

MA. WENELITA S. TIRAZONA, PETITIONER, VS. PHILIPPINE EDS TECHNO- SERVICE INC. (PET INC.) AND/OR KEN KUBOTA, MAMORU ONO AND JUNICHI HIROSE, RESPONDENTS.

G.R. No. 169712. January 20, 2009

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Before Us is a Motion for Leave to File [a] Second Motion for Reconsideration,[1] with the Second Motion for Reconsideration incorporated therein, where petitioner Ma. Wenelita Tirazona (Tirazona) seeks the reconsideration of the Resolution[2] of this Court dated 23 June 2008. Said Resolution denied for lack of merit petitioner's previous Motion for Reconsideration,[3] which sought the reversal of our Decision[4] dated 14 March 2008 or, in the alternative, modification thereof by awarding her separation pay and retirement benefits under existing laws.

In our 14 March 2008 Decision, we subscribed to the factual findings of the National Labor Relations Commission (NLRC) and the Court of Appeals that Tirazona, being the Administrative Manager of Philippine EDS Techno-Service, Inc. (PET), was a managerial employee who held a position of trust and confidence; that after PET officers/directors called her attention to her improper handling of a situation involving a rank-and-file employee, she claimed that she was denied due process for which she demanded P2,000,000.00 indemnity from PET and its officers/directors; that she admitted to reading a confidential letter addressed to PET officers/directors containing the legal opinion of the counsel of PET regarding her case; and that she was validly terminated from her employment on the ground that she willfully breached the trust and confidence reposed in her by her employer. In the end, we concluded that:

Tirazona, in this case, has given PET more than enough reasons to distrust her. The arrogance and hostility she has shown towards the company and her stubborn, uncompromising stance in almost all instances justify the company's termination of her employment. Moreover, Tirazona's reading of what was supposed to be a confidential letter between the counsel and directors of the PET, even if it concerns her, only further supports her employer's view that she cannot be trusted. In fine, the Court cannot fault the actions of PET in dismissing petitioner.[5]

Hence, the fallo of our 14 March 2008 Decision reads:

WHEREFORE, premises considered, the instant petition is hereby DENIED for lack of merit and the Decision of the Court of Appeals dated 24 May 2005 is hereby AFFIRMED. Costs against the petitioner.[6]

On 29 April 2008, Tirazona moved for reconsideration[7] of our afore-mentioned Decision. She argued therein that the Court failed to consider the length of her service to PET in affirming her termination from employment. She prayed that her dismissal be declared illegal. Alternatively, should the Court uphold the legality of her dismissal, Tirazona pleaded that she be awarded separation pay and retirement benefits, out of humanitarian considerations.

In our Resolution[8] dated 23 June 2008, we denied Tirazona's Motion for Reconsideration, as the same did not present any substantial arguments that would warrant a modification of our previous ruling. We thus decreed:

ACCORDINGLY, the Court resolves to DENY the motion for reconsideration with FINALITY for lack of merit.

On 21 August 2008, Tirazona filed the instant Motion for Leave to File [a] Second Motion for Reconsideration, with the Second Motion for Reconsideration incorporated therein, raising essentially the same arguments and prayers contained in her first Motion for Reconsideration.

The Court thereafter required PET to comment on the above motion. On 19 November 2008, PET filed its Comment/Opposition,[9] to which Tirazona filed her Reply[10] on 8 December 2008.

After thoroughly scrutinizing the averments of the present Motion, the Court unhesitatingly declares the same to be completely unmeritorious.

Section 2, Rule 52 of the Rules of Court explicitly decrees that no second motion for reconsideration of a judgment or final resolution by the same party shall be entertained. Accordingly, a second motion for reconsideration is a prohibited pleading, which shall not be allowed, except for extraordinarily persuasive reasons and only after an express leave shall have first been obtained.[11] In this case, we fail to find any such extraordinarily persuasive reason to allow Tirazona's Second Motion for Reconsideration.

