PHILIPPINE DAILY INQUIRER, INC., PETITIONER, VS. LEON M. MAGTIBAY, JR. AND PHILIPPINE DAILY INQUIRER EMPLOYEES UNION (PDIEU), RESPONDENTS.

G.R. NO. 164532. July 27, 2007

Ponente: GARCIA, J.

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GARCIA, J.:

By this petition for review on certiorari under Rule 45 of the Rules of Court, petitioner Philippine Daily Inquirer, Inc. (PDI) seeks the reversal and setting aside of the decision[1] dated May 25, 2004 of the Court of Appeals (CA) in CA G.R. SP No. 78963, affirming the resolution dated September 23, 2002 of the National Labor Relations Commission (NLRC) in NLRC Case No. 00-03-01945-96. The affirmed NLRC resolution reversed an earlier decision dated July 29, 1996 of the Labor Arbiter in NLRC Case No. 011800-96, which dismissed the complaint for illegal dismissal filed by the herein respondent Leon Magtibay, Jr. against the petitioner.

The factual antecedents are undisputed:

On February 7, 1995, PDI hired Magtibay, on contractual basis, to assist, for a period of five months from February 17, 1995, the regular phone operator. Before the expiration of Magtibay's contractual employment, he and PDI agreed to a fifteen-day contract extension, or from July 17, 1995 up to July 31, 1995, under the same conditions as the existing contract.

After the expiration of Magtibay's contractual employment, as extended, PDI announced the creation and availability of a new position for a second telephone operator who would undergo probationary employment. Apparently, it was PDI's policy to accord regular employees preference for new vacancies in the company. Thus, Ms. Regina M. Layague, a PDI employee and member of respondent PDI Employees Union (PDIEU), filed her application for the new position. However, she later withdrew her application, paving the way for outsiders or non-PDI employees, like Magtibay in this case, to apply.

After the usual interview for the second telephone operator slot, PDI chose to hire Magtibay on a probationary basis for a period of six (6) months. The signing of a written contract of employment followed.

On March 13, 1996, or a week before the end the agreed 6-month probationary period, PDI officer Benita del Rosario handed Magtibay his termination paper, grounded on his alleged failure to meet company standards. Aggrieved, Magtibay immediately filed a complaint for illegal dismissal and damages before the Labor Arbiter. PDIEU later joined the fray by filing a supplemental complaint for unfair labor practice.

Magtibay anchored his case principally on the postulate that he had become a regular employee by operation of law, considering that he had been employed by and had worked for PDI for a total period of ten months, i.e., four months more than the maximum six-month period provided for by law on probationary employment. He also claimed that he was not apprised at the beginning of his employment of the performance standards of the company, hence, there was no basis for his dismissal. Finally, he described his dismissal as tainted with bad faith

and effected without due process.

PDI, for its part, denied all the factual allegations of Magtibay, adding that his previous contractual employment was validly terminated upon the expiration of the period stated therein. Pressing the point, PDI alleged that the period covered by the contractual employment cannot be counted with or tacked to the period for probation, inasmuch as there is no basis to consider Magtibay a regular employee. PDI additionally claimed that Magtibay was dismissed for violation of company rules and policies, such as allowing his lover to enter and linger inside the telephone operator's booth and for failure to meet prescribed company standards which were allegedly made known to him at the start through an orientation seminar conducted by the company.

After due proceedings, the Labor Arbiter found for PDI and accordingly dismissed Magtibay's complaint for illegal dismissal. The Labor Arbiter premised his holding on the validity of the previous contractual employment of Magtibay as an independent contract. He also declared as binding the stipulation in the contract specifying a fixed period of employment. According to the Labor Arbiter, upon termination of the period stated therein, the contractual employment was also effectively terminated, implying that Magtibay was merely on a probationary status when his services were terminated inasmuch as the reckoning period for probation should be from September 21, 1995 up to March 31, 1996 as expressly provided in their probationary employment contract. In fine, it was the Labor Arbiter's position that Magtibay's previous contractual employment, as later extended by 15 days, cannot be considered as part of his subsequent probationary employment.

