MARILYN T. SAGUM, PETITIONER, VS. COURT OF APPEALS, NATIONAL LABOR RELATIONS COMMISSION, INSTITUTE OF INTEGRATED ELECTRICAL ENGINEERS OF THE PHILIPPINES, INC. AND/OR EDWARD MEND...

G.R. NO. 158759. May 26, 2005

Ponente: PUNO, J.

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PUNO, J.:

Petitioner Marilyn T. Sagum is another hapless employee whose dismissal was ruled to be illegal but, without her reinstatement forthcoming, is still on the outside looking in.[1]

At bar is a Petition for Review on Certiorari[2] assailing the Decision and the Resolution of the Court of Appeals in CA-G.R. SP No. 68790 dated June 28, 2002 and April 2, 2003, respectively. The appellate court declared the dismissal of petitioner as illegal and ordered the payment of her full backwages but did not decree her reinstatement and denied her claim for damages.

The instant case arose from the complaint of petitioner for illegal dismissal[3] against private respondents Institute of Integrated Electrical Engineers of the Philippines, Inc. (IIEE), Engrs. Edward L. Mendoza, Amador C. Calado, Jr., Antonio S. Herrera, Jr., and Fe M. Barrientos. Private respondent institute, a professional organization duly existing under Philippine laws, is the association of all licensed electrical engineers in the country. Private respondents Mendoza, Calado, Herrera and Barrientos were duly elected for the positions of President, Vice-President-Internal Affairs, National Treasurer and National Secretary, respectively, in 1996.[4] The officers of private respondent institute are elected annually by its members and are supported administratively by a permanent staff.[5] Petitioner was a member of the permanent staff for sixteen (16) years.

Petitioner was hired as a Recording/Filing Clerk in June 1980. By her efficiency, loyalty and dedication to the service, she was promoted as Membership Secretary in April 1981, Acting Executive Secretary in February 1986, and Executive Secretary in September 1986. As Executive Secretary, she has served eleven (11) National Presidents.

After eight (8) years, or on September 17, 1994, petitioner was appointed as Office Manager[6] in concurrent capacity as Executive Secretary. With her dual position, she was tasked to oversee the daily operations of private respondent institute, supervise the office staff, take the minutes of the officers' meetings and inform the staff of policies approved by the officers during board meetings. Petitioner was also in charge of the purchase of materials and the printing requirements of the association, a member of the bidding committee, and recommended approval for all purchases to the National Secretary.[7]

The following year, on May 23, 1995, petitioner was appointed as Officer-in-Charge for the Executive Director.[8] She had two (2) immediate subordinates to assist her in her functions: Maan Dela Torre (Dela Torre) as Administrative Secretary and Jude Magayones as Clerk/Stenographer.[9]

Barely after a year, on July 30, 1996, petitioner was preventively suspended for thirty (30) days. She was served two (2) written notices[10] demanding her explanation for the imputed offenses and indiscretions, subjected to an administrative investigation, and dismissed by private respondent institute on September 1, 1996 for gross negligence and loss of trust and confidence. [11]

Petitioner contends that her travails started on July 2, 1996 – when private respondent Mendoza and the members of the Executive Committee (EXCOM) discussed the participation of DBR Prints and General Services (DBR) as a bidder for the printing of Part I of the Philippine Electrical Code (Code). Private respondent Calado, a member of the EXCOM, questioned DBR's participation in the bidding. According to Calado, DBR was prohibited to bid in all the printing jobs of respondent institute due to the alleged live-in relationship of its owner, Diosdado del Rosario (del Rosario), with Dela Torre, petitioner's immediate subordinate.

Petitioner, who was present in the EXCOM Meeting as Executive Secretary, clarified that there was no official order banning DBR from bidding and the award of printing jobs to the latter was approved by the Board of Directors, the EXCOM and/or the Committee Head. She attached purchase orders as proof of such approval. She also explained that the live-in relationship of del Rosario and Dela Torre was known to the public and did not affect the efficiency of Dela Torre and the quality of service of DBR to private respondent institute.

