

PHILIPPINE AMERICAN DRUG CO., PETITIONER, VS. COURT OF INDUSTRIAL RELATIONS AND ALBERTO CUADRA, RESPONDENTS.

G.R. No. 15162. April 18, 1962

Ponente: BENGZON, C.J.

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BENGZON, C.J.:

Certiorari, by way of appeal, to reverse the order of the Court of Industrial Relations directing petitioner Philippine American Drug Co. to pay to respondent Alberto Cuadra the difference between what he would have received as petitioner's Legaspi branch manager and what he had actually earned while employed in another company, from December 1, 1957 to June 30, 1958.

In March 1957 in CIR Case No. 692-V (3), said Industrial Court found that Philippine American Drug Co., was justified in laying off some 40 employees, including Cuadra, then a sales supervisor, because it had suffered business losses. However, the court ordered petitioner to give the employees so separated first priority should it thereafter employ additional personnel.

It happened that on December 1, 1957, petitioner appointed Federico Garcia, Jr., vice Angel Fidelino as Legaspi branch manager.

So, invoking his priority right to employment, Cuadra asked the court to require petitioner to dismiss Garcia, and to appoint him instead as Legaspi branch manager. In opposition, petitioner alleged that Cuadra did not have the requisite qualifications and that Garcia, who was fully qualified, was not an additional employee, but a replacement of Fidelino who had been dismissed. Later, as affirmative defense, it averred that as of June 30, 1958, all its provincial branch managers, Garcia among them, would be laid off.

Deeming Cuadra more qualified than Garcia, and considering his preferential right, the Court of Industrial Relations on September 15, 1958, declared that petitioner should have employed him instead of taking an outsider, (Garcia). It therefore required petitioner to pay to Cuadra the difference between the equivalent of what Garcia received during his incumbency and Cuadra's actual earnings during the same period. The motion for reconsideration having been denied by resolution en banc, the present petition for certiorari, was filed, petitioner claiming that the Industrial Court acted without or in excess of jurisdiction, or with grave abuse of discretion.

The issue is: Does a dismissed employee's preferential right to reemployment include appointment to a position higher than that which he had lost?

The position of Legaspi branch manager was higher than that of sales supervisor.[1]

Unquestionably, petitioner had suffered a business recession which rendered unjustified Cuadra's reinstatement on March 1957—a remedy to which he would ordinarily have been entitled. So he was merely given a priority right to be employed should petitioner subsequently employ additional personnel. A preferential right to employment is a lesser privilege than reinstatement; it is reinstatement contingent upon availability of work.

It is a settled rule that the Industrial Court cannot order reinstatement of a dismissed employee to a position which he had not previously occupied.[2] All that is required is that the dismissed employee be restored to his former position or to substantially equivalent employment. If reinstatement, as defined, does not cover appointment to a higher position (otherwise it would be a misnomer), then the preferential right to employment, a lesser right, certainly cannot include appointment to a position higher than that formerly occupied by the laidoff employee.

So, in ordering that Cuadra be paid the equivalent to Garcia's salary (minus what Cuadra earned in another company), the court virtually ordered his appointment as petitioner's Legaspi branch manager—an act which it had no power to do. Indeed, even if Cuadra were still working as petitioner's sales supervisor at the time of Fidelino's dismissal, he could have hoped to be promoted, but he could not have compelled petitioner to promote him to Legaspi branch manager.

WHEREFORE, the appealed order is reversed, and herein petitioner is absolved from all liability to Cuadra. So ordered.

Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, Paredes, and Dizon, JJ., concur.

[1] While there is no admission that the office of branch manager is higher than that of sales supervisor, there is no claim that they are equal. Respondent court avers that it had not impliedly ruled that a Manila sales supervisor is of the same category as a provincial branch manager (page 4, respondent court's answer), somehow, leaving the impression that they are not exactly of the same class. On the other hand, Cuadra claims "that the position of sales supervisor is almost equivalent to the position of branch manager (page 2, respondent Cuadra's answer). "Almost" means nearly; in large part; well-nigh; little short of (Webster's International Dictionary, 2nd ed., unabridged). So sales supervisor is not quite equal to a provincial branch manager even with reference to petitioner's organizational set-up. Note that Cuadra, when he was Davao general manager, received P650 a month, but only P600 a month when was sales supervisor. (Cuadra was formerly Davao general manager, but he res'gned on January 20, 1951, because he was being demoted to salesman. Petitioner reemployed him as sales supervisor on July 9, 1951).

[2] *San Miguel Brewery, Inc. vs. Santos*, G.R. No. L-12682. The Court (citing 36 Words & Phrases, Perm. ed., 730) defined reinstatement as reforestation to a state from which one has been removed or separated, and consequently declared that one who had been dismissed from the position of temporary guard may be reinstated to the same, but not to the position of permanent guard (which, though not stated, appears to be of higher category, considering the tenure).

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