Apart from the foregoing consideration, the Labor Arbiter further ruled that Magtibay's dismissal from his probationary employment was for a valid reason. Albeit the basis for termination was couched in the abstract, i.e., "you did not meet the standards of the company," there were three specific reasons for Magtibay's termination, to wit: (1) he repeatedly violated the company rule prohibiting unauthorized persons from entering the telephone operator's room; (2) he intentionally omitted to indicate in his application form his having a dependent child; and (3) he exhibited lack of sense of responsibility by locking the door of the telephone operator's room on March 10, 1996 without switching the proper lines to the company guards so that incoming calls may be answered by them.

The Labor Arbiter likewise dismissed allegations of denial of due process and the commission by PDI of unfair labor practice.

PDIEU and Magtibay appealed the decision of the Labor Arbiter to the NLRC. As stated earlier, the NLRC reversed and set aside said decision, effectively ruling that Magtibay was illegally dismissed. According to the NLRC, Magtibay's probationary employment had ripened into a regular one.

With the NLRC's denial of its motion for reconsideration, PDI went to the CA on a petition for certiorari. Eventually, the CA denied due course to PDI's petition on the strength of the following observations:

> We agree with the findings of respondent NLRC.
>
> Petitioner PDI failed to prove that such rules and regulations were included in or form part of the standards that were supposed to be made known to respondent Magtibay at the time of his engagement as telephone operator. Particularly, as regards the first stated infraction xxx petitioner PDI, contrary to its assertion, stated in its position paper, motion for reconsideration and in this petition that respondent Magtibay failed to abide by the rules and regulations of the company issued by Ms. Benita del Rosario regarding the entry of persons in the operator's booth when respondent was already working for petitioner PDI. Further, nowhere can it be found in the list of Basic Responsibility and Specific Duties and Responsibilities (Annex D of the petition) of respondent Magtibay that he has to abide by the duties, rules and regulations that he has allegedly violated. The infractions considered by petitioner PDI as grounds for the dismissal of respondent Magtibay may at most be classified as just causes for the termination of the latter's employment. x x x.

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> x x x x x x x x x

> Finally, the three questionable grounds also relied upon by petitioner PDI in dismissing respondent Magtibay may be considered as just causes. However, petitioner PDI did not raise the same as an issue in the present petition because the procedure it adopted in dismissing respondent Magtibay fell short of the minimum requirements provided by law.

PDI filed a motion for reconsideration but to no avail.

Hence, this recourse by PDI on the following submissions:

> I.

> THE COURT OF APPEALS COMMITTED GRAVE ERROR IN FINDING THAT A PROBATIONARY EMPLOYEE'S FAILURE TO FOLLOW AN EMPLOYER'S RULES AND REGULATIONS CANNOT BE DEEMED FAILURE BY SAID EMPLOYEE TO MEET THE STANDARDS OF HIS EMPLOYER THUS EMASCULATING PETITIONER'S RIGHT TO CHOOSE ITS EMPLOYEES.

> II.

> THE COURT OF APPEALS COMMITTED A GRAVE ERROR IN REFUSING TO FIND THAT PROCEDURAL DUE PROCESS AS LAID DOWN IN SECTION 2, RULE XXIII OF THE IMPLEMENTING RULES OF THE LABOR CODE HAD BEEN OBSERVED BY THE PETITIONER.

We GRANT the petition.

