

PENINSULA MANILA, ROLF PFISTERER AND BENILDA QUEVEDO-SANTOS, PETITIONERS, ELAINE M. ALIPIO, RESPONDENT.

G.R. No. 167310. June 17, 2008

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

For review on certiorari are the Decision[1] dated August 23, 2004 and Resolution[2] dated March 11, 2005 of the Court of Appeals in CA-G.R. SP No. 67007, which reversed the Decision[3] dated December 29, 2000 of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 023890-00. The NLRC had earlier affirmed with modification the Labor Arbiter's Decision,[4] dismissing the complaint for illegal dismissal against herein petitioners, but awarding respondent herein separation pay amounting to P20,000.

The pertinent facts are as follows:

Petitioner, The Peninsula Manila, is a corporation engaged in the hotel business. Co-petitioners Rolf Pfisterer and Benilda Quevedo-Santos were the general manager and human resources manager, respectively, of the hotel at the time of the controversy.

The hotel operates a clinic 24 hours a day and employs three regular nurses who work eight hours each day on three separate shifts. The hotel also engages the services of reliever nurses who substitute for the regular nurses who are either off-duty or absent.

Respondent Elaine M. Alipio was hired merely as a reliever nurse. However, she had been performing the usual tasks and functions of a regular nurse since the start of her employment on December 11, 1993. Hence, after about four years of employment in the hotel, she inquired why she was not receiving her 13th month pay.

In response, petitioners required her to submit a summary of her tour of duty for 1997. After she had submitted the said summary, Alipio was paid P8,000 as her 13th month pay for 1997. Alipio likewise requested for the payment of her 13th month pay for 1993 to 1996, but her request was denied.

On December 18, 1998, Alipio was informed by a fellow nurse that she can only report for work after meeting up with petitioner Santos. When Alipio met with Santos on December 21, 1998, Alipio was asked regarding her payslip vouchers. She told Santos that she made copies of her payslip vouchers because Peninsula does not give her copies of the same. Santos was peeved with Alipio's response because the latter was allegedly not entitled to get copies of her payslip vouchers. Santos likewise directed Alipio not to report for work anymore.

Aggrieved, Alipio filed a complaint for illegal dismissal against the petitioners.

After due proceedings, the Labor Arbiter dismissed the complaint for lack of merit, but directed that Peninsula pay Alipio separation pay amounting to P20,000. The Labor Arbiter held,

WHEREFORE, in view of the foregoing, judgment is hereby rendered DISMISSING the instant complaint for lack of merit. However, considering that complainant had served as reliever for respondent hotel for a long

period, the respondent hotel is ordered to give her separation pay equivalent to one-half month pay for every year of complainant's reliever service, in the total amount of P20,000.00 based on an average monthly pay of P8,000.00.

SO ORDERED.[5]

On appeal, the NLRC affirmed with modification the Labor Arbiter's decision, to wit:

WHEREFORE, the appeal of the complainant is dismissed for lack of merit. Accordingly, the decision appealed from is affirmed with the modification that the award of separation pay is hereby deleted.

SO ORDERED.[6]

Upon further review, the Court of Appeals reversed the decision of the NLRC after ascertaining that the findings of the Labor Arbiter and the NLRC that Alipio is not an employee of Peninsula and that she was validly dismissed is not supported by the evidence on record.[7] The dispositive portion of the Decision dated August 23, 2004 of the Court of Appeals reads:

WHEREFORE, the petition is GRANTED and the Decision dated December 29, 2000 and the Order dated June 29, 2001 of the National Labor Relations Commission are REVERSED and SET ASIDE.

Private respondents The Peninsula Manila and Benilda Quevedo-Santos are ordered to reinstate petitioner Elaine M. Alipio as regular staff nurse without loss of seniority rights; to pay petitioner, jointly and severally, full backwages and all the benefits to which she is entitled under the Labor Code from December 12, 1994 up to the time of her actual reinstatement; moral damages in the amount of P30,000.00, exemplary damages in the amount of P20,000[.]00, and attorney's fees equivalent to ten (10%) percent of the total monetary award.

Let this case be remanded to the Labor Arbitration Branch, National Labor Relations Commission for the computation of the monetary claims of petitioner.

SO ORDERED.[8] (Emphasis supplied.)

Petitioners moved for reconsideration but their motion was denied. Hence, the instant petition for review on certiorari contending that the Court of Appeals seriously erred:

I.