As a general rule, an employee who has been dismissed for any of the just causes enumerated under Article 282[12] of the Labor Code is not entitled to separation pay.[13] In *Sy v. Metropolitan Bank & Trust Company*, [14] we declared that only unjustly dismissed employees are entitled to retirement benefits and other privileges including reinstatement and backwages.

Although by way of exception, the grant of separation pay or some other financial assistance may be allowed to an employee dismissed for just causes on the basis of equity,[15] in *Philippine Long Distance Telephone Company v. National Labor Relations Commission*, [16] we set the limits for such a grant and gave the following ratio for the same:

[S]eparation 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. x x x.

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 [a] 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. (Emphasis

ours.)

In accordance with the above pronouncements, Tirazona is not entitled to the award of separation pay.

Contrary to her exaggerated claims, Tirazona was not just "gracelessly expelled" or "simply terminated" from the company on 22 April 2002. She was found to have violated the trust and confidence reposed in her by her employer when she arrogantly and unreasonably demanded from PET and its officers/directors the exorbitant amount of P2,000,000.00 in damages, coupled with a threat of a lawsuit if the same was not promptly paid within five days. This unwarranted imposition on PET and its officers/directors was made after the company sent Tirazona a letter, finding her handling of the situation involving a rank-and-file employee to be less than ideal, and merely reminding her to be more circumspect when dealing with the more delicate concerns of their employees. To aggravate the situation, Tirazona adamantly and continually refused to cooperate with PET's investigation of her case and to provide an adequate explanation for her actions.

Verily, the actions of Tirazona reflected an obdurate character that is arrogant, uncompromising, and hostile. By immediately and unreasonably adopting an adverse stance against PET, she sought to impose her will on the company and placed her own interests above those of her employer. Her motive for her actions was rendered even more questionable by her exorbitant and arbitrary demand for P2,000,000.00 payable within five days from demand. Her attitude towards her employer was clearly inconsistent with her position of trust and confidence. Her poor character became even more evident when she read what was supposed to be a confidential letter of the legal counsel of PET to PET officers/directors expressing his legal opinion on Tirazona's administrative case. PET was, therefore, fully justified in terminating Tirazona's employment for loss of trust and confidence.

Tirazona also failed to persuade us to consider in her favor her length of service to PET.

In the Motion for Reconsideration filed on 29 April 2008 and in the instant motion, Tirazona prays for this Court to grant her separation and other retirement benefits, should we uphold the legality of her dismissal. She anchors her claim on the fact that she had allegedly been in the employ of PET for twenty-six (26) years and that the Court must give due consideration to the length of her service to the company.^[17] However, in her Reply to the Comment/Opposition to the instant motion filed by PET, Tirazona retracted the above allegation and stated that the claim of twenty-six (26) years of employment with PET was an error committed through inadvertence. She then averred that the length of her employment with PET should indeed be counted from July 1999, which up to the present time will result in a period of eight (8) years, more or less.

We find that the above statement is still inaccurate. As this Court ruled in our Decision dated 14 March 2008, Tirazona was validly terminated from her employment on 22 April 2002. Therefore, counting from the time when Tirazona was employed by PET on 19 July 1999 up to the time when she was dismissed, she had only rendered a little more than two (2) years and nine (9) months of service to PET.

Finally, the cases cited by Tirazona hardly support her cause.

In *Soco v. Mercantile Corporation of Davao*^[18] and *Firestone Tire and Rubber Company of the Philippines v. Lariosa*,^[19] separation pay was granted to the dismissed employees, as they were mere rank-and-file employees who did not have any previous derogatory record with their companies and in equitable regard for their long years of service spanning more than ten (10) years.

In *Farrol v. Court of Appeals*,^[20] separation pay was awarded because the penalty of dismissal was held to be harsh and disproportionate to the offense committed and the dismissed employee had been at the service of the company for twenty four (24) years.

In *Negros Navigation Co. Inc. v. National Labor Relations Commission*,^[21] separation pay was awarded to the

employee dismissed, as it was the employer itself that prayed for the award of the same, in lieu of the employee's reinstatement.

