

**SAMAHAN NG MGA MANGGAGAWA SA HYATT
(SAMASAH-NUWHRAIN), PETITIONER, VS. HON. VOLUNTARY
ARBITRATOR BUENAVENTURA C. MAGSALIN AND HOTEL
ENTERPRISES OF THE PHILIPPINES, INC., RESPOND...**

G.R. No. 164939. June 06, 2011

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

Before this Court are two consolidated petitions filed by petitioner Samahan ng mga Manggagawa sa Hyatt-NUWHRAIN-APL under Rule 45 of the 1997 Rules of Civil Procedure, as amended. The first petition, docketed as G.R. No. 164939, assails the Resolutions dated October 3, 2003[1] and August 13, 2004[2] of the Court of Appeals (CA) in CA-G.R. SP No. 78364, which dismissed petitioner's petition for review at the CA for being the wrong remedy. The second petition, docketed as G.R. No. 172303, assails the Decision[3] dated December 16, 2005 and Resolution[4] dated April 12, 2006 of the CA in CA-G.R. SP No. 77478, modifying the judgment of the Voluntary Arbitrator in NCMB-NCR-CRN-07-008-01.

The antecedent facts are as follows:

Petitioner Samahan ng mga Manggagawa sa Hyatt-NUWHRAIN-APL is a duly registered union and the certified bargaining representative of the rank-and-file employees of Hyatt Regency Manila, a five-star hotel owned and operated by respondent Hotel Enterprises of the Philippines, Inc. On January 31, 2001, Hyatt's General Manager, David C. Pacey, issued a Memorandum[5] informing all hotel employees that hotel security have been instructed to conduct a thorough bag inspection and body frisking in every entrance and exit of the hotel. He enjoined employees to comply therewith. Copies of the Memorandum were furnished petitioner.

On February 3, 2001, Angelito Caragdag, a waiter at the hotel's Cafe Al Fresco restaurant and a director of the union, refused to be frisked by the security personnel. The incident was reported to the hotel's Human Resources Department (HRD), which issued a Memorandum[6] to Caragdag on February 5, 2001, requiring him to explain in writing within forty-eight (48) hours from notice why no disciplinary action should be taken against him. The following day, on February 6, 2001, Caragdag again refused to be frisked by the security personnel. Thus, on February 8, 2001, the HRD issued another Memorandum[7] requiring him to explain.

On February 14, 2001, the HRD imposed on Caragdag the penalty of reprimand for the February 3, 2001 incident, which was considered a first offense, and suspended him for three days for the February 6, 2001 incident, which was considered as a second offense.[8] Both penalties were in accordance with the hotel's Code of Discipline.

Subsequently, on February 22, 2001, when Mike Moral, the manager of Hyatt's Cafe Al Fresco and Caragdag's immediate superior, was about to counsel two staff members, Larry Lacambacal and Allan Alvaro, at the training room, Caragdag suddenly opened the door and yelled at the two with an enraged look. In a disturbing voice he said, "Ang titigas talaga ng ulo n'yo. Sinabi ko na sa inyo na huwag kayong makikipagusap sa management

habang ongoing pa ang kaso!" (You are very stubborn. I told you not to speak to management while the case is ongoing!) Moral asked Caragdag what the problem was and informed him that he was simply talking to his staff. Moral also told Caragdag that he did not have the right to interrupt and intimidate him during his counseling session with his staff.

On February 23, 2001, Moral issued a Memorandum[9] requiring Caragdag to explain his actions in the training room. Caragdag submitted his written explanation on February 25, 2001[10] narrating that he was informed by someone that Lacambacal and Alvaro were requesting for his assistance because Moral had invited them to the training room. Believing that he should advise the two that they should be accompanied by a union officer to any inquisition, he went to the training room. However, before he could enter the door, Moral blocked him. Thus, he told Lacambacal and Alvaro that they should be assisted by a union representative before giving any statement to management. Caragdag also prayed that Moral be investigated for harassing union officers and union members.

