

AMA COMPUTER COLLEGE, INC., PETITIONER, VS. ELY GARCIA AND MA. TERESA BALLA, RESPONDENTS.

G.R. No. 166703. April 14, 2008

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This Petition for Review on Certiorari under Rule 45 of the Rules of Court seeks to reverse the Decision^[1] dated 30 August 2004 of the Court of Appeals in CA-G.R. SP No. 81808 affirming the Decision dated 29 May 2003 of the National Labor Relations Commission (NLRC) in NLRC NCR 00-03-01898-00. The NLRC, in its Decision, affirmed the Labor Arbiter's Decision dated 25 March 2002, finding that the dismissal by petitioner AMA Computer College, Inc. (ACC) of respondents Ely Garcia (Garcia) and Ma. Teresa Balla (Balla) was illegal and granting of backwages and separation pay; but modified the same by deleting the grant of 13th month pay, service incentive leave pay and cost of living allowance. The Court of Appeals, in its Resolution dated 1 December 2004, denied ACC's motion for reconsideration of its earlier Decision.

The factual antecedents of the case are as follows:

Garcia was hired as a janitress by ACC on 6 January 1988. On 15 May 1989, her employment status was changed to probationary Library Aide. She became a regular employee on 15 February 1990.

Balla was hired as a Social Worker by ACC on 1 August 1996. She later became a Guidance Assistant in the Guidance Department of ACC, and on 2 June 1997, became a regular employee.

On 21 March 2000, Anthony R. Vince Cruz, ACC Human Resource Director, informed Garcia and Balla and 52 other employees of the termination of their employment, thus:

This is to formally inform you that due to the prevailing economic condition of our economy and as part of the austerity program of the company, the top management has decided to come up with a manpower review of the AMA Group of Companies in order to streamline its operation and the growth of the Organization.

In view of this, your position as Library Aide [for Ely; Guidance Assistant, for Teresa] has (sic) been found no longer necessary for the reason that your function can be handled by the other existing staff.

Thus, we regret to inform you effective April 21, 2000, your employment with AMA Group of Companies is hereby terminated. x x x.^[2]

Thereafter, Garcia and Balla filed a complaint with the Labor Arbiter for illegal dismissal and prayed for the payment of separation pay, 13th month pay, and attorney's fees, alleging that ACC's streamlining program was tainted with bad faith as there was no fair and reasonable criteria used therein, such as the less preferred status, efficiency rating and authority. They asserted that certain acts of ACC belied its claim of being adversely affected by the prevailing economic conditions, and that the statistics and pattern of dismissal by the college indicate a nefarious intent to circumvent the law on the security of tenure.

ACC, in its position paper, countered that Garcia and Balla's dismissal was due to the legitimate streamlining by the company.

On 25 March 2002, the Labor Arbiter ruled that Garcia and Balla were illegally dismissed and ordered the payment of their backwages and additional separation pay. The dispositive portion of the Labor Arbiter's Decision[3] reads:

Wherefore, premises all considered, judgment is hereby rendered finding the dismissal illegal and ordering respondent [petitioner ACC] to pay complainants [Garcia and Balla] backwages and additional separation pay.

The Research and Computation Unit, (sic) this Commission is hereby directed to effect the necessary computation which shall form part of this decision.

Aggrieved by the Labor Arbiter's afore-quoted Decision, ACC appealed to the NLRC.

On 20 May 2003, the NLRC[4] affirmed the assailed Decision of the Labor Arbiter with the modification of deleting the award of 13[th] month pay, service incentive leave pay and cost of living allowance. The NLRC thus ordered:

While We are in accord with the finding that complainants were illegally dismissed from employment, We find the inclusion of the relief of 13[th] month pay, Service Incentive Leave Pay and Cost of Living Allowance as inappropriate.

Quite notable from the pro-forma complaint that no prayer for payment of cost of living allowance or service incentive leave pay was indicated therein by the complainants (Records, p. 2). And, while they may have indicated non-payment of the 13[th] month benefit as a cause of action, nowhere in the Labor Arbiter's decision can it be gleaned that the said relief was adjudged in favor of the complainants. Deletion of the aforesaid monetary award is, therefore, decreed.

WHEREFORE, premises considered, the decision under review is hereby MODIFIED by DELETING the relief of 13[th] month pay, service incentive leave pay and cost of living allowance therefrom.

In other respects, the decision, insofar as it orders the payment to the complainants [Garcia and Balla] their backwages and additional separation pay, shall stand AFFIRMED.