Petitioner states that she again earned the ire of private respondents when she gave an unsolicited advice to the members of the EXCOM during a Committee Meeting. The EXCOM had allegedly decided to demote Dela Torre, her immediate subordinate, from her position as Administrative Secretary to a Clerk. Petitioner commented that it would be illegal to demote an employee.

On July 30, 1996, a stranger arrived at the IIEE Head Office. He turned out to be a newly-hired security guard. After an hour, private respondent Mendoza gave petitioner a notice of thirty-day suspension effective immediately.[12] Private respondent Mendoza also ordered her to surrender the keys to the vault, drawer, cabinet and petty cash. An on-the-spot accounting of the contents of the vault was conducted. Finally, upon private respondent Mendoza's order, the newly-hired security guard thoroughly checked her bag before she left the premises.

On July 31, 1996, petitioner submitted a written explanation[13] denying her involvement in the imputed charges. On August 6, 1996, Mendoza again wrote petitioner for the return of all office files, properties and diskettes still in her possession. On August 12, 1996, petitioner received two (2) more letters from private respondents: one for the turn-over of office properties;[14] the other for her attendance in an administrative investigation.[15] She was given the option to bring one (1) representative. Petitioner claims that the supposed investigation turned out to be an interrogation designed to elicit information to be used against her.

On August 31, 1996, after the expiration of her thirty-day suspension, petitioner called up private respondent Mendoza to ask when she could go back to work. The latter told her that she could not report for work anymore and advised her to wait for a call. On the same day, a Memo[16] was issued to petitioner dismissing her effective September 1, 1996 on the ground of gross negligence and loss of trust and confidence.

Private respondents tell another tale. They insist that petitioner was dismissed for cause.

On the latter part of 1995, private respondent Calado, then National Treasurer, noticed that one company, DBR, had been consistently awarded majority of the printing contracts of respondent institute. He relayed this observation to the incoming national officers for 1996 – herein private respondents.

On June 27, 1996, during the bidding for the printing of Part I of the Code, the Board of Directors declared a bidding failure due to violation of bidding procedures. Though DBR turned out to be the lowest bidder, its bid

was allegedly received after the lapse of the period of submission of bids and on the same day the bids were opened. Further, it was allegedly not opened in the presence of the Committee Members and the National Secretary.[17] This triggered a company-wide audit of all printing transactions in the previous years. The audit revealed two major irregularities: the printing requirements of respondent institute were overpriced at 20%-100% for the years 1994-1996;[18] and, the printing jobs were consistently awarded to DBR despite the lack of necessary bidding requirements.[19] Petitioner was preventively suspended pending investigation of the charges.

The administrative investigation of petitioner allegedly yielded the following findings:[20]

> - [Petitioner] repeatedly denied having [any] knowledge as to [a] board policy requiring a canvass of at least three companies for the printing requirements or for requirements over P10,000.00;
>
> - [She] denied knowledge if the memo she issued dated 12 March 1996 was being followed by her subordinates;
>
> - She has no knowledge of the By-Laws of the Institute (regarding mailing of ballots); and,
>
> - She admits that she does not conduct canvass of the printing requirements being handled by her.[21]

After the summary hearing, the Board of Directors deliberated and found justifiable cause to dismiss petitioner and Dela Torre. Private respondents conducted further investigations after the dismissals and allegedly uncovered more serious anomalies.

