

ESTER B. MARALIT, PETITIONER, VS. PHILIPPINE NATIONAL BANK, RESPONDENT.

G.R. No. 163788. August 24, 2009

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a petition[1] for review on certiorari under Rule 45 of the Rules of Court. The petition challenges the 31 May 2004 Decision[2] of the Court of Appeals in CA-G.R. SP No. 72540. The Court of Appeals set aside the 27 August 2001 Resolution[3] of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 027826-01, affirming with modification the 22 January 2001 Decision[4] of the Labor Arbiter in Sub-RAB Case No. 05-09-00316-00.

The Facts

Petitioner Ester B. Maralit (Maralet) worked for respondent Philippine National Bank (PNB) from 27 August 1968 to 31 December 1998. She began as a casual clerk and climbed her way to become branch manager.

In February 1998, PNB offered its personnel an early retirement plan. In its 25 February 1998 Board Resolution No. 1, PNB approved the Special Separation Incentive Plan (SSIP). On 7 July 1998, PNB issued General Circular No. 1-355/98[5] laying down the guidelines for the availment of the SSIP. Under the Circular, personnel with pending administrative cases or who are under preliminary investigation may avail of the SSIP. However, payment of their benefits shall be made only after the resolution of their cases and only if they are not disqualified from receiving such benefits. The Circular stated:

A. Period for Submission of Prescribed Forms Under the Plan

Officers and employees who will retire or will be separated from the service under the Plan shall accomplish the attached prescribed form for availment of the separation benefits under the SSIP (Annex A). The duly accomplished forms shall be submitted directly to the Personnel Administration and Industrial Relations Division (PAIRD). These forms will only be received and acknowledged by PAIRD starting 8:00 AM of July 13, 1998 up to but not later than 5:00 PM of September 30, 1998.

The deadline for submission will strictly be observed and submissions made after 5:00 PM of September 30, 1998 will no longer be accepted.

All duly accomplished forms received by PAIRD during the prescribed period can no longer be withdrawn.

x x x x

D. Personnel With Administrative Cases/Exclusions

1. Personnel with pending administrative cases or those who are under preliminary investigation can also submit duly accomplished forms for availment of benefits under the SSIP but payment thereof shall be made only upon final resolution of their cases provided that the decision in said case does not disqualify them from

the enjoyment of said benefits.[6] (Emphasis supplied)

In its 8 September 1998 memorandum,[7] PNB's Internal Audit Group (IAG) found that Maralit violated bank policies, which resulted in the return of unfunded checks amounting to P54,950,000. The IAG stated that:

BASIS OF THIS REPORT

Memorandum of VP Florencio C. Lat of Branch Operations and Consumer Banking Division -- Southern Luzon/Bicol dated July 9, 1998 referring to IAG for an immediate investigation the possible kiting operation in Pili Branch as reported in the memorandum dated July 8, 1998 of Per Pro Gay Ophelia T. Alano of Pili Branch addressed to SAM Ben-Hur Relativo of Branch Accounting Supervision Division on DAUD accommodation (Annexes A & B).

x x x x

VIOLATIONS OF BANK POLICIES AND PRESCRIBED PROCEDURES

Sanao Marketing Corporation was allowed drawings against uncollected deposits contrary to the provisions of Gen. Cir. 3-335/97 of May 15, 1997 Re: Drawings Against Uncollected Deposits (DAUD) which provides, among others, that (Annex W):

"In view of the inherent risk involved and the sanction that may be imposed by BSP in allowing DAUDs, concerned officers are enjoined to strictly observe the BSP and the Bank's policy on DAUD."

The following personnel allowed these DAUDs which resulted in the return of unfunded checks for P54.950 MM and its debit to Accounts Receivable -- Others:

1) Manager Ester B. Maralit

a. For approving (as co-signatory) the issuance of five Manager's Checks totalling P49.550 MM against the uncleared five Maybank checks for the same amount which she approved for deposit on the same day.

b. For Failure to stop the apparent kiting operation of Sanao Marketing Corporation wherein Manager's Checks payable to Amado Sanao were purchased against uncleared check deposits drawn by Mr. Sanao against his current account maintained at Maybank -- Naga Branch where the Manager's Checks purchased were negotiated.

In her memorandum dated July 9, 1998, addressed to VP Florencio Lat of Branch Operations & Consumer Banking Division -- SOL/Bicol, Manager Maralit stated, among others, that (Annex X):

x x x x

ACTIONS TAKEN

1. SVP Leopoldo A. Manuel approved the recommendation of AVP Milagros Pastrana of Branch Administrative Office -- Southern Luzon and Bicol dated July 9, 1998, for the 60-day temporary assignment of Manager Ester B. Maralit to Naga Branch vice Per Pro Ildefonso T. Lizaso, Unit Head -- Loans, Naga Branch who was assigned as Officer-In-Charge of Pili Branch, effective upon assumption of duties upon approval, without change in salary and allowances and without per diems (Annex Y).