This Court, to be sure, has for a reason, consistently tended to be partial in favor of workers or employees in labor cases whenever social legislations are involved. However, in its quest to strike a balance between the employer's prerogative to choose his employees and the employee's right to security of tenure, the Court remains guided by the gem of a holding in an old but still applicable case of Pampanga Bus, Co. v. Pambusco Employees Union, Inc.[2] In it, the Court said:

> The right of a laborer to sell his labor to such persons as he may choose is, in its essence, the same as the right of an employer to purchase labor from any person whom it chooses. The employer and the employee have thus an equality of right guaranteed by the Constitution. If the employer can compel the employee to work against the latter's will, this is servitude. If the employee can compel the employer to give him work against the employer's will, this is oppression.

Management and labor, or the employer and the employee are more often not situated on the same level playing field, so to speak. Recognizing this reality, the State has seen fit to adopt measures envisaged to give those who have less in life more in law. Article 279 of the Labor Code which gives employees the security of tenure is one playing field leveling measure:

> Art. 279. Security of Tenure. – In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. x x x.

But hand in hand with the restraining effect of Section 279, the same Labor Code also gives the employer a period within which to determine whether a particular employee is fit to work for him or not. This employer's prerogative is spelled out in the following provision:

> Art. 281. Probationary employment. – Probationary employment shall not exceed six (6) months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the

> employer to the employee at the time of his engagement. An employee who is allowed to work after a probationary period shall be considered a regular employee.

In International Catholic Migration Commission v. NLRC,[3] we have elucidated what probationary employment entails:

> x x x. A probationary employee, as understood under Article 282 (now Article 281) of the Labor Code, is one who is on trial by an employer during which the employer determines whether or not he is qualified for permanent employment. A probationary appointment is made to afford the employer an opportunity to observe the fitness of a probationer while at work, and to ascertain whether he will become a proper and efficient employee. The word "probationary," as used to describe the period of employment, implies the purpose of the term or period but not its length.
>
> Being in the nature of a "trial period" the essence of a probationary period of employment fundamentally lies in the purpose or objective sought to be attained by both the employer and the employee during said period. The length of time is immaterial in determining the correlative rights of both in dealing with each other during said period. While the employer, as stated earlier, observes the fitness, propriety and efficiency of a probationer to ascertain whether he is qualified for permanent employment, the probationer, on the other, seeks to prove to the employer, that he has the qualifications to meet the reasonable standards for permanent employment.
>
> It is well settled that the employer has the right or is at liberty to choose who will be hired and who will be denied employment. In that sense, it is within the exercise of the right to select his employees that the employer may set or fix a probationary period within which the latter may test and observe the conduct of the former before hiring him permanently. x x x.

Within the limited legal six-month probationary period, probationary employees are still entitled to security of tenure. It is expressly provided in the afore-quoted Article 281 that a probationary employee may be terminated only on two grounds: (a) for just cause, or (b) when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement.[4]

PDI invokes the second ground under the premises. In claiming that it had adequately apprised Magtibay of the reasonable standards against which his performance will be gauged for purposes of permanent employment, PDI cited the one-on-one seminar between Magtibay and its Personnel Assistant, Ms. Rachel Isip-Cuzio. PDI also pointed to Magtibay's direct superior, Benita del Rosario, who diligently briefed him about his responsibilities in PDI. These factual assertions were never denied nor controverted by Magtibay. Neither did he belie the existence of a specific rule prohibiting unauthorized persons from entering the telephone operator's booth and that he violated that prohibition. This notwithstanding, the NLRC and the CA proceeded nonetheless to rule that the records of the case are bereft of any evidence showing that these rules and regulations form part of the so-called company standards.