On November 12, 1999, Labor Arbiter Donato G. Quinto, Jr. ruled that petitioner['s dismissal was illegal and ordered, viz.:

> WHEREFORE, premises above considered, the dismissal of complainant Marilyn Sagum is hereby declared illegal. Since the reinstatement would not bring harmony between complainant and respondent[,] Institute of Integrated Electrical Engineers of the Philippines, Inc. is ordered to pay complainant separation pay of P195,168.00 plus backwages for one (1) year in the amount of P146,376.00 plus attorney's fees equivalent to ten percent (10[%]) of the money award, all in the aggregate of three hundred seventy[-]five thousand six hundred ninety[-]eight pesos and 40/100 centavos ([P]375,698.40).[22]

Petitioner filed a Partial Appeal[23] with the NLRC for reinstatement and the payment of full backwages. She argued that the decision of the Labor Arbiter did not show a case of irretrievable estrangement between her and private respondents as to preclude her reinstatement. She also questioned the denial of her claim for damages.[24] Private respondents, on the other hand, moved for a reversal of the decision and the dismissal of the case.[25]

The NLRC reversed the decision of the Labor Arbiter and ruled, viz.:

> Logically, the issues raised by complainant in its (sic) partial appeal becomes (sic) moot and academic. As reinstatement has no place for an employee validly dismissed – neither can damages be a necessary consequence thereof.
>
> ACCORDINGLY, premises considered, the decision appealed from is hereby reversed and set aside and a new [one] entered dismissing [the] case for want of merits.[26]

Petitioner's motion for reconsideration was denied for lack of merit. She filed a petition for review with the Court of Appeals.

The Court of Appeals found the decision of the Labor Arbiter to be more conformable with the evidence and the law and granted the petition. It ruled, viz.:

> WHEREFORE, premises considered, the decision of the NLRC is hereby annulled and SET ASIDE. The

> Decision of the Labor Arbiter dated November 12, 1999 is affirmed with the MODIFICATION that the petitioner shall be awarded full backwages.[27]

Respondent court ratiocinates its order on the payment of separation pay in lieu of petitioner's reinstatement, viz.:

> Considering that the dismissal was without basis, reinstatement with payment of backwages is in order. However, due to the strained relations which would not bring harmony between the parties brought about by the litigation and private respondents' consistent stand that there was a just cause for petitioner Sagum's dismissal for loss of trust and confidence and gross negligence, we find that separation pay should be awarded as an alternative to reinstatement.[28]

In a Motion for Partial Reconsideration, petitioner argued that the appellate court's denial of her reinstatement and claim for damages despite its finding of illegal dismissal violates the Labor Code. Respondent court denied the Motion for lack of merit.[29]

Petitioner raises the same issue in this petition, viz.:

> THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERROR IN CONTRADICTING THE EXPRESS MANDATE OF ARTICLE 279 OF THE LABOR CODE; x x x
>
> THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERROR IN ITS FACTUAL FINDING OF STRAINED RELATIONS WITHOUT CITING ANY SPECIFIC EVIDENCE ON WHICH THE SAME IS BASED CONTRADICTING THE APPLICABLE JURISPRUDENCE DECIDED BY THIS HONORABLE SUPREME COURT.[30]

We find for the petitioner on the issue of reinstatement.

Article 279 of the Labor Code provides the law on reinstatement, viz.:

> Article 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.

Corollarily, the Omnibus Rules Implementing the Labor Code state, viz.:

> Section 2. Security of Tenure. In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause as provided in the Labor Code or when authorized by existing laws.
>
> Sec. 3. Reinstatement. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and to backwages.[31]

The existence of strained relations is a factual finding and should be initially raised, argued and proven before the Labor Arbiter.[32] Petitioner is correct that the finding of strained relations does not have any basis on the records. Indeed, nowhere was the issue raised in private respondents' pleadings before the Labor Arbiter and the NLRC. Sieving through the records, private respondents first raised the issue in their Comment to Petitioner's Motion for Partial Reconsideration before the Court of Appeals.[33] In Globe-Mackay Cable and Radio Corporation v. NLRC,[34] we emphasized that the principle of strained relations cannot be applied indiscriminately. Otherwise, an illegally dismissed employee can never be reinstated because invariably, some hostility is engendered between litigants. As a rule, no strained relations should arise from a valid and legal act of asserting one's right; otherwise, an employee who asserts his right could be easily separated from the service by merely paying his separation pay on the pretext that his relationship with his employer had already become strained.[35]