On February 28, 2001, Moral found the explanations unsatisfactory. In a Memorandum[11] issued on the same date, Moral held Caragdag liable for Offenses Subject to Disciplinary Action (OSDA) 3.01 of the hotel's Code of Discipline, i.e., "threatening, intimidating, coercing, and provoking to a fight your superior for reasons directly connected with his discharge of official duty." Thus, Caragdag was imposed the penalty of seven days suspension in accordance with the hotel's Code of Discipline.

Still later, on March 2, 2001, Caragdag committed another infraction. At 9:35 a.m. on the said date, Caragdag left his work assignment during official hours without prior permission from his Department Head. He was required to submit an explanation, but the explanation[12] he submitted was found unsatisfactory. On March 17, 2001, Moral found Caragdag liable for violating OSDA 3.07, i.e., "leaving work assignment during official working hours without prior permission from the department head or immediate superior," and suspended him for three days.[13]

Because of the succession of infractions he committed, the HRD also required Caragdag to explain on May 11, 2001 why the hotel's OSDA 4.32 (Committing offenses which are penalized with three [3] suspensions during a 12-month period) should not be enforced against him.[14] An investigation board was formed after receipt of Caragdag's written explanation, and the matter was set for hearing on May 19, 2001. However, despite notice of the scheduled hearing, both Caragdag and the Union President failed to attend. Thereafter, the investigating board resolved on the said date to dismiss Caragdag for violation of OSDA 4.32.[15] Caragdag appealed but the investigating board affirmed its resolution after hearing on May 24, 2001.

On June 1, 2001, the hotel, through Atty. Juancho A. Baltazar, sent Caragdag a Notice of Dismissal,[16] the pertinent portion of which reads:

Based on the findings of the Investigation Board dated May 19, 2001 which was approved by the General Manager Mr. David Pacey on the same day and which did not merit any reversal or modification after the hearing on your appeal on May 24, 2001, the penalty of DISMISSAL is therefore affirmed to take effect on June 1, 2001.

Caragdag's dismissal was questioned by petitioner, and the dispute was referred to voluntary arbitration upon agreement of the parties. On May 6, 2002, the Voluntary Arbitrator rendered a decision,[17] the dispositive portion of which reads:

WHEREFORE, premises considered, this Arbiter rules that the three separate suspensions of Mr. Caragdag are valid, his dismissal is legal and OSDA 4.32 of Hyatt's Code of Discipline is reasonable.

However, for humanitarian considerations, Hyatt is hereby ordered to grant financial assistance to Mr. Caragdag in the amount of One Hundred Thousand Pesos (PhP100,000.00).

In finding the three separate suspensions of Caragdag valid, the Voluntary Arbitrator reasoned that the union officers and members had no right to breach company rules and regulations on security and employee discipline on the basis of certain suspicions against management and an ongoing CBA negotiation standoff. The Voluntary Arbitrator also found that when Caragdag advised Lacambacal and Alvaro not to give any statement, he threatened and intimidated his superior while the latter was performing his duties. Moreover, there is no reason why he did not arrange his time-off with the Department Head concerned. Thus, Caragdag was validly dismissed pursuant to OSDA 4.32 of Hyatt's Code of Discipline, which states that an employee who commits three different acts of misconduct within a twelve (12)-month period commits serious misconduct.

Petitioner sought reconsideration of the decision while respondent filed a motion for partial reconsideration. However, the Voluntary Arbitrator denied both motions on May 26, 2003.[18]

On August 1, 2003, petitioner assailed the decision of the Voluntary Arbitrator before the CA in a petition for certiorari which was docketed as CA-G.R. SP No. 78364.[19] As mentioned at the outset, the CA dismissed the petition outright for being the wrong remedy. The CA explained:

Rule 43, Section 5 of the 1997 Rules of Civil Procedure explicitly provides that the proper mode of appeal from judgments, final orders or resolution of voluntary arbitrators is through a Petition for Review which should be filed within fifteen (15) days from the receipt of notice of judgment, order or resolution of the voluntary arbitrator.

