

ANABELLE MUAJE-TUAZON AND ALMER R. ABING, PETITIONERS, VS. WENPHIL CORPORATION, ELIZABETH P. ORBITA, AND THE COURT OF APPEALS, RESPONDENTS.

G.R. NO. 162447. December 27, 2006

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Before us is a petition for review under Rule 45 assailing the Decision[1] dated August 27, 2003 of the Court of Appeals in CA-G.R. SP No. 75419 and its Resolution dated February 23, 2004 denying reconsideration. The Court of Appeals reversed the National Labor Relations Commission's finding of illegal dismissal.

The pertinent facts of the case are as follows:

Petitioners Annabelle M. Tuazon and Almer R. Abing worked as branch managers of the Wendy's food chains in MCU Caloocan and Meycauayan, respectively, of respondent Wenphil Corporation. From September 14 to November 8, 1998, Wendy's had a "Biggie Size It! Crew Challenge" promotion contest. The branch with the highest sales of "Biggie Size It" wins. The Meycauayan and MCU Caloocan branches won first and second places, respectively. Because of its success, respondent had a second run of the contest from April 26 to July 4, 1999. The Meycauayan branch won again. The MCU Caloocan branch failed to make it among the winners.[2]

Before the start of the third round from October 18, 1999 to January 16, 2000, Abing was assigned to the SM North Edsa Annex branch while Tuazon was assigned to the Meycauayan branch. Before the announcement of the third round winners, management received reports that as early as the first round of the contest, the Meycauayan, MCU Caloocan, Tandang Sora and Fairview branches cheated. An internal investigation ensued.[3]

On February 3, 2000, petitioners were summoned to the main office regarding the reported anomaly. Petitioners denied there was cheating. Immediately thereafter, petitioners were notified, in writing, of hearings scheduled on February 4 and 7, 2000 and of their immediate suspension.[4] Thereafter, on February 29, 2000, petitioners were dismissed.

Petitioners filed, with the Regional Arbitration Branch, a complaint for illegal suspension and dismissal against respondent Wenphil Corporation and its General Manager, Elizabeth P. Orbita. Petitioners insisted that they were innocent of the accusations and were dismissed without cause. They claimed that the real reason for their termination was their persistent demands for overtime and holiday pay. They aver that (a) they were not notified beforehand why they were called to the main office; (b) their right to due process was denied; and (c) they were not afforded counsel despite their request for one.

In their defense, respondents maintained that petitioners were terminated for dishonesty amounting to serious misconduct and willful breach of trust. They presented affidavits of witnesses, receipts and other documents to support the charges against petitioners. Respondents posited that since petitioners occupied managerial positions, loss of trust and confidence by the employer was sufficient cause for their termination. Moreover, respondents

insisted that petitioners were afforded due process, with two required notices, and the opportunity to defend themselves. Lastly, respondents asserted that the preventive suspension was necessary for the protection of the company's property and possible destruction of evidence pending investigation.

During the hearings, the Labor Arbiter disregarded the affidavits of respondents' witnesses for being executed only after the company investigation and held that respondents' evidence insufficiently proved the alleged cheating of the petitioners. The Labor Arbiter ruled in favor of the petitioners as follows:

WHEREFORE, judgment is hereby rendered finding the suspension and dismissal of complainants Almer R. Abing and Annabelle M. Tuazon illegal. Respondent WENPHIL CORPORATION is hereby ordered to:

- immediately reinstate complainants to their former or equivalent position, actual or in payroll at, their option, without loss of seniority rights and benefits.
- to pay them backwages from the time they were illegally dismissed on 03 February 2000 until their reinstatement, computed as of the date of this decision, as follows:

$([P15,000] + 3,000 + 2,000 + 1,000) \times 10 \text{ months} = P210,000.00$ for each complainant.

- to pay them ten (10%) percent attorney's fees.

All other claims are dismissed for lack of merit.