ACC filed a Motion for Reconsideration of the foregoing but the same was denied[5] by the NLRC in a Resolution dated 30 October 2003.

ACC then appealed[6] by way of Petition for Certiorari under Rule 65 of the Rules of Court to the Court of Appeals alleging that the NLRC gravely abused its discretion amounting to lack or in excess of jurisdiction in only partially modifying the Decision of the Labor Arbiter and affirming the rest thereof.

On 30 August 2004, the Court of Appeals rendered a Decision[7] affirming the Decision of the NLRC. In its Decision, the Court of Appeals ruled that inquiry in a Petition for Certiorari under Rule 65 of the Rules of Court is limited exclusively to the issue of whether or not respondent acted with grave abuse of discretion, amounting to lack or in excess of jurisdiction, and does not go as far as to evaluate the sufficiency of evidence upon which the NLRC and the Labor Arbiter based their determination.

ACC filed a motion for reconsideration but was denied by the Court of Appeals in a Resolution[8] dated 1 December 2004.

Hence, the present Petition for Review under Rule 45 of the Rules of Court filed by ACC raising the following errors[9] of the Court of Appeals:

THE COURT OF APPEALS GRAVELY ERRED IN DEPARTING FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL REVIEW[.]

THE COURT OF APPEALS GRAVELY ERRED WHEN IT SUSTAINED THE FINDING OF ILLEGAL DISMISSAL NOTWITHSTANDING THE SUBSTANTIAL EVIDENCE ADDUCED BY PETITIONER TO THE CONTRARY[.]

THE COURT OF APPEALS GRAVELY ERRED WHEN IT REFUSED TO RECOGNIZE REDUNDANCY AS A BASIS IN TERMINATING THE SERVICES OF RESPONDENT[S].

On 18 April 2005, We required[10] Garcia and Balla to file their Comment within ten days from notice, but they failed to comply therewith despite notice.

As a consequence, we required[11] Garcia and Balla to show cause why they should not be held in contempt of court for failure to file their desired comment. Again, they failed to comply with our show cause order, thus, we imposed[12] upon them a fine of P500.00 each payable within ten days from receipt of notice.

Still failing to receive any response from Garcia and Balla, we required[13] ACC, on 2 October 2006, to inform the Court of their current addresses.

In a Manifestation[14] dated 18 January 2007, ACC stated that, as for Garcia, it has the same address as the one being considered by the Court; and as to Balla, all pleadings and orders in the course of the proceedings before the NLRC and the Court of Appeals were served to her through Garcia's address.

In a Resolution dated 28 February 2007, we noted ACC's Manifestation but considered its compliance unsatisfactory. We required ACC to exert more effort in locating Garcia's present address and to inform the Court thereof within ten days from notice.[15]

ACC through counsel failed to comply with our 28 February 2007 Resolution, thus, we required[16] its counsel to show cause why it should not be held in contempt for failure to submit the addresses of Garcia and Balla despite notice.

In a Compliance[17] dated 5 December 2007, ACC through counsel apologized for its inadvertence and asked for an extension within which to comply with the 28 February 2007 Resolution, which was granted.[18]

ACC's counsel would later inform us that various ways were employed to search for Garcia's address, such as searches through the telephone directories, internet and personal inquiries, but to no avail. Hence, ACC requested for another extension,[19] which was again granted.

In a Manifestation, dated 5 January 2007, ACC through counsel stated that it already made a personal inquiry at Garcia's previous address, but still without success.

Thus, we resolved to dispense with Garcia and Balla's comment and submitted the case for decision based on the pleadings filed.

Even without Garcia and Balla's comment, this Court denies ACC's Petition.

The issues for resolution are factual and Rule 45 of the Rules of Court provides that only questions of law may be raised in a petition for review on certiorari. The *raison d'être* is that the Court is not a trier of facts. It is not to reexamine and reevaluate the evidence on record. Moreover, the factual findings of the NLRC, as affirmed by the Court of Appeals, are accorded high respect and finality unless the factual findings and conclusions of the Labor Arbiter clash with those of the NLRC and the Court of Appeals in which case, the Court will have to review the records and the arguments of the parties to resolve the factual issues and render substantial justice to the

parties.[20]

In termination cases, the burden of proving just and valid cause for dismissing an employee from his employment rests upon the employer, and the latter's failure to discharge that burden would result in a finding that the dismissal is unjustified.[21]

It must be stressed at the outset that ACC raised different grounds to justify its dismissal of Garcia and Balla: before the Labor Arbiter, it cited retrenchment; before the NLRC, it claimed redundancy; and before the Court of Appeals, it averred both retrenchment and redundancy.

