, per instruction of their union officials. Said wearing of armbands while nursing patients, is a constitutional right, which cannot be curtailed if peacefully carried out. Second, it ruled that the placards complained of by MCCH did not contain scurrilous, indecent or libelous remarks. Finally, it concluded that, in a belated but crude attempt to camouflage the illegal dismissal of petitioners, MCCH merely fabricated the notices allegedly sent to petitioners.

Anent the charge of gross insubordination, the NLRC ruled that petitioners were not guilty thereof, because the elements thereof had not been sufficiently proven, to wit: (1) reasonableness and lawfulness of the order or directive, (2) sufficiency of knowledge on the part of the employee of such order, and (3) the connection of the order with the duties which the employee had been engaged to discharge.

Unconvinced of the correctness of the NLRC decision, MCCH filed a motion for reconsideration presenting the following documentary evidence:

- 1) Affidavits of Paz Velasco, Luciano Quitoy, Joseph Dagatan, and Gina Jumao-as to show that petitioners were duly served the notices in question;
- 2) Letter reply of NAMA-MCCH dated March 18, 1996 wherein petitioners, together with the rest of the union members, collectively acknowledged receipt of the March 15, 1996 directive;
- 3) Position Paper of terminated co-employees where the receipt of the subject notices were admitted as well as the commission of the aforementioned protest mass actions; and
- 4) Appeal of private respondents, who did not join the protest mass action, to the Board of Trustees of MCCH to show that reinstatement is no longer feasible in view of strained relationship.

On February 4, 1999, the NLRC denied the plea for reconsideration of MCCH.

Undeterred, MCCH filed a special civil action for certiorari under Rule 65 of the 1997 Rules of Civil Procedure before the Court of Appeals, docketed as CA-G.R. SP No. 51690.

In its Decision[6] dated March 13, 2000, the Court of Appeals decided CA-G.R. SP No. 51690 as follows:

WHEREFORE, the petition is granted. The Decision of public respondent NLRC 4th Division dated November 25, 1998 in NLRC Case No. V-00234-97 is hereby REVERSED and the complaint of private respondents is dismissed for lack of merit. Petitioner Metro Cebu Community Hospital (MCCH) is however ordered to pay the private respondents separation pay equivalent to one-half month for every year of service in the interest of equity.

No costs.

SO ORDERED.[7]

The appellate court held that Bascon and Cole were validly terminated for their gross insubordination or willful disobedience as:

- 1) The order for petitioners to refrain from wearing armbands and putting up placards was legal, fair and reasonable.
- 2) The order was connected with the duties, which the petitioners had been engaged to discharge.
- 3) Said order was sufficiently made known to petitioners as receipt of the same by the latter was convincingly substantiated by hard evidence.

The appellate court stressed that petitioners' gross insubordination constituted unlawful acts undertaken in conjunction with an illegal mass concerted action akin to an illegal strike. Finally, the Court of Appeals ruled that petitioners' union activities violated the rights of patients and third parties such that they were outside the ambit of legality and beyond the mantle of protection of the freedom of speech.

Hence, the instant case, with the petitioners submitting for resolution the following issues:

I

CAN THE HONORABLE COURT OF APPEALS SUPPLANT ITS FINDINGS OF FACTS WITH THAT OF THE COMMISSION?

II

CAN THE HONORABLE COURT OF APPEALS REVERSE THE DECISION OF THE COMMISSION ALTHOUGH THERE IS NO FINDING OF GRAVE ABUSE OF DISCRETION OR LACK OF JURISDICTION?

III

CAN AN EMPLOYEE BE TERMINATED FOR INSUBORDINATION FOR IP SO FACTO NOT SHOWING UP FOR THE INVESTIGATION?[8]

Anent the first and second issues, as a general rule, the findings of facts of the NLRC are deemed binding and conclusive upon the Court. We have repeatedly said that the Court is not a trier of facts. Thus, resort to judicial review of the decisions of the NLRC in a special civil action for certiorari under Rule 65 of the Rules of Court is generally limited to the question of grave abuse of discretion amounting to lack or excess of jurisdiction.[9] However, where, as in the instant case, the findings of facts of the NLRC contradict those of the Labor Arbiter, a departure from the general rule is warranted. Thus, the Court may look into the records of the case and reexamine the questioned findings.[10] Where the NLRC and the Labor Arbiter disagree on their finding of facts, the Court can review the records to determine which findings should be preferred as more conformable to the evidentiary facts.[11]

In *St. Martin Funeral Home v. NLRC*, [12] we held that the special civil action of certiorari is the mode of judicial review of the decisions of the NLRC either by this Court or the Court of Appeals, but the latter court is the more appropriate forum in strict observance of the doctrine on the hierarchy of courts and that, in the exercise of this power, the Court of Appeals can review the factual findings or the legal conclusions of the NLRC.[13]

With regard to the third issue, note that petitioners were terminated for allegedly participating in an illegal strike and gross insubordination to the order prohibiting them from wearing armbands and putting up placards, not for ipso facto failing to show up in the scheduled investigation. Thus, the real issue is whether or not petitioners were validly terminated for (1) allegedly participating in an illegal strike and/or (2) gross insubordination to the order to stop wearing armbands and putting up placards.

As to the first ground, Article 264 (a) of the Labor Code provides in part that:

...Any union officer who knowingly participates in illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status... (Emphasis ours)

Thus, while a union officer can be terminated for mere participation in an illegal strike, an ordinary striking employee, like petitioners herein, must have participated in the commission of illegal acts during the strike (underscoring supplied). There must be proof that they committed illegal acts during the strike.[14] But proof

beyond reasonable doubt is not required. Substantial evidence, which may justify the imposition of the penalty of dismissal, may suffice.