We do not agree with the appellate court when it cleared the NLRC of commission of grave abuse of discretion despite the latter's disregard of clear and convincing evidence that there were reasonable standards made known by PDI to Magtibay during his probationary employment. It is on record that Magtibay committed obstinate infractions of company rules and regulations, which in turn constitute sufficient manifestations of his inadequacy to meet reasonable employment norms. The suggestion that Magtibay ought to have been made to understand during his briefing and orientation that he is expected to obey and comply with company rules and regulations strains credulity for acceptance. The CA's observation that "nowhere can it be found in the list of Basic Responsibility and Specific Duties and Responsibilities of respondent Magtibay that he has to abide by the duties, rules and regulations that he has allegedly violated" is a strained rationalization of an unacceptable conduct of an

employee. Common industry practice and ordinary human experience do not support the CA's posture. All employees, be they regular or probationary, are expected to comply with company-imposed rules and regulations, else why establish them in the first place. Probationary employees unwilling to abide by such rules have no right to expect, much less demand, permanent employment. We, therefore find sufficient factual and legal basis, duly established by substantial evidence, for PDI to legally terminate Magtibay's probationary employment effective upon the end of the 6-month probationary period.

It is undisputed that PDI apprised Magtibay of the ground of his termination, i.e., he failed to qualify as a regular employee in accordance with reasonable standards made known to him at the time of engagement, only a week before the expiration of the six-month probationary period. Given this perspective, does this make his termination unlawful for being violative of his right to due process of law?

It does not.

Unlike under the first ground for the valid termination of probationary employment which is for just cause, the second ground does not require notice and hearing. Due process of law for this second ground consists of making the reasonable standards expected of the employee during his probationary period known to him at the time of his probationary employment. By the very nature of a probationary employment, the employee knows from the very start that he will be under close observation and his performance of his assigned duties and functions would be under continuous scrutiny by his superiors. It is in apprising him of the standards against which his performance shall be continuously assessed where due process regarding the second ground lies, and not in notice and hearing as in the case of the first ground.

Even if perhaps he wanted to, Magtibay cannot deny – as he has not denied – PDI's assertion that he was duly apprised of the employment standards expected of him at the time of his probationary employment when he underwent a one-on-one orientation with PDI's personnel assistant, Ms. Rachel Isip-Cuzio. Neither has he denied nor rebutted PDI's further claim that his direct superior, Benita del Rosario, briefed him regarding his responsibilities in PDI.

Lest it be overlooked, Magtibay had previously worked for PDI as telephone operator from February 7, 1995 to July 31, 1995 as a contractual employee. Thus, the Court entertains no doubt that when PDI took him in on September 21, 1995, Magtibay was already very much aware of the level of competency and professionalism PDI wanted out of him for the entire duration of his probationary employment.

PDI was only exercising its statutory hiring prerogative when it refused to hire Magtibay on a permanent basis upon the expiration of the six-month probationary period. This was established during the proceedings before the labor arbiter and borne out by the records and the pleadings before the Court. When the NLRC disregarded the substantial evidence establishing the legal termination of Magtibay's probationary employment and rendered judgment grossly and directly contradicting such clear evidence, the NLRC commits grave abuse of discretion amounting to lack or excess of jurisdiction. It was, therefore, reversible error on the part of the appellate court not to annul and set aside such void judgment of the NLRC.

WHEREFORE, the assailed decision dated May 25, 2004 of the CA in CA G.R. SP No. 78963 is hereby REVERSED and SET ASIDE, and the earlier resolution dated September 23, 2002 of the NLRC in NLRC Case No. 00-03-01945-96 is declared NULL and VOID. The earlier decision dated July 29, 1996 of the Labor Arbiter in NLRC Case No. 011800-96, dismissing respondent Leon Magtibay, Jr.'s complaint for alleged illegal dismissal, is REINSTATED.

No pronouncement as to costs.

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SO ORDERED.

Puno, C.J., (Chairperson), Sandoval-Gutierrez, Corona, and Azcuna, JJ., concur.

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[1] Penned by Associate Justice Mariano C. del Castillo with Associate Justices Marina L. Buzon and Magdangal M. de Leon, concurring; rollo, pp. 58-69.

[2] 68 Phil. 541 (1939).

[3] G.R. No. 72222, January 30, 1989, 169 SCRA 606.

[4] Agoy v. NLRC, G.R. No. 112096, January 30, 1996, 252 SCRA 588.

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