

STAR PAPER CORPORATION, PETITIONER, VS. CARLITO ESPIRITU, TOMAS PAGUIRIGAN, TEODORO SUBAGAN, LUISITO MAGNAMPO, RESPONDENTS.

G.R. NO. 154006. November 02, 2006

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

This resolves the petition for review on certiorari seeking to set aside the Decision[1] of the Court of Appeals (CA) dated February 4, 2002 and its Resolution dated June 11, 2002 denying petitioner's Motion for Reconsideration of the aforementioned Decision.

The antecedent facts, as accurately set forth in the Resolution of the National Labor Relations Commission (NLRC) dated May 29, 2001, are as follows:

Complainants in this case worked in respondents' paper manufacturing business in various capacities as machine operator, bookbinding head and/or helper. They claimed that, for refusal to sign for the ratification of an addendum to an existing Collective Bargaining Agreement which was intended to effect a reduction in their leave benefits of fifteen (15) days for every year of service, they were subjected to acts of harassment such that, on November 11, 1998, when they reported for work, they were not allowed entry by respondent company's security guard and that, they were instead instructed by the company's Personnel Manager, Mr. Jessie Ongsitco, to receive a Memorandum of Transfer which they refused. Complainants alleged that their transfer to a provincial post constituted a case of constructive dismissal.

Respondents denied the charge, averring that the transfer had, for its sole consideration, the best interest of the company and that it was an undertaking which was agreed into (sic) by the complainants when they signed their employment contracts with the respondent company.

Respondents further alleged that there was no reason to get back at the complainants on account of their refusal to sign the adverted signature sheet for the ratification of an Addendum to the 1995 CBA, since the majority of the employees in the bargaining unit had already ratified the said addendum; that during their employment, complainants committed several offenses in that, Tungpalan failed to report for work on March 12, 1998 then broke a breaker in August 1998, signed an overtime form but did not render overtime work, and had several unexcused absences; Espiritu was also cited for a number of tardiness and absences; that Regalado was suspended for seven (7) days in November 1997 for absences, issued a memorandum for not wearing the proper uniform and for tardiness likewise; and that Paguirigan in 1998 had ten (10) unexcused absences and was suspended twice on such account.

On January 25, 2000, the Labor Arbiter rendered judgment, the pertinent portion of which reads, as follows: There is a convincing and cogent evidence to buttress the contention that respondents in giving new provincial assignments to complainants, or otherwise transferred them to other places were nothing more, but to consider the same as an act of management right and prerogative. x x x

It is observed, however, that complainants were given new provincial assignments by the respondents by virtue

of the Information Sheets filled up and signed by them as a condition sine qua non for employment, (See Annexes "I", Position Paper of Respondents), where it explicitly spelled out complainants unconditional willingness to be transferred to any branch office of the company within the country. x x x

Suffice it to say, therefore, that respondents in transferring the assignments of complainants from other places or provincial branch offices are indeed justified under our jurisprudence (supra). Along this line, it seems clear enough to discern that complainants were transferred to the branch offices of respondents, without malicious intent, in order to utilize the expertise and talent of these employees. x x x

x x x x x x x x"

In summation, the Commission finds and so conclude after a careful evaluation of the pleadings, as well as, the evidence adduced by the contending parties that complainants' claim for illegal dismissal, or constructive dismissal will not prosper x x x .

x x x Nevertheless, notwithstanding the aforesaid findings, on considerations of justice and equity, separation pay was awarded in complainants' favor at the rate of one-half month's salary for every year of service.

From the Labor Arbiter's decision, complainants filed an appeal, maintaining that their transfer was effected in bad faith, as gleaned from the chain of events which transpired, from their refusal to sign the signature sheet, to the service of memoranda for their planned transfer, and finally to their being barred from their employer's premises.

x x x x x x x x [2]

The NLRC then affirmed the Labor Arbiter's Decision and dismissed herein respondents' appeal.