IN GIVING DUE COURSE TO THE RESPONDENT'S PETITION FOR CERTIORARI WHICH WAS MAINLY BASED ON ALLEGATIONS OF SUPPOSED FACTUAL ERRORS COMMITTED BY THE NATIONAL LABOR RELATIONS COMMISSION AND IN REVERSING THE LATTER'S FINDINGS OF FACT WHICH WERE SUPPORTED BY SUBSTANTIAL EVIDENCE IN THE RECORD; AND

II.

IN DECLARING THE RESPONDENT'S DISMISSAL TO BE ILLEGAL AND ORDERING HER REINSTATEMENT WITH FULL BACK WAGES, TOGETHER WITH PAYMENT OF MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES.[9]

Petitioners contend that the Court of Appeals should have accorded the unanimous findings of the Labor Arbiter and the NLRC due respect and finality as the conclusion reached by the two bodies is supported by substantial evidence on record. Petitioners insist Alipio was terminated for a just cause and with due process. Petitioners likewise argue that Alipio cannot be reinstated as a regular staff nurse because (1) she never served in that capacity; and (2) there is no vacancy for the said position or any equivalent position to which she may be reinstated.

Alipio, for her part, counters that the NLRC decision, affirming that of the Labor Arbiter, is not beyond the scope of judicial review because palpable mistake was committed in disregarding evidence showing (1) her status as a regular employee of Peninsula; and (2) petitioners' failure to observe substantive and procedural due process. She points out that a Certification dated April 22, 1997 issued by the hotel proves she was a regular staff nurse until her illegal dismissal. She stresses that her supposed employment at the Quezon City Medical Center does not negate the fact that she also worked as a regular nurse of the hotel. Additionally, she contends that obtaining copies of her own payslips does not indicate a perverse attitude justifying dismissal for serious misconduct or willful disobedience. She adds, there is no showing that her refusal to return copies of her payslips caused material damage to petitioners. She further claims that bad faith attended her dismissal.

After carefully weighing the parties' arguments, we resolve to deny the petition.

It is doctrinal that the factual findings of quasi-judicial agencies like the NLRC are generally accorded respect and finality if such are supported by substantial evidence. In some instances, however, the Court may be compelled to deviate from this general rule if the Labor Arbiter and the NLRC misappreciated the facts, thereby resulting in the impairment of the worker's constitutional and statutory right to security of tenure.[10]

The conclusions reached by the NLRC and the Labor Arbiter, that Alipio was not a regular employee of the hotel and that she was validly dismissed, are not supported by law and evidence on record.

Article 280 of the Labor Code provides:

ART. 280. Regular and Casual Employment. -- The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.

An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That, any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists. (Emphasis supplied.)

Thus, an employment is deemed regular when the activities performed by the employee are usually necessary or desirable in the usual business of the employer. However, any employee who has rendered at least one year of service, even though intermittent, is deemed regular with respect to the activity performed and while such activity actually exists.[11]

In this case, records show that Alipio's services were engaged by the hotel intermittently from 1993 up to 1998. Her services as a reliever nurse were undoubtedly necessary and desirable in the hotel's business of providing comfortable accommodation to its guests. In any case, since she had rendered more than one year of intermittent service as a reliever nurse at the hotel, she had become a regular employee as early as December 12, 1994. Lastly, per the hotel's own Certification dated April 22, 1997, she was already a "regular staff nurse" until her dismissal.

Being a regular employee, Alipio enjoys security of tenure. Her services may be terminated only upon compliance with the substantive and procedural requisites for a valid dismissal: (1) the dismissal must be for any of the causes provided in Article 282[12] of the Labor Code; and (2) the employee must be given an opportunity to be heard and to defend himself.[13]

Did Alipio commit serious misconduct when she obtained copies of her payslips?

We have defined misconduct as any forbidden act or dereliction of duty. It is willful in character and implies a wrongful intent, not a mere error in judgment. The misconduct, to be serious, must be grave and not merely trivial.[14]

In this case, Alipio's act of obtaining copies of her payslips cannot be characterized as a misconduct, much less a grave misconduct. On the contrary, we find it absurd that she had to resort to her own resourcefulness to get hold of these documents since it was incumbent upon Peninsula, as her employer, to give her copies of her payslips as a matter of course. We are thus convinced that Alipio's dismissal was not based on a just cause.

