DUSIT HOTEL NIKKO, PETITIONER, VS. RENATO M. GATBONTON, RESPONDENT.

G.R. NO. 161654. May 05, 2006

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This is a petition for review of the Decision[1] dated September 22, 2003, and the Resolution[2] dated January 9, 2004, of the Court of Appeals in CA-G.R. SP No. 73296, which reversed the Resolution[3] dated September 24, 2001, of the National Labor Relations Commission (NLRC) in NLRC CA No. 025743-00.

The facts are as follows:

On November 21, 1998,[4] respondent Renato M. Gatbonton was hired as Chief Steward in petitioner Dusit Hotel Nikko's Food and Beverage Department. He signed a three-month probationary employment contract until February 21, 1999,[5] with a monthly salary of P25,000. At the start of his employment, the standards by which he would be assessed to qualify for regular employment were explained to him.

The hotel alleged that at the end of the probation period, Ingo Rauber, Director of its Food and Beverage Department, observed that Gatbonton failed to meet the qualification standards for Chief Steward, and Rauber recommended a two-month extension of Gatbonton's probationary period, or until April 22, 1999. At the end of the 4th month, on March 24, 1999, Rauber informed Gatbonton that the latter had poor ratings on staff supervision, productivity, quantity of work, and overall efficiency and did not qualify as Chief Steward. Gatbonton requested another month or until April 22, 1999 to improve his performance, to which Rauber agreed but allegedly refused to sign the Performance Evaluation Form. Neither did he sign the Memorandum on the extension.

On March 31, 1999, a notice[6] of termination of probationary employment effective April 9, 1999, on the above alleged grounds was served on Gatbonton. On April 12, 1999, he filed a complaint for illegal dismissal and non-payment of wages, with prayers for reinstatement, full backwages, and damages, including attorney's fees.

On July 10, 2000, the Labor Arbiter disposed of the case as follows:

> WHEREFORE, PREMISES CONSIDERED, respondent Dusit Hotel Nikko is hereby ordered to reinstate upon promulgation of this decision, the herein complainant Renato Gatbonton to his former position as regular Chief Steward without loss of seniority rights and other benefits with full backwages from the time of his illegal dismissal on April 9, 1999 up to actual reinstatement or in the amount of P375,000 (P25,000 x 15 months or up to July 9, 2000) to be adjusted, plus ten percent (10%) attorneys fees.
>
> The same respondent is also ordered to pay complainant's unpaid salaries within ten (10) days from receipt hereof.
>
> Complainant's prayer for damages is hereby dismissed for lack of concrete evidence.

SO ORDERED.[7]

The Labor Arbiter found that at the time of the respondent's termination, he was already a regular employee. Further, there was no evidence that Gatbonton was assessed or evaluated by the petitioner during his three-month probationary employment; thus, he could not be dismissed for failure to meet the reasonable standards for his position.

Aggrieved, the petitioner appealed to the National Labor Relations Commission (NLRC) which reversed the Labor Arbiter's decision and declared the respondent's dismissal legal. The NLRC noted that the Personnel Action Form showed respondent's probationary employment was extended from February 24 to April 22, 1999. Hence, when he was terminated on April 9, 1999, he was still on probation.

The respondent filed a petition for certiorari with the Court of Appeals contending that the NLRC acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it reversed the decision of the Labor Arbiter. The respondent maintained: (1) that the petitioner failed to establish with substantial evidence that the respondent's probationary employment was extended; (2) that the petitioner failed to establish that the alleged extension was formally communicated to the respondent during his probationary employment; and (3) that the petitioner failed to establish that the alleged extension was valid and legal.[8]

The appellate court granted the petition and reinstated the decision of the Labor Arbiter. The present petition is anchored on the following grounds:

I

WHETHER OR NOT THE RESPONDENT WAS STILL A PROBATIONARY EMPLOYEE AT THE TIME OF HIS DISMISSAL;

II

WHETHER OR NOT THE RESPONDENT WAS VALIDLY DISMISSED ON THE GROUND OF FAILURE TO MEET THE STANDARDS OF SATISFACTORY PERFORMANCE MADE KNOWN TO HIM AT THE TIME OF HIS ENGAGEMENT;

III

WHETHER OR NOT [RESPONDENT] IS ENTITLED TO REINSTATEMENT, BACKWAGES AND ATTORNEY'S FEES;

IV

WHETHER OR NOT [RESPONDENT] HAS BEEN PAID HIS REMAINING SALARIES.[9]

Essentially, we must resolve two questions: (1) Was respondent a regular employee at the time of his dismissal? and (2) Was he validly terminated?

As in previous cases, when we find arbitrariness and disharmony in the factual findings of the Labor Arbiter and the National Labor Relations Commission, we review the findings of fact and if errors are found, we will not hesitate to set aside such factual findings of these agencies.

