JENNIFER FABELLO PASAMBA, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, HON. VICTORIANO R. CALCAY, RAUL T. AQUINO, ANGELITA A. GACUTAN, AND LABOR ARBITER ERNESTO S. DINOP...

G.R. No. 168421. June 08, 2007

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, assailing the Decision,[1] dated 18 April 2005, rendered by the Court of Appeals, affirming the Resolution,[2] promulgated by the National Labor Relations Commission (NLRC) on 15 May 2003. The Court of Appeals, in its assailed Decision, sustained as valid the petitioner's dismissal from her employment with St. Luke's Medical Center (SLMC).

Petitioner Jennifer Fabello Pasamba was employed as a staff nurse by SLMC on 3 July 2001 on a probationary status for a maximum of six months. On 15 October 2001, Dr. Pacita J. M. Lopez, Assistant Chairman of the Department of Pediatrics, filed a Complaint with Lydia Cabigao, the Vice President for Nursing, against the petitioner for uttering slanderous remarks against her.[3] In her complaint, Dr. Lopez attached a letter, dated 10 October 2001, written by Hazel S. Cabales, the mother of a patient, relaying an incident wherein petitioner allegedly made the following remarks against Dr. Lopez[4]:

> "Bakit si Dra. Lopez pa ang napili mong "pedia" eh ang tanda-tanda na n'un? x x x Alam mo ba, kahit wala namang diperensya yung baby, ipinapa-isolate nya? Minsan nga, meron bagong baby siyang pasyente na ipinasok dito, sabi ko, bah, himala! Walang ikinabit sa kanya. Tapos, kinabukasan . . . kinabitan din pala!"

On 16 October 2001, SLMC issued a Memorandum requiring petitioner to reply in writing to Dr. Lopez's complaint.[5]

In a Letter,[6] dated 18 October 2001, petitioner, thru counsel, denied making the statement, which Cabales attributed to her. Petitioner also claimed that Cabales had merely concocted the story after petitioner barred Cabales from staying in the Intermediate Maternity Care Unit (IMCU), since visitors were not allowed to do so.

SLMC also conducted a hearing on 19 October 2001, wherein the petitioner was given an opportunity to be heard and confront Cabales, who was then present. During the hearing, petitioner stated that she had nothing more to add to her letter, dated 18 October 2001.

Another Memorandum[7] was sent to the petitioner by SLMC on 25 October 2001, directing her to explain why disciplinary action should not be taken against her for violating Rule IV, Article 2 of the SLMC Code of Discipline:

> a) Libelous utterances or publications which tend to cause dishonor, discredit, contempt to the hospital, to its employees, customers and officers; or

> b) Slanderous utterances to cause embarrassment to the hospital, to its employees, customers and officers.

In Reply to the 25 October 2001 memorandum, petitioner sent a Letter[8] dated 29 October 2001 to SLMC, wherein she adopted the explanation she gave in her letter dated 18 October 2001, and demanded a reinvestigation.

On 7 November 2001, SLMC notified petitioner, thru a Letter,[9] that she was found guilty of uttering slanderous and derogatory remarks against Dr. Lopez. As a consequence, her employment with the hospital was terminated.

On 21 December 2001, petitioner filed a Complaint for illegal dismissal before the Labor Arbiter. In her Position Paper,[10] petitioner attached the statements of Veronica A. Ramos and Mary Jean Parcon, both dated 21 November 2001. In her Statement,[11] Ramos recounted an incident wherein she advised the husband of Hazel Cabales not to stay in the vicinity of IMCU outside visiting hours. Parcon, on the other hand averred in her Statement[12] that in a conversation which she overheard on 7 September 2001 between Cabales and petitioner, Dr. Lopez was never mentioned.

Petitioner also attached a Statement[13] made by Evengeline Aguilan Cambri commending petitioner for her professional attitude and alleging that she never heard petitioner disparage Dr. Lopez. Further attached were the statements made by Nayma Magallanes and Charito Cruz, former patients whose newborn children were also placed under the petitioner's care, to the effect that they were highly satisfied with the services of the petitioner.[14]

SLMC, on its part, presented the Employment Contract, as evidence of the petitioner's probationary status.[15] It also alleged that petitioner was informed of the standards by which probationary employees are evaluated and the rules which all employees are required to comply with during a seminar held for this purpose. To prove this, it presented the attached copies of the Attendance Sheet, the evaluation form which the petitioner filled out and a Certification, dated 3 January 2002, showing that she attended the seminar and received a copy of the SLMC Code of Discipline.[16]

The Labor Arbiter dismissed the complaint and upheld the validity of the petitioner's termination after finding that petitioner uttered the slanderous remarks against Dr. Lopez. The various statements made in behalf of the petitioner to the effect that the affiants never heard the petitioner utter the slanderous words were considered by the Labor Arbiter as inconclusive in proving that petitioner never actually uttered these words. Cabales, on the other hand, did not have any motive to fabricate the statements she attributed to the petitioner, whom Cabales positively identified and confronted during the company hearing. Thus, petitioner's dismissal was based on sufficient grounds. The Labor Arbiter ordered in its Decision, dated 24 April 2002, that[17]:

> WHEREFORE, this case is hereby DISMISSED for lack of merit. For the same reason, so are respondents' counterclaims.