Lastly, in *Philippine Commercial International Bank v. Abad*,^[22] separation pay was ordered granted to a dismissed managerial employee because there was an express finding that the violation of the bank policies was not perpetrated for the employee's self-interest, nor did the employee exhibit any lack of moral depravity. The employee had also been in the service of the company for twenty-five (25) years.

Obviously, Tirazona's reliance upon the above-cited cases is misleading, as the circumstances therein are markedly different from those in the case at bar.

In sum, we hold that the award of separation pay or any other kind of financial assistance to Tirazona, under the guise of compassionate justice, is not warranted in this case. To hold otherwise would only cause a disturbance of the sound jurisprudence on the matter and a perversion of the noble dictates of social justice.

While the Court commiserates with the plight of Tirazona, who has recently manifested^[23] that she has since been suffering from her poor health condition, the Court cannot grant her plea for the award of financial benefits based solely on this unfortunate circumstance. For all its conceded merit, equity is available only in the absence of law and not as its replacement. Equity as an exceptional extenuating circumstance does not favor, nor may it be used to reward, the indolent^[24] or the wrongdoer, for that matter. This Court will not allow a party, in the guise of equity, to benefit from its own fault.^[25]

WHEREFORE, the Motion for Leave to File [a] Second Motion for Reconsideration is hereby DENIED for lack of merit and the Second Motion for Reconsideration incorporated therein is NOTED WITHOUT ACTION in view of the denial of the former.

SO ORDERED.

Ynares-Santiago, J., (Chairperson), Austria-Martinez, Nachura, and Leonardo-De Castro,^[*] JJ., concur.

[*] Per Special Order No. 546, Associate Justice Teresita J. Leonardo-De Castro was designated to sit as additional member in view of the retirement of Associate Justice Ruben T. Reyes dated 5 January 2009.

[1] Rollo, pp. 252-261.

[2] Id. at 250.

[3] Id. at 232-249.

[4] Penned by Associate Justice Minita V. Chico-Nazario with Associate Justices Consuelo Ynares-Santiago, Ma. Alicia Austria-Martinez, Antonio Eduardo B. Nachura and Ruben T. Reyes, concurring; rollo, pp. 207-230.

[5] Id. at 228.

[6] Id.

[7] Id. at 232-247.

[8] Id. at 250.

[9] Id. at 274-282.

[10] Id. at 443-447.

[11] *Ortigas and Company Limited Partnership v. Velasco*, 324 Phil. 483, 489 (1996).

[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] Section 7, Rule I, Book VI of the Omnibus Rules Implementing the Labor Code provides:

Sec. 7. Termination of employment by employer. -- The just causes for terminating the services of an employee shall be those provided in Article 282 of the Code. The separation from work of an employee for a just cause does not entitle him to the termination pay provided in the Code, without prejudice, however, to whatever rights, benefits and privileges he may have under the applicable individual or collective agreement with the employer or voluntary employer policy or practice.

[14] G.R. No. 160618, 2 November 2006, 506 SCRA 580, 588.

[15] *Philippine Commercial International Bank v. Abad*, G.R. No. 158045, 28 February 2005, 452 SCRA 579, 587.

[16] G.R. No. L-80609, 23 August 1988, 164 SCRA 671, 682-683.

[17] Tirazona has consistently maintained throughout this case that she was only employed by PET on 19 July 1999 as the Head of the Human Resource Department and as Administrative Manager. Such fact was explicitly stated in her Complaint and Position Paper before the Labor Arbiter; the Letter of Employment attached to said Position Paper; her Petition for Certiorari and Memorandum before the Court of Appeals; and her original Petition for Review and Memorandum before this Court.

[18] 232 Phil. 488 (1987).

[19] 232 Phil. 201 (1987).

[20] 382 Phil. 212 (2000).

[21] G.R. No. L-78207, 6 December 1988, 168 SCRA 258.

[22] *Supra* note 15.

[23] *Rollo*, pp. 268-273.

[24] *B. E. San Diego, Inc. v. Alzul*, G.R. No. 169501, 8 June 2007, 524 SCRA 402, 435.

[25] *Id.*

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