

MAXI SECURITY AND DETECTIVE AGENCY, REPRESENTED BY ITS OWNER ROLANDO P. OCHOA, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, SECOND DIVISION, AND GERMAN GUSI, RESPONDENTS.

G.R. NO. 162850. December 16, 2005

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This petition for review on certiorari[1] assails the September 28, 2001 Decision[2] and the March 15, 2004 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 64347 which affirmed with modification the November 29, 2000 Decision[4] of the National Labor Relations Commission (NLRC).

Petitioner Maxi Security and Detective Agency hired German Gusi (Gusi) on April 4, 1995 as a security guard. It alleged that on October 6, 1997, Gusi did not report for work and was absent for more than a week. Hence, it sent Remegio Salonga, another employee, to inform Gusi to report for work otherwise, he would be terminated by reason of abandonment.

Respondent Gusi claimed that he was terminated on October 5, 1997 when he was summoned to petitioner's office and was handed his salary for five days, and thereafter, informed that his services were not needed anymore. Consequently, on October 8, 1997, he filed a complaint for illegal dismissal.

On July 1, 1999,[5] Labor Arbiter Potenciano S. Cañizares, Jr. held that Gusi was illegally dismissed, thus:

WHEREFORE, the respondents are hereby ordered to reinstate the complainant without loss of seniority rights and other privileges and to pay 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. (Article 279, Labor Code)

The respondents are likewise ordered to pay the complainant 13[th] month pay and service incentive leave pay for the period of his employment.

The complainant's backwages up to the date of this Decision and other monetary awards as computed by Ms. Leonisa G. Lodronio of the Commission's Computation and Examination Unit NCR South Sector are the following:

A. Backwages;

1. Basic:

$10/05/97-02/05/98 = 185.00 \times 30 \times 4.00 = 22,200.00$

$02/06/98-10/30/99 = 198.00 \times 30 \times 20.80 = 123,552.00$

$10/31/99-11/15/99 = 223.50 \times 30 \times .46 = 3,084.30$ 148,836.30

2. 13th Month Pay:

$$10/05/97-02/05/98 = 22,200.00/12 = 1,850.00$$

$$02/06/98-10/30/99 = 123,552.00/12 = 10,296.00$$

$$10/31/99-11/15/99 = 3,084.30/12 = 257.03 \quad 12,403.03$$

3. SILP:

$$10/05/97-12/31/97 = (185.00 \times 5) 2.87/12 = 221.23$$

$$01/01/98-12/31/98 = (198.00 \times 5) = 990.00$$

$$01/01/99-11/15/99 = (223.50 \times 5) 10.5/12 = 977.81 \quad 2,189.04 \quad 163,428.37$$

B. 13[th] Month Pay:

$$04/04/95-10/04/97 = 165.00 \times 30 \times 30/12 = 12,375.00$$

C. SILP:

$$04/04/95-10/04/95 = (165.00 \times 5) 30/12 = 2,062.50$$

TOTAL = = = = = P177,865.87

Article 223 of the Labor Code in part provides that, "In any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be executory, even pending appeal. The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation or, at the option of the employer, merely reinstated in the payroll. The posting of a bond by the employer shall not stay the execution for reinstatement provided herein." Accordingly, the respondents are directed to reinstate the complainant when he reports for work by virtue of this Decision.

Other claims are hereby dismissed for lack of evidence.

SO ORDERED.[6]

The NLRC affirmed in toto the decision of the labor arbiter.[7]

Thus, petitioner appealed to the Court of Appeals by way of special civil action for certiorari. In the Decision dated September 28, 2001, the Court of Appeals noted that Gusi was guilty of absence without leave from October 6, 1997 to October 31, 1997, hence, he should be suspended for two months for unauthorized absences. It also ruled that petitioner failed to discharge the burden of proving that Gusi abandoned his work. As such, Gusi was illegally dismissed and is therefore entitled to full backwages from the time his compensation was unlawfully withheld up to his actual reinstatement less backwages for two months corresponding to his suspension.[8] The dispositive portion of the decision states, thus:

WHEREFORE, the decision of public respondent NLRC is AFFIRMED with the MODIFICATION that private respondent shall be paid full backwages from December 6, 1997 up to the time of his actual reinstatement.

SO ORDERED.[9]

While the case was pending reconsideration before the Court of Appeals, counsel for petitioner manifested that Gusi died on April 7, 1999 but the fact of his death was not relayed to the labor arbiter as required by the Rules of Court.

On March 15, 2004, the Court of Appeals denied petitioner's motion for reconsideration. Hence, this petition on the following issues:

I

THE HONORABLE COURT OF APPEALS COMMITTED REVERSIBLE ERROR AND/OR ACTED WITH GRAVE ABUSE OF DISCRETION WHEN IT RENDERED THE ASSAILED DECISION AND RESOLUTION WITHOUT FIRST DIRECTING THE SUBSTITUTION OF THE RESPONDENT AFTER IT WAS NOTIFIED OF HIS DEATH THEREBY RENDERING SAID DECISION AND RESOLUTION NULL AND VOID.