Manager Maralit and Per Pro Lizaso assumed their new assignments on July 15, 1998.

2. Branch Manager Lizaso furnished IAG, with a copy of Pili Branch report to Bangko Sentral ng Pilipinas dated July 28, 1998 on the "Report on Crime/Losses -- P54,950,000.00 Drawings Against Uncollected Deposits -- Sanao Marketing Corporation" (Annex Z). The report is in compliance with Gen Cir. 7-26/90 dated March 1,

1990 prescribing the format and requiring the submission of the report within five days from knowledge of crimes (Annex AA).[8]

The IAG recommended that Maralit be required to submit her written explanation under oath.

On 15 September 1998, Maralit filed with PNB's Personnel Administration and Industrial Relations Division her application[9] for early retirement.

In its 29 September 1998 memorandum,[10] PNB charged Maralit with serious misconduct, gross violation of bank rules and regulations, and conduct prejudicial to the best interest of the bank. PNB stated:

You are hereby charged with Serious Misconduct, Gross Violation of Bank Rules and Regulations, and Conduct Grossly Prejudicial to the Best Interest of the Service consisting of giving undue and unwarranted preference, advantage or benefit to a private party through manifest partiality and evident bad faith committed by you while performing your duties as Manager of Pili Branch as follows:

1. On July 1, 1998, you approved five (5) unfunded Maybank-Naga Branch checks aggregating P49.550 MM for deposit to Current Account No. 377-830027-8 of Sanao Marketing Corporation and were used to purchase five Manager's Checks for the same amount against uncleared balance.

On July 2, 1998, the said Maybank checks were returned for reason drawn against uncollected deposits (DAUD). On the following day, these checks were redeposited. On July 6, 1998, said checks were again returned for reason "DAIF".

2. On July 6, 1998, you consented tolerated, and abetted the approval of four (4) unfunded Maybank-Naga Branch checks aggregating P5.4 MM for deposit to the abovementioned account to cover the over-the-counter encashment of "on-us" checks and incoming clearing checks on the day of the deposit, which eventually were returned on July 7, 1998 for reason "DAIF".

3. On July 7, 1998, you approved five (5) unfunded PCIBank-Paseo de Roxas Branch checks aggregating P54.950 MM for deposit to CA #377-830027-8 to fund the previously returned unfunded Maybank checks for P52.950 MM. The said PCIBank checks were likewise returned for reason "Payment Stopped" and "Insufficient Fund".

4. As a consequence of your foregoing acts, Bank funds were used for the benefit of the above-named private party to the damage and prejudice of the Bank.

BANK LOSS

As of July 10, 1998, the Bank stands to suffer losses in the total amount of P54.950 MM representing unpaid amount of the aforesaid returned checks, exclusive of interest and other charges.

In view of the foregoing, please submit to the Inspection and Investigation Unit (IIU) of the Internal Audit Group (IAG) your written answer under oath to the above charges together with whatever affidavits and other documentary evidence you may wish to submit within five (5) days from receipt of this memorandum why you should not be penalized for Serious Misconduct, Willful Breach of Trust and Gross Violation of Bank Rules and Regulations under Article 282 of the Labor Code.

Further, you are hereby informed that you have the right to be assisted by a representative in the preparation of your answer and you are entitled to all the rights you have under the labor laws.

Attached is the Internal Audit report dated September 8, 1998.

PNB directed Maralit to submit her written answer under oath, together with affidavits and other documentary evidence, explaining why she should not be punished under Article 282 of the Labor Code for serious misconduct,

willful breach of trust, and gross violation of bank rules and regulations.

In its 16 October 1998 memorandum,[11] PNB placed Maralit under preventive suspension. PNB stated:

In connection with the Special Audit report of Internal Audit Group dated September 8, 1998 re: Unfunded Returned Checks for P54,950 MM of Sanao Marketing Corporation -- Pili Branch, which cited you as one of the personnel who allowed/approved drawings against uncollected deposits (DAUD) that resulted in the return of unfunded checks for P54,950 MM, you are hereby placed under preventive suspension for thirty (30) days effective upon receipt hereof pursuant to Section 3, Rule XIV of the Omnibus Rules Implementing the Labor Code.

On 20 November 1998, PNB conditionally approved Maralit's application for early retirement effective at the close of business hours on 31 December 1998. PNB stated that, "Payment of Special Separation Incentive and other Benefits shall be made only upon final resolution of the administrative case against you, provided that the decision in said investigation does not disqualify you from the enjoyment of said benefits." Under the SSIP, Maralit was entitled to P1,359,086.02 retirement benefits.