SO ORDERED.[5]

Respondents appealed to the National Labor Relations Commission (NLRC), which affirmed with modification the decision of the Labor Arbiter in this wise:

WHEREFORE, the appealed Decision is hereby AFFIRMED but with the following modifications:

- Declaring the preventive suspension of the complainants to be legal. Accordingly, the period from February 3-28, 2000, during which they were preventively suspended, shall be excluded in the computation of their backwages; and
- Ordering respondent company to pay complainants separation pay, in lieu of reinstatement, at the rate of one (1) month salary for every year of service to be computed from the date of employment up to the actual payment thereof.

SO ORDERED.[6]

Denied reconsideration, respondents elevated the case to the Court of Appeals, which found substantial proof of petitioners' misconduct. The appellate court held that although the affidavits were executed after the company investigation, the facts and issues therein were discussed during the investigation and submitted to the management before the decision to dismiss the petitioners was made. It also ruled that respondent Wenphil sufficiently complied with the due process requirement. The appellate court ruled as follows:

WHEREFORE, premises considered, the instant petition for certiorari is hereby GRANTED. The assailed resolutions of the National Labor Relations Commission dated January 30, 2002 and September 24, 2002 are hereby SET ASIDE. In lieu thereof, judgment is hereby rendered REVERSING and SETTING ASIDE the decision of the Labor Arbiter, dated December 8, 2000 rendered in NLRC NCR Cases Nos. 30-03-00993-00 and 30-03-01020-00. The private respondents' complaints filed in the aforementioned cases are hereby DISMISSED.

SO ORDERED.[7]

Petitioners moved for reconsideration but the same was denied. Petitioners now come before us assigning the following errors:

- THE FACTUAL BASES USED BY THE COURT OF APPEALS IN REVERSING THE RULING OF THE NLRC IS (sic) ACTUALLY UNFOUNDED;
- THE COURT OF APPEALS HAD DELIBERATELY OVERLOOKED THE FACT THAT THE INTERROGATION PROCESS CONDUCTED BY THE EMPLOYER IS VOID AB INITIO, HENCE, CANNOT BE USED AS A SUBSTITUTE FOR LAWFUL INVESTIGATION FOR PURPOSES OF DUE PROCESS;
- THE COURT OF APPEALS HAD WHIMSICALLY GIVE[N] TOO MUCH WEIGHT TO THE AFFIDAVITS WHICH ASIDE FROM BEING SELF-SERVING, ARE NON-EXISTEN[T] AT THE TIME THEY WERE USED AS A GROUND FOR THE DISMISSAL OF THE PETITIONERS;
- IN REVERSING THE FACTUAL FINDINGS OF THE LABOR TRIBUNALS, THE COURT OF APPEALS WENT TO THE EXTENT OF OVER-EXPANDING ITS CERTIORARI JURISDICTION, IN VIOLATION OF LAW AND ESTABLISHED JURISPRUDENCE ON THE MATTER;
- THE LABOR ARBITER, BEING THE ONE WHO ACTUALLY CONDUCTED THE HEARING IN THE ARBITRATION STATE AND HAD PERSONALLY OBSERVED THE DEMEANOR OF [THE] PARTIES DURING THE HEARING, HIS FACTUAL FINDINGS (sic) CARRY HEAVIER WEIGHT THAN THE EVALUATION OF [THE] COURT OF APPEALS' JUSTICES WHO MERELY RELY (sic) THEIR FINDINGS SOLELY FROM THE RECORD OF THE CASE (sic).[8]

Essentially, we are asked to resolve the following issues: (1) Did the appellate court act in excess of its jurisdiction when it reviewed factual findings of the Labor Arbiter and NLRC? (2) Was there compliance with the due process requirement? (3) Were petitioners illegally dismissed?

On the threshold procedural issue, petitioners contend that the appellate court went beyond its jurisdiction when it re-evaluated the findings of facts of the Labor Arbiter also affirmed by the NLRC.