We reiterated the rule in Quijano v. Mercury Drug Corporation, viz.:

> [A]n illegally dismissed employee is entitled to reinstatement as a matter of right. Over the years, however, the case law developed that where reinstatement is not feasible, expedient or practical, as where reinstatement would only exacerbate the tension and strained relations between the parties, or where the relationship between the employer and [the] employee has been unduly strained by reason of their irreconcilable differences, particularly where the illegally dismissed employee held a managerial or key position in the company, it would be more prudent to order payment of separation pay instead of reinstatement. Some unscrupulous employers, however, have taken advantage of the overgrowth of this doctrine of "strained relations" by using it as a cover to get rid of its employees and thus defeat their right to job security.
>
> To protect labor's security of tenure, we emphasize that the doctrine of "strained relations" should be strictly applied so as not to deprive an illegally dismissed employee of his right to reinstatement. Every labor dispute almost always results in "strained relations," and the phrase cannot be given an overarching interpretation, otherwise, an unjustly dismissed employee can never be reinstated.
>
> x x x
>
> [T]he alleged antagonism between the petitioner and the private respondent is a mere conclusion bereft of evidentiary support. To be sure, the private respondent did not raise the defense of strained relationship with the petitioner before the labor arbiter. Consequently, this issue which is factual in nature, was not the subject of evidence on the part of both the petitioner and the respondent. There is thus no competent evidence upon which to base the conclusion that the relationship between the petitioner and the respondent has reached the point where it is now best to sever their employment relationship. We therefore hold that the NLRC's ruling on the alleged brewing antagonism between the petitioner and the respondent is a mere guesswork and cannot justify the non-reinstatement of petitioner x x x.[36] (footnotes and emphases omitted)

In the case at bar, there are no hard facts upon which to base the application of the doctrine of strained relationship. Petitioner is correct that mere persistency in argument does not amount to proof,[37] and to deny an employee's right to be reinstated on the basis of the mere consistency of the employer's stand that the dismissal was for cause is to make a mockery of the right of reinstatement under Article 279 of the Labor Code.

Be that as it may, we reject petitioner's claim for moral and exemplary damages. The award of moral and exemplary damages is proper when an illegally dismissed employee had been harassed and arbitrarily terminated by the employer, as when the latter committed an anti-social and oppressive abuse of its right to investigate and dismiss an employee. The person claiming moral damages must prove the existence of bad faith by clear and convincing evidence for the law always presumes good faith. It is not enough that one merely suffered sleepless nights, mental anguish or serious anxiety as the result of the actuations of the other party.[38]

In the case at bar, we are not convinced that private respondents acted in a wanton or oppressive manner. The measures undertaken were relevant to the company-wide audit and investigation conducted within the institute. The suspension of petitioner without prior investigation is akin to preventive suspension which was necessary pending investigation of company records which she had access to. Nor can the posting of security guards inside the petitioner's room while the on-the-spot accounting was being conducted and the inspection of her bag and personal effects in the presence of her subordinates be characterized as oppressive. Despite the presence of security guards, petitioner did not even allege that there was use of force, abusive language or any species of violence. Lastly, we do not find the articles published in private respondent institute's publication, The Electrical Engineer, to be malicious as they were fact-based.

IN VIEW WHEREOF, the assailed Decision and the Resolution of the Court of Appeals in CA-G.R. SP No. 68790 dated June 28, 2002 and April 2, 2003, respectively, are AFFIRMED with the MODIFICATION that

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petitioner Marilyn T. Sagum is entitled to REINSTATEMENT. Private respondents are ORDERED to immediately reinstate petitioner to her previous position without loss of seniority rights. In case the former position of petitioner is no longer available, private respondent institute is directed to create an equivalent position and immediately reinstate petitioner without loss of seniority rights.