Considering that petitioner intends this petition to be a Petition for Certiorari, the Court hereby resolves to dismiss the petition outright for being an improper mode of appeal.

Even if this Court treats the instant petition as a Petition for Review, still the Court has no alternative but to dismiss the same for having been filed out of time. As admitted by the petitioner it received the Order dated 26 May 2003 denying their motion for reconsideration on 02 June 2003. The fifteen (15) day period within which to appeal through a Petition for Review is until June 17, 2003. The petitioner filed the present petition on August 1, 2003, way beyond the reglementary period provided for by the Rules.[20]

Petitioner duly filed a motion for reconsideration of the dismissal, but the motion was denied by the CA. Thus, petitioner filed before this Court a petition for review on certiorari which was docketed as G.R. No. 164939.

In the meantime, on June 30, 2003, respondent also filed a petition for review[21] with the CA on the ground that the Voluntary Arbitrator committed a grievous error in awarding financial assistance to Caragdag despite his finding that the dismissal due to serious misconduct was valid. On December 16, 2005, the CA promulgated a decision in CA-G.R. SP. No. 77478 as follows:

WHEREFORE, the Decision dated May 6, 2002 of Voluntary Arbitrator Buenaventura C. Magsalin is AFFIRMED with MODIFICATION by DELETING the award of financial assistance in the amount of P100,000.00 to Angelito Caragdag.

SO ORDERED.[22]

In deleting the award of financial assistance to Caragdag, the CA cited the case of *Philippine Commercial International Bank v. Abad*,[23] which held that the grant of separation pay or other financial assistance to an employee dismissed for just cause is based on equity and is a measure of social justice, awarded to an employee who has been validly dismissed if the dismissal was not due to serious misconduct or causes that reflected adversely on the moral character of the employee. In this case, the CA agreed with the findings of the Voluntary Arbitrator that Caragdag was validly dismissed due to serious misconduct. Accordingly, financial assistance should not have been awarded to Caragdag. The CA also noted that it is the employer's prerogative to prescribe

reasonable rules and regulations necessary or proper for the conduct of its business or concern, to provide certain disciplinary measures to implement said rules and to ensure compliance therewith.

Petitioner sought reconsideration of the decision, but the CA denied the motion for lack of merit. Hence, petitioner filed before us a petition for review on certiorari docketed as G.R. No. 172303.

Considering that G.R. Nos. 164939 and 172303 have the same origin, involve the same parties, and raise interrelated issues, the petitions were consolidated.

Petitioner raises the following issues:

In G.R. No. 164939

THE COURT OF APPEALS ERRED IN DISMISSING OUTRIGHT THE PETITION FOR CERTIORARI ON THE GROUND THAT THE SAME IS AN IMPROPER MODE OF APPEAL.[24]

In G.R. No. 172303

THE COURT OF APPEALS ERRED IN DELETING THE AWARD OF FINANCIAL ASSISTANCE IN THE AMOUNT OF P100,000.00 TO ANGELITO CARAGDAG.[25]

The issues for our resolution are thus two-fold: first, whether the CA erred in dismissing outright the petition for certiorari filed before it on the ground that the same is an improper mode of appeal; and second, whether the CA erred in deleting the award of financial assistance in the amount of P100,000.00 to Caragdag.

On the first issue, petitioner argues that because decisions rendered by voluntary arbitrators are issued under Title VII-A of the Labor Code, they are not covered by Rule 43 of the 1997 Rules of Civil Procedure, as amended, by express provision of Section 2 thereof. Section 2, petitioner points out, expressly provides that Rule 43 "shall not apply to judgments or final orders issued under the Labor Code of the Philippines." Hence, a petition for certiorari under Rule 65 is the proper remedy for questioning the decision of the Voluntary Arbitrator, and petitioner having availed of such remedy, the CA erred in declaring that the petition was filed out of time since the petition was filed within the sixty (60)-day reglementary period.

