CENTURY CANNING CORPORATION, PETITIONER, VS. COURT OF APPEALS AND GLORIA C. PALAD, RESPONDENTS.

G.R. No. 152894. August 17, 2007

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a petition for review[1] of the Decision[2] dated 12 November 2001 and the Resolution dated 5 April 2002 of the Court of Appeals in CA-G.R. SP No. 60379.

The Facts

On 15 July 1997, Century Canning Corporation (petitioner) hired Gloria C. Palad (Palad) as "fish cleaner" at petitioner's tuna and sardines factory. Palad signed on 17 July 1997 an apprenticeship agreement[3] with petitioner. Palad received an apprentice allowance of P138.75 daily. On 25 July 1997, petitioner submitted its apprenticeship program for approval to the Technical Education and Skills Development Authority (TESDA) of the Department of Labor and Employment (DOLE). On 26 September 1997, the TESDA approved petitioner's apprenticeship program.[4]

According to petitioner, a performance evaluation was conducted on 15 November 1997, where petitioner gave Palad a rating of N.I. or "needs improvement" since she scored only 27.75% based on a 100% performance indicator. Furthermore, according to the performance evaluation, Palad incurred numerous tardiness and absences. As a consequence, petitioner issued a termination notice[5] dated 22 November 1997 to Palad, informing her of her termination effective at the close of business hours of 28 November 1997.

Palad then filed a complaint for illegal dismissal, underpayment of wages, and non- payment of pro-rated 13th month pay for the year 1997.

On 25 February 1999, the Labor Arbiter dismissed the complaint for lack of merit but ordered petitioner to pay Palad her last salary and her pro-rated 13th month pay. The dispositive portion of the Labor Arbiter's decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered declaring that the complaint for illegal dismissal filed by the complainant against the respondents in the above-entitled case should be, as it is hereby DISMISSED for lack of merit. However, the respondents are hereby ordered to pay the complainant the amount of ONE THOUSAND SIX HUNDRED THIRTY-TWO PESOS (P1,632.00), representing her last salary and the amount of SEVEN THOUSAND TWO HUNDRED TWENTY EIGHT (P7,228.00) PESOS representing her prorated 13th month pay.
>
> All other issues are likewise dismissed.
>
> SO ORDERED.[6]

On appeal, the National Labor Relations Commission (NLRC) affirmed with modification the Labor Arbiter's

decision, thus:

> WHEREFORE, premises considered, the decision of the Arbiter dated 25 February 1999 is hereby MODIFIED in that, in addition, respondents are ordered to pay complainant's backwages for two (2) months in the amount of P7,176.00 (P138.75 x 26 x 2 mos.). All other dispositions of the Arbiter as appearing in the dispositive portion of his decision are AFFIRMED.
>
> SO ORDERED.[7]

Upon denial of Palad's motion for reconsideration, Palad filed a special civil action for certiorari with the Court of Appeals. On 12 November 2001, the Court of Appeals rendered a decision, the dispositive portion of which reads:

> WHEREFORE, in view of the foregoing, the questioned decision of the NLRC is hereby SET ASIDE and a new one entered, to wit:
>
> - finding the dismissal of petitioner to be illegal;
>
> - ordering private respondent to pay petitioner her underpayment in wages;
>
> - ordering private respondent to reinstate petitioner to her former position without loss of seniority rights and to pay her full backwages computed from the time compensation was withheld from her up to the time of her reinstatement;
>
> - ordering private respondent to pay petitioner attorney's fees equivalent to ten (10%) per cent of the monetary award herein; and
>
> - ordering private respondent to pay the costs of the suit.
>
> SO ORDERED.[8]

The Ruling of the Court of Appeals

The Court of Appeals held that the apprenticeship agreement which Palad signed was not valid and binding because it was executed more than two months before the TESDA approved petitioner's apprenticeship program. The Court of Appeals cited Nitto Enterprises v. National Labor Relations Commission,[9] where it was held that prior approval by the DOLE of the proposed apprenticeship program is a condition sine qua non before an apprenticeship agreement can be validly entered into.