Maralit submitted her answer dated 11 January 1999. She stated that "The favorable accommodations granted to (a certain) Mr. Amado A. Sanao were made in good faith and intended for the higher interests of the Bank," and that "Said accommodations was [sic] a business decision, bearing in mind the consequential interests beneficial to the Bank." She admitted that the accommodations were "deviation[s] from Bank's policies."

In its report dated 22 September 1999, PNB's Inspection and Investigation Unit found that (1) Maralit did not deny the irregular transactions imputed against her, (2) Maralit's approval of drawings against uncollected deposits was a wanton violation of the policy of the Bangko Sentral ng Pilipinas (BSP) and PNB, (3) Maralit was fully aware of the prohibition against drawings against uncollected deposits, (4) Maralit's actions prejudiced PNB, (5) Maralit had no discretion to do prohibited acts, and (6) PNB's interest was unreasonably put at risk.

On 14 April 2000, Maralit received a letter[12] dated 23 March 2000 together with a copy of PNB's Administrative Adjudication Panel's decision[13] dated 14 February 2000 finding her guilty of serious misconduct, gross violation of bank rules and regulations, and conduct prejudicial to the best interest of the bank. PNB dismissed Maralit from the service with forfeiture of her retirement benefits effective at the close of business hours on 31 December 1998.

Maralit filed with the arbitration branch of the NLRC a complaint for non-payment of retirement benefits and separation pay, and for damages against PNB.

The Labor Arbiter's Ruling

In his 22 January 2001 Decision, the Labor Arbiter held that Maralit was entitled to P1,359,086.02 retirement benefits, P200,000 exemplary damages, and P155,908.60 attorney's fees. The Labor Arbiter found that (1) Maralit was not under preliminary investigation when she filed her application for early retirement; (2) had Maralit known that she would be administratively charged, she would not have availed of the SSIP so that she could continue receiving her monthly salary; (3) when PNB approved Maralit's application for early retirement, the Administrative Adjudication Panel had not decided the administrative case against her; (4) there was no hearing or conference held where Maralit could respond to the charge, present her evidence, or rebut the evidence presented against her; and (5) PNB illegally dismissed Maralit and committed an act oppressive to labor.

PNB appealed to the NLRC, claiming that the Labor Arbiter gravely abused his discretion and erred in his factual findings.

The NLRC's Ruling

In its 27 August 2001 Resolution, the NLRC affirmed with modification the Labor Arbiter's 22 January 2001 Decision. The NLRC deleted the award of P200,000 exemplary damages. The NLRC held that (1) there was no grave abuse of discretion on the part of the Labor Arbiter, (2) the material facts as found by the Labor Arbiter were consistent with the evidence, and (3) the award of exemplary damages lacked basis.

PNB filed with the Court of Appeals a petition[14] for certiorari under Rule 65 of the Rules of Court with prayer for preliminary injunction. PNB claimed that the NLRC committed grave abuse of discretion when it affirmed the Labor Arbiter's 22 January 2001 Decision because (1) Maralit was not entitled to retirement benefits, (2) Maralit was afforded due process, and (3) Maralit was not entitled to attorney's fees.

The Court of Appeals' Ruling

In its 31 May 2004 Decision, the Court of Appeals set aside the 27 August 2001 Resolution of the NLRC. The Court of Appeals held that the NLRC committed grave abuse of discretion when it affirmed the Labor Arbiter's 22 January 2001 Decision. The Court of Appeals found that Maralit was under preliminary investigation when she filed her application for early retirement and that she was afforded due process.

Hence, the present petition.

The Issues

In her petition dated 16 July 2004, Maralit raised the following issues:

- WHETHER THE ACT OF THE HONORABLE NLRC IN AFFIRMING IN TOTO [sic] THE DECISION OF ITS LABOR ARBITER CONSTITUTES A GRAVE ABUSE OF DISCRETION.
- WHETHER THE ALLEGED ERRORS ATTRIBUTED BY THE COURT A QUO TO THE LABOR AGENCY CONSTITUTE GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION OR JUST MERELY ERRORS OF JUDGMENT.
- WHETHER IN A SPECIAL CIVIL ACTION FOR CERTIORARI THE COURT A QUO CAN SUBSTITUTE ITS OWN FINDINGS OF FACTS AND CONCLUSIONS WITH THAT OF THE LABOR AGENCY WHICH ARE ALL SUPPORTED BY SUBSTANTIAL EVIDENCE, AFTERWARDS, DECLARE THE LATTER TO HAVE COMMITTED GRAVE ABUSE OF DISCRETION[.]
- WHETHER THE COURT A QUO IN A SPECIAL CIVIL ACTION FOR CERTIORARI CAN ENTERTAIN NEW EVIDENCE TO PROVE FACTS NOT PROVEN BEFORE THE LABOR AGENCY.
- WHETHER THE COURT A QUO ERRED IN NOT UPHOLDING THE RETIREMENT OF PETITIONER FROM THE SERVICE OF RESPONDENT EFFECTIVE 31 DECEMBER 1998[.]
- WHETHER OR NOT PETITIONER HAS RETIRED OR WAS DISMISSED FROM THE SERVICE EFFECTIVE 31 DECEMBER 1998.
- WHETHER THE DECISION OF THE LABOR ARBITER DATED 22 JANUARY 2001 HAD LONG BECOME FINAL AND EXECUTORY, BY REASON OF RESPONDENT'S UNTIMELY APPEAL TO THE HONORABLE NLRC. OR PUT OTHERWISE, WHETHER THE DECISION OF THE LABOR ARBITER DATED 22 JANUARY 2001 CAN BE REINSTATED.