Respondents counter that the appellate court correctly exercised its power of certiorari since the Labor Arbiter and the NLRC gravely abused their discretion when it failed to consider the affidavits of the witnesses against the petitioners. They also point out that the present petition raises questions of fact which are not proper in a petition for review under Rule 45.

The rule is that a petition for certiorari is available when any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.[9] Generally, factual issues are not proper subjects for certiorari which is limited to the issue of jurisdiction and grave abuse of discretion.[10] Grave abuse of discretion is committed when the board, tribunal or officer exercising judicial function fails to consider evidence adduced by the parties.[11] In the present case, the Labor Arbiter and the NLRC disregarded the affidavits of the witnesses against the petitioners.

Moreover, where the party's contention appears to be clearly tenable, or where the broader interest of justice and public policy so require, the court may, in a certiorari proceeding, correct the error committed.[12] Hence, in our view, the Court of Appeals correctly exercised its power of certiorari when it re-evaluated the findings of fact by the Labor Arbiter and the NLRC.

The general rule is that the jurisdiction of this Court in a petition for review under Rule 45 is confined to a review of questions of law. Further, the findings of fact of the Court of Appeals, when supported by substantial evidence,

are conclusive and binding on the parties, and are not reviewed by this Court, except when the findings are contrary with those of the lower court or quasi-judicial bodies.[13] The contradictory findings of the NLRC and the Court of Appeals provide sufficient justification for our review of the facts.

On the second issue. Did Wenphil comply with the due process requirement before dismissing the petitioners?

Petitioners aver that their right to due process was violated. They were not notified of the accusation against them before they were summoned to the main office of Wenphil on February 3, 2000 for investigation. Further, they assert that the company investigation was irregular or void since they were not allowed to seek the assistance of counsel, and that they were not present when the testimonies of the witnesses were taken, and they were not given the opportunity to confront the witnesses against them.

First, the law requires that the employee be given two written notices before terminating his employment, namely: (1) a notice which apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the subsequent notice which informs the employee of the employer's decision to dismiss him.[14]

The records show that the petitioners were given written notices informing them that they were charged with serious misconduct and dishonesty in relation to the "Biggie Size It! Crew Challenge" program, and notifying them of the scheduled hearings on February 4 and 7, 2000.[15] Although notices were given to them only on February 3, 2000, it will be noted that there were other investigations or hearings set after February 4 and 7 where they had the opportunity to explain their side after they were apprised of their alleged infractions. We note likewise that petitioners, thinking that their verbal explanations were sufficient, opted to forego a written explanation, and did not appear during the set hearing. These actions were choices that petitioners voluntarily made.

On record are the written notices dated February 29, 2000,[16] whereby petitioners were notified of respondents' decision to terminate them. Petitioner Tuazon acknowledged receipt of her notice as evidenced by her signature on the company's copy. Petitioner Abing's refusal to sign the company's copy, despite his own copy having been tendered to him, does not invalidate the notice of his termination.

Petitioners contend that they were not given the opportunity to confront the witnesses against them. Petitioners must be reminded, however, that confrontation of witnesses is required only in adversarial criminal prosecutions, and not in company investigations for the administrative liability of the employee.[17] Additionally, actual adversarial proceedings become necessary only for clarification, or when there is a need to propound searching questions to witnesses who give vague testimonies. This is not an inherent right, and in company investigations, summary proceedings may be conducted.[18]

Finally, on the last issue. Petitioners contend that respondents did not sufficiently prove the existence of a just cause for their termination, hence they were illegally dismissed.