SO ORDERED.

Austria-Martinez, and Chico-Nazario, JJ., concur.
Callejo, Sr., J., no part.
Tinga, J., out of the country.

** Also spelled as Colado in other parts of the records.

[1] Globe-Mackay Cable and Radio Corporation v. NLRC, G.R. No. 82511, March 3, 1992 (206 SCRA 701, 709).

[2] Rollo, 8-41.

[3] Petitioner's complaint for illegal dismissal was first filed as a complaint for illegal suspension.

[4] [Private] Respondents' Position Paper, 1; CA Rollo, 141.

[5] [Private] Respondents' Memorandum, 3; Rollo, 285.

[6] Annex A, Complainant's Position Paper; CA Rollo, 78.

[7] [Private] Respondents' Memorandum of Appeal, 3; Rollo, 81.

[8] Annex B, Complainant's Position Paper; CA Rollo, 79. In this Memo, the following powers were conferred on petitioner:

- All powers vested on the Executive Director may be exercised by petitioner;

- Policy changes, if any, will have to be approved by the National Secretary and/or the National President or the Board as the case may be; and,

- Interpretations of existing office policies will be left to the discretion of the Executive Secretary and she may or may not consult the National Secretary or any officer of the Institute. Copies of all hiring and termination letters should be furnished the National Secretary, National President and Committee Chairmen concerned.

[9] [Private] Respondents' Memorandum, 3; Rollo, 285.

[10] Dated July 30, 1996 and August 12, 1996. See Annexes E & H, Complainant's Position Paper; CA Rollo, 107 & 109.

[11] See Omnibus Rules Implementing the Labor Code on Termination of Employment.

[12] Annex E, Complainant's Position Paper; CA Rollo, 107.

[13] Annex F, Complainant's Position Paper; id. at 108.

[14] Annex H-1, Complainant's Position Paper; id. at 110.

[15] Annex H, Complainant's Position Paper; id. at 109.

[16] Annex J, Complainant's Position Paper; id. at 113.

[17] [Private] Respondents' Memorandum of Appeal, 2; Rollo, 80.

[18] CA Rollo, 165-166.

[19] I.e., requisition form, canvass sheet, delivery receipt, official receipt, etc.

[20] [Private] Respondents' Position Paper, 4; CA Rollo, 144.

[21] As a consequence, the prices of DBR for 1994 and 1995 were found to be 20%-100% more expensive than the prevailing prices of 1996 for other suppliers.

[22] Decision of Labor Arbiter Donato G. Quinto, Jr., 12; Rollo, 70.

[23] Rollo, 71-77.

[24] Partial Appeal, 5; Rollo, 75.

[25] [Private] Respondents' Memorandum of Appeal; id. at 79-88.

[26] NLRC Resolution, 1-9; id. at 89-97.

[27] CA Decision, 1-15; id. at 43-57.

[28] id. at 14; id. at 56.

[29] Rollo, 58.

[30] Petition, 12; Rollo, 20.

[31] Book VI, Rule I.

[32] Philippine Long Distance Telephone Company v. Tolentino, G.R. No. 143171, September 21, 2004, citing Quijano v. Mercury Drug Corporation, infra Note 36.

[33] Comment [to Petitioner's Motion for Partial Reconsideration], 6; CA Rollo, 323.

[34] Supra Note 1.

[35] Ibid.

[36] Quijano v. Mercury Drug Corporation, G.R. No. 126561, July 8, 1998 (292 SCRA 109).

[37] Petition, 27; Rollo, 35.

[38] Audion Electric Co., Inc. v. NLRC, G.R. No. 106648, June 17, 1999 (308 SCRA 340), citing Equitable Banking Corporation v. NLRC, 273 SCRA 352.

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