The Court's Ruling

The petition is unmeritorious.

Maralit claims that Articles 217[15] and 223[16] of the Labor Code grant the NLRC the power to review

decisions of labor arbiters. Since the law expressly grants the NLRC the power to review decisions of labor arbiters, the NLRC did not commit grave abuse of discretion when it affirmed with modification the Labor Arbiter's 22 January 2001 Decision. She stated:

With all due respect, the appellate powers of the Honorable NLRC to affirm, modify, reverse, or set aside decisions of Labor Arbiters are legally mandated. In this case, when the Honorable NLRC issued the Resolution dated 27 August 2001 (Appendix "C"), affirming with modification the decision of the Labor Arbiter dated 22 January 2001 (Appendix "B"), it is to be considered as merely exercising a duty mandated by law. Hence, said act of affirming per se cannot be considered as an act of "grave abuse of discretion."

Said powers of the Commission are contained in the Labor Code as amended by R.A. No. 6715.

x x x x

[T]he act of the Honorable NLRC in affirming in toto the decision of its Labor Arbiter does not constitute a grave abuse of discretion, but instead, a valid discharge or exercise of a duty mandated by law.[17]

The Court is unimpressed. Grave abuse of discretion arises when a court or tribunal exercises powers granted by law capriciously, whimsically, or arbitrarily.[18] Indeed, the law grants the NLRC the power to review decisions of labor arbiters. However, the fact that the law grants the NLRC the power to review decisions of labor arbiters does not automatically rule

out the possibility of grave abuse of discretion. Grave abuse of discretion may arise if the NLRC exercises such power in a capricious, whimsical, arbitrary, or despotic manner.

Maralit claims that the Labor Arbiter's findings that she was not under preliminary investigation when she filed her application for early retirement and that she was denied due process were errors of judgment, and thus the Labor Arbiter did not commit grave abuse of discretion. She stated:

With all due respect, the aforesaid findings relied upon by the court a quo in nullifying the Resolution of the Honorable NLRC dated 27 August 2001 are mere "Errors of Judgment" and not acts constituting "Grave Abuse of Discretion". It may be observed, the court a quo even stated in "First Error" found above that the "Labor Arbiter erred", thereby admitting that the same was a mere error of judgment.[19]

The Court is unimpressed. Labor officials commit grave abuse of discretion when their factual findings are arrived at arbitrarily or in disregard of the evidence.[20] In the present case, the Labor Arbiter and the NLRC acted with grave abuse of discretion because their factual findings were arrived at in disregard of the evidence.

In his 22 January 2001 Decision, the Labor Arbiter found that Maralit was not under preliminary investigation when she filed her application for early retirement. In its 27 August 2001 Resolution, the NLRC held that the material facts as found by the Labor Arbiter were consistent with the evidence.

The evidence shows that Maralit was under preliminary investigation when she filed her application for early retirement: (1) in a memorandum dated 8 July 1998, a certain Gay Ophelia T. Alano reported Maralit's irregular transactions; (2) in a memorandum dated 9 July 1998, Vice President Florencio C. Lat of Branch Operations and Consumer Banking Division for Southern Luzon and Bicol referred Maralit's irregular transactions to the IAG for immediate investigation; (3) Maralit submitted a memorandum dated 9 July 1998 admitting the irregular transactions; (4) on 9 July 1998, Vice President Milagros Pastrana of Branch Administrative Office for Southern Luzon and Bicol recommended that Maralit be temporarily assigned to the Naga Branch; (5) on 15 July 1998, Maralit assumed her new assignment at the Naga Branch; (6) on 28 July 1998, PNB reported to the BSP the P54,950,000 drawings against uncollected deposits; (7) in a memorandum dated 8 September 1998, the IAG found that Maralit violated bank policies which resulted in the return of unfunded checks amounting to

P54,950,000 and recommended that Maralit be required to submit her written answer under oath; (8) on 15 September 1998, Maralit filed her application for early retirement; (9) in its 29 September 1998 memorandum, PNB stated, "Attached is the Internal Audit report dated September 8, 1998"; and (10) in its 16 October 1998 memorandum, PNB stated, "In connection with the Special Audit report of Internal Audit Group dated September 8, 1998."

