LAGONOY BUS CO., INC./ NYMPHA O. BUENCAMINO, PETITIONERS, VS. COURT OF APPEALS (FORMER FOURTH DIVISION), JOSE B. CARIÑO, LORENZO FERMANO, ELEUTERIO P. PADIN, JR., MELVIN F. MORA...

G.R. NO. 165598. August 14, 2007

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Assailed by petition for review on certiorari are both the Decision[1] dated April 28, 2004 and the Resolution[2] dated September 27, 2004, of the Court of Appeals in CA-G.R. SP No. 71240. The Court of Appeals had reinstated the decision[3] of the Labor Arbiter who declared respondents' dismissal illegal and ordered petitioners to pay respondents their full backwages and separation pay.

Petitioner Lagonoy Bus Co., Inc. (LBCI) is a transportation company which commenced operations in September 1991. It was headed by Reynaldo D. Buencamino as President and General Manager (old LBCI). Reynaldo is the husband of petitioner Nympha O. Buencamino.

On various dates, LBCI hired respondents Jose B. Cariño, Lorenzo Fermano, Eleuterio P. Padin, Jr., Melvin F. Moraleda, Leynard O. Alvarez, Benjamin Ringanate, Jr., Loreto B. Concina, Rey B. Oliver, Jr., and Ruperto O. Rebuya, Jr., in different capacities as bus driver, alternate driver, bus conductor, and bus inspector, respectively.

Meanwhile, LBCI obtained a loan from the Rural Bank of Nabua, Inc., with Alfredo F. Odiamar, Nympha's father, as co-maker/borrower. When LBCI defaulted, the bank filed a case for a sum of money with damages.

On June 4, 1997, LBCI temporarily ceased operations following the attachment of its rolling stocks. Consequently, it terminated respondents' services without notice and separation pay. To settle the case, Alfredo paid the loan as evidenced by a compromise agreement.

On July 4, 1997, the bus company (hereafter, the new LBCI) resumed operations under the management of Nympha. It also rehired respondents on probationary basis. Sometime in December 1997 and January 1998, respondents were dismissed for failing to meet the company standards.[4] Respondents filed separate complaints for illegal dismissal with claims for separation pay, backwages and damages.

For their part, petitioners specified dishonesty and loss of confidence as additional grounds to dismiss respondents.[5]

On January 15, 2001, the Labor Arbiter rendered a decision in favor of respondents, declaring their dismissal illegal. The decision decreed as follows:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of complainants, and against respondents, in the manner following:
>
> - Declaring the dismissal of the complainants by respondents Lagonoy Bus Co., Inc./[Nympha] O.

Buencamino, illegal;

- Ordering respondents to pay complainants their full backwages, computed as of the date of this decision, as follows:

1) Jose B. Cariño (P2,240 x 38 mos.)

Php

85,120.00

2) Lorenzo Fermano (P200 x 26 x 38)
197,600.00

3) Eleuterio P. Padin, Jr. (P173 x 26 x35)
157,430.00

4) Melvin F. Moraleda (P200 x 26 x 35)
182,000.00

5) Leynard O. Alvarez (P173 x 26 x 35)
157,430.00

6) Benjamin Ringanate, Jr. (P200 x 26 x 35)
182,000.00

7) Loreto B. Concina (P200 x 26 x 35)
182,000.00

8) Rey B. Oliver, Jr. (P200 x 26 x 35)
182,000.00

9) Ruperto O. Rebuya, Jr. (P200 x 26 x35)

182,000.00

Php 1,507,580.00

3. Ordering respondents to pay complainants their respective separation pay in lieu of reinstatement, computed as follows:

1) Jose B. Cariño (P2,240 x 5 yrs)

Php

11,200.00

2) Lorenzo Fermano (P200 x 26 x 2)

10,400.00

3) Eleuterio P. Padin, Jr. ([P]173 x 26 x 6)

26,988.00

4) Melvin F. Moraleda (P200 x 26 x 3)

15,600.00

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5) Leynard O. Alvarez ([P]173 x 26 x 6)

26,988.00

6) Benjamin Ringanate, Jr. (P200 x 26 x 7)

36,400.00

7) Loreto B. Concina (P200 x 26 x 7)

36,400.00

8) Rey B. Oliver, Jr. (P200 x 26 x 4)

20,800.00

9) Ruperto O. Rebuya, Jr. (P200 x 26 x 4)

20,800.00

Php 205,576.00

All other claims and charges are DISMISSED for lack of merit.