Here, Article 281 of the Labor Code is pertinent. It provides that:

ART. 281. Probationary Employment. -- Probationary employment shall not exceed six (6) months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. The services of an employee who has been engaged on a probationary basis may be terminated for a

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> just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. An employee who is allowed to work after a probationary period shall be considered a regular employee.

As Article 281 clearly states, a probationary employee can be legally terminated either: (1) for a just cause; or (2) when the employee fails to qualify as a regular employee in accordance with the reasonable standards made known to him by the employer at the start of the employment.[10] Nonetheless, the power of the employer to terminate an employee on probation is not without limitations. First, this power must be exercised in accordance with the specific requirements of the contract. Second, the dissatisfaction on the part of the employer must be real and in good faith, not feigned so as to circumvent the contract or the law; and third, there must be no unlawful discrimination in the dismissal. In termination cases, the burden of proving just or valid cause for dismissing an employee rests on the employer.[11]

Here, the petitioner did not present proof that the respondent was evaluated from November 21, 1998 to February 21, 1999, nor that his probationary employment was validly extended.

The petitioner alleged that at the end of the respondent's three-month probationary employment, Rauber recommended that the period be extended for two months since respondent Gatbonton was not yet ready for regular employment.[12] The petitioner presented a Personnel Action Form[13] containing the recommendation. We observed, however, that this document was prepared on March 31, 1999, the end of the 4th month of the respondent's employment. In fact, the recommended action was termination of probationary employment effective April 9, 1999, and not extension of probation period.[14] Upon appeal to the NLRC, the petitioner presented another Personnel Action Form[15] prepared on March 2, 1999, showing that the respondent's probationary employment was extended for two months effective February 23, 1999.

The Personnel Action Form dated March 2, 1999, contained the following remarks: "subject to undergo extension of probation for two (2) months as per attached memo." Yet, we find this document inconclusive. First, the action form did not contain the results of the respondent's evaluation. Without the evaluation, the action form had no basis. Second, the action form spoke of an attached memo which the petitioner identified as Rauber's Memorandum, recommending the extension of the respondent's probation period for two months. Again, the supposed Memorandum was not presented. Third, the action form did not bear the respondent's signature.

In the absence of any evaluation or valid extension, we cannot conclude that respondent failed to meet the standards of performance set by the hotel for a chief steward. At the expiration of the three-month period, Gatbonton had become a regular employee. It is an elementary rule in the law on labor relations that a probationary employee engaged to work beyond the probationary period of six months, as provided under Article 281 of the Labor Code, or for any length of time set forth by the employer (in this case, three months), shall be considered a regular employee.[16] This is clear in the last sentence of Article 281. Any circumvention of this provision would put to naught the State's avowed protection for labor.

Since respondent was not dismissed for a just or authorized cause, his dismissal was illegal, and he is entitled to reinstatement without loss of seniority rights, and other privileges as well as to full backwages, inclusive of allowances, and to other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

The petitioner presented copies of Check No. 0000200953[17] and the corresponding voucher[18] in the amount of P6,095.19, to prove that the respondent had been paid his remaining unpaid salaries on May 26, 1999. We have no reason to disbelieve said payment, since the respondent failed to refute this matter before the Court of Appeals and before us.

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WHEREFORE, the instant petition for review is DENIED. The Decision of the Court of Appeals in CA-G.R. SP No. 73296, which reversed the Resolution dated September 24, 2001 of the National Labor Relations Commission, is AFFIRMED WITH the MODIFICATION that the order for payment of unpaid salaries is DELETED.

SO ORDERED.

Carpio, Carpio Morales, Tinga, and Velasco, Jr., JJ., concur.

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[1]Rollo, pp. 42-46. Penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justices Roberto A. Barrios, and Arsenio J. Magpale concurring.

[2] Id. at 40.

[3] Id. at 152-158.

[4]Records, p. 10 (November 23, 1998, in other parts of the records).

[5] Id. at 67 (February 23, 1999, in other parts of the records).

[6]Id. at 12.

[7]Id. at 58.

[8] CA rollo, p.10.

[9] Rollo, pp. 420-421.

[10]Aberdeen Court, Inc. v. Agustin, Jr., G.R. No. 149371, April 13, 2005, 456 SCRA 32, 41.

[11] Sameer Overseas Placement Agency, Inc. v. NLRC, G.R. No. 132564, October 20, 1999, 317 SCRA 120, 124-125.

[12] Records, p. 14.

[13] Id. at 22.

[14] Id.

[15] Id. at 84.

[16] Phil. Federation of Credit Cooperatives, Inc. v. NLRC, G.R. No. 121071, December 11, 1998, 300 SCRA 72, 74-75.

[17] Records, p. 88.

[18] Id. at 89.

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