Was Alipio afforded an opportunity to be heard and to defend herself?

When Santos had a meeting with Alipio on December 21, 1998, she was not informed that the hotel was contemplating her dismissal. Neither was she informed of the ground for which her dismissal was sought. She was simply told right there and then that she was already dismissed, thereby affording no opportunity for her to be heard and defend herself. Thus, Alipio was likewise deprived of procedural due process.

Clearly, Alipio was illegally dismissed because petitioners failed on both counts to comply with the twin requisites for a valid termination. She is thus entitled to reinstatement without loss of seniority rights and other privileges and to full backwages, inclusive of allowances, and to other benefits, or their monetary equivalent computed from the time compensation was withheld up to the time of actual reinstatement.[15] Should reinstatement be no longer feasible, Alipio is entitled to separation pay equivalent to one month pay for her every year of service in lieu of reinstatement.[16]

Furthermore, as a rule, moral damages are recoverable where the dismissal of the employee was attended with bad faith or was done in a manner contrary to good customs.[17] Exemplary damages may also be awarded if the dismissal is effected in a wanton, oppressive or malevolent manner.[18]

In this case, while the petitioners issued a Certification dated April 22, 1997 and recognized Alipio as a regular employee, they deprived her of copies of her own payslips. Moreover, her dismissal was effected in a manner whereby she was deprived of due process. Under these circumstances, she is also entitled to moral damages in the amount of P15,000 and exemplary damages in the amount of P10,000.

Lastly, the award of attorney's fees equivalent to ten percent (10%) of the total monetary award is consistent with prevailing jurisprudence[19] and thus ought to be affirmed.

WHEREFORE, the petition is DENIED for lack of merit. The assailed Decision dated August 23, 2004 and Resolution dated March 11, 2005 of the Court of Appeals in CA-G.R. SP No. 67007 are hereby AFFIRMED as MODIFIED, such that the amount of moral damages is reduced to only P15,000 and the exemplary damages to only P10,000.

No pronouncement as to costs.

SO ORDERED.

Tinga, Reyes, Leonardo-De Castro, and Brion, JJ., concur.

[*]Additional member in place of Associate Justice Presbitero J. Velasco, Jr. who is on official leave.

[**] Additional member in place of Associate Justice Conchita Carpio Morales who is on official leave.

- [1] Rollo, pp. 34-52. Penned by Associate Justice Marina L. Buzon, with Associate Justices Mario L. Guariña III and Santiago Javier Ranada concurring.
- [2] Id. at 53-57.
- [3] Id. at 74-82.
- [4] Id. at 62-72 (Dated March 15, 2000).
- [5] Id. at 72.
- [6] Id. at 81.
- [7] Id. at 40.
- [8] Id. at 50.
- [9] Id. at 139-140.
- [10] Trendline Employees Association-Southern Philippines Federation of Labor v. NLRC, G.R. No. 112923, May 5, 1997, 272 SCRA 172, 179.
- [11] De Leon v. National Labor Relations Commission, G.R. No. 70705, August 21, 1989, 176 SCRA 615, 621.
- [12] ART. 282. Termination by employer. - An employer may terminate an employment for any of the following causes:
- (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
 - (b) Gross and habitual neglect by the employee of his duties;
 - (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
 - (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and
 - (e) Other causes analogous to the foregoing.
- [13] Voyeur Visage Studio, Inc. v. Court of Appeals, G.R. No. 144939, March 18, 2005, 453 SCRA 721, 729.
- [14] Lakpue Drug, Inc. v. Belga, G.R. No. 166379, October 20, 2005, 473 SCRA 617, 623.
- [15] Labor Code, 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. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.
- [16] P.J. Lhuillier, Inc. v. National Labor Relations Commission, G.R. No. 158758, April 29, 2005, 457 SCRA 784, 799, citing Gaco v. National Labor Relations Commission, G.R. No. 104690, February 23, 1994, 230 SCRA 260, 268.
- [17] Mayon Hotel & Restaurant v. Adana, G.R. No. 157634, May 16, 2005, 458 SCRA 609, 639.
- [18] Kay Products, Inc. v. Court of Appeals, G.R. No. 162472, July 28, 2005, 464 SCRA 544, 559.

[19] Micro Sales Operation Network v. National Labor Relations Commission, G.R. No. 155279, October 11, 2005, 472 SCRA 328, 331.

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