II

ASSUMING, ARGUENDO, THAT THE ASSAILED DECISION AND RESOLUTION ARE VALID, THE HONORABLE COURT OF APPEALS COMMITTED REVERSIBLE ERROR AND/OR ACTED WITH GRAVE ABUSE OF DISCRETION WHEN IT AFFIRMED THE FINDINGS OF THE PUBLIC RESPONDENT THAT:

- RESPONDENT GUSI DID NOT COMMIT ABANDONMENT OF WORK NOTWITHSTANDING PROOF TO THE CONTRARY;
- RESPONDENT GUSI WAS ILLEGALLY DISMISSED BY PETITIONER NOTWITHSTANDING HIS ABANDONMENT OF HIS WORK;
- RESPONDENT GUSI IS ENTITLED TO PAYMENT OF BACKWAGES AND OTHER MONETARY CLAIMS UNTIL HE IS ACTUALLY REINSTATED DESPITE NOTICE THAT SAID RESPONDENT ALREADY PASSED AWAY IN APRIL 1999.[10]

The issues for resolution are as follows: (1) whether Gusi was illegally dismissed; (2) whether Gusi is entitled to receive backwages; and (3) whether the decision of the Court of Appeals was valid in view of failure of Gusi's counsel to inform the court of Gusi's death pursuant to Section 16, Rule 3 of the Rules of Court.

We find merit in the petition.

As a general rule, only questions of law may be brought to this Court in a petition for review on certiorari under Rule 45 of the Rules of Court. This Court is not a trier of facts, and as such is not tasked to calibrate and assess the probative weight of evidence adduced by the parties during trial all over again.[11] This case is not an exception.

There is no need to resolve the factual issue on whether Gusi was illegally dismissed. The labor arbiter, the NLRC, and the Court of Appeals all found that petitioner illegally terminated the employment of Gusi. The labor arbiter held that petitioner violated Gusi's security of tenure, thus:

... The respondents (now petitioner) alleged that the complainant went on AWOL and they sent Remigio Salonga, an employee, to tell the complainant (Gusi) to immediately report for work; and that they instructed Rosalie Palmera, appraiser of Ochoa-Realica Pawnshop, Inc. at Imus Branch, to re-assign the complainant to another post due to his habitual tardiness, sleeping on the job and drunkenness. They could not have re-assigned him to another post, if the complainant did not report at all after Remigio Salonga contacted him. Their argument is ambiguous and evasive as to merit belief.[12]

On appeal, the NLRC agreed with the findings of the labor arbiter that the contradictory testimonies of petitioner's witnesses Rosalie Palmera and Remegio Salonga were unbelievable. Rosalie Palmera testified that sometime in October 1997, she was instructed to transfer Gusi to another assignment due to his habitual tardiness, sleeping on

the job and drunkenness. Meanwhile, Remegio Salonga testified that he went to the residence of Gusi and notified the latter to resume working at his assigned post at the Ochoa-Realica Pawnshop, Inc., otherwise his employment shall be deemed terminated by reason of abandonment.[13]

The Court of Appeals sustained the decision of both the labor arbiter and the NLRC, to wit:

As a general rule, findings of facts of quasi-judicial bodies like the NLRC, particularly, when they coincide with those of the Labor Arbiter, are accorded with respect and even finality if supported by substantial evidence.

In illegal dismissal cases, the employer bears the burden of proof to show that the dismissal is for a just or authorized cause.

In this case, petitioner insists that there was no illegal dismissal case to speak of because private respondent abandoned his work. He was absent without official leave and his explanation was unmeritorious. He was reassigned to another post but refused to work for duty.

We are not impressed with the submission of petitioner that private respondent had abandoned his work during the period the absences in question were incurred. While it is true that petitioner submitted proofs that it exerted efforts to contact private respondent through one of its employees to return to work, still this will not justify private respondent's termination from work.

Indeed, for abandonment of work to be a just and valid grounds for dismissal, there must be deliberate and unjustified refusal on the part of the employee to resume his employment. The burden of proof is on the employer to show an unequivocal intent on the part of the employee to discontinue employment. Moreover, the filing of a complaint for illegal dismissal is inconsistent with a charge of abandonment, for an employee who takes steps to protest his lay-off cannot by any logic be said to have abandoned his work.[14]

To validly terminate the employment of Gusi, petitioner must comply with the twin requisites, namely: (a) the dismissal must be for any of the causes provided for in Article 282 of the Labor Code; and b) the employee must be afforded an opportunity to be heard and to defend himself.[15] In termination cases, the burden of proving just and valid cause for dismissing an employee from his employment rests upon the employer, and the latter's failure to discharge that burden would result in a finding that the dismissal is unjustified.[16] To succeed in pleading abandonment as a valid ground for dismissal, the employer must prove (1) the intention of an employee to abandon his or her employment and (2) an overt act from which such intention may be inferred; i.e., the employee showed no desire to resume his work. Mere absence is not sufficient.[17] We thus affirm the findings of the appellate court that Gusi was illegally dismissed for failure of petitioner to prove that he abandoned his work.