It is apparent that ACC itself is confused as to the real reason why it terminated Garcia and Balla's employment.

Both retrenchment and redundancy are authorized causes for the termination of employment. According to Article 283 of the Labor Code:

ART. 283. Closure of establishment and reduction of personnel. - The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the worker and the Department of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

Although governed by the same provision of the Labor Code, retrenchment and redundancy are two distinct grounds for termination arising from different circumstances, thus, they are in no way interchangeable.

Redundancy exists when the service capability of the workforce is in excess of what is reasonably needed to meet the demands of the business enterprise. A reasonably redundant position is one rendered superfluous by any number of factors, such as overhiring of workers, decreased volume of business, dropping of a particular product line previously manufactured by the company or phasing out of service activity priorly undertaken by the business. Among the requisites of a valid redundancy program are: (1) the good faith of the employer in abolishing the redundant position; and (2) fair and reasonable criteria in ascertaining what positions are to be declared redundant and accordingly abolished.[22]

The determination that the employee's services are no longer necessary or sustainable and, therefore, properly terminable for being redundant is an exercise of business judgment of the employer. The wisdom or soundness of this judgment is not subject to discretionary review of the Labor Arbiter and the NLRC, provided there is no violation of law and no showing that it was prompted by an arbitrary or malicious act. In other words, it is not enough for a company to merely declare that it has become overmanned. It must produce adequate proof of such redundancy to justify the dismissal of the affected employees.[23]

In *Panlilio v. National Labor Relations Commission*,[24] it was held that the following evidence may be proffered to substantiate redundancy: the new staffing pattern, feasibility studies/proposal on the viability of the newly created positions, job description and the approval by the management of the restructuring.

In the case at bar, ACC attempted to establish its streamlining program by presenting its new table of organization. ACC also submitted a certification[25] by its Human Resources Supervisor, Ma. Jazmin Reginaldo,

that the functions and duties of many rank and file employees, including the positions of Garcia and Balla as Library Aide and Guidance Assistant, respectively, are now being performed by the supervisory employees. These, however, do not satisfy the requirement of substantial evidence that a reasonable mind might accept as adequate to support a conclusion.[26] As they are, they are grossly inadequate and mainly self-serving. More compelling evidence would have been a comparison of the old and new staffing patterns, a description of the abolished and newly created positions, and proof of the set business targets and failure to attain the same which necessitated the reorganization or streamlining.

To further justify its dismissal of Garcia and Balla, ACC presented several memoranda to prove that Garcia and Balla had been remiss in the performance of their duties, as well as perennially tardy and absent. Other than being self-serving, said memoranda are irrelevant to prove redundancy of the positions held by Garcia and Balla. Redundancy arises because there is no more need for the employee's position in relation to the whole business organization, and not because the employee unsatisfactorily performed the duties and responsibilities required by his position. Redundancy is an authorized cause for termination of employment under Article 282 of the Labor Code; while serious misconduct or willful disobedience or gross and habitual neglect of duties by the employee is a just cause for dismissal under Article 283 of the Code.

The lingering doubt as to the existence of redundancy or of ACC's so called "streamlining program" is highlighted even more by its non-presentation of the required notice[27] to the Department of Labor and Employment (DOLE) at least one month before the intended dismissal.[28] The notice to the DOLE would have afforded the labor department the opportunity to look into and verify whether there is truth as to ACC's claim that a decline in its student population resulted in excess manpower in the college. Compliance with the required notices would have also established that ACC pursued its streamlining program in good faith.

In balancing the interest between labor and capital, the prudent recourse in termination cases is to safeguard the prized security of tenure of employees and to require employers to present the best evidence obtainable, especially so because in most cases, the documents or proof needed to resolve the validity of the termination, are in the possession of employers. A contrary ruling would encourage employers to utilize redundancy as a means of dismissing employees when no valid grounds for termination are shown by simply invoking a feigned or unsubstantiated redundancy program.

Granting that ACC was able to substantiate the need for streamlining its organization, it still failed to implement the same using fair and reasonable criteria for choosing which employees to dismiss. Among the accepted criteria in implementing a redundancy are: (a) less preferred status, e.g., temporary employee; (b) efficiency; and (c) seniority.[29] There is no showing that ACC applied any of these criteria in determining that, among its employees, Garcia and Balla should be dismissed, thus, making their dismissal arbitrary and illegal.