In his 22 January 2001 Decision, the Labor Arbiter found that there was no hearing or conference held where Maralit could respond to the charges against her, present her evidence, or rebut the evidence presented against her, and thus PNB illegally dismissed Maralit and committed an act oppressive to labor. In its 27 August 2001 Resolution, the NLRC held that the material facts as found by the Labor Arbiter were consistent with the evidence.

The evidence shows that Maralit was afforded due process. The essence of due process is an opportunity to be heard or, as applied to administrative proceedings, an opportunity to explain one's side. A formal or trial-type hearing is not essential.[21] In the present case, PNB gave Maralit ample opportunity to explain her side. In its 29 September 1998 memorandum, PNB directed Maralit to submit her written answer under oath together with affidavits and other documentary evidence:

In view of the foregoing, please submit to the Inspection and Investigation Unit (IIU) of the Internal Audit Group (IAG) your written answer under oath to the above charges together with whatever affidavits and other documentary evidence you may wish to submit within five (5) days from receipt of this memorandum why you should not be penalized for Serious Misconduct, Willful Breach of Trust and Gross Violation of Bank Rules and Regulations under Article 282 of the Labor Code.

Further, you are hereby informed that you have the right to be assisted by a representative in the preparation of your answer and you are entitled to all the rights you have under the labor laws.[22] (Emphasis supplied)

In its comment[23] dated 23 September 2004, PNB described its procedure in investigating erring employees:

The administrative investigation in PNB undergoes a three-tiered process which commences with an audit report made by the Internal Audit Division (IAD). IAD comes up with its findings on the administrative lapses and audit exceptions involved and advises the employee concerned to submit his comment under oath. Subsequently, if the circumstances warrant, IAD forwards the matter to a fact-finding body in the Legal Department known as the IIU which stands for Investigation and Inspection Unit. The employee is again given the opportunity to file an answer under oath. If still the circumstances warrant further investigation, the matter is elevated to the Administration and Adjudication Panel (AAP) which is a special body created by the Bank to conduct its own formal inquiry and summon the employee concerned for proper ventilation of his defenses. Thereafter, the AAP submits its findings and recommendation to the Office of the President for approval.

It bears to stress that all these three investigative bodies are separate and independent from each other, and they proceed without influence from the other bodies having their own respective mandates and processes.[24]

Maralit submitted her answer dated 11 January 1999. In her answer, Maralit admitted that she violated PNB's policy against drawings against uncollected deposits. She stated that, "The accommodations -- though admittedly a deviation from Bank's policies, were all aboveboard and well-motivated." In *Lagatic v. NLRC*,[25] the Court held that there is no necessity for a formal hearing when the employee admits responsibility for an alleged misconduct.

Maralit claims that, in a special civil action for certiorari, the Court of Appeals cannot make its own factual determination. She stated:

Such an act of the court a quo in substituting its own findings of facts with that of the Labor Agency is not

allowed in certiorari proceedings under Rule 65 of the Rules of Court as it tantamount [sic] to excessive exercise of jurisdiction. x x x

As earlier discussed, in a certiorari proceedings [sic] under Rule 65 of the Rules of Court, the Court is confined only in [sic] issues of want of jurisdiction and grave abuse of discretion amounting to lack or excess of jurisdiction.[26]

The Court is unimpressed. In a special civil action for certiorari, the Court of Appeals has ample authority to make its own factual determination. In *Gutib v. Court of Appeals*,[27] the Court held:

[I]t has been said that a wide breadth of discretion is granted a court of justice in certiorari proceedings. The cases in which certiorari will issue cannot be defined, because to do so would be to destroy its comprehensiveness and usefulness. So wide is the discretion of the court that authority is not wanting to show that certiorari is more discretionary than either prohibition or mandamus. In the exercise of our superintending control over inferior courts, we are to be guided by all the circumstances of each particular case "as the ends of justice may require." So it is that the writ will be granted where necessary to prevent a substantial wrong or to do substantial justice. (Emphasis supplied)

In *Globe Telecom, Inc. v. Florendo-Flores*,[28] the Court held:

[T]he Court in the exercise of its equity jurisdiction may look into the records of the case and re-examine the questioned findings. As a corollary, this Court is clothed with ample authority to review matters, even if they are not assigned as errors in the appeal, if it finds that their consideration is necessary to arrive at a just decision of the case. The same principles are now necessarily adhered to and are applied by the Court of Appeals in its expanded jurisdiction over labor cases elevated through a petition for certiorari; thus, we see no error on its part when it made anew a factual determination of the matters and on that basis reversed the ruling of the NLRC. (Emphasis supplied)