Respondents no longer filed a motion for reconsideration of the NLRC Resolution and proceeded to file a petition for certiorari with the CA, explaining as follows:

The filing of the instant petition is proper in view of the extreme urgency of the issues involved in the case. The petitioners had to dispense with the filing of a Motion for Reconsideration because, firstly, since the questions raised before this Court are the same as those which were squarely raised and passed upon by the court-a-quo, the filing of a Motion for Reconsideration in said court before certiorari can be instituted in this court is no longer a pre-requisite. (Legaspi Oil Co. vs. Geronimo – 76 SCRA 174) Secondly, the rule requiring the filing of a motion for reconsideration before an application for a writ of certiorari can be entertained was never intended to be applied without considering the circumstances. (Matutina vs. Buslon, et al., 109 Phil 140)

In the present case, time is of the essence in view of the unilateral acts committed by Respondent Company [herein petitioners], which tend to undermine the rights of petitioners thereby depriving them of the rights granted to them by law.[3]

The CA gave due course to the petition despite the fact that no motion for reconsideration from the NLRC Decision was filed by herein respondents. The findings of both the Labor Arbiter and the NLRC were reversed by the CA, holding instead that:

Considering the uncontroverted fact that there was a previous meeting between petitioners [herein respondents] and the representative of the Corporation before the Mediation Board and an agreement dated November 10, 1998 was reached wherein the respondents agreed that that petitioners be allowed to report for work the following day leaving the settlement of the money claims as the lone issue to be resolved; we cannot rationalize as reasonable, more so lawful why the promised reinstatement to the petitioners was not effected but instead, petitioners were stopped at the gate when they reported for work and served the memorandum of their transfer to provincial assignments.

Furthermore, since all the complainants were residents of Metro Manila, their transfer to Iloilo, Bacolod,

Davao, Cebu and Cagayan on the same day when the Memorandum of Transfer was served to them is very unreasonable. (p. 51, rollo) Indeed, it is inconsiderate for the Corporation to order its employees who are residents of Metro Manila and have families to be left behind to report to their provincial assignments on the same day they were served the Memorandum of Transfer.

Moreover, petitioners worked in the Corporation as machine operator, bookbinding head and/or helper. It certainly does not need a great stretch of imagination to know that it is difficult for them to relocate to provinces far from Metro Manila on so short a notice.

The aforementioned facts as established from the records render support to the claim of the petitioners that there was bad faith on the part of the Corporation specially when the Memo of Transfer of work assignment came less than a week after petitioners refused to sign the signature sheet of the document for the ratification of the Addendum to the Collective Bargaining Agreement of 1995 between the Corporation and its employees.

Indeed, one of the prerogatives of management, and a very important one at that, is the right to transfer employees in their work station. But, of course, like other prerogatives, the right to transfer or re-assign is subject to limitations arising under the law, contract, or general principles of fair play and justice. (Chu vs. National Labor Relations Commission, 232 SCRA 764)

Jurisprudence proscribes transfers or reassignments of employees when such acts are unreasonable and cause inconvenience or prejudice to them. (Chu vs. National Labor Relations Commission, supra.)

Given the foregoing facts, we conclude that the Memo of Transfer served on the petitioners was effected with mala fides. [4]

The dispositive portion of the CA Decision dated February 4, 2002 reads:

WHEREFORE, premises considered, the Decision dated January 25, 2000 of the Labor Arbiter, and the Resolution dated May 29, 2001 of the Public Respondent National Labor Relations Commission (NLRC) are REVERSED and SET ASIDE. Private Respondent STAR PAPERS CORPORATION is found to have constructively dismissed petitioners and is hereby ordered to pay petitioners separation pay equivalent to one (1) month salary for every year of service; and in accordance with Republic Act 6715, petitioners are entitled to their full backwages, inclusive of allowances and other benefits or their monetary equivalent computed from the time their actual compensation was withheld from them up to the time of the finality of this decision.

Costs against private respondents.

SO ORDERED.[5]

Herein petitioner moved for reconsideration of the foregoing Decision but per Resolution dated June 11, 2002, the same was denied.