Retrenchment, on the other hand, is the termination of employment effected by management during periods of business recession, industrial depression, seasonal fluctuations, lack of work or considerable reduction in the volume of the employer's business.[30] Resorted to by an employer to avoid or minimize business losses,[31] it is a management prerogative consistently recognized by this Court.[32]

There are three basic requisites for a valid retrenchment to exist, to wit: (a) the retrenchment is necessary to prevent losses and such losses are proven; (b) written notice to the employees and to the DOLE at least one (1) month prior to the intended date of retrenchment; and (c) payment of separation pay equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher.[33]

To justify retrenchment, the employer must prove serious business losses.[34] Indeed, not all business losses suffered by the employer would justify retrenchment under Article 283 of the Labor Code.[35] The "loss" referred

to in Article 283 cannot be just any kind or amount of loss; otherwise, a company could easily feign excuses to suit its whims and prejudices or to rid itself of unwanted employees.[36]

In a number of cases, the Court has identified the necessary conditions for the company losses to justify retrenchment: (1) the losses incurred are substantial and not de minimis; (2) the losses are actual or reasonably imminent; (3) the retrenchment is reasonably necessary and is likely to be effective in preventing the expected losses; and (d) the alleged losses, if already incurred, or the expected imminent losses sought to be forestalled, are proven by sufficient and convincing evidence.[37] ACC miserably failed to prove any of the foregoing.

In the case at bar, ACC claimed that the retrenchment of Garcia and Balla was justified due to the financial difficulties experienced by the college that it was made effective in all of its campuses and for all departments; and appropriate notices were given to Garcia and Balla. But other than its bare allegations, ACC failed to present any supporting evidence.

Not only was ACC unable to prove its losses, it also failed to present proof that it served the necessary notice to the DOLE one month before the purported retrenchment of Garcia and Balla.[38] As also found by the Labor Arbiter, and affirmed by the NLRC and the Court of Appeals, ACC did not give Garcia and Balla sufficient separation pay. Falling short of all the requirements, ACC cannot claim that it had effected a valid retrenchment of Garcia and Balla.

In sum, the Court finds no basis for disturbing the consistent findings of the Labor Arbiter, the NLRC and the Court of Appeals that ACC was not able to discharge the burden of proving that its dismissal of Garcia and Balla was valid.

Finally, ACC argues that the Court of Appeals should not have limited its power of review to the finding of grave abuse of discretion allegedly committed by the NLRC, but should have considered the substantial evidence adduced by ACC.

The contention is without merit.

The extent of judicial review by certiorari of decisions or resolutions of the NLRC, as exercised previously by the Supreme Court and now by the Court of Appeals, is described in *Zarate, Jr. v. Olegario*,[39] thus -

The rule is settled that the original and exclusive jurisdiction of this Court to review a decision of respondent NLRC (or Executive Labor Arbiter as in this case) in a petition for certiorari under Rule 65 does not normally include an inquiry into the correctness of its evaluation of the evidence. Errors of judgment, as distinguished from errors of jurisdiction, are not within the province of a special civil action for certiorari, which is merely confined to issues of jurisdiction or grave abuse of discretion. It is thus incumbent upon petitioner to satisfactorily establish that respondent Commission or executive labor arbiter acted capriciously and whimsically in total disregard of evidence material to or even decisive of the controversy, in order that the extraordinary writ of certiorari will lie. By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, and it must be shown that the discretion was exercised arbitrarily or despotically. For certiorari to lie, there must be capricious, arbitrary and whimsical exercise of power, the very antithesis of the judicial prerogative in accordance with centuries of both civil law and common law traditions. (Underscoring supplied.)

The Court of Appeals, therefore, can grant the petition for certiorari if it finds that the NLRC, in its assailed decision or resolution, committed grave abuse of discretion by capriciously, whimsically, or arbitrarily disregarding evidence which is material or decisive of the controversy.

In *Garcia v. National Labor Relations Commission*,[40] we further defined the scope of the Court of Appeals'

power to review the evidence when the decision of the NLRC is brought before it via a petition for certiorari -

[I]n *Ong v. People*, we ruled that certiorari can be properly resorted to where the factual findings complained of are not supported by the evidence on record. Earlier, in *Gutib v. Court of Appeals*, we emphasized thus:

[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.

