

DIVINE WORD COLLEGE OF SAN JOSE AND FR. ELEUTERIO S. LACARON, SVD, PETITIONERS, VS. HERMINIA G. AURELIO, RESPONDENT.*G.R. NO. 163706. March 29, 2007*

Ponente: QUISUMBING, J.

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This is an appeal to reverse and set aside the Decision[1] dated February 6, 2004 of the Court of Appeals in CA-G.R. SP No. 78793 and its Resolution[2] dated May 24, 2004 denying the motion for reconsideration. The appellate court had reversed the Decision[3] dated April 2, 2003 and Resolution[4] dated May 29, 2003 of the National Labor Relations Commission (NLRC) that earlier reversed the Labor Arbiter's award of separation pay to respondent.

Respondent Herminia G. Aurelio was hired as accounting clerk by petitioner Divine Word College (DWC) of San Jose, Occidental Mindoro on March 26, 1976. She was thereafter promoted to Senior Bookkeeper. When Administrative and Finance Officer Fr. Rudolf Holzgartner, SVD was on leave, Aurelio was designated as Acting Finance Officer.

In July 1989, DWC changed the basis for the across-the-board increase in the wages of its employees resulting in the lowering of the wages. Two years after, a labor inspection team examined DWC's records for compliance of labor laws and found violations of several labor standard laws such as nonpayment of holiday pay, rest day, and holiday premium pay. On November 23, 1993, the employees and DWC forged a compromise agreement on the payment of the abovementioned benefits and the yearly across-the-board increase in salaries.

According to Aurelio, it was around this time when Fr. Holzgartner started to ignore and admonish her. Despite her credible explanations, she was terminated. She then filed a complaint for illegal dismissal, nonpayment of salaries, 13th month pay, as well as actual, moral, and exemplary damages, against DWC and petitioner Fr. Eleuterio Lacaron, SVD, President of DWC.

Petitioners, on the other hand, averred that Aurelio was appointed senior bookkeeper in lieu of a designation as accountant since she was not a certified public accountant; and in 1991, Fr. Holzgartner recommended Aurelio as the Acting Finance Officer. According to petitioners, the position had gone to Aurelio's head, so much so that Aurelio made decisions and administrative/finance plans for DWC without authority from the school administration; reported for work at her discretion; chose her work assignments; divulged plans of the school administration even before these were finalized; and sowed intrigue which caused conflicts to the point where her co-workers filed several complaints about her attitude and treatment of co-employees. At the end of school year 1991-1992, Aurelio was in the list for reshuffling of assignments. Petitioners added that when she was retained as senior bookkeeper, her attitude and performance continued to deteriorate. Despite several reminders from Fr. Holzgartner and admonitions from her superiors, she did not improve. They even called her attention to all her shortcomings and reminded her of the highly confidential nature of her position as bookkeeper.[5] In response,

she submitted a written explanation dated January 7, 1996.[6]

According to petitioners, on November 24, 1996, because of a report on the under-application of tuition fee proceeds by the external auditor Carlos J. Valdez & Co. (CJV & Co.), the faculty asked for the transfer of Fr. Holzgartner. In response, Fr. Holzgartner looked for the report of CJV & Co. but did not find it in his files nor in the files of the finance office. He called CJV & Co. and was told that the latter gave a copy to Aurelio several weeks past. Fr. Holzgartner reminded CJV & Co. of its duty to keep confidential information unless DWC gives it prior clearance. CJV & Co. explained that it was Aurelio who called them, inquired about the application of the proceeds of the tuition fee increases and told them that it was Fr. Holzgartner who asked for it. According to petitioners, Aurelio got the report from CJV & Co. without its authorization, using her position, and maliciously disseminated it. The report, sadly, was inaccurate, because a second report showed that some salaries and employee benefits were not included in the determination of the application of the 70% tuition fee increase. Aurelio did not bother to explain that what she disseminated was only a preliminary report; worse, she added fuel to the controversy by making malicious statements to the effect that DWC and Fr. Holzgartner were trying to cheat the employees, resulting to unrest among the employees. When Fr. Holzgartner confronted Aurelio, she denied any wrongdoing. Dialogue with the teachers and employees proved too late.