Petitioner filed an appeal before the NLRC, which merely affirmed, in a Resolution dated 15 May 2003, the decision rendered by the Labor Arbiter on 24 April 2002.[18] Thereafter, petitioner filed a Motion for Reconsideration, which was denied by the NLRC in another Resolution on 12 August 2003.[19]

On appeal, the Court of Appeals affirmed the NLRC Resolution, dated 15 May 2003. It ruled that the SLMC dismissed the petitioner for failure to meet the reasonable standards for regularization when it violated the company rule against slanderous utterances, standards which were conveyed to the petitioner when she was hired. In the decretal portion of its Decision, the Court of Appeals ruled that[20]:

> WHEREFORE, premises considered, petition for certiorari is hereby DISMISSED. ACCORDINGLY, the Decision dated May 15, 2003 of the NLRC affirming the Decision of the Labor Arbiter dated April 24, 2002

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> dismissing the complaint for illegal dismissal for lack of merit, and the Order dated August 12, 2003 denying petitioner's motion for reconsideration, are hereby AFFIRMED.

Hence, the present petition, in which the following issues were raised[21]:

> I
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> THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN LAW AND SUBVERTED ESTABLISHED JURISPRUDENCE IN NOT FINDING THAT THERE WAS NO CAUSE FOR DISMISSAL WHICH BY LAW IN ORDER TO BE VALID GROUND FOR DISMISSAL MUST BE RELATED TO HER JOB AS A STAFF NURSE.
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> II
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> THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN LAW AND SUBVERTED PREVAILING JURISPRUDENCE, WHEN IT UPHELD THE DISMISSAL, CONSIDERING THAT THE GROUND FOR DISMISSAL THAT OF SLANDEROUS UTTERANCES ("TSISMIS"), IS NOT RELATED TO PETITIONER'S JOB AS A STAFF NURSE, HENCE NOT A JUST CAUSE FOR DISMISSAL.
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> III
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> THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN LAW AND SUBVERTED THE DOCTRINE LAID DOWN BY THE SUPREME COURT IN BLTB VS. CIR (sic) CASE, WHEN IT UPHELD THE DISMISSAL, NOTWITHSTANDING THE COMPANY RULES PRESCRIBING ONLY A 30 DAYS SUSPENSION FOR ALLEGED OFFENSE OF SLANDEROUS UTTERANCES IMPUTED TO PETITIONER.

The petition is without merit.

The factual findings of administrative agencies are generally held to be binding and even final as long as they are supported by substantial evidence in the record of the case.[22] This is especially true in this case where the Labor Arbiter, the NLRC and the Court of Appeals are in full agreement as to the facts. No rule is more settled than that this Court is not a trier of facts. Absent any showing that the administrative body acted without jurisdiction or in excess of its jurisdiction, the findings of facts shall not be disturbed.[23]

There is no reason to overturn the factual findings of the Labor Arbiter, the NLRC and the Court of Appeals in this case, all of which have unanimously declared that petitioner was guilty of uttering the slanderous remarks against Dr. Lopez. The evidence on record supports this finding.

Cabales, a disinterested person, had attested to the fact that the petitioner made statements about Dr. Lopez that were clearly defamatory. Cabales even appeared during the hearing held on 19 October 2001, so that petitioner could confront her. Although petitioner was given the opportunity to question Cabales, she failed to do so. Moreover, despite petitioner's allegations to the contrary, Cabales does not appear to have any motive to fabricate her accusation against the petitioner.

Petitioner's self-serving allegation that Cabales held a grudge against the petitioner is unconvincing. It is unlikely that Cabales reported the incident to Dr. Lopez simply because petitioner prohibited Cabales from lingering within restricted premises. Petitioner, herself, sought to prove that other nurses had prohibited Cabales and her husband from doing the same. Yet, there is no showing that Cabales had vengefully filed any complaint against the other nurses that allegedly warned her off the restricted premises.

