

R.P. DINGLASAN CONSTRUCTION, INC., PETITIONER, VS. MARIANO ATIENZA AND SANTIAGO ASI, RESPONDENTS.

G.R. No. 156104. June 29, 2004

Ponente: PUNO, J.

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PUNO, J.:

This is an appeal from the decision[1] and resolution[2] of the Court of Appeals, dated January 17, 2001 and October 30, 2002, respectively, upholding the finding of constructive dismissal against petitioner.

Petitioner R.P. Dinglasan Construction, Inc. provided janitorial services to Pilipinas Shell Refinery Corporation (Shell Corporation) in Batangas City. Private respondents Mariano Atienza and Santiago Asi served as petitioner's janitors assigned with Shell Corporation since 1962 and 1973, respectively.

Private respondents claim that on July 7, 1994, petitioner called for a meeting and informed private respondents and three (3) other employees that their employment with Shell Corporation would be terminated effective July 15, 1994. They were told that petitioner lost the bidding for janitorial services with Shell. Petitioner notified respondents that they may reapply as helpers and redeployed in other companies where petitioner had subsisting contracts but they would receive only a minimum wage. Private respondents refused as the offer would be a form of demotion --- they would lose their seniority status and would not be guaranteed to work at regular hours.

In December 1994, private respondents filed a complaint against petitioner for non-payment of salary with the district office of the Department of Labor and Employment (DOLE) in Batangas City. In February 1995, during the conciliation proceedings with the DOLE, petitioner sent notices to respondents informing them that they would be reinstated with Shell Corporation as soon as they submit their barangay clearance, medical certificate, picture and information sheet as per the new identification badge requirements of Shell Corporation. Thereafter, petitioner again met with private respondents, who were then accompanied by the barangay captain and a councilor, and the latter confirmed to the former their willingness to be reinstated. Private respondents duly submitted the documents required for their reinstatement.

In May 1995, respondents demanded the payment of their backwages starting from July 15, 1994. On June 1, 1995, petitioner notified private respondents that they have been declared absent without leave (AWOL) as they allegedly failed to signify their intention to return to work and submit the badge requirements for their reinstatement. On June 13, 1995, private respondents wrote petitioner and insisted that they had complied with the badge requirements. Accompanied by the barangay officials, private respondents attempted to meet with the officers of petitioner but the latter refused to dialogue with them. As proof of their compliance with the Shell requirements, private respondents submitted to the DOLE their x-ray results, dated May 17 and 19, 1995 and their barangay certification, dated May 13, 1995.

The case was eventually referred to the National Labor Relations Commission (NLRC) for compulsory arbitration. Private respondents amended their complaint charging petitioner with illegal dismissal and non-payment of 13th month pay, with a claim for payment of attorney's fees and litigation expenses, and a prayer

for reinstatement with payment of full backwages from July 15, 1994.

Petitioner gave a different version of the incident. It allegedly informed respondents and the other affected employees that they would be deployed to petitioner's other principal companies but that their work would be different. Except for private respondents, all the affected employees accepted its offer of redeployment and reported back to work. Respondents failed to submit a resignation letter to signify their intention not to return to work.

Thereafter, during the pendency of the labor case, petitioner in two (2) separate notices,[3] informed private respondents that they could be reinstated at Shell Corporation with no diminution in their salary provided that they submit the documents for the new identification badge requirement of Shell Corporation. Private respondents, however, refused to return to work until they were paid their backwages. Consequently, petitioner was constrained to consider them as having abandoned their work and to terminate their employment on September 19, 1995. Petitioner, thus, justified the dismissal of private respondents on the grounds of gross and habitual neglect of duties and abandonment of work.

On September 3, 1998, labor arbiter Andres Zavalla rendered a decision[4] finding that private respondents were illegally dismissed from service and ordering their reinstatement. The dispositive portion reads:

WHEREFORE, premises considered, the following orders are hereby entered:

- declaring that the complainants were illegally dismissed from their employment;

- ordering the respondent to pay complainants the aggregate amount of P755,942.15 representing their full backwages and benefits from July 15, 1994 up to the promulgation of this decision; separation pay in lieu of reinstatement; 13th month pay for 1994 and attorney's fees equivalent to 10% of the total monetary award due complainants, broken down as follows:

Mariano Atienza

-

P366,594.67

Santiago Asi

-

P320,625.50

Attorney's fees

-

P 68,722.02

- dismissing the claims for litigation expenses for lack of basis.

SO ORDERED.

