

DR. REY C. TAMBONG, PETITIONER, VS. R. JORGE DEVELOPMENT CORPORATION, DOING BUSINESS AS PREMIUM AGRO-VET PRODUCTS, INC., AND/OR ROMEO J. JORGE, RESPONDENTS.

G.R. NO. 146068. August 31, 2006

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SANDOVAL-GUTIERREZ, J.:

Assailed in the instant Petition for Review on Certiorari are the Resolution of the Court of Appeals dated July 19, 2000 in CA-G.R. SP No. 59637 dismissing the petition for certiorari filed by herein petitioner, and the Resolution dated September 29, 2000 denying his motion for reconsideration.

R. Jorge Development Corporation, respondent, doing business as Premium Agro-Vet Products, Inc., is a distributor of veterinary products. It has a national network of area sales representatives who generally operate singly in their assigned areas. On February 16, 1992, respondents hired Dr. Rey C. Tambong, petitioner, as sales representative. Later, he was assigned as area sales representative for Area 17, comprising South Cotabato, General Santos City, and Saranggani. Sometime in May 1996, due to his repeated breach of company policies and insubordination, petitioner was offered another position, i.e., third party consultant, without a fixed income or percentage of sales.

Feeling aggrieved, petitioner, on July 18, 1996, filed a complaint for constructive dismissal with the Sub-Regional Arbitration Branch No. X of the National Labor Relations Commission (NLRC) in General Santos City. The complaint was later amended as one for illegal dismissal after he received a notice of termination dated August 17, 1996. He prayed for immediate reinstatement, payment of full back wages, damages, attorney's fees, and payment of incentives and commissions.

In their Answer to the complaint, respondents asserted that the dismissal from employment of petitioner is lawful and complied with the required procedural due process.

On June 25, 1998, the Labor Arbiter dismissed the complaint for lack of merit, holding petitioner's dismissal from the service is valid and for just causes, thus:

x x x the evidence show that complainant's dismissal from the service is valid and for just causes as provided under Art. 280 of the Labor Code, as amended. The complainant committed fraud against respondent company when he claimed reimbursement for expenses despite the fact that he was on leave of absence and when he failed to account for amounts released to him for remittance to a customer. Evidence also showed that he was on leave of absence when he failed to account for amounts released to him for remittance to a customer. Evidence also showed that he is guilty of gross negligence, allowing company products to expire. The same is tantamount to willful misconduct and serious disobedience, as he admitted causing loss to the respondent. His repeated failure to comply with company directives respecting submission of report and remittances of sales collection also constitute just causes for his termination (sic). x x x

On appeal by petitioner, the NLRC Cagayan de Oro City, in a Resolution dated October 29, 1999, reversed the Labor Arbiter's findings, declaring that petitioner's dismissal from the service is illegal. It ordered petitioner's

reinstatement to his previous position without loss of seniority rights. It also directed respondents to pay petitioner his salaries from March 1996 until finality of the resolution; his commission computed from March 1996, the monthly amount of which is the average of his commissions earned during the last twelve (12) months prior to his dismissal; and attorney's fees computed at 10% of the total award. A copy of the Resolution was received by petitioner on November 29, 1999.

Both parties moved for reconsideration, with petitioner asking for a partial reconsideration. Respondents prayed for the reinstatement of the Labor Arbiter's Resolution dismissing petitioner's complaint. On the other hand, petitioner asked that he should also be awarded moral and exemplary damages, wage differentials, sales commissions and incentives.

On April 7, 2000, the NLRC rendered a Decision reversing its Resolution of October 29, 1999 by reinstating the Labor Arbiter's Resolution dismissing the complaint. Finding that petitioner was "guilty of not just one cause but of almost all the just causes available," the NLRC ruled that the dismissal of petitioner is for just and valid causes. A copy of the Resolution was received by petitioner on April 19, 2000.

On June 16, 2000, petitioner filed a petition for certiorari with the Court of Appeals. On July 19, 2000, the appellate court rendered the first assailed Resolution dismissing the petition for his failure to indicate therein "the date when the petitioner received a copy of the October 29, 1999 resolution, in violation of Section 3, paragraph 2, Rule 46 of the 1997 Rules of Civil Procedure, as amended by Supreme Court Circular No. 39-38 dated August 18, 1998."

Petitioner timely filed a motion for reconsideration but it was denied by the Court of Appeals in its second assailed Resolution dated September 29, 2000 reiterating its ruling that the material dates should be alleged in the petition. In the same Resolution, the appellate court also held that the petition is likewise dismissible for being late, thus:

In any case, even granting that said counsel received the resolution of October 29, 1999 on November 29, 1999, his filing of a Motion for Reconsideration on December 6, 1999 consumed seven (7) out of the 60 day period for his filing of a petition for certiorari; thus, he had only 53 days from April 19, 2000 within which to file a petition for certiorari. Such period expired on June 11, 2000 pursuant to the rule then obtaining as found in Section 4, Rule 65 of the 1997 Rules of Civil Procedure as amended by Supreme Court Circular No. 39-98, dated August 19, 1998.