In this case, the Court of Appeals found that petitioners' actual participation in the illegal strike was limited to wearing armbands and putting up placards. There was no finding that the armbands or the placards contained offensive words or symbols. Thus, neither such wearing of armbands nor said putting up of placards can be construed as an illegal act. In fact, per se, they are within the mantle of constitutional protection under freedom of speech.

Evidence on record shows that various illegal acts were committed by unidentified union members in the course of the protracted mass action. And we commiserate with MCCCH, patients, and third parties for the damage they suffered. But we cannot hold petitioners responsible for acts they did not commit. The law, obviously solicitous of the welfare of the common worker, requires, before termination may be considered, that an ordinary union member must have knowingly participated in the commission of illegal acts during a strike.

As regards the appellate court's finding that petitioners were justly terminated for gross insubordination or willful disobedience, Article 282 of the Labor Code provides in part:

An employer may terminate an employment for any of the following causes:

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

However, willful disobedience of the employer's lawful orders, as a just cause for dismissal of an employee, envisages the concurrence of at least two requisites: (1) the employee's assailed conduct must have been willful, that is, characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge.[15]

In this case, we find lacking the element of willfulness characterized by a perverse mental attitude on the part of petitioners in disobeying their employer's order as to warrant the ultimate penalty of dismissal. Wearing armbands and putting up placards to express one's views without violating the rights of third parties, are legal per se and even constitutionally protected. Thus, MCCCH could have done well to respect petitioners' right to freedom of speech instead of threatening them with disciplinary action and eventually terminating them.

Neither are we convinced that petitioners' exercise of the right to freedom of speech should be taken in conjunction with the illegal acts committed by other union members in the course of the series of mass actions. It bears stressing that said illegal acts were committed by other union members after petitioners were already terminated, not during the time that the latter wore armbands and put up placards.

Finally, even if willful disobedience may be properly appreciated, still, the penalty of dismissal is too harsh. Not every case of willful disobedience by an employee of a lawful work-connected order of the employer may be penalized with dismissal. There must be reasonable proportionality between, on the one hand, the willful disobedience by the employee and, on the other hand, the penalty imposed therefor.[16] In this case, evidence is wanting on the depravity of conduct and willfulness of the disobedience on the part of petitioners, as contemplated by law. Wearing armbands to signify union membership and putting up placards to express their views cannot be of such great dimension as to warrant the extreme penalty of dismissal, especially considering the long years of service rendered by petitioners and the fact that they have not heretofore been subject of any disciplinary action in the course of their employment with MCCCH.

The termination of petitioners' employment not being for any of the just or authorized causes, it constitutes illegal dismissal. Article 279 of the Labor Code, as amended, provides that:

...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.

Hence, illegally dismissed employees are entitled to both reinstatement and full backwages as a matter of course. MCCH alleges that due to strained relations, reinstatement is no longer possible. We disagree. In *Quijano v. Mercury Drug Corporation*,^[17] we stated that the doctrine of “strained relations” is inapplicable to a situation where the employee has no say in the operation of the employer’s business. Petitioners herein are nurse and nursing aide, respectively in MCCH and thus, have no prerogative in the operation of the business. As also held in the *Mercury Drug* case:

To protect labor’s security of tenure, we emphasize that the doctrine of “strained relations” should be strictly applied so as not to deprive an illegally dismissed employee of his right to reinstatement. Every labor dispute almost always results in “strained relations,” and the phrase cannot be given an overarching interpretation, otherwise, an unjustly dismissed employee can never be reinstated.^[18]

We cannot in our conscience allow MCCH to unjustly deny petitioners their lawful occupation, especially at this late point in their lives when it would be a near impossibility for them to find another employment. The employer’s power to dismiss must be tempered with the employee’s right to security of tenure. Time and again we have said that the preservation of the lifeblood of the toiling laborer comes before concern for business profits. Employers must be reminded to exercise the power to dismiss with great caution, for the State will not hesitate to come to the succor of workers wrongly dismissed by capricious employers.

WHEREFORE, the petition is GRANTED. The Decision of the Court of Appeals in CA-G.R. SP No. 51690 dated March 13, 2000 is REVERSED. Private respondent Metro Cebu Community Hospital is hereby ordered to reinstate petitioners Noemi V. Cole and Elizabeth C. Bascon without loss of seniority rights and other privileges and to pay them full backwages, inclusive of allowances, and other benefits computed from the time they were dismissed up to the time of their actual reinstatement.

No pronouncement as to costs.

SO ORDERED.

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

[1] Rollo, pp. 34-58; penned by Associate Justice Presbitero J. Velasco, Jr., with Associate Justices Salome A. Montoya and Bernardo LL. Salas concurring.

[2] Id. at 32-33.

[3] Rollo, pp. 36, 38.

[4] Id. at 97-102.

[5] Id. at 125-140.

[6] Id. at 34-58.

[7] Id. at 57.

[8] Id. at 19-20.

- [9] Permex, Inc. v. NLRC, 380 Phil. 79, 85 (2000).
- [10] See Corporal, Sr. v. NLRC, G.R. No. 129315, 2 October 2000, 341 SCRA 658, 665.
- [11] Samson v. NLRC, 386 Phil. 669, 681 (2000).
- [12] 356 Phil. 811 (1998).
- [13] Agustilo v. Court of Appeals, 417 Phil. 218, 227 (2001).
- [14] Association of Independent Unions in the Philippines v. NLRC, 364 Phil. 697, 709 (1999).
- [15] Dimabayao v. NLRC, 363 Phil. 279, 284 (1999).
- [16] St. Michael's Institute v. Santos, G.R. No. 145280, 4 December 2001, 371 SCRA 383, 393.
- [17] 354 Phil. 112 (1998).
- [18] Id. at 122.

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