On appeal, the decision of the labor arbiter was affirmed by the NLRC.[5] Without moving for reconsideration, petitioner immediately filed a petition for certiorari before the Court of Appeals but petitioner suffered the same fate. On the procedural aspect, the Court of Appeals ruled that the petition could not prosper as petitioner failed to move for a reconsideration of the NLRC decision. On the substantive issues, the appellate court upheld the findings of the labor arbiter and the NLRC that: (1) private respondents were constructively dismissed as

petitioner's offer of reassignment involved a diminution in pay and demotion in rank that made their continued employment unacceptable; and, (2) private respondents could not be considered to have abandoned their work.[6]

As petitioner's motion for reconsideration was denied,[7] petitioner filed this appeal and assigned the following errors:

I

THE COURT OF APPEALS, CONTRARY TO APPLICABLE DECISIONS OF THIS HONORABLE SUPREME COURT, ERRED IN RULING THAT A MOTION FOR RECONSIDERATION OF THE DECISION OF THE NLRC IS A CONDITION SINE QUA NON TO THE INSTITUTION OF A SPECIAL CIVIL ACTION OF (sic) CERTIORARI, AS THE INSTANT CASE FALLS UNDER THE EXCEPTIONS.

II

THE COURT OF APPEALS, CONTRARY TO EXISTING LAW, ERRED IN DISMISSING THE PETITION FOR CERTIORARI AND AFFIRMING THE DECISION OF THE NLRC INsofar AS THE MONETARY AWARD IS CONCERNED.

We find no merit in the petition.

On the first issue, petitioner faults the Court of Appeals for dismissing its appeal for its failure to move for a reconsideration of the NLRC Decision. Petitioner contends that its filing would have been purely pro forma and a clear exercise in futility as the issues of illegal dismissal and abandonment heard and passed upon by the NLRC were the same issues it brought on appeal to the Court of Appeals.

Indeed, the well-established rule is that a motion for reconsideration of the decision of the NLRC is necessary before an appeal may be allowed.[8] The rule on exhaustion of administrative remedies intends to afford the tribunal or agency the first opportunity to rectify the errors it may have committed before resort to courts of justice can be had.[9] Nonetheless, strict and rigid application of technical rules of procedure, without regard to the merits of the case, is not encouraged as it will only frustrate rather than promote substantial justice. Rules of procedure should be viewed as tools designed to facilitate the dispensation of justice.[10]

In the case at bar, however, we note that the Decision of the Court of Appeals dismissing petitioner's appeal was not grounded solely on a procedural lapse, i.e., failure of the petitioner to move for a reconsideration of the NLRC Decision. The records clearly show that after ruling against petitioner on this procedural issue, the Court of Appeals proceeded to discuss the substantive aspect of the case, i.e., whether petitioner validly dismissed private respondents due to abandonment of work. Hence, it is not accurate to state that the Court of Appeals dismissed the petition solely on the basis of a strict application of technical rules.

We now resolve the substantive issue.

Petitioner justifies its dismissal of private respondents on the ground that they failed to report back to the office and thus abandoned their work. This allegation, however, is not supported by the evidence.

In an illegal dismissal case, the onus probandi rests on the employer to prove that its dismissal of an employee is for a valid cause.[11] In the case at bar, petitioner failed to discharge its burden. It failed to establish that private respondents deliberately and unjustifiably refused to resume their employment without any intention of returning to work.

To constitute abandonment of work, two (2) requisites must concur: first, the employee must have failed to report for work or must have been absent without justifiable reason; and second, there must have been a clear intention on the part of the employee to sever the employer-employee relationship as manifested by overt acts.[12]

Abandonment as a just ground for dismissal requires deliberate, unjustified refusal of the employee to resume his employment. Mere absence or failure to report for work, after notice to return, is not enough to amount to abandonment.[13]

In the case at bar, the evidence of private respondents negates petitioner's theory that they abandoned their work. Firstly, private respondents reported back to petitioner's office a number of times expressing their desire to continue working for petitioner without demotion in rank or diminution of salary. This fact was established by the corroborating testimony of barangay councilman Valentin Clerigo who, together with the barangay captain, accompanied private respondents to petitioner's office at least ten (10) times to negotiate their redeployment on more acceptable terms. Secondly, in seeking reinstatement, private respondents also sought the intervention of the DOLE to arbitrate the labor issue between the parties. Thirdly, private respondents submitted the barangay clearances and x-ray results required from them by petitioner for their reinstatement as witnessed by the barangay officials. Lastly, the records would bear that private respondents lost no time and sought their reinstatement by filing an illegal dismissal case against petitioner, which act is clearly inconsistent with a desire to sever employer-employee relations and abandon their work. All these overt acts on the part of private respondents negate petitioner's claim of abandonment of work and prove beyond doubt their steadfast desire to continue their employment with petitioner and be reinstated to their former position. Moreover, petitioner failed to explain why it waited for 14 months from the time private respondents allegedly did not return to work before it dismissed them for being AWOL.