The Court of Appeals can grant a petition for certiorari when, as in the present case, it finds that the NLRC committed grave abuse of discretion by disregarding evidence material to the controversy. To make this finding, the Court of Appeals necessarily has to look at the evidence and make its own factual determination.[29]

Maralit claims that, in a special civil action for certiorari, the Court of Appeals cannot receive new evidence. She stated that, "tcourt a quo gave utmost credence to [the IAG's 8 September 1998 memorandum], disregarding all the evidence presented by the parties before the Labor . Worse, it nullified the decisions of the Honorable NLRC relying primarily on said `belated evidence'. This is not allowed x x x."

The Court is unimpressed. In a special civil action for certiorari, the Court of Appeals has ample authority to receive new evidence and perform any act necessary to resolve factual issues. Section 9 of Batas Pambansa Blg. 129, as amended, states that, "The Court of Appeals shall have the power totry cases and conduct hearings, receive evidence and perform any and all acts necessary to resolve factual issuesraised in cases falling within its original and appellate jurisdiction, including the power to grant and conduct new trials or further proceedings." In *VMC Rural Electric Service Cooperative, Inc. v. Court of Appeals*,[30] the Court held:

[I]t is already settled that under Section 9 of Batas Pambansa Blg. 129, as amended by Republic Act No. 7902 (An Act Expanding the Jurisdiction of the Court of Appeals, amending for the purpose of Section Nine of Batas Pambansa Blg. 129 as amended, known as the Judiciary Reorganization Act of 1980), the Court of Appeals -- pursuant to the exercise of its original jurisdiction over Petitions for Certiorari -- is specifically given the power to pass upon the evidence, if and when necessary, to resolve factual issues. As clearly stated in Section 9 of Batas Pambansa Blg. 129, as amended by Republic Act 7902:

"The Court of Appeals shall have the power to try cases and conduct hearings, receive evidence and perform any and all acts necessary to resolve factual issues raised in cases falling within its original and appellate

jurisdiction, including the power to grant and conduct new trials or further proceedings. x x x." (Emphasis supplied)

Maralit claims that PNB had already approved her application for early retirement and she had effectively retired, thus PNB could no longer dismiss her. She stated:

Petitioner's retirement was approved by respondent's President Benjamin P. Palma Gil and communicated to her through a letter dated 20 November 1998 sent by respondent's PAIRD. [sic] where respondent even appreciated petitioner's 30 years of loyal service x x x.

It is clearly established in the foregoing discussion that petitioner has retired from the service effective 31 December 1998 on the basis of respondent's approval of her application for retirement under the SSIP on 20 November 1998. This fact was even confirmed by the court a quo in its assailed decision when it states that "Private respondent's separation from the service took effect after the business hours of 31 December 1998". (APPENDIX "A", p. 4).

x x x x

Basic is the rule, an employee who has already retired can no longer be subsequently dismissed, as naturally, how can you dismiss an employee who has already retired?. [sic] However, in this case, respondent in trying to circumvent this principle, made the dismissal of the petitioner to take effect retroactively on 31 December 1998, the date of petitioner's retirement. x x x

Invoking the principle on estoppel, an employer who accepts or approves the retirement of an employee loses the right to dismiss such employee in a subsequent action. "Retirement" and "Dismissal" are entirely different and incompatible from each other. Each is a distinct and separate mode of extinguishing an employer-employee relationship, and has its own legal effects in our jurisdiction. Consequently, they cannot be taken together for the purpose of terminating employment relation.

x x x x

It is therefore our view that the subsequent action of respondent dismissing petitioner after she had long retired from the service, have [sic] no legal force and effect, for the simple reason that when respondent issued its administrative Decision on 14 February 2000, there was no longer an employer-employee relationship between the parties, as such relationship had long been extinguished or severed away back on December 31, 1998 when petitioner retired from the service.[31]

The Court is unimpressed. The evidence shows that Maralit was under preliminary investigation when she filed her application for early retirement. PNB consistently stated that payment of Maralit's retirement benefits shall be paid only after final resolution of the administrative case against her, provided that she is not disqualified to receive such benefits. PNB's 7 July 1998 General Circular No. 1-355/98, which laid down the guidelines for the availment of the SSIP, stated:

Personnel with pending administrative cases or those who are under preliminary investigation can also submit duly accomplished forms for availment of benefits under the SSIP but payment thereof shall be made only upon final resolution of their cases provided that the decision in said case does not disqualify them from the enjoyment of said benefits.[32]

PNB's 20 November 1998 letter, which approved Maralit's application for early retirement effective at the close of business hours on 31 December 1998, stated that, "Payment of Special Separation Incentive and other Benefits shall be made only upon final resolution of the administrative case against you, provided that the decision in said investigation does not disqualify you from the enjoyment of said benefits."