On the other hand, respondent maintains that the CA acted correctly in dismissing the petition for certiorari for being the wrong mode of appeal. It stresses that Section 1 of Rule 43 clearly states that it is the governing rule with regard to appeals from awards, judgments, final orders or resolutions of voluntary arbitrators. Respondent contends that the voluntary arbitrators authorized by law include the voluntary arbitrators appointed and accredited under the Labor Code, as they are considered as included in the term "quasi-judicial instrumentalities."

Petitioner's arguments fail to persuade.

In the case of *Samahan ng mga Manggagawa sa Hyatt-NUWHRAIN-APL v. Bacungan*,[26] we repeated the well-settled rule that a decision or award of a voluntary arbitrator is appealable to the CA via petition for review under Rule 43. We held that:

The question on the proper recourse to assail a decision of a voluntary arbitrator has already been settled in *Luzon Development Bank v. Association of Luzon Development Bank Employees*, where the Court held that the decision or award of the voluntary arbitrator or panel of arbitrators should likewise be appealable to the Court of Appeals, in line with the procedure outlined in Revised Administrative Circular No. 1-95 (now embodied in Rule 43 of the 1997 Rules of Civil Procedure), just like those of the quasi-judicial agencies, boards and commissions enumerated therein, and consistent with the original purpose to provide a uniform procedure for the appellate review of adjudications of all quasi-judicial entities.

Subsequently, in *Alcantara, Jr. v. Court of Appeals*, and *Nippon Paint Employees Union-Olalia v. Court of*

Appeals, the Court reiterated the aforequoted ruling. In *Alcantara*, the Court held that notwithstanding Section 2 of Rule 43, the ruling in *Luzon Development Bank* still stands. The Court explained, thus:

"The provisions may be new to the Rules of Court but it is far from being a new law. Section 2, Rules 42 of the 1997 Rules of Civil Procedure, as presently worded, is nothing more but a reiteration of the exception to the exclusive appellate jurisdiction of the Court of Appeals, as provided for in Section 9, *Batas Pambansa Blg. 129*, as amended by Republic Act No. 7902:

(3) Exclusive appellate jurisdiction over all final judgments, decisions, resolutions, orders or awards of Regional Trial Courts and quasi-judicial agencies, instrumentalities, boards or commissions, including the Securities and Exchange Commission, the Employees' Compensation Commission and the Civil Service Commission, except those falling within the appellate jurisdiction of the Supreme Court in accordance with the Constitution, the Labor Code of the Philippines under Presidential Decree No. 442, as amended, the provisions of this Act and of subparagraph (1) of the third paragraph and subparagraph (4) of the fourth paragraph of Section 17 of the Judiciary Act of 1948.

"The Court took into account this exception in *Luzon Development Bank* but, nevertheless, held that the decisions of voluntary arbitrators issued pursuant to the Labor Code do not come within its ambit x x x"

Furthermore, Sections 1, 3 and 4, Rule 43 of the 1997 Rules of Civil Procedure, as amended, provide:

SECTION 1. Scope. - This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the x x x, and voluntary arbitrators authorized by law.

x x x x

SEC. 3. Where to appeal. - An appeal under this Rule may be taken to the Court of Appeals within the period and in the manner therein provided, whether the appeal involves questions of fact, of law, or mixed questions of fact and law.

SEC. 4. Period of appeal. - The appeal shall be taken within fifteen (15) days from notice of the award, judgment, final order or resolution, or from the date of its last publication, if publication is required by law for its effectivity, or of the denial of petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the court or agency a quo. x x x. (Emphasis supplied.)

Hence, upon receipt on May 26, 2003 of the Voluntary Arbitrator's Resolution denying petitioner's motion for reconsideration, petitioner should have filed with the CA, within the fifteen (15)-day reglementary period, a petition for review, not a petition for certiorari.