We hold that private respondents were constructively dismissed by petitioner. Constructive dismissal is defined as quitting when continued employment is rendered impossible, unreasonable or unlikely as the offer of employment involves a demotion in rank and diminution of pay.[14] In the case at bar, petitioner committed constructive dismissal when it offered to reassign private respondents to another company but with no guaranteed working hours and payment of only the minimum wage. The terms of the redeployment thus became unacceptable for private respondents and foreclosed any choice but to reject petitioner's offer, involving as it does a demotion in status and diminution in pay. Thereafter, for six (6) months, private respondents were in a floating status. Interestingly, it was only after private respondents filed a complaint with the DOLE that petitioner backtracked in its position and offered to reinstate private respondents to their former job in Shell Corporation with no diminution in salary. Eventually, however, petitioner unilaterally withdrew its offer of reinstatement, refused to meet with the private respondents and instead decided to dismiss them from service.

On the second issue, petitioner cannot impugn for the first time the computation of the monetary award granted by the labor arbiter to private respondents. The settled rule is that issues not raised or ventilated in the court a quo cannot be raised for the first time on appeal as to do so would be offensive to the basic rules of fair play and justice.[15] The computation of monetary award granted to private respondents is a factual issue that should have been posed at the arbitration level when the award was first granted by the labor arbiter who received and evaluated the evidence of both parties, or, at the latest, raised by petitioner in its appeal with the NLRC. Petitioner omitted to do any of these. All throughout the proceedings below, from the labor arbiter to the NLRC, and even in its petition before the Court of Appeals, petitioner repeatedly pounded only on the sole issue of the validity of its dismissal of private respondents. Thus, at this late stage of the proceedings, it cannot ask the Court to review the bases and verify the correctness of the labor arbiter's computation of the monetary award which it never assailed below. A first-hand evaluation of the evidence of the parties upon which the monetary award is based belongs to the labor arbiter. This Court is not a trier of facts and factual issues are improper in a petition for review on certiorari.[16] Likewise, the Court notes that in seeking reinstatement and payment of their monetary claims, private respondents have traversed a long and difficult path. This case has passed the DOLE, the labor arbiter, the NLRC, the Court of Appeals and now this Court, with the finding of illegal dismissal having been consistently

affirmed in each stage. Private respondents had been rendering janitorial services as early as 1962 and, at the time of their dismissal, were receiving a measly P4,000.00 monthly salary. It is time to put a period to private respondents' travail. If there is anything that frustrates the search for justice by the poor, it is the endless search for it.

IN VIEW WHEREOF, the petition is DISMISSED and the impugned decision and resolution of the Court of Appeals, dated January 17, 2001 and October 30, 2002, respectively, are AFFIRMED in toto. No pronouncement as to costs.

SO ORDERED.

Quisumbing, Callejo, Sr., and Tinga, JJ., concur.
Austria-Martinez, J., on leave.

[1] Penned by then Associate Justice Presbitero J. Velasco, Jr., and concurred in by Associate Justices Ruben T. Reyes and Juan Q. Enriquez, Jr.; Rollo at 28-36.

[2] Id. at 37.

[3] Dated February 18 and April 17, 1995; Annexes "G" and "H" of Petition; Rollo at 50-51.

[4] Id. at 54-68.

[5] Penned by Commissioner Ireneo B. Bernardo and concurred in by Presiding Commissioner Lourdes Javier and Commissioner Tito F. Genilo; Id. at 70-78.

[6] Promulgated on March 9, 2001, penned by then Associate Justice Presbitero J. Velasco, Jr. and concurred in by Associate Justices Ruben T. Reyes and Juan Q. Enriquez, Jr.; Id. at 28-36.

[7] Resolution, dated October 30, 2002; Id. at 37.

[8] *Seagull Shipmanagement & Transport, Inc. vs. NLRC*, 333 SCRA 236 (2000).

[9] *Biogenerics Marketing vs. NLRC*, 313 SCRA 748 (1999).

[10] *Silverio vs. Court of Appeals*, G.R. No. 143395, July 24, 2003.

[11] *Columbus Phils. Bus Corporation vs. National Labor Relations Commission*, 364 SCRA 606 (2001).

[12] *Security and Credit Investigation, Inc. vs. National Labor Relations Commission*, 350 SCRA 357 (2001).

[13] *Columbus Phils. Bus Corporation vs. NLRC*, 364 SCRA 606 (2001).

[14] *Jo Cinema Corporation vs. Abellana*, 360 SCRA 142 (2001).

[15] *Tinio vs. Manzano*, 307 SCRA 460 (1999); *Manalili vs. Court of Appeals*, 280 SCRA 372 (1989); *Ruby International Corporation vs. Court of Appeals*, 284 SCRA 445 (1998).

[16] Section 1, Rule 45, Revised Rules of Court.

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