And in another case of recent vintage, we further held:

In the review of an NLRC decision through a special civil action for certiorari, resolution is confined only to issues of jurisdiction and grave abuse of discretion on the part of the labor tribunal. Hence, the Court refrains from reviewing factual assessments of lower courts and agencies exercising adjudicative functions, such as the NLRC. Occasionally, however, the Court is constrained to delve into factual matters where, as in the instant case, the findings of the NLRC contradict those of the Labor Arbiter.

In this instance, the 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 their 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. (Underscoring supplied.)

None of the foregoing circumstances exists in this case that would justify the Court of Appeals, in a petition for certiorari, to look into and re-weigh the evidence on record to determine whether the NLRC committed errors of judgment as regards thereto. Absent exceptional circumstances, the general rule applies and the Court of Appeals is limited only to ascertaining whether the NLRC acted capriciously and whimsically in total disregard of evidence material to or decisive of the controversy so as to oust the latter of jurisdiction.

WHEREFORE, the instant Petition is hereby DENIED. The Decision dated 30 August 2004 of the Court of Appeals in CA-G.R. SP No. 81808 is hereby AFFIRMED. Costs against petitioner.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Nachura, and Reyes, JJ., concur.

[1] Penned by Presiding Justice Conrado M. Vasquez, Jr. with Associate Justices Josefina Guevarra-Salonga and Fernada Lampas-Peralta, concurring. Rollo, pp. 31-38.

[2] Rollo, p. 44.

[3] *Id.* at 137-142.

[4] *Id.* at 49-54.

[5] *Id.* at 57-58.

[6] *Id.* at 59-77.

- [7] Id. at 31-38.
- [8] Id. at 41-42.
- [9] Id. at 16.
- [10] Id. at 198.
- [11] Id. at 199. Issued on 8 February 2006.
- [12] Id. at 200. Issued 12 July 2006.
- [13] Id. at 2004.
- [14] Id. at 206-208.
- [15] Id. at 210.
- [16] Id. at 219.
- [17] Id. at 220-224.
- [18] Id. at 226.
- [19] Id. at 227-233.
- [20] *Union Motor Corporation v. National Labor Relations Commission*, G.R. No. 159738, 9 December 2004, 445 SCRA 683, 689.
- [21] *Metro Transit Organization, Inc. v. National Labor Relations Commission*, 331 Phil. 633, 642 (1996).
- [22] *Asian Alcohol Corporation v. National Labor Relations Commission*, 364 Phil. 912, 930 (1999).
- [23] *Asufrin, Jr. v. San Miguel Corporation*, 469 Phil. 237, 245 (2004).
- [24] 346 Phil. 30, 34 (1997).
- [25] Rollo, p. 91. Issued on 17 July 2003.
- [26] *Mendoza v. National Labor Relations Commission*, 369 Phil. 1113, 1130 (1999).
- [27] ART. 283. Closure of establishment and reduction of personnel. - The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the worker and the Department of Labor and Employment at least one (1) month before the intended date thereof. x x x. (Emphasis supplied.)
- [28] Rollo, p. 53
- [29] *Asufrin, Jr. v. San Miguel Corporation*, supra note 22 at 275.
- [30] *De la Cruz v. National Labor Relations Commission*, 335 Phil. 932, 939 (1997).
- [31] *Somerville Stainless Steel Corporation v. National Labor Relations Commission*, 350 Phil. 859, 869 (1998).
- [32] Id.
- [33] *F.F. Marine Corporation v. National Labor Relations Commission*, G.R. No. 152039, 8 April 2005, 455

SCRA 154, 165.

[34] *Balbalec v. National Labor Relations Commission*, 321 Phil. 771, 778 (1995).

[35] *Guerrero v. National Labor Relations Commission*, 329 Phil. 1069, 1075 (1996).

[36] *Somerville Stainless Steel Corp v. National Labor Relations Commission*, supra note 31.

[37] *Lopez Sugar Corporation v. Federation of Free Workers*, G.R. Nos. 75700-01, 30 August 1990, 189 SCRA 179, 186-187; *Somerville Stainless Steel Corporation v. National Labor Relations Commission*, supra note 31; *Revidad v. National Labor Relations Commission*, 315 Phil. 373, 395 (1995); *Catatista v. National Labor Relations Commission*, 317 Phil. 54, 61 (1995); *San Miguel Jeepney Service v. National Labor Relations Commission*, 332 Phil. 804 (1996).

[38] *Rollo*, p. 140.

[39] 331 Phil. 278, 287-288 (1996).

[40] G.R. No. 147427, 7 February 2005, 450 SCRA 535, 548-549.

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