There is no denying that petitioners were managerial employees. They executed management policies, they had the power to hire personnel and assign them tasks; and discipline the employees in their branch. They recommended actions on employees to the head office.[19] Pertinent is Article 212 (m) of the Labor Code defining a managerial employee as one who is vested with powers or prerogatives to lay down and execute management policies and/or hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees. Consequently, as managerial employees, in the case of petitioners, the mere existence of grounds for the loss of trust and confidence justify their dismissal.[20] Pursuant to our ruling in *Caoile v. National Labor Relations Commission*,[21] as long as the employer has a reasonable ground to believe that the managerial employee concerned is responsible for the purported misconduct, or the nature of his participation renders him unworthy of

the trust and confidence demanded by his position, the managerial employee can be dismissed.

In the present case, the tape receipts presented by respondents showed that there were anomalies committed in the branches managed by the petitioners. On the principle of respondeat superior or command responsibility alone, petitioners may be held liable for negligence in the performance of their managerial duties, unless petitioners can positively show that they were not involved. Their position requires a high degree of responsibility that necessarily includes unearthing of fraudulent and irregular activities.[22] Their bare, unsubstantiated and uncorroborated denial of any participation in the cheating does not prove their innocence nor disprove their alleged guilt.[23] Additionally, some employees declared in their affidavits[24] that the cheating was actually the idea of the petitioners.

Petitioners make much of the fact that the affidavits were executed only after the investigation. This is of no moment. For even without the affidavits, sufficient basis exists for respondents' loss of trust and confidence on the petitioners as managerial officers.

WHEREFORE, the petition is DENIED. The Decision dated August 27, 2003 and Resolution dated February 23, 2004 of the Court of Appeals in CA-G.R. SP No. 75419 are hereby AFFIRMED.

No pronouncement as to costs.

SO ORDERED.

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

* Also referred to as Yvette in the title of CA Decision, the body of the Labor Arbiter's decision, and the position papers of the parties.

[1] Rollo, pp. 25-39.

[2] Id. at 59-61, 93-98.

[3] Id. at 60-62, 98-100.

[4] Id. at 148-151.

[5] Id. at 75-76.

[6] Id. at 51.

[7] Id. at 39.

[8] Id. at 12-13.

[9] RULES OF COURT, Rule 65, Sec. 1.

[10] *Negros Oriental Electric Coopertive 1 v. The Secretary of the Department of Labor and Employment*, G.R. No. 143616, May 9, 2001, 357 SCRA 668, 673.

[11] *Philippine Airlines, Inc. v. Confesor*, G.R. No. 111480, March 10, 1994, 231 SCRA 41, 53 citing *Caltex Filipino Managers and Supervisors Association v. Court of Industrial Relations*, Nos. L-30632-33, April 11, 1972, 44 SCRA 350, 366.

[12] Id. citing *De Laureano v. Adil*, No. L-43345, July 29, 1976, 72 SCRA 148, 161.

[13] See *Vera Cruz v. Calderon*, G.R. No. 160748, July 14, 2004, 434 SCRA 534, 538-539.

[14] *Agabon v. National Labor Relations Commission*, G.R. No. 158693, November 17, 2004, 442 SCRA 573, 608.

[15] *Rollo*, pp. 148-151.

[16] *Id.* at 150-151.

[17] See *Manuel v. N.C. Construction Supply*, G.R. No. 127553, November 28, 1997, 282 SCRA 326, 334-335.

[18] *Arboleda v. National Labor Relations Commission*, G.R. No. 119509, February 11, 1999, 303 SCRA 38, 45 citing *Manila Electric Company v. NLRC*, G.R. No. 114129, October 24, 1996, 263 SCRA 531, 542.

[19] See *Tabacalera Insurance Co. v. NLRC*, No. L-72555, July 31, 1987, 152 SCRA 667, 674.

[20] *Del Val v. National Labor Relations Commission*, G.R. No. 121806, September 25, 1998, 296 SCRA 283, 289.

[21] G.R. No. 115491, November 24, 1998, 299 SCRA 76, 83.

[22] *Nokom v. National Labor Relations Commission*, 390 Phil. 1228, 1241 (2000).

[23] *Id.*

[24] Annexes "K" to "Q", *rollo*, pp. 152-166.

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