Hence, this petition for certiorari where petitioner alleges that the CA committed an error:

- IN GIVING DUE COURSE TO RESPONDENTS' PETITION FOR CERTIORARI DESPITE THEIR ADMISSION IN THEIR PETITION THEY DID NOT BOTHER TO FILE A MOTION FOR RECONSIDERATION OF THE MAY 29, 2001 RESOLUTION OF THE NATIONAL LABOR RELATIONS COMMISSION;
- COROLLARY TO THIS ASSIGNMENT IS, THE HONORABLE COURT OF APPEALS' ERROR IN NOT RULING ON HEREIN PETITIONER'S ASSERTION BEFORE THE SAID COURT THAT THE PETITION SHOULD NOT BE GIVEN DUE COURSE AS IT WAS FILED WITHOUT FILING A MOTION FOR RECONSIDERATION OF THE DECISION OF THE NATIONAL LABOR RELATIONS COMMISSION;

- IN REVERSING THE DECISION OF THE LABOR ARBITER AND THAT OF THE NATIONAL LABOR RELATIONS COMMISSION;
- THE HONORABLE COURT OF APPEALS COMMITTED AN ERROR OF LAW IN SUBSTITUTING ITS FINDINGS OF FACTS WITH THAT OF THE LABOR ARBITER AND OF THE NATIONAL LABOR RELATIONS COMMISSION;
- IN ANY EVENT, SHOULD THE DECISION OF THE COURT OF APPEALS BE SUSTAINED THE SAID COURT COMMITTED AN ERROR OF LAW IN ORDERING PAYMENT OF BACKWAGES FROM DISMISSAL UP TO REINSTATEMENT INSTEAD OF FROM ITS FINDING OF ALLEGED ILLEGAL DISMISSAL.[6]

Respondents, on the other hand, maintain that their case falls within the exceptions to the general rule that before a petition for certiorari may be resorted to, a motion for reconsideration of the questioned order of resolution must be filed.

A thorough review of the records reveals that the petition is bereft of merit.

There are recognized exceptions to the general rule that the filing of a motion for reconsideration of the assailed Order or Resolution is an indispensable condition. These exceptions, as enumerated in *Cervantes v. Court of Appeals*, [7] are:

- (a) where the order is a patent nullity, as where the court a quo has no jurisdiction;
- (b) where the questions raised in the certiorari proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;
- (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable;
- (d) where, under the circumstances, a motion for reconsideration would be useless;
- (e) where petitioner was deprived of due process and there is extreme urgency for relief;
- (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;
- (g) where the proceedings in the lower court are a nullity for lack of due process;
- (h) where the proceedings was ex parte or in which the petitioner had no opportunity to object; and
- (i) where the issue raised is one purely of law or public interest is involved.[8]

In *Romy's Freight Service v. Castro*, [9] the Court ruled that since the issue in the petition for certiorari filed with the appellate court was the very same one that was presented and resolved by the NLRC, and also because the employer-employee relationship is imbued with public interest, the appellate court acted properly in taking cognizance of the case even if no motion for reconsideration had been filed by private respondents with the NLRC.

In the present case, the issues raised in respondents' petition for certiorari with the CA, i.e., whether there was constructive dismissal and whether respondents are entitled to their monetary claims, were the exact same issues raised before both the Labor Arbiter and the NLRC. The matter of an employer's abuse of management prerogatives also involves public interest. Verily, the present case qualifies as an exemption to the general rule; thus, the filing of a motion for reconsideration with the NLRC may be dispensed with.

Next, petitioner argues that the CA should have accorded respect to the factual findings of the NLRC and the Labor Arbiter. The CA did not change any of the factual findings that "complainants were given new provincial assignments by the respondents by virtue of the Information Sheet filled up and signed by them as a condition sine qua non for employment x x x where it explicitly spelled out complainants unconditional willingness to be transferred to any branch office of the company within the country"[10] but herein respondents refused to accept the Memorandum of Transfer of Assignment. However, based on the very same facts on record, the CA made a contrary conclusion. There is no principle or rule in law that precludes the CA from doing so.