The Court of Appeals also held that petitioner illegally dismissed Palad. The Court of Appeals ruled that petitioner failed to show that Palad was properly apprised of the required standard of performance. The Court of Appeals likewise held that Palad was not afforded due process because petitioner did not comply with the twin requirements of notice and hearing.

The Issues

> Petitioner raises the following issues:
>
> - WHETHER THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN HOLDING THAT PRIVATE RESPONDENT WAS NOT AN APPRENTICE; and
>
> - WHETHER THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN HOLDING THAT PETITIONER HAD NOT ADEQUATELY PROVEN THE EXISTENCE OF A VALID CAUSE IN TERMINATING THE SERVICE OF PRIVATE RESPONDENT.[10]

The Ruling of the Court

The petition is without merit.

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Registration and Approval by the TESDA of Apprenticeship Program Required Before Hiring of Apprentices

The Labor Code defines an apprentice as a worker who is covered by a written apprenticeship agreement with an employer.[11] One of the objectives of Title II (Training and Employment of Special Workers) of the Labor Code is to establish apprenticeship standards for the protection of apprentices.[12] In line with this objective, Articles 60 and 61 of the Labor Code provide:

> ART. 60. Employment of apprentices. --Only employers in the highly technical industries may employ apprentices and only in apprenticeable occupations approved by the Minister of Labor and Employment. (Emphasis supplied)
>
> ART. 61. Contents of apprenticeship agreements. -- Apprenticeship agreements, including the wage rates of apprentices, shall conform to the rules issued by the Minister of Labor and Employment. The period of apprenticeship shall not exceed six months. Apprenticeship agreements providing for wage rates below the legal minimum wage, which in no case shall start below 75 percent of the applicable minimum wage, may be entered into only in accordance with apprenticeship programs duly approved by the Minister of Labor and Employment. The Ministry shall develop standard model programs of apprenticeship. (Emphasis supplied)

In Nitto Enterprises v. National Labor Relations Commission,[13] the Court cited Article 61 of the Labor Code and held that an apprenticeship program should first be approved by the DOLE before an apprentice may be hired, otherwise the person hired will be considered a regular employee. The Court held:

> In the case at bench, the apprenticeship agreement between petitioner and private respondent was executed on May 28, 1990 allegedly employing the latter as an apprentice in the trade of "care maker/molder." On the same date, an apprenticeship program was prepared by petitioner and submitted to the Department of Labor and Employment. However, the apprenticeship agreement was filed only on June 7, 1990. Notwithstanding the absence of approval by the Department of Labor and Employment, the apprenticeship agreement was enforced the day it was signed.
>
> Based on the evidence before us, petitioner did not comply with the requirements of the law. It is mandated that apprenticeship agreements entered into by the employer and apprentice shall be entered only in accordance with the apprenticeship program duly approved by the Minister of Labor and Employment.
>
> Prior approval by the Department of Labor and Employment of the proposed apprenticeship program is, therefore, a condition sine qua non before an apprenticeship agreement can be validly entered into.
>
> The act of filing the proposed apprenticeship program with the Department of Labor and Employment is a preliminary step towards its final approval and does not instantaneously give rise to an employer-apprentice relationship.
>
> Article 57 of the Labor Code provides that the State aims to "establish a national apprenticeship program through the participation of employers, workers and government and non-government agencies" and "to establish apprenticeship standards for the protection of apprentices." To translate such objectives into existence, prior approval of the DOLE to any apprenticeship program has to be secured as a condition sine qua non before any such apprenticeship agreement can be fully enforced. The role of the DOLE in apprenticeship programs and agreements cannot be debased.
>
> Hence, since the apprenticeship agreement between petitioner and private respondent has no force and effect in the absence of a valid apprenticeship program duly approved by the DOLE, private respondent's assertion that he was hired not as an apprentice but as a delivery boy ("kargador" or "pahinante") deserves credence. He should rightly be considered as a regular employee of petitioner as defined by Article 280 of the Labor Code x x x. (Emphasis supplied)[14]

Republic Act No. 7796[15] (RA 7796), which created the TESDA, has transferred the authority over

apprenticeship programs from the Bureau of Local Employment of the DOLE to the TESDA.[16] RA 7796 emphasizes TESDA's approval of the apprenticeship program as a pre-requisite for the hiring of apprentices. Such intent is clear under Section 4 of RA 7796:

> SEC. 4. Definition of Terms. -- As used in this Act:
>
> x x x
>
> j) "Apprenticeship" training within employment with compulsory related theoretical instructions involving a contract between an apprentice and an employer on an approved apprenticeable occupation;
>
> k) "Apprentice" is a person undergoing training for an approved apprenticeable occupation during an established period assured by an apprenticeship agreement;
>
> l) "Apprentice Agreement" is a contract wherein a prospective employer binds himself to train the apprentice who in turn accepts the terms of training for a recognized apprenticeable occupation emphasizing the rights, duties and responsibilities of each party;
>
> m) "Apprenticeable Occupation" is an occupation officially endorsed by a tripartite body and approved for apprenticeship by the Authority [TESDA]; (Emphasis supplied)

In this case, the apprenticeship agreement was entered into between the parties before petitioner filed its apprenticeship program with the TESDA for approval. Petitioner and Palad executed the apprenticeship agreement on 17 July 1997 wherein it was stated that the training would start on 17 July 1997 and would end approximately in December 1997.[17] On 25 July 1997, petitioner submitted for approval its apprenticeship program, which the TESDA subsequently approved on 26 September 1997.[18] Clearly, the apprenticeship agreement was enforced even before the TESDA approved petitioner's apprenticeship program. Thus, the apprenticeship agreement is void because it lacked prior approval from the TESDA.

The TESDA's approval of the employer's apprenticeship program is required before the employer is allowed to hire apprentices. Prior approval from the TESDA is necessary to ensure that only employers in the highly technical industries may employ apprentices and only in apprenticeable occupations.[19] Thus, under RA 7796, employers can only hire apprentices for apprenticeable occupations which must be officially endorsed by a tripartite body and approved for apprenticeship by the TESDA. This is to ensure the protection of apprentices and to obviate possible abuses by prospective employers who may want to take advantage of the lower wage rates for apprentices and circumvent the right of the employees to be secure in their employment.

The requisite TESDA approval of the apprenticeship program prior to the hiring of apprentices was further emphasized by the DOLE with the issuance of Department Order No. 68-04 on 18 August 2004. Department Order No. 68-04, which provides the guidelines in the implementation of the Apprenticeship and Employment Program of the government, specifically states that no enterprise shall be allowed to hire apprentices unless its apprenticeship program is registered and approved by TESDA.[20]

Since Palad is not considered an apprentice because the apprenticeship agreement was enforced before the TESDA's approval of petitioner's apprenticeship program, Palad is deemed a regular employee performing the job of a "fish cleaner." Clearly, the job of a "fish cleaner" is necessary in petitioner's business as a tuna and sardines factory. Under Article 280[21] of the Labor Code, an employment is deemed regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer.

Illegal Termination of Palad

We shall now resolve whether petitioner illegally dismissed Palad.

Under Article 279[22] of the Labor Code, an employer may terminate the services of an employee for just causes[23] or for authorized causes.[24] Furthermore, under Article 277(b)[25] of the Labor Code, the employer must send the employee who is about to be terminated, a written notice stating the causes for termination and must give the employee the opportunity to be heard and to defend himself. Thus, to constitute valid dismissal from employment, two requisites must concur: (1) the dismissal must be for a just or authorized cause; and (2) the employee must be afforded an opportunity to be heard and to defend himself.[26]

In this case, the Labor Arbiter held that petitioner terminated Palad for habitual absenteeism and poor efficiency of performance. Under Section 25, Rule VI, Book II of the Implementing Rules of the Labor Code, habitual absenteeism and poor efficiency of performance are among the valid causes for which the employer may terminate the apprenticeship agreement after the probationary period.