The instant petition was filed by registered mail on June 23, 2000 as shown by the registry stamp of the post office on its cover, not on June 16, 2000 – which is the date of the petition. Obviously, the same was filed way beyond the reglementary period.

Petitioner now raises the following issue:

Whether or not the Court of Appeals erred in holding that the petitioner failed to comply with Rule 46 on material dates and that the petition for certiorari was filed late.

Respondents, in their Comment, prayed that the petition be denied for being misleading and for utter lack of merit.

Petitioner does not deny that he failed to indicate in his petition for certiorari filed with the Court of Appeals the date he received a copy of the NLRC October 29, 1999 Resolution. He, however, asserts that the appellate court should have found that he complied with the Rules considering that the date of his receipt of the said Resolution was stamped on the copy he attached as Annex "G" to his petition. Also, in his motion for reconsideration filed with the NLRC, a copy of which he submitted as Annex "H" of his petition, he stated therein the date he received

a copy of the Resolution. He maintains that his failure to indicate in the petition for certiorari filed with the Court of Appeals the date of his receipt of the October 29, 1999 Resolution was due to an excusable negligence.

There are three essential dates that must be stated in a petition for certiorari brought under Rule 65. First, the date when notice of the judgment or final order or resolution was received; second, when a motion for new trial or reconsideration was filed; and third, when notice of the denial thereof was received.[1] Failure of petitioner to comply with this requirement shall be sufficient ground for the dismissal of the petition.[2] Substantial compliance will not suffice in a matter involving strict observance with the Rules.[3]

Here, petitioner failed to state the first date. He admitted that he did not allege in his petition for certiorari filed with the Court of Appeals when he received a copy of the NLRC Resolution of October 29, 1999 reversing the Labor Arbiter's Decision which dismissed his (petitioner's) complaint for illegal dismissal. This date is material for it would determine whether his motion for reconsideration of the said Resolution was seasonably filed. While there are exceptional cases where we set aside procedural defects to correct a patent injustice, however, petitioner failed to satisfy the Court of Appeals that the noncompliance with the requirement is justified. We have ruled time and again that litigants should have the amplest opportunity for a proper and just disposition of their cause – free, as much as possible, from the constraints of procedural technicalities. But equally settled is the rule that, save for the most persuasive of reasons, strict compliance with procedural rules is enjoined to facilitate the orderly administration of justice.[4]

In *Santos v. Court of Appeals*,[5] petitioner failed to show the first and second dates, namely, the date of receipt of the impugned NLRC Decision as well as the date of filing of his motion for reconsideration. Petitioner countered by stating that in the body of the petition for certiorari filed with the Court of Appeals, it was explicitly stated that the NLRC Resolution dated May 11, 1999 was received by petitioner through counsel on July 30, 1999. He even reiterated this contention in his Reply. We held:

The requirement of setting forth the three (3) dates in a petition for certiorari under Rule 65 is for the purpose of determining its timeliness. Such a petition is required to be filed not later than sixty (60) days from notice of the judgment, order or Resolution sought to be assailed. Therefore, that the petition for certiorari was filed forty-one (41) days from receipt of the denial of the motion for reconsideration is hardly relevant. The Court of Appeals was not in any position to determine when this period commenced to run and whether the motion for reconsideration itself was filed on time since the material dates were not stated. It should not be assumed that in no event would the motion be filed later than fifteen (15) days. Technical rules of procedure are not designed to frustrate the ends of justice. These are provided to effect the proper and orderly disposition of cases and thus effectively prevent the clogging of court dockets. Utter disregard of the Rules cannot justly be rationalized by harking on the policy of liberal construction.

Moreover, the Court of Appeals found that the petition for certiorari was filed late. Even assuming that it was filed on time, we find no reason to disturb the findings of both the Labor Arbiter and the NLRC that the dismissal of petitioner from employment was for valid and just causes under Article 280 of the Labor Code. In fact, the NLRC ruled that petitioner is "guilty of not just one cause, but of almost all the just causes available." At this juncture, it is relevant to emphasize that this Court is not a trier of facts.

WHEREFORE, we DENY the petition and AFFIRM the challenged Resolutions of the Court of Appeals in CA-G.R. SP No. 59637. Costs against petitioner.

SO ORDERED.

Puno, (Chairperson), Azcuna and Garcia, JJ., concur. Corona, J., on leave.

[1] Section 3, par. 2, Rule 46, 1997 Rules of Civil Procedure, as amended by Supreme Court Circular No. 39-98, dated August 18, 1998; Santos, et al. v. Court of Appeals, et al., GR. No. 141947, July 25, 2001, 360 SCRA 512; Great Southern Maritime Services Corporation v. Acuña, et al., G.R. No. 140189, February 28, 2005, 452 SCRA 422.

[2] Section 3, par. 6, *ibid.*

[3] Ortiz v. Court of Appeals, G.R. No. 127393, December 4, 1998, 299 SCRA 708.

[4] Pet Plans, Inc. v. Court of Appeals, G.R. No. 148287, November 23, 2004, 443 SCRA 510.

[5] G.R. No. 141947, July 25, 2001, 360 SCRA 512.

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