Petitioner insists on a liberal interpretation of the rules but we find no cogent reason in this case to deviate from the general rule. Verily, rules of procedure exist for a noble purpose, and to disregard such rules in the guise of liberal construction would be to defeat such purpose. Procedural rules are not to be disdained as mere technicalities. They may not be ignored to suit the convenience of a party. Adjective law ensures the effective enforcement of substantive rights through the orderly and speedy administration of justice. Rules are not intended to hamper litigants or complicate litigation. But they help provide for a vital system of justice where suitors may be heard following judicial procedure and in the correct forum. Public order and our system of justice are well served by a conscientious observance by the parties of the procedural rules.[27]

On the second issue, petitioner argues that Caragdag is entitled to financial assistance in the amount of P100,000 on humanitarian considerations. Petitioner stresses that Caragdag's infractions were due to his being a union officer and his acts did not show moral depravity. Petitioner also adds that, while it is true that the award of

financial assistance is given only for dismissals due to causes specified under Articles 283 and 284 of the Labor Code, as amended, this Court has, by way of exception, allowed the grant of financial assistance to an employee dismissed for just causes based on equity.

Respondent on the other hand, asserts that the CA correctly deleted the award of financial assistance erroneously granted to Caragdag considering that he was found guilty of serious misconduct and other acts adversely reflecting on his moral character. Respondent stresses that Caragdag's willful defiance of the hotel's security policy, disrespect and intimidation of a superior, and unjustifiable desertion of his work assignment during working hours without permission, patently show his serious and gross misconduct as well as amoral character.[28]

Again, petitioner's arguments lack merit.

The grant of separation pay or some other financial assistance to an employee dismissed for just causes is based on equity.[29] In *Phil. Long Distance Telephone Co. v. NLRC*,[30] we ruled that severance compensation, or whatever name it is called, on the ground of social justice shall be allowed only when the cause of the dismissal is other than serious misconduct or for causes which reflect adversely on the employee's moral character. The Court succinctly discussed the propriety of the grant of separation pay in this wise:

We hold that henceforth separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. Where the reason for the valid dismissal is, for example, habitual intoxication or an offense involving moral turpitude, like theft or illicit sexual relations with a fellow worker, the employer may not be required to give the dismissed employee separation pay, or financial assistance, or whatever other name it is called, on the ground of social justice.

A contrary rule would, as the petitioner correctly argues, have the effect, of rewarding rather than punishing the erring employee for his offense. And we do not agree that the punishment is his dismissal only and that the separation pay has nothing to do with the wrong he has committed. Of course it has. Indeed, if the employee who steals from the company is granted separation pay even as he is validly dismissed, it is not unlikely that he will commit a similar offense in his next employment because he thinks he can expect a like leniency if he is again found out. This kind of misplaced compassion is not going to do labor in general any good as it will encourage the infiltration of its ranks by those who do not deserve the protection and concern of the Constitution.

The policy of social justice is not intended to countenance wrongdoing simply because it is committed by the underprivileged. At best it may mitigate the penalty but it certainly will not condone the offense. Compassion for the poor is an imperative of every humane society but only when the recipient is not a rascal claiming an undeserved privilege. Social justice cannot be permitted to be refuge of scoundrels any more than can equity be an impediment to the punishment of the guilty. Those who invoke social justice may do so only if their hands are clean and their motives blameless and not simply because they happen to be poor. This great policy of our Constitution is not meant for the protection of those who have proved they are not worthy of it, like the workers who have tainted the cause of labor with the blemishes of their own character.[31]

Here, Caragdag's dismissal was due to several instances of willful disobedience to the reasonable rules and regulations prescribed by his employer. The Voluntary Arbitrator pointed out that according to the hotel's Code of Discipline, an employee who commits three different acts of misconduct within a twelve (12)-month period commits serious misconduct. He stressed that Caragdag's infractions were not even spread in a period of twelve (12) months, but rather in a period of a little over a month. Records show the various violations of the hotel's rules and regulations were committed by Caragdag. He was suspended for violating the hotel policy on bag inspection and body frisking. He was likewise suspended for threatening and intimidating a superior while the latter was

counseling his staff. He was again suspended for leaving his work assignment without permission. Evidently, Caragdag's acts constitute serious misconduct.