However, the NLRC reversed the finding of the Labor Arbiter on the issue of the legality of Palad's termination:

> As to the validity of complainant's dismissal in her status as an apprentice, suffice to state that the findings of the Arbiter that complainant was dismissed due to failure to meet the standards is nebulous. What clearly appears is that complainant already passed the probationary status of the apprenticeship agreement of 200 hours at the time she was terminated on 28 November 1997 which was already the fourth month of the apprenticeship period of 1000 hours. As such, under the Code, she can only be dismissed for cause, in this case, for poor efficiency of performance on the job or in the classroom for a prolonged period despite warnings duly given to the apprentice.
>
> We noted that no clear and sufficient evidence exist to warrant her dismissal as an apprentice during the agreed period. Besides the absence of any written warnings given to complainant reminding her of "poor performance," respondents' evidence in this respect consisted of an indecipherable or unauthenticated xerox of the performance evaluation allegedly conducted on complainant. This is of doubtful authenticity and/or credibility, being not only incomplete in the sense that appearing thereon is a signature (not that of complainant) side by side with a date indicated as "1/16/98". From the looks of it, this signature is close to and appertains to the typewritten position of "Division/Department Head", which is below the signature of complainant's immediate superior who made the evaluation indicated as "11-15-97."
>
> The only conclusion We can infer is that this evaluation was made belatedly, specifically, after the filing of the case and during the progress thereof in the Arbitral level, as shown that nothing thereon indicate that complainant was notified of the results. Its authenticity therefor, is a big question mark, and hence lacks any credibility. Evidence, to be admissible in administrative proceedings, must at least have a modicum of authenticity. This, respondents failed to comply with. As such, complainant is entitled to the payment of her wages for the remaining two (2) months of her apprenticeship agreement.[27] (Emphasis supplied)

Indeed, it appears that the Labor Arbiter's conclusion that petitioner validly terminated Palad was based mainly on the performance evaluation allegedly conducted by petitioner. However, Palad alleges that she had no knowledge of the performance evaluation conducted and that she was not even informed of the result of the alleged performance evaluation. Palad also claims she did not receive a notice of dismissal, nor was she given the chance to explain. According to petitioner, Palad did not receive the termination notice because Palad allegedly stopped reporting for work after being informed of the result of the evaluation.

Under Article 227 of the Labor Code, the employer has the burden of proving that the termination was for a valid or authorized cause.[28] Petitioner failed to substantiate its claim that Palad was terminated for valid reasons. In fact, the NLRC found that petitioner failed to prove the authenticity of the performance evaluation which petitioner claims to have conducted on Palad, where Palad received a performance rating of only 27.75%. Petitioner merely relies on the performance evaluation to prove Palad's inefficiency. It was likewise not shown that petitioner ever apprised Palad of the performance standards set by the company. When the alleged valid cause

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for the termination of employment is not clearly proven, as in this case, the law considers the matter a case of illegal dismissal.[29]

Furthermore, Palad was not accorded due process. Even if petitioner did conduct a performance evaluation on Palad, petitioner failed to warn Palad of her alleged poor performance. In fact, Palad denies any knowledge of the performance evaluation conducted and of the result thereof. Petitioner likewise admits that Palad did not receive the notice of termination[30] because Palad allegedly stopped reporting for work. The records are bereft of evidence to show that petitioner ever gave Palad the opportunity to explain and defend herself. Clearly, the two requisites for a valid dismissal are lacking in this case.

WHEREFORE, we AFFIRM the Decision dated 12 November 2001 and the Resolution dated 5 April 2002 of the Court of Appeals in CA-G.R. SP No. 60379.

SO ORDERED.

Quisumbing, (Chairperson), Carpio-Morales, Tinga, and Velasco, Jr., JJ., concur.

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Penned by Associate Justice Elvi John S. Asuncion with Associate Justices Romeo A. Brawner and Juan Q. Enriquez, Jr., concurring.

[3] CA rollo, pp. 57-58.

[4] Id. at 63.

[5] Id. at 59.

[6] Id. at 32-33.

[7] Id. at 42.

[8] Rollo, p. 29.

[9] G.R. No. 114337, 29 September 1995, 248 SCRA 654.

[10] Rollo, p. 70.

[11] Article 58(b) of the Labor Code.

[12] Article 57(3) of the Labor Code.

[13] Supra note 9.

[14] Id. at 660-661.

[15] Otherwise known as the TESDA Act of 1994.

