

MA. SALVACION G. AQUINO, PETITIONER, VS. COURT OF APPEALS (EIGHT DIVISION), ST. PAUL'S COLLEGE OF MANILA, INC. AND SR. NATIVIDAD DE JESUS FERRAREN, S.P.C., RESPONDENTS.

G.R. NO. 149404. September 15, 2006

Ponente: GARCIA, J.

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GARCIA, J.:

Assailed and sought to be set aside in this petition for certiorari under Rule 65 of the Rules of Court is the August 6, 2001 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 63907 which affirmed an earlier decision of the National Labor Relations Commission (NLRC) dismissing the petitioner's complaint for illegal dismissal against the herein private respondents, St. Paul's College of Manila and its president and college dean, Sister Natividad De Jesus Ferraren, S.P.C.

In brief, the pertinent facts are:

Petitioner, a professor in the respondent St. Paul's College of Manila for 22 years, verbally accepted sometime in February, 1998 a tutorial and a summer teaching load for the summer of 1998. Subsequently, the petitioner decided to leave for the United States in response to an urgent request from her brother and sister-in-law thereat to help them take care of their children, thus necessitating a revision of her summer schedule. Hence, in a letter dated March 31, 1998 and addressed to respondent Sister Natividad De Jesus Ferraren, president and college dean of the respondent college, the petitioner proposed a change in her teaching schedule to accommodate her departure for abroad on April 27, 1998.

Unfortunately, it was only on April 26, 1998 when Sister Ferraren received a copy of said letter as attached to another letter by the petitioner dated April 25, 1998. In that letter of April 25, 1998, the petitioner apologized for not being able to seek Sister Ferraren's prior approval of change in her teaching schedule but explained that the change had been made with the approval of her (petitioner's) department chairperson, Ms. Shirley Agatep and the college's registrar, Ms. Lilia B. Santos.

It was only upon the belated receipt of the said April 25 letter that Sister Ferraren learned for the first time of the petitioner's plan to depart for abroad and of her proposal to alter her summer teaching schedule. Despite her knowledge of the need for a schedule change as early as March of 1998, the petitioner never bothered to mention about it even when she signed her conformity to the summer load schedule fixed by the college and despite an April 15, 1998 memorandum reminding all teachers to comply with their teaching schedules or risk disciplinary action.

Conformably with the existing college's policy whereby only its president and college dean can approve changes in the schedules of classes and applications for leave, Sister Ferraren wrote department chairperson Ms. Shirley Agatep and college registrar Ms. Lilia B. Santos to submit their written explanations regarding the petitioner's allegations that the two had approved the change in her summer teaching schedule. Both denied the imputed approval and even stated in their respective written explanations that because they are without authority to act on

the matter, they merely advised the petitioner to secure the approval of Sister Ferraren. While admitting to having merely endorsed the petitioner's request for a change of schedule, Ms. Agatep further expressed surprise on how it came about that it was only on April 25, 1998 when the endorsed request was delivered by the petitioner to Sister Ferraren.

Thereafter, in a memorandum dated May 19, 1998 to which was attached the aforementioned written explanations of Ms. Agatep and Ms. Santos, the petitioner was required to show cause within five (5) days from receipt of said memorandum why she should not be subjected to disciplinary action, including dismissal, for: (1) taking a leave without the explicit approval of the college dean and president; (2) abandonment of employment; (3) fraud and willful breach of trust; (4) failure to observe contractual obligations with the school; (5) serious misconduct or willful disobedience in connection with work; and (6) insubordination, all punishable under the College's Faculty Manual.

On June 2, 1998, the respondent college officially started the school year 1998-1999 with a seminar for all faculty members. Petitioner was neither present thereat nor did she communicate her whereabouts. At this time, the respondent college had not yet even received any response from her to the show-cause memorandum adverted to.

Classes commenced with the petitioner still nowhere to be found, compelling the respondent college to hire the services of a substitute teacher to take over some of her more important subjects while her other classes were left unattended. Meanwhile, the petitioner continued to remain in the college's payroll as a full-time professor for the subjects assigned to her, including those momentarily taken over by the substitute teacher.

On June 10, 1998, the petitioner surfaced and came forward to personally deliver to Sister Ferraren her written compliance to the show-cause memorandum. In it, she admitted having changed her schedule without first seeking Sister Ferraren's approval but with the explanation that she had been constantly trying as early as March of that year to write for an approval of adjustment in her teaching schedule but to no avail. She further explained that it was only when she ran out of time that she decided to leave her letter-request for schedule adjustment with Sister Ferraren's secretary on April 25, 1998.