The reliefs afforded to employees whose employment were unlawfully severed are reinstatement and payment of full backwages. Reinstatement restores the employee to the position from which he was removed, i.e., to his status quo ante dismissal, while the grant of backwages allows the same employee to recover from the employer that which he lost by way of wages because of his dismissal.[18]

The Court of Appeals held that Gusi was entitled to payment of full backwages from December 6, 1997 up to the time of his actual reinstatement. However, since Gusi died on April 7, 1999, reinstatement is rendered impossible. As regards the award of backwages, the same should be computed after the lapse of his two-months½ suspension or December 6, 1997 up to the time of his death on April 7, 1999.

In view of Gusi's death, however, separation pay cannot be awarded in lieu of reinstatement. Separation pay is the amount that an employee receives at the time of his severance from the service and is designed to provide the employee with the wherewithal during the period that he is seeking another employment.[19] To grant the same in this case would result in absurdity.

The decision of the Court of Appeals is valid despite Gusi's death during the pendency of the case and the lack of substitution of parties. The Court of Appeals is not expected to know or take judicial notice of the death of Gusi without proper manifestation from his counsel.[20] It had jurisdiction to proceed with the case. We held in *Florendo, Jr. v. Coloma*,[21] to wit:

... The petitioners challenge the proceeding in the Court of Appeals after the death of the plaintiff-appellant Adela Salindon. They are of the opinion that since there was no legal representative substituted for Salindon after her death, the appellate court lost its jurisdiction over the case and consequently, the proceedings in the said court are null and void. This argument is without merit.

....

In the case at bar, Salindon's counsel after her death on December 31, 1976 failed to inform the court of Salindon's death. The appellate court could not be expected to know or take judicial notice of the death of Salindon without the proper manifestation from Salindon's counsel. In such a case and considering that the supervening death of appellant did not extinguish her civil personality, the appellate court was well within its jurisdiction to proceed as it did with the case. There is no showing that the appellate court's proceedings in the case were tainted with irregularities.[22]

It appears that when notice of Gusi's death was manifested by petitioner on December 19, 2001, the decision had already been promulgated by the Court of Appeals on September 28, 2001.

Nonetheless, the issue is rendered moot by the Court's order upon the petitioner to appoint an administrator for the estate of Gusi pursuant to Section 16, Rule 3 of the Rules of Court.[23]

WHEREFORE, the petition is **PARTIALLY GRANTED**. The September 28, 2001 Decision and the March 15, 2004 Resolution of the Court of Appeals in CA-G.R. SP No. 64347 are **AFFIRMED** with the **MODIFICATION** that the award of backwages is computed from December 6, 1997 up to the time of his death on April 7, 1999.

SO ORDERED.

Davide, Jr., C.J., Quisumbing, and Azcuna, JJ., concur.

Carpio, J., On official leave.

[1] Rollo, pp. 3-15.

[2] *Id.* at 31-35. Penned by Associate Justice Eugenio S. Labitoria and concurred in by Associate Justices Eloy R. Bello, Jr. and Perlita J. Tria Tirona.

[3] *Id.* at 38-39. Penned by Commissioner Victoriano R. Calaycay and concurred in by Commissioners Raul T. Aquino and Angelita A. Gacutan.

[4] *Id.* at 23-28.

[5] *Id.* at 19-22.

[6] *Id.* at 21-22.

[7] *Id.* at 27.

[8] *Id.* at 35.

[9] *Id.*

[10] *Id.* at 7.

- [11] Cadiz, et al. v. Court of Appeals, et al., G.R. No. 153784, October 25, 2005.
- [12] Rollo, p. 20.
- [13] Id. at 26.
- [14] Id. at 33-34.
- [15] Nokom v. National Labor Relations Commission, 390 Phil. 1228, 1240-1241 (2000).
- [16] Metro Transit Organization, Inc. v. NLRC, 331 Phil. 633, 642 (1996).
- [17] Fernandez v. NLRC, 349 Phil. 65, 91 (1998).
- [18] Buenviaje v. Court of Appeals, 440 Phil. 84, 92 (2002).
- [19] Cabatulan v. Buat, G.R. No. 147142, February 14, 2005, 451 SCRA 234, 247.
- [20] Florendo, Jr., et al. v. Hon. Coloma, etc., et al., 214 Phil. 268, 274 (1984).
- [21] Id.
- [22] Id.
- [23] Resolution dated December 5, 2005.

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