In its 14 February 2000 decision, PNB's Administrative Adjudication Panel found Maralit guilty of serious

misconduct, gross violation of bank rules and regulations, and conduct prejudicial to the best interest of the bank. Maralit violated bank policies which resulted in the return of unfunded checks amounting to P54,950,000. Accordingly, PNB dismissed Maralit from the service with forfeiture of her retirement benefits effective at the close of business hours on 31 December 1998.

PNB may rightfully terminate Maralit's services for a just cause, including serious misconduct.[33] Serious misconduct is improper conduct, a transgression of some established and definite rule of action, a forbidden act, or a dereliction of duty. Having been dismissed for a just cause, Maralit is not entitled to her retirement benefits.[34]

Maralit claims that the Labor Arbiter's 22 January 2001 Decision had already become final and executory on 18 February 2001, thus, all proceedings taken after 18 February 2001 are void. She stated:

The decision of the Labor Arbiter dated 22 January 2001 (Appendix "B") was received by respondent on 08 February 2001.

On 20 February 2001, or after 12 days from receipt of said Decision, respondent filed an Appeal Memorandum, and paid therefor the corresponding appeal fee and posted the required appeal bond, as per Certification dated 22 February 2001 issued by the Arbitration Branch of the NLRC, hereto attached and marked as APPENDIX "G";

On 22 February 2001, petitioner filed a Motion to Dismiss respondent's Appeal on the ground that the appeal was filed "out of time". Copy of the "Motion to Dismiss Appeal, etc.," is hereto attached and marked as APPENDIX "H";

On 28 February 2001, respondent filed its opposition thereto. On 06 March 2001, petitioner filed her reply to such opposition. However, on 13 March 2001, petitioner received a copy of a Letter of Transmittal from the Labor Arbiter transmitting all the records of the case to NLRC, Manila on appeal, but without resolving the aforesaid incident

On 2 April 2001, petitioner filed with the Honorable Commission a "Manifestation with Motion to Resolve Complainant's Motion to Dismiss Appeal" as said motion was not resolved by the Labor Arbiter. Without resolving said incident, the Honorable Commission, issued its Resolution dated 27 August 2001 (Appendix "C") affirming the decision of the Labor Arbiter dated 22 January 2001 (Appendix "B").

When respondent brought this case before the Honorable Court of Appeal[s] on Certiorari under Rule 65, petitioner raised the same issue in her "Comment", x x x but said issue was never passed upon by the court a quo in the assailed Decision.

x x x x

With the foregoing, we humbly submit that the decision of the Labor Arbiter dated 22 January 2001 (Appendix "B") had long become final and executory or to be exact on 18 February 2001. Hence, all proceedings taken from said date and up to the present, except those related to its execution, are null and void ab initio. We asked, therefore, that said decision be ordered REINSTATED.[35]

The Court is unimpressed. The gravity of Maralit's infraction demands the relaxation of strict rules of procedure. Strict rules of procedure may be set aside to serve the demands of substantial justice. Labor cases must be decided according to justice, equity, and the substantial merits of the controversy. In *Azul v. Banco Filipino Savings and Mortgage Bank*,[36] the Court held:

The seriousness of petitioner's infraction demanded the setting aside of strict rules of procedure as to allow the determination on the merits of whether he was lawfully dismissed. As held by the Court, the application of

technical rules of procedure may be relaxed to serve the demands of substantial justice, particularly in labor cases, because they must be decided according to justice and equity and the substantial merits of the controversy.

There is substantial evidence showing that there was valid cause for the bank to dismiss petitioner's employment for loss of trust and confidence. Petitioner was a bank accountant, which is a position of trust and confidence. The amount involved is significant, almost P4.5 million.

WHEREFORE, the Court DENIES the petition. The Court AFFIRMS the 31 May 2004 Decision of the Court of Appeals in CA-G.R. SP No. 72540 which set aside the 27 August 2001 Resolution of the National Labor Relations Commission in NLRC NCR CA No. 027826-01 which, in turn, affirmed with modification the 22 January 2001 Decision of the Labor Arbiter in Sub-RAB Case No. 05-09-00316-00.

SO ORDERED.

Puno, C.J., Corona, Leonardo-De Castro, and Abad, JJ., concur.

[*] Designated additional member per Raffle dated 17 August 2009.

[1] Rollo, pp. 8-57.

[2] Id. at 60-70. Penned by Associate Justice Andres B. Reyes, Jr., with Associate Justices Cancio C. Garcia and Lucas P. Bersamin concurring.