Upon handing over her aforesaid written compliance to Sister Ferraren, the petitioner verbally requested the latter to simply set it aside and pleaded to Sister Ferraren to forgo conducting an administrative hearing on her case so as not to apprise the other teachers of the details of the incident, and expressed her desire to merely retire instead. Sister Ferraren immediately accommodated her desire for early retirement but directed the petitioner to reduce the same in writing to facilitate the release of her unpaid salaries and benefits as an early retiree. The petitioner told Sister Ferraren that she would bring a written request therefor the following day. In turn, Sister Ferraren assured her of the expedient release of her salaries and benefits. Hence, after the petitioner left, Sister Ferraren instructed the college's accounting department to compute all the salaries and benefits due the petitioner and distributed her remaining classes to other teachers. The accounting department accordingly struck the petitioner's name off the payroll of the college starting June 10, 1998 after computing her unpaid salaries and benefits.

As things turned out later, however, the petitioner failed to submit her promised written request for early retirement despite several attempts on the part of the college to contact her for the purpose. Sensing that the petitioner was deliberately avoiding Sister Ferraren and that she may be contemplating of filing a case for illegal dismissal, the respondent college decided to hold an administrative hearing on the various charges proffered against her in the show-cause memorandum, which charges remained pending before she optionally retired on June 10, 1998. Accordingly, formal notices dated July 9, 1998 were separately sent to the petitioner, Ms. Agatep and Ms. Santos directing them to appear at a formal hearing on July 17, 1998 to explain their sides.

A day before the scheduled hearing, the petitioner came back and verbally informed Sister Ferraren of her

intention to attend the hearing whereat she would admit her mistake and put on record her decision to simply retire. During the hearing, however, the petitioner, in a complete turn about of what she verbally told to Sister Ferraren, did not admit her mistake nor make of record her decision for an early retirement. Instead, she excused herself from the hearing for allegedly feeling ill and asked for a resetting thereof in two (2) weeks, after which she left even as the hearing committee informed her that the hearing would nonetheless proceed as to Ms. Agatep and Ms. Santos who were then ready to present their sides. Before leaving, however, the petitioner was assured by the committee that she would be informed of the minutes of the hearing and that she may respond in writing should she be unable to attend the next hearing. This was noted in the minutes of the July 17 hearing, which minutes were duly sent to the petitioner on July 21, 1998, together with a notice for the next hearing date on July 30, 1998.

On July 29, 1998, or a day before the next hearing, the respondent college and Sister Ferraren received a letter from the petitioner's counsel to the effect that his client does not intend anymore to attend any hearings. In the same letter, the counsel demanded for his client's reinstatement with full backwages and without loss of seniority rights and benefits. The following day, the investigating committee proceeded with the hearing, and eventually reached the conclusion that the petitioner was guilty of the charges stated in the show-cause memorandum. Even then, the committee recommended to allow the petitioner's early retirement and the payment of her benefits in acknowledgment of her desire to simply retire.

It was against the foregoing backdrop of events when, on October 6, 1998, the petitioner filed with the Labor Arbiter a complaint for illegal dismissal and non-payment of salaries against the herein private respondents.

In his decision of December 22, 1999, Labor Arbiter Romulo S. Protacio found for the petitioner. But on appeal by the private respondents, the NLRC, in its decision of December 29, 2000, reversed that of the labor arbiter.

From the NLRC's reversal decision, the petitioner went to the CA in CA-G.R. SP No. 63907. As stated at the threshold hereof, the appellate court, in its decision dated August 6, 2001, affirmed that of the NLRC.

Hence, the petitioner's present recourse under Rule 65 of the Rules of Court raising the following issues:

- Whether the CA committed grave abuse of discretion in affirming the NLRC's finding that the private respondents have granted the petitioner an early retirement;
- Whether the CA committed grave abuse of discretion in affirming the NLRC's finding that the private respondents have not illegally dismissed the petitioner and hence not entitled to reinstatement with backwages and without loss of seniority rights and other benefits appertaining to her position;
- Whether the CA committed grave abuse of discretion in affirming the NLRC's finding that Sister Ferraren cannot be held personally liable for the petitioner's claims; and
- Whether the CA committed grave abuse of discretion in not awarding moral and exemplary damages and attorney's fees to the petitioner.

WE DENY.

