GSP MANUFACTURING CORPORATION AND CHARO APACIBLE, PETITIONERS, VS. PAULINA CABANBAN, RESPONDENT.

G.R. NO. 150454. July 14, 2006

Ponente: CORONA, J.

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CORONA, J.:

This is a petition for review on certiorari from a decision[1] and a resolution[2] of the Court of Appeals.

In brief, the facts of the case follow.[3]

Respondent Paulina Cabanban worked with petitioner GSP Manufacturing Corporation (GSP) as a sewer from February 7, 1985 until her alleged termination on March 1, 1992.

On June 16, 1992, respondent filed with the National Labor Relations Commission (NLRC), National Capital Region Arbitration Branch, a complaint against petitioners for illegal dismissal, non-payment of holiday pay, service incentive leave pay and 13th month pay.

Respondent claimed she was terminated by petitioners because she failed to dissuade her daughter from continuing her employment at the Sylvia Santos Company, a business competitor of petitioners.

In their defense, petitioners argued that respondent abandoned her work on March 14, 1992 and that they reported this to the Department of Labor and Employment on May 15, 1992.

On May 7, 1993, labor arbiter Melquiades Sol D. del Rosario found petitioners guilty of illegal dismissal. Petitioners appealed to the NLRC.

On August 10, 1995, the NLRC issued a resolution affirming in toto the decision of the labor arbiter. Hence, this petition.

Petitioners vigorously assail the findings of fact of the Court of Appeals which affirmed those of the labor arbiter. They claim that these findings, based solely on statements made by respondent in the affidavit attached to her position paper, were arrived at arbitrarily.

The petition is without merit.

As petitioners are well aware of, factual findings of the NLRC, particularly when they are in agreement with those of the labor arbiter, are deemed binding and conclusive on this Court. As long as their decisions are devoid of any unfairness or arbitrariness in their evaluation of the evidence, all that is left for us to do is stamp our affirmation and declare its finality.[4] Having perused the records, we find no such arbitrariness here.

We would like to reiterate some salient points laid down in our prior pronouncements concerning abandonment of employment. Abandonment as a just ground for dismissal requires the deliberate, unjustified refusal of the employee to perform his employment responsibilities. Mere absence or failure to work, even after notice to return, is not tantamount to abandonment.[5] The records are bereft of proof that petitioners even furnished respondent

such notice.

Furthermore, it is a settled doctrine that the filing of a complaint for illegal dismissal is inconsistent with abandonment of employment. An employee who takes steps to protest his dismissal cannot logically be said to have abandoned his work.[6] The filing of such complaint is proof enough of his desire to return to work, thus negating any suggestion of abandonment.[7]

Clearly, petitioners' claim that respondent's complaint was "an afterthought," having been filed a long time after the date of the supposed abandonment, was utterly without merit. As the Court of Appeals correctly pointed out, citing the case of Pare v. NLRC,[8] respondent had four years within which to institute her action for illegal dismissal. Compared to the six months it took the aggrieved employee in that case to file his complaint for illegal dismissal, respondent's 84 days was not unreasonably long at all.

WHEREFORE, the petition is hereby DENIED. The assailed decision and resolution of the Court of Appeals in CA-G.R. SP No. 51161 are hereby AFFIRMED.

Costs against petitioners.

SO ORDERED.

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

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[1] Decision dated January 31, 2001 in CA-G.R. SP No. 51161, penned by Associate Justice Oswaldo D. Agcaoili (now retired) and concurred in by Associate Justices Elvi John S. Asuncion and Mercedes Gozo-Dadole of the Second Division of the Court of Appeals; rollo, pp. 10-16.

[2] Resolution dated September 28, 2001 (affirming the January 31, 2001 CA Decision) in CA-G.R. SP No. 51161, penned by Associate Justice Oswaldo D. Agcaoili (now retired) and concurred in by Associate Justices Elvi John S. Asuncion and Mercedes Gozo-Dadole of the Second Division of the Court of Appeals; id., p. 18.

[3] Id., pp. 11-13.

[4] NYK v. NLRC, 445 Phil. 654 (2003).

[5] R.P. Dinglasan v. Atienza, G.R. No. 156104, 29 June 2004, 433 SCRA 263; Samarca v. Arc-Men Industries, Inc., G.R. No. 146118, 8 October 2003, 413 SCRA 162; Phil. Industrial Security Agency Corp. v. Dapiton, 377 Phil. 951 (1999); Samahan ng mga Manggagawa sa Bandolino v. NLRC, 341 Phil. 635 (1997).

[6] Samarca v. Arc-Men Industries, Inc., supra; Kams Int'l. v. NLRC, 373 Phil. 950 (1999); Hagonoy Rural Bank, Inc. v. NLRC, G.R. No. 122075, 28 January 1998, 285 SCRA 297.

[7] Hagonoy Rural Bank, Inc. v. NLRC, supra.

[8] 376 Phil. 288 (1999).

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