In the meantime, CJV & Co. split into two auditing firms: CJV & Co. and Alba Ledesma & Co. (Alba). The preliminary report of CJV & Co. was endorsed to Alba for verification. It was discovered that various amounts spent by DWC for salaries and other employee benefits had been inadvertently omitted in the said report. Thus, Alba prepared a final report which belied all the accusations of the teachers against DWC, Fr. Lacaron and Fr. Holzgartner.

On March 26, 1997, Aurelio received a letter from Fr. Holzgartner informing her that an evaluation of her performance and behavior would be conducted. On May 2 and 6, 1997, after an investigation, an ad hoc committee sent its letter[7] to Fr. Holzgartner recommending Aurelio's termination. On June 9, 1997, petitioners sent Aurelio a carefully worded termination letter[8] that purposely omitted Aurelio's misdeeds to avoid jeopardizing her future employment. The termination would take effect on July 15, 1997.

On July 17, 1997, Aurelio filed a complaint for illegal dismissal, nonpayment of salaries, 13th month pay, as well as actual, moral, and exemplary damages, against DWC and Fr. Lacaron. Unable to amicably settle, both parties filed their position papers. Petitioners averred that Aurelio was removed from the service for serious breach of trust and confidence.

On October 19, 1998, a decision was rendered by the Labor Arbiter, the dispositive portion of which reads:

WHEREFORE, premises considered, respondent is adjudged guilty of illegal dismissal and is hereby ordered to pay complainant's full backwages from July 6, 1997 to date in the total amount of P110,110.13. Considering however, that the relations between the management and the complainant has become so [estranged] and strained, complainant is declared separated from employment effective this day and respondent ordered to pay in addition to backwages, the sum of P78,523.20 (P6,543.60 x 12 years) by way of separation pay.

SO ORDERED.[9]

On December 21, 1998, Aurelio filed a motion[10] to clarify the decision with respect to her length of service upon which the monetary awards were based. Petitioners, for their part, appealed the decision. Aurelio opposed the appeal.

On March 18, 1999, the NLRC issued an order[11] requiring DWC to file an additional bond in the sum of P78,523.20, since the appeal bond covered only the award of P110,110.13 backwages.

On April 19, 1999, DWC filed a manifestation with motion for clarification[12] that its appeal bond actually covered only the backwages award since they were not appealing the award of separation pay, based on a manifestation and motion wherein Aurelio manifested that due to error in computing her years of service, the monetary award given to her was erroneous and therefore the appeal bond was insufficient to cover the monetary award.

On May 17, 2000, the NLRC issued an order remanding the case to the Labor Arbiter to resolve Aurelio's motion to clarify and correct typographical error in the decision as regards the monetary award.

Said motion was resolved by the Labor Arbiter on July 25, 2002, stating that:

In view of the foregoing, the award of separation pay is One Hundred Fifty Thousand Five Hundred Two Pesos and Eighty Centavos (P150,502.80) and the record of the instant case is hereby forwarded to the Second Division of the NLRC for appropriate action.

SO ORDERED.[13]

On April 2, 2003, the NLRC rendered its decision reversing and setting aside the decision of the Labor Arbiter and accordingly, dismissed the case for lack of merit. It held that there was a denial of the petitioners' right to submit evidence and, ultimately, to due process in the proceedings before the Labor Arbiter.[14] It also held that the two positions that respondent held - as a trusted employee on the one hand, and as self-appointed town crier (relative to confidential documents in the Finance Office) on the other - were inconsistent and irreconcilable, and thus, her own actuations rendered her continued employment impossible.

The dispositive portion read:

WHEREFORE, the decision appealed from is hereby REVERSED, and the instant case DISMISSED for lack of merit.

SO ORDERED.[15]

The motion for reconsideration was denied.