Furthermore, the positive statements of Cabales cannot be defeated by the suspiciously evasive and indirect allegations of the petitioner's witnesses that defamatory statements against Dr. Lopez were not made within their

hearing. Such statements, even if true, would not discount the fact that these statements were truly made, although unheard by the witnesses.

Likewise, the statements submitted by the petitioner, made on her behalf by former patients, commending her performance as a nurse, do not put into question the incident related by Cabales, wherein petitioner uttered words which were harmful to the reputation of Dr. Lopez. Evidently, petitioner failed to present any evidence that would sufficiently overturn the unanimous findings of the Labor Arbiter, the NLRC and the Court of Appeals that, indeed, she made slanderous statements against Dr. Lopez, which she addressed to a former SLMC patient, whose newborn child was at that time confined in SLMC.

Petitioner alleges that uttering slanderous statements is not related to her work as a nurse, and therefore cannot effect her dismissal. To support this contention, petitioner cites the case of Philippine Aeolus Automotive United Corporation v. National Labor Relations Commission,[24] where the Court held that for serious misconduct or improper behavior to warrant the dismissal of a regular employee, the employee's act must relate to the performance of the employee's duties. Petitioner's theory is both unfounded and incorrect.

In the present case, petitioner was not dismissed for serious misconduct, which is among the grounds for dismissing regular employees enumerated under Article 282 of the Labor Code. Petitioner was a probationary employee, not a regular employee. A probationary employee is one, who, for a given period of time, is being observed and evaluated to determine whether or not he is qualified for a permanent position. A probationary appointment affords the employer an opportunity to observe the skill, competence, as well as the attitude of a probationer.[25] The Labor Code assigns a separate provision, Article 281, and provides a different set of grounds for the dismissal of probationary employees:

> 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. (Emphasis provided.)

The services of an employee hired on probationary basis may be terminated when he or she 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. The law does not preclude the employer from terminating the probationary employment, if the employer finds that the probationary employee is not qualified for regular employment.[26] As long as the termination was made for reasons provided under Article 281 of the Labor Code before the expiration of the six-month probationary period, the employer is well within its rights to sever the employer-employee relationship. A contrary interpretation would contravene the clear meaning of the term "probationary."[27] The law in protecting the rights of the laborer authorizes neither the oppression nor the self-destruction of the employer.[28]

The provision which states that "the probationary period shall not exceed six months" means that the probationary employee may be dismissed for cause at any time before the expiration of six months after hiring. If, after working for less than six months, he or she is found unfit for the job, he or she can be dismissed. On the other hand, if such worker continues to be employed longer than six months, he or she is considered as a regular employee and ceases to be a probationary employee.[29]

There is no dispute that SLMC notified the petitioner of the standards she needed to comply with for her continued employment. The Contract of Employment[30] between SLMC and the petitioner specifically provided

for the strict compliance with SLMC's Code of Conduct:

> You will be under probation employment for a maximum of six months, within which period SLMC will determine your suitability for the job including your work habits, personal characteristics and your fitness prior to regularization. Such appointment may be terminated at any time at the discretion of management, should you fail to qualify as a regular employee based on SLMC work standards.
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> x x x x
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> You are subject to strictly abide by SLMC's Code of Discipline and its policies and procedures formulated by the organization and all such rule and policies as may from time to time be issued by the organization.You will be issued a copy of these rules and policies at the start of your probationary employment. (Emphasis provided.)

There is no dispute that petitioner was informed that uttering slanderous remarks is an infraction of the rules and regulations of SLMC. Petitioner and her co-employees, as new employees of SLMC, attended an orientation seminar entitled, "Induction to St. Luke's Family," wherein the standards which the employees were required to meet were discussed. Petitioner's attendance was evidenced by the Internal Customer Satisfaction Index Evaluations Form[31] and Attendance Sheet.[32] The Certification[33] issued by SLMC's Section Manager for Labor Relations, Luvie de los Reyes and the Department Manager for Training Development and Education, Geraldine Dimalibot, affirmed that the coverage of the seminar included the provisions of the Code of Discipline. Rule IV, Article 2 of the SLMC Code of Discipline reads:

> c) Libelous utterances or publications which tend to cause dishonor, discredit, contempt to the hospital, to its employees, customers and officers; or
>
> d) Slanderous utterances to cause embarrassment to the hospital, to its employees, customers and officers.