SO ORDERED.[6]

On January 28, 2002, the National Labor Relations Commission (NLRC) reversed the decision of the Labor Arbiter and dismissed the complaints.[7] Respondents moved for reconsideration but were denied on March 22, 2002.[8] On April 25, 2002, the NLRC issued an Entry of Judgment certifying that on April 19, 2002, the NLRC resolution dated March 22, 2002 became final and executory.[9]

Respondents sought relief from the Court of Appeals on April 29, 2002 through a petition for certiorari under Rule 65 of the Rules of Court.[10] On April 28, 2004, the appellate court reversed the NLRC decision in this wise:

> WHEREFORE, premises considered, the instant Petition for Certiorari is GRANTED. Accordingly, the January 28, 2002 and March 22, 2002 Resolutions of the NLRC, Third Division, are ANNULLED and SET ASIDE and the DECISION of the labor arbiter dated January 15, 2001 is hereby REINSTATED.
>
> SO ORDERED.[11]

The Court of Appeals ruled that the old LBCI and the new LBCI were one and the same because the new LBCI (1) engaged in the same line of business and carried the same corporate name; (2) utilized the same rolling stocks, passenger buses, and facilities; (3) plied the same route; and (4) had the same personnel. Thus, the new LBCI should be treated as respondents' employer in resolving their complaints for illegal dismissal.

The appellate court also noted that respondents have worked for LBCI for at least two years and performed services that were desirable and necessary to LBCI's business; thus, they had attained regular status despite the contrary stipulations in their contracts with the new LBCI. They could not be dismissed without just cause and due process as done by petitioners.

Petitioners now allege in the instant petition that the Court of Appeals erred in:

I.

GRANTING THE PETITION FOR CERTIORARI UNDER RULE 65 OF THE 1997 RULES OF CIVIL PROCEDURE AS IT IS NOT THE PROPER REMEDY TO REVIEW A DECISION THAT HAS ALREADY BECOME FINAL AND EXECUTORY.

II.
HOLDING THAT LAGONOY BUS COMPANY, INC. (LBCI) UNDER THE OLD MANAGEMENT OF REYNALDO BUENCAMINO AND LAGONOY BUS COMPANY, INC. (LBCI) UNDER THE NEW MANAGEMENT OF [NYMPHA] BUENCAMINO ARE ONE AND THE SAME COMPANY AND TOTALLY IGNORED THE SUBROGATION PURSUANT TO ARTICLE 1303 OF THE CIVIL CODE OF ALFREDO F. ODIAMAR & HERMOGENA S. ODIAMAR OVER THE RIGHTS AND INTERESTS OF THE RURAL BANK OF NABUA, INC. IN CIVIL CASE NO. IR-2891 AND THEIR EVENTUAL ENTRY AS THE NEW OWNERS OF LBCI.

III.
HOLDING THAT COMPLAINANTS WERE ILLEGALLY DISMISSED FROM EMPLOYMENT [DESPITE THEIR] PROBATIONARY STATUS AND ON THE GROUND OF LOSS OF CONFIDENCE IN COMPLETE DISREGARD OF THE EXPRESS MANDATE OF ARTICLES 281 AND 282 OF THE LABOR CODE.[12]

Simply put, petitioners raise the following issues: (1) Is a petition for certiorari under Rule 65 of the Rules of Court the proper remedy against a decision of the NLRC that has become final and executory? (2) Are the old LBCI and the new LBCI distinct companies or are they one and the same? (3) Were respondents illegally dismissed?

On the first issue, petitioners contend that an appeal from the final disposition of the NLRC should be by a petition for review under Rule 45 of the Rules of Court. Respondents counter that although the decision of the NLRC was declared final and executory, they were not precluded from filing a petition for certiorari under Rule 65 within the reglementary period provided in the Rules of Court.

In St. Martin Funeral Home v. NLRC,[13] we held that the special civil action of certiorari is the mode of judicial review of the decisions of the NLRC either by this Court or the Court of Appeals, but the latter court is the more appropriate forum in view of the doctrine on the hierarchy of courts and that, in the exercise of this power, the Court of Appeals can review the factual findings or the legal conclusions of the NLRC.[14]

In this case, when respondents received the March 22, 2002 resolution of the NLRC on April 3, 2002, they had sixty days within which to elevate the case on certiorari to the Court of Appeals. Hence, the petition they filed on April 29, 2002 was within the reglementary period. Moreover, considering that the petition for certiorari before the Court of Appeals was timely filed, then it can also be said that there was no error on the part of the appellate court when it entertained the said petition for certiorari.

On the second issue, petitioners argue that after the old LBCI ceased operations on June 4, 1997, it underwent a change of ownership and management. When Alfredo paid the loan of the LBCI, he was subrogated to the bank's rights against LBCI. Hence, he became LBCI's majority stockholder and as purchaser, he had no legal obligation to continue employing respondents.

Respondents insist that the old LBCI and the new LBCI are one and the same since the cessation of operations by the old LBCI was merely temporary. In fact, it resumed operations only a month thereafter.

Under Article 286[15] of the Labor Code, an employer may bona fide suspend the operation of its business for a period not exceeding six months. In such a case, there is no termination of the employment of the employees, but

only a temporary displacement. When the suspension of the business operations exceeds six months, then the employment of the employees could be deemed terminated. Worth stressing, if the operation of the business is resumed within six months, it shall be the duty of the employer to reinstate his employees to their former positions without loss of seniority rights, if the latter would indicate their desire to resume work within one month from such resumption of operations.[16]

In compliance, therefore, with said Article 286 and the applicable jurisprudence, it was the duty of the new LBCI to reinstate respondents to their former positions without loss of seniority rights when it resumed operations on July 4, 1997, a month after it temporarily ceased operations. Respondents in fact indicated their desire to resume their work when they re-applied with the new LBCI.