Respondent filed a petition for certiorari[16] under Rule 65 of the Rules of Court with the Court of Appeals which reversed and set aside the decision of the NLRC. The Court of Appeals held that loss of trust and confidence has been indiscriminately used by employers to justify almost every instance of termination as a defense against claims of arbitrary dismissal, and that assuming there was such, there was failure on the part of petitioners to observe the procedural requirements of the law for an effective dismissal. There was no observance of due process as Aurelio was not given notice nor given an opportunity to defend herself. According to the Court of Appeals, petitioners did not furnish a notice which apprised the respondent of the particular acts or omissions for which her dismissal was sought.

The dispositive portion of the Court of Appeals' decision reads:

WHEREFORE, in view of the foregoing, the petition is GRANTED. The assailed order dated April 2, 2003, and a resolution dated May 29, 2003 of the National Labor Relations Commission, Second Division, in NLRC NCR CA No. 018324-99, NLRC RAB IV-7-9184-97-M are hereby REVERSED and SET ASIDE. Private respondent DWC is hereby ordered to pay petitioner Herminia G. Aurelio backwages to be computed from the time her salary was withheld up to the finality of this decision, plus separation pay since reinstatement is no longer viable.

SO ORDERED.[17]

Petitioners moved for reconsideration but it was denied. Hence, the instant petition, which raises the following issues:

I.

THE HONORABLE COURT OF APPEALS ERRED IN ITS FINDING OF ILLEGAL DISMISSAL, DESPITE AFFIRMING THE CONFIDENTIAL NATURE OF THE POSITION OF PRIVATE RESPONDENT, AND FURTHER DESPITE ADMISSION THAT PRIVATE RESPONDENT COMMITTED SERIOUS MISCONDUCT, ALLEGEDLY FOR THE REASON THAT THE MISCONDUCT DOES NOT SUFFICE TO JUSTIFY PRIVATE RESPONDENT'S TERMINATION.

II.

THE HONORABLE COURT OF APPEALS ERRED IN DISREGARDING THE FINDINGS OF FACT OF THE HONORABLE NLRC WHICH WERE ADMITTED BY PRIVATE RESPONDENT AS TO HER LAPSES:

- DESPITE THE FACT THAT THE COURT OF APPEALS AFFIRMED THE CONFIDENTIAL NATURE OF PRIVATE RESPONDENT'S POSITION; AND,

- DESPITE THE FACT THAT PRIVATE RESPONDENT'S ADMISSIONS CONSTITUTE SUBSTANTIAL EVIDENCE TO SHOW BREACH OF TRUST AND CONFIDENCE.

III.

THE COURT OF APPEALS ERRED WHEN IT MODIFIED PORTIONS OF THE DECISION OF LABOR ARBITER AND THE NLRC WHICH HAD ATTAINED FINALITY BECAUSE THESE WERE NOT QUESTIONED AND/OR RAISED ON EITHER PETITIONER DWC'S APPEAL TO THE NLRC OR PRIVATE RESPONDENT'S PETITION FOR CERTIORARI BEFORE THE COURT OF APPEALS. THESE ISSUES ARE:

- THE AWARD OF BACK WAGES FOR A SPECIFIC PERIOD FROM 06 JULY 1997 TO 19 OCTOBER 1998 IN THE TOTAL AMOUNT OF P110,110.13.

- THE ISSUE OF PROCEDURAL DUE PROCESS.

- IN FACT, PRIVATE RESPONDENT'S PETITION BEFORE THE HONORABLE COURT OF APPEALS DISTINCTLY QUESTIONED AND/OR "ZEROED ON" THE DELETION OF THE AWARD OF SEPARATION PAY AND NOT THE AWARD OF BACK WAGES OR ITS COMPUTATION.

IV.

THE HONORABLE COURT OF APPEALS ERRED IN REVERSING THE FINDINGS OF FACT OF THE NLRC ON PETITION FOR REVIEW.

V.