[3] Id. at 85-87. Penned by Presiding Commissioner Roy V. Señeres, with Commissioners Vicente S.E. Veloso and Alberto R. Quimpo concurring.

[4] Id. at 71-84. Penned by Labor Arbiter Rolando L. Bobis.

[5] CA rollo, pp. 53-57.

[6] Id. at 53-54.

[7] Id. at 38-47.

[8] Id. at 38, 44-47.

[9] Id. at 52.

[10] Id. at 59-60.

[11] Id. at 48.

[12] Id. at 64.

[13] Id. at 61-63.

[14] Id. at 2-26.

[15] Article 217 of the Labor Code provides:

Art. 217. Jurisdiction of Labor Arbiters and the Commission. -- (a) Except as otherwise provided under this Code, the Labor Arbiters shall have the original and exclusive jurisdiction to hear and decide, within thirty (30) calendar days after the submission of the case by the parties for decision without extension, even in the absence of stenographic notes, the following cases involving all workers, whether agricultural or non-agricultural:

- (1) Unfair labor practice cases;
 - (2) Termination disputes;
 - (3) If accompanied with a claim for reinstatement, those cases that workers may file involving wages, rates of pay, hours of work and other terms and conditions of employment;
 - (4) Claims for actual, moral, exemplary and other forms of damages arising from the employer-employee relations;
 - (5) Cases arising from any violation of Article 264 of this Code, including questions involving the legality of strikes and lockouts; and
 - (6) Except claims for employees compensation, social security, medicare and maternity benefits, all other claims arising from employer-employee relations, including those of persons in domestic or household service involving an amount exceeding five thousand pesos (P5,000), whether or not accompanied with a claim for reinstatement.
- (b) The Commission shall have exclusive appellate jurisdiction over all cases decided by Labor Arbiters.
- (c) Cases arising from the interpretation of collective bargaining agreements and those arising from the interpretation or enforcement of company personnel policies shall be disposed of by the Labor Arbiter by referring the same to the grievance machinery and voluntary arbitration as may be provided in said agreements.

[16]Article 223 of the Labor Code provides:

Art. 223. Appeal. -- Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. Such appeal may be entertained only on any of the following grounds:

- (a) If there is prima facie evidence of abuse of discretion on the part of the Labor Arbiter;
- (b) If the decision, order or award was secured through fraud or coercion, including graft and corruption;
- (c) If made purely on questions of law; and
- (d) If serious errors in the findings of facts are raised which would cause grave or irreparable damage or injury to the appellant.

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 issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from.

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.

To discourage frivolous or dilatory appeals, the Commission or the Labor Arbiter shall impose reasonable penalty, including fines or censures, upon the erring parties.

In all cases, the appellant shall furnish a copy of the memorandum of appeal to the other party who shall file an answer not later than ten (10) calendar days from receipt thereof.

The Commission shall decide all cases within twenty (20) calendar days from receipt of the answer of the

appellee. The decision of the Commission shall be final and executory after ten (10) calendar days from receipt thereof by the parties.

Any law enforcement agency may be deputized by the Secretary of Labor and Employment or the Commission in the enforcement of decisions, awards or orders.

[17] Rollo, pp. 27-29.

[18] *Fernandez v. Commission on Elections*, G.R. No. 171821, 9 October 2006, 504 SCRA 116, 119.

[19] Rollo, p. 30.

[20] *Triumph International, Inc. v. Apostol*, G.R. No. 164423, 16 June 2009; *Marival Trading, Inc. v. National Labor Relations Commission*, G.R. No. 169600, 26 June 2007, 525 SCRA 708, 722-723; *Escareal v. National Labor Relations Commission*, G.R. No. 99359, 2 September 1992, 213 SCRA 472, 490.

[21] *Philippine Long Distance Company v. Bolso*, G.R. No. 159701, 17 August 2007, 530 SCRA 550, 564-565.

[22] CA rollo, p. 60.

[23] Rollo, pp. 106-118.

[24] *Id.* at 115-116.

[25] 349 Phil. 172, 182 (1998).

[26] Rollo, p. 34.

[27] 371 Phil. 293, 307 (1999).

[28] 438 Phil. 756, 764-765 (2002).

[29] *Marival Trading, Inc. v. National Labor Relations Commission*, *supra* note 20.

[30] G.R. No. 153144, 16 October 2006, 504 SCRA 336, 348-350.

[31] Rollo, pp. 40, 45, 47-48.

[32] CA rollo, p. 54.

[33] Labor Code, Art. 282(a).

[34] *Philippine Long Distance Company v. Bolso*, *supra* note 21 at 559-564.

[35] Rollo, pp. 50-51, 55.

[36] G.R. No. 172401, 30 October 2006, 506 SCRA 290, 295.

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