DYNAMIC SIGNMAKER OUTDOOR ADVERTISING SERVICES, INC., FILOMENO P. HERNANDEZ, ROMMEL A. HERNANDEZ, SEGUNDA A. HERNANDEZ, AND CINDERELLA A. HERNANDEZ-RAÑESES, PETITIONERS, VS. FRA...

G.R. NO. 156589. June 27, 2005

Ponente: CARPIO-MORALES, J.

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CARPIO-MORALES, J.:

From the appellate court's Decision[1] of September 30, 2002 reversing the Resolutions[2] of the National Labor Relations Commission (NLRC) and accordingly finding employer Dynamic Signmaker Outdoor Advertising Services Inc. (petitioner) liable for illegally dismissing its employee Francisco Potongan (respondent), petitioner corporation, together with its co-petitioners Filomeno P. Hernandez, Rommel A. Hernandez, Segunda A. Hernandez, and Cinderella A. Hernandez-Rañeses, its President/General Manager, Asst. General Manager, Finance Manager, Personnel Manager, respectively, lodged the present petition for review on certiorari.

In 1987, respondent started working for petitioner corporation as a Production Supervisor at a monthly salary of P16,000.00.[3]

In early February 1996, the union of rank and file employees of petitioner corporation, the Bigkis Manggagawa sa Dynamic Signmakers Outdoor Advertising Services – Kilusan ng Manggagawang Makabayan (KMM-Katipunan),[4] declared a strike on account of which petitioner corporation replaced all its supervisors and designated, by letter memorandum[5] dated February 16, 1996, certain persons to take over the operations of the corporation including Rufino Hornilla[6] who took over petitioner's functions.

By February 21, 1996, respondent's salary was withheld[7] and was advised to take a leave of absence until further notice.[8]

Respondent later received on February 28, 1996 a letter from petitioner Filomeno P. Hernandez, President/General Manager of the corporation, "inviting" him to answer the following charges:

> 1.) That on February 21, 1996, at around 9:00 A.M. you entered the company fabrication shop where you were assigned as supervisor and caused to create fire by secretly switching 'on' the idle plastic oven and grounded the 2 electric machine welders while the 'strike' was on-going outside the premises.
>
> Witnesses also in the persons of Mr. Luis Mimay, and his men found out later what you have done and noticed the electric current and the burning of the oven already very hot. You secretly left the premises and had not for the said witnesses and contractors, you had vehemently caused to burn the company's main building and its offices.
>
> 2.) That you allegedly on several occasions, urged strongly the same group of contractors led by Mr. Luis Mimay, working on some left over jobs at the factory, to slow down work or not to work at all in sympathy to the 'strikers' who are in the ranking files. Those proved also that as our trusted staff and supervisor you have

> caused disruption of work of the contractors. The company suffered losses in its failure to accomplish its job projects on due dates. Your actuations and actions proved disastrous to the company's interest. Considering these circumstances, we urge you to reply your side on these matters so that we could institute proper corresponding action based on the above in 5 days time from receipt of this letter.[9] (Underscoring supplied)

By letter of March 4, 1996, respondent through counsel, denied the charges proffered against him, he insisting that they were fabricated to justify his termination due to suspicions that he was a strike-sympathizer.[10] In the same letter, respondent expressed his openness to the conduct of a full-blown investigation of the case by the NLRC.[11]

Respondent later filed on January 29, 1997 a complaint against herein petitioners for illegal dismissal, reinstatement, backwages and damages with the Regional Arbitration Branch of the NLRC, docketed as NLRC Case No. RAB-IV-1-8738-97-RI,[12] the case subject of the petition.