The Court agrees with the analysis and conclusion of the CA that, based on the facts of the case, respondents were constructively dismissed. It must be stressed that where an employee complains of constructive dismissal, it is the employer who bears the burden of proving that the transfer of an employee is for just and valid grounds, such as genuine business necessity, and such transfer is not unreasonable, inconvenient, or prejudicial to the employee. An employer's failure to discharge such burden would make him liable for unlawful constructive dismissal.[11]

In this case, the main argument of petitioner is that the transfers were an act of management right and prerogative and respondents should not complain about such transfers since from the beginning of their employment, they (respondents) signified their willingness to be transferred to any of petitioner's branches as shown in the Information Sheet each of them accomplished as a pre-requisite for employment. Be that as it may, petitioner must show that the transfer was done in good faith. As stated in *Urbanes, Jr. v. Court of Appeals*,[12] "[t]he management prerogative to transfer personnel must be exercised without grave abuse of discretion and putting to mind the basic elements of justice and fair play. There must be no showing that it is unnecessary, inconvenient and prejudicial to the displaced employee." [13]

Indeed, the combined circumstances of the immediate transfer of respondents to far-off provinces after their refusal to sign the signature sheet of the document for the ratification of the Addendum to the Collective Bargaining Agreement of 1995, and petitioner's emphasis on respondents' alleged previous infractions at work, point to the fact that the transfers are motivated by ill-will on the part of petitioner. Petitioner's order for respondents to report for work in petitioner's provincial branches on the very same day that they were served with the Memo of Transfer is extremely unreasonable as the relocation would unduly inconvenience not only respondents but their respective families. Petitioner, therefore, failed to sufficiently prove that respondents' transfer is for a just and valid cause and not unreasonable, inconvenient, or prejudicial to the employee, making it liable for constructive dismissal.

Petitioner further avers that the CA committed an error of law in ordering payment of backwages from dismissal up to reinstatement instead of ordering backwages only from the time the CA ruled that there was illegal dismissal. Petitioner is mistaken. In the first place, the CA never ordered the reinstatement of respondents but instead ordered the payment of separation pay. As to issue of backwages, the Court has ruled in a long line of cases that where an employee would have been entitled to reinstatement with full backwages, but circumstances, i.e., strained relationships, makes reinstatement impossible, the more equitable disposition would be an award of separation pay equivalent to at least one month pay, or one month pay for every year of service, whichever is higher, in addition to full backwages, inclusive of allowances, and other benefits or their monetary equivalent, computed from the time the employee's compensation was withheld from him up to the time of his supposed actual reinstatement.[14] In this case, since payment of backwages and separation pay were ordered only upon promulgation of the CA Decision, and the case was further elevated to this Court, then the supposed actual reinstatement, had reinstatement been feasible, would have been upon the finality of this Court's decision. Thus, the computation of full backwages, inclusive of allowances, and other benefits or their monetary equivalent, should be computed from the time the respondents' compensation was withheld from them up to the time of the

finality of this decision.

IN VIEW OF THE FOREGOING, the petition is DENIED for lack of merit. The Decision of the Court of Appeals dated February 4, 2002 is AFFIRMED.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Callejo, SR., and Chico-Nazario, JJ., concur.

[1] Penned by Court of Appeals Associate Justice Teodoro P. Regino with Associate Justices Eugenio S. Labitoria and Rebecca De Guia-Salvador concurring.

[2] NLRC Records, pp. 223-231.

[3] CA rollo, p. 4.

[4] Rollo, pp. 37-38.

[5] Id. at 38-39.

[6] Id. at 14-15.

[7] *Cervantes v. Court of Appeals*, G.R. No. 166755, November 18, 2005, 475 SCRA 562, 569-570, citing *Acance v. Court of Appeals*, G.R. No. 159699, March 16, 2005, 453 SCRA 548.

[8] Id. at 569-570.

[9] G.R. No. 141637, June 8, 2006.

[10] Decision of the Labor Arbiter, NLRC Records, p. 108.

[11] *Westmont Pharmaceuticals, Inc. v. Samaniego*, G.R. Nos. 146653-54 and G.R. Nos. 147407-08, February 20, 2006, 482 SCRA 611, 620.

[12] G.R. No. 138379, November 25, 2004, 444 SCRA 84.

[13] Id. at 95.

[14] *Westmont Pharmaceuticals, Inc. v. Samaniego*, supra at 621; *Grandspan Development Corporation v. Bernardo*, G.R. No. 141464, September 21, 2005, 470 SCRA 461, 472-474.

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