In *Piedad v. Lanao del Norte Electric Cooperative, Inc.*,^[32] we ruled that a series of irregularities when put together may constitute serious misconduct, which under Article 282 of the Labor Code, as amended, is a just cause for dismissal.

Caragdag's dismissal being due to serious misconduct, it follows that he should not be entitled to financial assistance. To rule otherwise would be to reward him for the grave misconduct he committed. We must emphasize that social justice is extended only to those who deserve its compassion.^[33]

WHEREFORE, the petitions for review on certiorari are DENIED. The October 3, 2003 and August 13, 2004 Court of Appeals Resolutions in CA-G.R. SP No. 78364, as well as the Court of Appeals December 16, 2005 Decision and April 12, 2006 Resolution in CA-G.R. SP No. 77478, are AFFIRMED and UPHELD.

With costs against the petitioner.

SO ORDERED.

Carpio Morales, (Chairperson), Brion, Bersamin, Abad,[*] and Villarama, Jr., JJ., concur.

* Designated additional member per Special Order No. 997 dated June 6, 2011.

[1] Rollo (G.R. No. 164939), pp. 32-33. Penned by Associate Justice Perlita J. Tria Tirona, with Associate Justices Portia Aliño-Hormachuelos and Edgardo F. Sundiam, concurring.

[2] Id. at 35.

[3] Rollo (G.R. No. 172303), pp. 12-20. Penned by Associate Justice Marina L. Buzon, with Associate Justices Danilo B. Pine and Arcangelita Romilla-Lontok, concurring.

[4] Id. at 9-10. Penned by Associate Justice Marina L. Buzon, with Associate Justices Rosmari D. Carandang and Arcangelita Romilla-Lontok, concurring.

[5] CA rollo (CA-G.R. SP. No. 77478), p. 86.

[6] Id. at 87.

[7] Id. at 88.

[8] Id. at 89.

[9] Id. at 90.

[10] Id. at 161-163.

[11] Id. at 92.

[12] Id. at 164.

[13] Id. at 94.

[14] Id. at 95.

[15] Id. at 98-100.

[16] Id. at 108-109.

[17] Id. at 9-25.

[18] Id. at 27-30.

[19] CA rollo (CA-G.R. SP. No. 78364), pp. 2-31.

[20] Supra note 1.

[21] CA rollo (CA-G.R. SP. No. 77478), pp. 33-56.

[22] Supra note 3 at 20.

[23] G.R. No. 158045, February 28, 2005, 452 SCRA 579, 587.

[24] Rollo (G.R. No. 164939), p. 20.

[25] Rollo (G.R. No. 172303), p. 30.

[26] G.R. No. 149050, March 25, 2009, 582 SCRA 369, 374-375, citing *Luzon Development Bank v. Association of Luzon Development Bank Employees*, 319 Phil. 262 (1995); *Alcantara, Jr. v. Court of Appeals*, 435 Phil. 395 (2002); and *Nippon Paint Employees Union-Olalia v. Court of Appeals*, G.R. No. 159010, November 19, 2004, 443 SCRA 286.

[27] *Audi AG v. Mejia*, G.R. No. 167533, July 27, 2007, 528 SCRA 378, 385.

[28] Rollo (G.R. No. 172303), p. 416.

[29] See *Aparente, Sr. v. NLRC*, 387 Phil. 96, 107 (2000).

[30] No. L-80609, August 23, 1988, 164 SCRA 671, 680.

[31] Id. at 682-683.

[32] No. L-73735, August 31, 1987, 153 SCRA 500, 509, citing *National Service Corporation v. Leogardo, Jr.*, No. L-64296, July 20, 1984, 130 SCRA 502, 509.

[33] *A' Prime Security Services, Inc. v. NLRC*, G.R. No. 93476, March 19, 1993, 220 SCRA 142.

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