Respondent complained that although he was not sent a formal notice of termination, he was effectively dismissed from employment for after he was asked to take a leave of absence on February 21, 1996, as he did, and he was not instructed nor allowed to return to work, nor paid his salaries.[13]

By Resolution[14] of June 30, 1997, the Labor Arbiter dismissed the complaint on the ground that respondent's cause of action was barred by prior judgment, that was rendered on June 24, 1996 by Labor Arbiter Nieves V. De Castro in consolidated cases NLRC Case Nos. RAB-IV-2-7865-96-R and RAB-IV-2-7908-96-R[15] which found respondent among those guilty of committing prohibited acts and whose employment was consequently declared lost.[16]

Respondent appealed the dismissal of his complaint to the NLRC before which he argued that the Labor Arbiter did not acquire jurisdiction over his person in the above-said consolidated cases since service of summons to the therein respondents President of KMM-Katipunan and the President of the local union Bigkis Manggagawa sa Dynamic Signmakers Outdoor Advertising Services,[17] in either of which he is not a member,[18] cannot be considered proper service to him. Respondent thus concluded that a void judgment such as one rendered without jurisdiction over the person of the party maybe assailed at any time, either directly or collaterally.[19]

By decision[20] of May 21, 1998, the 2nd Division of the NLRC through Presiding Commissioner Raul T. Aquino set aside the Labor Arbiter's June 30, 1997 Resolution of dismissal on the ground that jurisdiction over the person of respondent in the consolidated cases was not acquired, hence, the judgment in the said cases with respect to him is null and void, and consequently, the application of the principle of res judicata – basis of the dismissal of his complaint was inappropriate.[21]

On account of the NLRC decision dated May 21, 1998, petitioner-corporation, by March 1, 1999 letter of counsel, directed respondent to go back to work.[22]

The Labor Arbiter eventually dismissed respondent's complaint, however, for lack of merit, by Decision[23] of July 20, 1999, holding that, inter alia, respondent should have reported back to work and/or inquired into the results of the investigation[24] of the charges against him; and that the belated filing of respondent's complaint partakes of a "fishing expedition."[25]

On appeal, the NLRC, by Resolution[26] of February 29, 2000, affirmed the decision of the Labor Arbiter, holding that petitioner, in the exercise of its business judgment, was granted leeway insofar as it concerned the movement, transfer or reassignment of its personnel.[27]

Respondent's motion for reconsideration of the decision having been denied by the NLRC by Resolution[28] dated May 11, 2000, he filed a petition for certiorari[29] with the appellate court.

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By Decision[30] of September 30, 2002, the appellate court reversed the NLRC decision, it holding that respondent was denied due process and was dismissed without cause when he was replaced by Rufino Hornilla and instructed to go on leave indefinitely.[31]

In reversing the NLRC decision, the appellate court noted that it was on account of respondent's replacement as Operations Manager and the instruction for him to go on indefinite leave that it took almost a year for him to file the complaint for illegal dismissal. Hence, the appellate court concluded, he should not be faulted for laches. Nor, said the appellate court, could respondent be deemed to have abandoned his work on receipt of petitioner's counsel's return to work March 1, 1999 letter because prior thereto he had considered himself illegally terminated as in fact he had filed on January 29, 1997 the complaint for illegal dismissal.[32]

Hence, the present petition for review on certiorari.

Petitioners insist that respondent was not illegally dismissed, "management [having] merely opted to reorganize," hence, the award to him of full backwages, reinstatement or separation pay, and attorney's fees is bereft of factual and legal basis.[33]

The March 1, 1999 letter of petitioner to respondent, quoted below, to wit:

> This is to give NOTICE that per records of our client, your employment was regarded as TERMINATED effective FEBRUARY 21, 1996 considering: (1) the filing of our client of the 1996 case entitled "Dynamic Signmaker Outdoor Advertising Services, Inc. vs. Bigkis Manggagawa sa Dynamic Signmaker Outdoor Services, Inc." docketed as NLRC Case No. RAB-IV-2-7865-96-R, wherein you were named as one of the respondents; and (ii) the filing, also, by our client of the 1996 criminal case against you for "Frustrated Arson", docketed as Crim. Case No. 96-13151, and pending with the Regional Trial Court of Antipolo City, Branch 73.
>
> FURTHER, this is to give NOTICE for you to REPORT back to your work IMMEDIATELY considering the judgment of the National Labor Relations Commission in RAB-IV-8738-97-RI (CA No. 013754-97), dated May 21, 1998, which rendered as "null and void", insofar as you are concerned, the decision in the said NLRC Case No. RAB-IV-2-7865-96-R. And should you fail to report, the same shall be regarded to mean that you are no longer interested about your employment.[34] (Emphasis and underscoring supplied)