Petitioner's allegation that uttering slanderous remarks is not related to her tasks as a staff nurse deserves scant consideration. SLMC is engaged in a business whose survival is dependent on the reputation of its medical practitioners. To impute unethical behavior and lack of professionalism to a medical professional, to one who is also a hospital official, would be inimical to the interests of SLMC. This would also show tremendous disloyalty on the part of the employee who makes such derogatory statements. Moreover, the petitioner's bad faith became evident when, instead of addressing these disparaging remarks to the proper hospital officers, she addressed them to a former patient, whose child was at that time a patient in SLMC and entrusted to the care of the medical professional in question. An employer cannot be compelled to retain an employee who is guilty of acts inimical to the interests of the employer. A company has the right to dismiss employees guilty of acts of dishonesty and disloyalty, if only as a measure of self-protection.[34] Dismissal of an employee guilty of such a serious infraction would be reasonable.

Petitioner also alleges that SLMC's Code of Discipline penalizes the offense of making "slanderous utterances" with a thirty-day suspension, and not dismissal. Such allegation would be contrary to basic knowledge and common sense. Petitioner, in making these slanderous utterances, violated the Code of Discipline, which contained the standards she knew she must comply with before she could be accorded regular status. An employer, such as SLMC, cannot be compelled to continue employing a probationary employee who, as early as three months after she was hired, had shown herself inclined to violate the more serious of the company's rules. Petitioner cannot put herself on the same plane as regular employees, who have proven their suitability to their work as well as their loyalty to their employers, and therefore, enjoy a more secure tenure.

In the case relied on by the petitioner, Batangas Laguna Tayabas Bus Co. v. Court of Appeals,[35] the Court held that the employer cannot dismiss a regular employee for an offense to which the company's Service Manual assigned a vague penalty. Not only was the dismissal of the offending employee specified, the employer also

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failed to comply with the requirements of procedural due process. The aforementioned case, which involved a regular employee who worked with the company for no less than eight years, is certainly not applicable to the present case. Moreover, the records clearly show that petitioner was afforded sufficient notice and hearing. SLMC issued the Memorandum, dated 16 October 2001, requiring the petitioner to reply to the complaint filed against her. Thereafter, a company hearing, which petitioner attended, was held on 19 October 2001. Lastly, SLMC notified the petitioner, thru a letter dated 7 November 2001, that her employment was terminated and explained the reasons therefor.

IN VIEW OF THE FOREGOING, the instant Petition is DENIED. This Court AFFIRMS the assailed Decision of the Court of Appeals, promulgated on 18 April 2005, declaring the dismissal of the petitioner valid. Costs against the petitioner.

SO ORDERED.

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

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[1] Penned by Associate Justice Monina Arevalo-Zenarosa with Associate Justices Remedios A. Salazar-Fernando and Rosemari D. Carandang, concurring. Rollo, pp. 44-55.

[2] Id. at 112-122.

[3] Id. at 45.

[4] Id. at 175.

[5] Id. at 178.

[6] Id. at 179-180.

[7] Id. at 181.

[8] Id. at 182.

[9] Id. at 183-186.

[10] Records, pp. 7-16.

[11] Id. at 26.

[12] Id. at 27.

[13] Rollo, p. 86.

[14] Id. at 87-88.

[15] Records, p. 61.

[16] Id. at 62-66.

[17] Rollo, pp. 110-111.

[18] Id. at 122.

[19] Records, pp. 545-546.

[20] Rollo, pp. 54-55.

[21] Id. at 16.

[22] Prime Marine Services, Inc. v. National Labor Relations Commission, 358 Phil. 30, 36 (1998).

[23] Ilas v. National Labor Relations Commission, G.R. Nos. 90394-97, 7 February 1991, 193 SCRA 682, 684-685.

[24] 387 Phil. 250 (2000).

[25] Escorpizo v. University of Baguio, 366 Phil. 166, 175-176 (1999); International Catholic Migration Commission v. National Labor Relations Commission, G.R. No. 72222, 30 January 1989, 169 SCRA 606, 613-614.

[26] Id. at 176; id. at 614-615.

[27] De la Cruz, Jr. v. National Labor Relations Commission, 463 Phil. 606, 618 (2003); Cathay Pacific Airways, Limited v. Marin, G.R. No.148931, 12 September 2006, 501 SCRA 461, 476.

[28] Philemploy Services and Resources, Inc. v. Rodriguez, G.R. No. 152616, 31 March 2006, 486 SCRA 302, 317.

[29] Manila Electric Company v. National Labor Relations Commission, G.R. No. 83751, 29 September 1989, 178 SCRA 198, 203.

[30] Rollo, p. 59.

[31] Id. at 172.

[32] Id. at 173.

[33] Id. at 174.

[34] Lopez v. National Labor Relations Commission, G. R. No. 167385, 13 December 2005, 477 SCRA 596, 601-602; MGG Marine Services, Inc. v. National Labor Relations Commission, 328 Phil. 1046, 1072 (1996).

[35] G.R. No. L-38482, 18 June 1976, 71 SCRA 470.

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