It bears emphasis that the petitioner has come to this Court via the vehicle of certiorari under Rule 65 of the Rules of Court. In their Comment[2] to the petition, the private respondents very much put in issue the propriety of the remedy resorted to by the petitioner. We sustain the private respondents.

One of the requisites for the issuance of a writ for certiorari is that there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law. Section 1, Rule 65 of the Rules of Court is emphatic on this. It reads:

Section 1. Petition for certiorari. - When any tribunal, board or officer exercising judicial or quasi-judicial

functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require. [Emphasis supplied]

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The special civil action of certiorari cannot be allowed when a party to a suit fails to appeal a judgment to the proper forum despite the availability of the remedy of appeal.[3] Certiorari is not and cannot be used as a substitute for appeal, where the latter remedy is available.[4] If any, the petitioner's proper recourse would have been to elevate the assailed CA decision to this Court via a petition for review under Rule 45 of the Rules of Court.

Moreover, let alone the fact that the petitioner erroneously resorted to Rule 65 when appeal by way of a petition for review under Rule 45 was available, the error is worse compounded by the circumstance that the petitioner did not file any motion for reconsideration with the CA prior to the filing of the present petition. The general rule is that a previous motion for reconsideration in the court of original proceeding is necessary before invoking the certiorari jurisdiction of a higher court. A petition for certiorari will not generally be entertained unless the public respondent has had, through a motion for reconsideration, a chance to correct or rectify the error imputed to him.[5]

But even if we were to overlook the error in the mode of appeal and suspend the application of procedural rules, as urged by the petitioner, still the petition must fail.

As it is, the questions raised in this recourse, be it under Rule 45 or Rule 65 of the Rules of Court, are basically one of facts.

Hornbook is the rule that in a petition for review, only errors of law may be raised.[6] Section 1 of Rule 45 expressly says so, to wit:

Section 1. Filing of petition with the Supreme Court. - A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth. [Emphasis supplied]

On the other hand, in a petition for certiorari under Rule 65, only jurisdictional issues may be raised, as when a court or tribunal has acted "without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction." The extraordinary writ of certiorari cannot legally be used for any other purpose. In a special civil action for certiorari, the Court cannot correct errors of fact which the lower court or tribunal may have committed.

Deference to the expertise acquired by the NLRC and the limited scope granted in the exercise of certiorari jurisdiction restrain any probe into the correctness of the NLRC's evaluation of evidence.[7] Factual findings of agencies exercising quasi-judicial functions, like the NLRC, are accorded not only respect but even finality, aside from the consideration that this Court is essentially not a trier of facts.[8]

Hence, in certiorari proceedings under Rule 65, judicial review does not go as far as to evaluate the sufficiency of evidence upon which the NLRC based its determinations, the inquiry being limited essentially to whether said tribunal has acted without or in excess of its jurisdiction or with grave abuse of discretion. And an act of a court or

tribunal may only be considered as in grave abuse of discretion when it is performed in a capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility.[9]

Here, there is no indication whatsoever that any grave abuse of discretion attended the proceedings below. For sure, the findings of fact were well substantiated by the evidence presented. We see no reason to disturb such findings. Further, those findings fully support the decision reached by the NLRC as affirmed by the CA.

WHEREFORE, the petition is DISMISSED and the assailed decision of the CA is hereby AFFIRMED.

Costs against the petitioner.

SO ORDERED.

Puno, (Chairperson), Sandoval-Gutierrez, Corona, and Azcuna, JJ. concur.

[1] Penned by Associate Justice Eugenio S. Labitoria with Associate Justices Eloy R. Bello and Perlita J. Tria Tirona, (all ret.), concurring; Rollo pp. 87-99.

[2] Id. at 325-345.

[3] De La Paz v. Panis, G.R. No. 57023, June 22, 1995, 245 SCRA 242.

[4] Del Rosario v. Balagot, G.R. No. L-55377, October 18, 1988, 166 SCRA 429.

[5] Amante v. Sison and Manzanero, 60 Phil. 949, 951 (1934).

[6] Villarico v. Court of Appeals, G.R. No. 132115, January 4, 2002, 373 SCRA 23.

[7] Travelaire & Tours Corp. et al. v. National Labor Relations Commission et. al., G.R. No. 131523, 20 August 1998, 294 SCRA 505.

[8] Bataan Shipyard and Engineering Corporation v. National Labor Relations Commission, et. al., G.R. No. 102876, March 4, 1997, 269 SCRA 199.

[9] Intestate Estate of Carmen de Luna v. IAC, G.R. No. 72424, February 13, 1989, 170 SCRA 246, 254.

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