Considering the circumstances in this case, we find no merit in petitioners' argument that Alfredo became LBCI's majority stockholder after he paid LBCI's loan and, as purchaser of its stocks, he had no legal obligation to continue employing respondents. That argument lacks factual as well as legal foundation.

First, even if Alfredo was subrogated to the bank's rights against LBCI, he became at most a creditor. Being a creditor differs from being a purchaser or majority stockholder. We note likewise that petitioners did not substantiate their claim of a sale, nor even the date thereof. Even LBCI's change of name to ANH Transport Services, Inc. on August 21, 1998, with Alfredo as majority stockholder is of no moment since the change occurred after respondents' dismissal. At the time respondents were dismissed, they were still employed by the old LBCI.

Second, granting that a sale took place, the old LBCI should have given respondents the required notice and separation pay prior to their dismissal. While we recognize that an employer has a right to sell or dispose of all or substantially all of its assets and properties, which could bring about the dismissal of its employees in the process, such right should not be interpreted in such a manner as to insulate the employer or the divesting corporation (the old LBCI) from its obligation to its employees, particularly the payment of separation pay. Such interpretation could not be tolerated in labor law. It strikes at the very concept of social justice.[17]

Third, as astutely observed by the Court of Appeals, the old LBCI and the new LBCI are one and the same because the new LBCI (1) engaged in the same line of business and carried the same corporate name; (2) utilized the same rolling stocks, passenger buses, and facilities; (3) plied the same route; and (4) had the same personnel.

On the third issue, petitioners contend that respondents were hired by the new LBCI under probationary status and were bound by the rules on probationary employment. Thus, petitioners had just cause to dismiss them when they failed to meet the company standards and committed acts tantamount to dishonesty and loss of confidence.

Respondents respond that having worked for LBCI for at least two years and performed services that were desirable and necessary to LBCI's business, they had attained regular status. Hence, they could not be dismissed without just cause and due process.

Having ruled out a sale of LBCI during its temporary suspension of operations, we hold that respondents remained regular employees of LBCI regardless of the change of management. They could likewise not be dismissed without just cause and due process. On this point, we find no reason to depart from the findings of both the Labor Arbiter and the Court of Appeals. They are positively instructive and well considered.

On the matter of dishonesty and loss of confidence, respondents' termination letters cited only failure to meet the company standards as ground for their dismissal.[18] This only shows that at the time respondents were dismissed, the particular and specific charges of dishonesty and loss of confidence had not yet surfaced. In fact, petitioners even admitted that they received information on non-collection or under-collection of fares only on

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January 5, 1998.[19] At that time, respondents had already been dismissed. Clearly, these additional grounds were mere afterthoughts to justify respondents' dismissal by the petitioners. We find the bare mention of the original and the additional grounds cited insufficient to justify said dismissal.

WHEREFORE, the instant petition is DENIED. The Decision dated April 28, 2004, as well as the Resolution dated September 27, 2004, of the Court of Appeals in CA-G.R. SP No. 71240 is hereby AFFIRMED. Let this case be remanded to the Labor Arbiter for re-computation and payment of the backwages and separation pay due respondents as expeditiously as possible.

Costs against the petitioners.

SO ORDERED.

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

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[1] Rollo, pp. 30-37. Penned by Associate Justice Rosmari D. Carandang, with Associate Justices Godardo A. Jacinto and Elvi John Asuncion concurring.

[2] Id. at 39-42.

[3] CA rollo, pp. 57-68.

[4] Id. at 29, 31, 33, 35, 41. (There are only 5 notices of dismissal attached in the Records.)

[5] Id. at 51-53.

[6] Id. at 66-68.

[7] Id. at 91-98.

[8] Id. at 103-105.

[9] Id. at 122.

[10] Id. at 4-13.

[11] Rollo, p. 36.

[12] Id. at 11.

[13] G.R. No. 130866, September 16, 1998, 295 SCRA 494.

[14] Bascon v. Court of Appeals, G.R. No. 144899, February 5, 2004, 422 SCRA 122, 129-130; See Agustilo v. Court of Appeals, G.R. No. 142875, September 7, 2001, 364 SCRA 740, 747.

[15] ART. 286. When employment not deemed terminated - The bona fide suspension of the operation of a business or undertaking for a period not exceeding six (6) months, or the fulfillment by the employee of a military or civic duty shall not terminate employment.

In all such cases, the employer shall reinstate the employee to his former position without loss of seniority rights if he indicates his desire to resume his work not later than one (1) month from the resumption of operations of his employer or from his relief from the military or civic duty.

[16] Nasipit Lumber Company v. National Organization of Workingmen (NOWM), G.R. No. 146225, November 25, 2004, 444 SCRA 158, 172.

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[17] San Felipe Neri School of Mandaluyong, Inc. v. NLRC, G.R. No. 78350, September 11, 1991, 201 SCRA 478, 484.

[18] Supra note 4.

[19] CA rollo, p. 52.

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