THE LAW AND ESTABLISHED JURISPRUDENCE ALLOW "PARTIAL APPEALS" AND PARTIAL DECISIONS. THE COURT OF APPEALS, THEREFORE, ERRED IN REVERSING THE DECISION DATED 02 APRIL 2003 OF THE HONORABLE NLRC ON THE BASIS THAT PETITIONER DWC'S APPEAL TO THE NLRC WAS NOT PERFECTED BECAUSE THE SUPERSEDEAS BOND WAS LIMITED TO THE AWARD OF BACK WAGES.[18]

Simply stated, petitioners raise the following issues: (1) Did the Court of Appeals err in finding that petitioners illegally dismissed respondent despite admission that respondent was a confidential employee and had admitted serious misconduct and evidence to show breach of trust and confidence? (2) Did the Court of Appeals err in

deleting the award of separation pay and not backwages? (3) Did the Court of Appeals err in holding that the respondent was denied procedural due process?

Respondent contends that the petitioners did not have just cause as the basis for terminating her employment. She reiterated the Court of Appeals' finding that all the petitioners offered were bare allegations of the acts imputed against respondent, and not a single concrete piece of evidence was presented.[19] Petitioners, on the other hand, claim that the termination was validly based on the ground of serious misconduct because respondent's disclosure of information was intentional and malicious, coupled with fraud.[20]

There is no denying the fact that Aurelio as Acting Finance Officer occupied a confidential position vis-à-vis her employer. Even if the Court of Appeals upheld the respondent's claims, it admitted the confidential nature of the latter's position.[21]

Article 282[22] of the Labor Code allows an employer to terminate an employee for fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative. While the right of an employer to freely select or discharge his employee is subject to regulation by the State, basically in its exercise of its paramount police power, nonetheless, an employer cannot be compelled to continue employing an employee guilty of acts inimical to the interest of the employer and justifying its loss of confidence in him.[23]

Thus, loss of trust and confidence is a valid ground for dismissing an employee, provided that the loss of confidence arises from particular proven facts. Termination of employment on this ground does not require proof beyond reasonable doubt of the employee's misconduct. It is sufficient that there is some basis for the loss of trust, or that the employer has reasonable ground to believe that the employee is responsible for the misconduct which renders him unworthy of the trust and confidence demanded by his position.[24] As the nature of his position is grounded on the trust and confidence reposed on him by his employer, the latter is given wide latitude of discretion in terminating him for lack or absence thereof.[25] In order to constitute a just cause for dismissal, the act complained of must be related to the performance of the duties of the employee such as would show him to be thereby unfit to continue working for the employer.[26] Moreover, for loss of trust and confidence to be a valid ground for an employee's dismissal, it must be substantial and not arbitrary, and must be founded on clearly established facts sufficient to warrant the employee's separation from work.[27]

Was there just cause in terminating the services of Aurelio? A perusal of the records and the evidence indicates that there was. The dissemination of confidential information by the respondent and the pointless labor dispute following its misinterpretation have been sufficiently proven. Procuring a report without authority, then covertly furnishing copies of the incomplete report to parties in an attempt to unfairly discredit one's superiors, to our mind, constituted serious breach of trust and confidence. It was grossly inappropriate for respondent to misrepresent herself in order to procure the external auditor's report. It was even worse to use the report against the college authorities who reposed on her their confidence. Passing off the report as complete when it was not, then falsely accusing one's superiors as cheating their employees based on the report, is morally reprehensible of the highest order. These highly condemnable acts made by Aurelio as the Acting Finance Officer shows her unfitness to continue working with DWC management. The law, in protecting the rights of workers, authorizes neither oppression nor self-destruction of the employer.[28] The employer may dismiss an employee if the former has reasonable grounds to believe, or to entertain the moral conviction, that the latter is responsible for the misconduct, and the nature of her participation therein renders her absolutely unworthy of the trust and confidence demanded by her position.[29] DWC, in this case, was acting within its rights under the law to terminate the services of Aurelio as the Acting Finance Officer of the college.

With regard to the issue on backwages, we rule that since there was no illegal dismissal, the award of backwages

would be inappropriate.