belies petitioners' claim, however. Res ipsa loquitor. It confirms that respondent's employment was terminated as early as February 21, 1996 (when he was instructed to go on indefinite leave and his salary was since then withheld), not for any of the just[35] or authorized[36] causes under the Labor Code, but on account of the filing against him by petitioner corporation of a labor case (NLRC Case No. RAB-IV-2-7865-96-R, one of the two consolidated cases) and a criminal case.

Petitioners want this Court to believe that when respondent was instructed to go on leave, the leave was never described as without pay, and that petitioner corporation simply needed time to transfer him to a position of equal salary and rank without demotion.[37]

Surely, this Court recognizes that management has wide latitude to regulate, according to its own discretion and judgment, all aspects of employment, including the freedom to transfer and reassign employees according to the requirements of its business.[38] The scope and limits of the exercise of management prerogatives, must, however, be balanced against the security of tenure given to labor. [39]

If exercised in good faith for the purpose of advancing business interests, not of defeating or circumventing the rights of employees,[40] the managerial prerogative to transfer personnel from one area of operation to another is justified.

This Court finds it difficult, however, to attribute good faith on the part of petitioners. Respondent was instructed to go on indefinite leave. He was asked to return to work only after more than three years from the time he was instructed to go on indefinite leave[41] during which period his salaries were withheld, and only after the NLRC promulgated its decision of May 21, 1998 reversing the labor arbiter's dismissal of his complaint.

This Court upholds then the appellate court's finding that respondent was constructively dismissed:

> There is no doubt, therefore, that the petitioner in this case was effectively terminated from employment by respondent when he was replaced as Operations Manager and instructed to take a leave indefinitely. Petitioner was neither transferred nor reassigned to another office or position contrary to what public respondent seems to allude. Petitioner was simply replaced and instructed to take a leave indefinitely. "In cases of illegal dismissal, the burden is on the employer to prove that there was a valid ground for dismissal." Medenilla vs. Philippne Veterans Bank, 328 SCRA 1, 7. We failed to extract from the record any evidence to show that there exists valid and just cause to terminate herein petitioner from employment. In fact during the pendency of the complaint for illegal dismissal by the petitioner against private respondents, the latter in a letter dated March 1, 1999, ordered petitioner to report back to work immediately. This in itself proves that herein private respondents believe that there exists no valid and just grounds (sic) to terminate herein petitioners from his employment.[42] (Underscoring supplied)

It upholds too the award to respondent of attorney's fees in the amount of P50,000.00, he having been forced to litigate and thereby incur expenses to protect his rights and interests.[43]

Clutching at straws, petitioners fault the appellate court for failure to recognize the final and executory nature of the June 24, 1996 NLRC Decision rendered in the consolidated cases and for affirming the nullification of said decision, with respect to respondent, which could be attacked only by direct action.[44]

Contrary to petitioners' position, the validity of a judgment or order of a court or quasi-judicial tribunal which has become final and executory may be attacked when the records show that it lacked jurisdiction to render the judgment.[45] For a judgment rendered against one in a case where jurisdiction over his person was not acquired is void, and a void judgment maybe assailed or impugned at any time either directly or collaterally by means of a petition filed in the same or separate case, or by resisting such judgment in any action or proceeding wherein it is invoked.[46]

Petitioners in fact do not even dispute respondent's claim that no summons was ever issued and served on him either personally or through registered mail as required under Rule III, Sections 3 and 6 of the Rules of Procedure of the NLRC, as amended by Resolution No. 01-02, Series of 2002:

> SEC. 3. Issuance of Summons. Within two (2) days from receipt of a case, the Labor Arbiter shall issue the required summons, attaching thereto a copy of the complaint/petition and supporting documents, if any. The summons, together with a copy of the complaint, shall specify the date, time and place of the conciliation and mediation conference in two (2) settings.
>
> xxx
>
> SEC. 6. Service of Notices and Resolutions. a) Notices or summonses and copies of orders, shall be served on the parties to the case personally by the bailiff or duly authorized public officer within three (3) days from receipt thereof or by registered mail, provided that in special circumstances, service of summons may be effected in accordance with the pertinent provisions of the Rules of Court; xxx

Supplementary or applied by analogy to these provisions are the provisions and prevailing jurisprudence in Civil Procedure. Where there is then no service of summons on or a voluntary general appearance by the defendant, the

court acquires no jurisdiction to pronounce a judgment in the cause.[47]

At all events, even if administrative tribunals exercising quasi-judicial powers are not strictly bound by procedural requirements, they are still bound by law and equity to observe the fundamental requirements of due process.[48]

Res inter alios acta nocere non debet. Things done between strangers ought not to injure those who are not parties to them.[49]

WHEREFORE, the instant petition is hereby DENIED. The decision of the appellate court is hereby AFFIRMED with the MODIFICATION that if reinstatement is no longer possible due to strained relations between the parties, petitioners are ordered to pay respondent, Francisco Potongan, separation pay equivalent to One Month salary for every year of service, computed from the time he was first employed until the finality of this decision.

SO ORDERED.

Panganiban, (Chairman), Sandoval-Gutierrez, Corona, and Garcia, JJ., concur.

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[1] Rollo at 33-47.

[2] Id. at 75-84.

[3] Rollo at 11.

[4] CA Rollo at 4.

[5] Id. at 35.

[6] Id. at 5.

[7] Ibid.

[8] Rollo at 13.

[9] CA Rollo at 36.

[10] Id. at 37.

[11] Id. at 38.

[12] Id. at 39-45.

[13] Id. at 42-43.

[14] Rollo at 59-61.

[15] Ibid. at 49-57.

[16] Ibid. at 57.

[17] CA Rollo at 107.

[18] Ibid. at 21.

[19] Ibid. at 110 citing Ang Lam v. Rosillosa and Santiago, 86 Phil. 447 (1950).

[20] Rollo at 62-69.

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[21] Id. at 67-68.

[22] CA Rollo 122.

[23] Id. at 46-50.

[24] Id. at 49.

[25] Ibid.

[26] Id. at 25-33.

[27] Id. at 30.

[28] Id. at 34.

[29] Id. at 2-23.

[30] Rollo at 33-47.

[31] Id. at 43.

[32] Id. at 42.

[33] Id. at 21.

[34] CA Rollo at 122.

[35] Labor Code of the Philippines, Article 282 provides to wit:

ART. 282. Termination by employer. – An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
(b) Gross and habitual neglect by the employee of his duties;
(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
(d) 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
(e) Other causes analogous to the foregoing.

[36] Labor Code of the Philippines, Article 283 provides to wit:

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, by serving a written notice on the worker and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least one (1) month pay or at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of the establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered as one (1) whole year.

[37] Rollo at 21.

[38] Mercury Drug Corporation v. Domingo, G.R. No.143998, March 28, 2005.

[39] Ibid.

[40] Mendoza v. Rural Bank of Lucban, 433 SCRA 756, 766 (2004).

[41] CA Rollo at 122.

[42] Rollo at 45.

[43] Brahm Industries Inc. v. NLRC, 280 SCRA 828, 839 (1997).

[44] Rollo at 23.

[45] Ramirez v. Bleza, 106 SCRA 187, 194 (1981) citing Rosensons, Inc. v. Jimenez, 68 SCRA 24 (1975).

[46] Ang Lam v. Rosilloza and Santiago, 86 Phil. 447, 452 (1956).

[47] Ponio v. Intermediate Appellate Court, 133 SCRA 577, 579 (1984).

[48] National Power Corporation v. NLRC, 272 SCRA 704, 723 (1997).

[49] Id. at 724.

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