[16] Sections 5 and 18 of RA 7796 provide:

> SEC. 5. Technical Education and Skills Development Authority, Creation. -- To implement the policy declared in this Act, there is hereby created a Technical Education and Skills Development Authority (TESDA), hereinafter referred to as the Authority, which shall replace and absorb the National Manpower and Youth Council (NMYC), the Bureau of Technical and Vocational Education (BTVE) and the personnel and functions pertaining to technical-vocational education in the regional offices of the Department of Education, Culture

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and Sports (DECS) and the apprenticeship program of the Bureau of Local Employment of the Department of Labor and Employment. (Emphasis supplied)

SEC. 18. Transfer of the Apprenticeship Program. - -The Apprenticeship Program of the Bureau of Local Employment of the Department of Labor and Employment shall be transferred to the Authority [TESDA] which shall implement and administer said program in accordance with existing laws, rules and regulations. (Emphasis supplied)

[17] CA rollo, p. 57.

[18] Id. at 63.

[19] See Article 60 of the Labor Code.

[20] DOLE Department Order No. 68-04: Guidelines in the Implementation of the Kasanayan at Hanapbuhay Program (An Apprenticeship and Employment Program) pertinently provides:

B. Definition of Terms

- Apprenticeship -- training within employment involving a contract between an apprentice and an enterprise on an apprenticeable occupation.

- Apprentice -- a person undergoing training for an approved apprenticeable occupation during an established period and covered by an apprenticeship agreement.

- Apprenticeship Agreement -- a contract wherein a prospective enterprise binds himself to train the apprentice who, in turn, accepts the terms of training for a recognized apprenticeable occupation emphasizing the rights, duties and responsibilities of each party.

- Apprenticeable Occupation -- an occupation officially approved for apprenticeship by TESDA.

x x x x

G. Registration of Apprenticeship Program

The enterprise shall register its apprenticeship program with any of the TESDA Provincial Offices. It shall submit the following:

- Letter of Application;

- Certification that the number of apprentices to be hired is not more than 20 percent of the total regular workforce; and

- Skills Training Outline.

No enterprise shall be allowed to hire apprentices unless its apprenticeship program is registered and approved by TESDA. H. Apprenticeship Agreement

No apprenticeship training will commence until an Apprenticeship Agreement has been forged between an enterprise and an apprentice. (Emphasis supplied)

[21] Article 280 of the Labor Code reads:

ART. 280. Regular and casual employment. -- The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreements of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer except where the employment has been fixed for a specific project

> or undertaking, the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.
>
> An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists. (Emphasis supplied)

[22] ART. 279. Security of Tenure. -- In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. 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.

[23] ART. 282. Termination by employer. - An employer may terminate an employment for any of the following causes:

- Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

- Gross and habitual neglect by the employee of his duties;

- Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

- Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

- Other causes analogous to the foregoing.

[24] ART. 283. Closure of establishment and reduction of personnel. -- The employer may also terminate the employment of any employee due to the installation of labor saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title x x x.

[25] ART. 277. Miscellaneous provisions. - x x x

(b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer. (Emphasis supplied)

[26] Skippers United Pacific, Inc. v. Maguad, G.R. No. 166363, 15 August 2006, 498 SCRA 639.

[27] CA rollo, pp. 41-42.

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[28] Manly Express, Inc. v. Payong, Jr., G.R. No. 167462, 25 October 2005, 474 SCRA 323; Manila Electric Company (MERALCO) v. National Labor Relations Commission, G.R. No. 153180, 2 September 2005, 469 SCRA 353.

[29] Philippine National Bank v. Cabansag, G.R. No. 157010, 21 June 2005, 460 SCRA 514.

[30] The termination notice reads:

DATE: NOV. 22, 1997

GLORIA C. PALAD
105 LOT 1 BLK. 6, PRK. 7
B. TANYAG, TAGUIG, METRO MANILA

Dear Ms. PALAD,

After a thorough evaluation of your work, attitude and performance, the management found out that you have been performing below the standard established by the company. As such, we regret to inform you that your employment shall be terminated effective at the close of business hours of NOV. 28, 1997.

Please proceed to the HRD office for your clearance.

NINA B. LLAGAS
Recruitment/Benefits Supervisor

Noted by:

BERNARDO O. JUNIO JR.
Human Resources Development Manager

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