Anent the issue on partial appeals, the Court of Appeals correctly brushed aside technicalities when it found that there was substantial compliance by petitioners. It held:

Private respondents' assertion that the appeal was limited to the award of backwages, hence it properly perfected the appeal upon the execution of the bond in the amount equivalent to the backwages, is not well-taken. Article 223 of the Labor Code is explicit in that, in case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond, in the amount equivalent to the monetary award in the judgment appealed from. The law does not make any distinction whether or not the appeal was total, or limited only to a portion of the monetary award, hence, the filing of a smaller amount of bond than the monetary award in the judgment is not justified.

In any event, this Court has brushed aside the technicality issue and considered private respondent[s] compliance "substantial", hence, the matter of whether or not the appeal was perfected, has been rendered moot and academic.[30]

Lastly, on the issue on procedural due process, petitioners claim that Aurelio was apprised of the actual basis for the loss of trust and confidence caused by dissemination of false information.[31] Aurelio in turn states that petitioners failed to issue the necessary notices to her prior to her dismissal.[32]

There is procedural due process in termination of employment for just cause if the employer gives the employee two written notices and a hearing or opportunity to be heard if requested by the employee before terminating the employment. Specifically, there should be a notice specifying the grounds for which dismissal is sought, a hearing or an opportunity to be heard, and after hearing or opportunity to be heard, a notice of the decision to dismiss.[33]

The records show that procedural due process had been fully complied with as Aurelio was apprised of the actual basis for the loss of trust and confidence. Letters had been sent to Aurelio asking her to explain her side to which she replied on January 7, 1996. A letter from DWC dated March 26, 1997 was sent to Aurelio informing the latter of her dissemination of sensitive information without prior clearance as a basis for loss of trust and confidence. An ad hoc committee was organized to conduct the investigation and make its recommendations. Aurelio was given an opportunity to comment and produce witnesses.[34] Two months after, another letter was sent informing Aurelio of DWC's decision to terminate her services effective one month after receipt of the letter.[35]

WHEREFORE, the instant petition is GRANTED. The Decision dated February 6, 2004 and Resolution dated May 24, 2004 of the Court of Appeals in CA-G.R. SP No. 78793 are REVERSED and SET ASIDE. The decision dated April 2, 2003 of the NLRC is REINSTATED. No pronouncement as to costs.

SO ORDERED.

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

[1] Rollo, pp. 61-78.

[2] Id. at 57-59.

[3] Id. at 432-437.

[4] Id. at 438-439.

[5] Id. at 96-97.

[6] Id. at 98-100.

[7] Id. at 105.

[8] Id. at 106.

[9] Id. at 185.

[10] Id. at 195.

[11] Id. at 186-188.

[12] Id. at 239-240.

[13] Id. at 485.

[14] Id. at 435.

[15] Id. at 436.

[16] Id. at 413-429.

[17] Id. at 371.

[18] Id. 664-665.

[19] Id. at 641.

[20] Id. at 671.

[21] Id. at 352.

[22] ART. 282. Termination of 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.

[23] *Tabacalera Insurance Co. v. NLRC*, No. L-72555, July 31, 1987, 152 SCRA 667, 674-675.

[24] *Alcazaren v. Univet Agricultural Products, Inc.*, G.R. No. 149628, November 22, 2005, 475 SCRA 636, 653.

[25] See *Equitable PCIBank v. Caguioa*, G.R. No. 159170, August 12, 2005, 466 SCRA 686, 700.

[26] See *Equitable Banking Corporation v. NLRC*, G.R. No. 102467, June 13, 1997, 273 SCRA 352, 378.

[27] *Labor v. National Labor Relations Commission*, G.R. No. 110388, September 14, 1995, 248 SCRA 183, 199-200.

[28] *Bondoc v. NLRC*, 342 Phil. 250, 262 (1997).

[29] *Filipro, Incorporated v. National Labor Relations Commission*, No. L-70546, October 16, 1986, 145 SCRA

123, 128.

[30] Rollo, pp. 351-352.

[31] Id. at 675.

[32] Id. at 643.

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

[34] Rollo, p. 101.

[35] Id. at 106.

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