DAVAO CONTRACTORS DEVELOPMENT COOPERATIVE (DACODECO), REPRESENTED BY CHAIRMAN OF THE BOARD ENGR. EDGAR L. CHAVEZ, PETITIONER, VS. MARILYN A. PASAWA, RESPONDENT.

G.R. NO. 172174. July 09, 2009

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Before us is a petition for review on certiorari seeking to reverse the Resolutions dated February 8, 2006[1] and March 28, 2006[2] of the Court of Appeals-Mindanao Station in CA-G.R. SP No. 00822 which had dismissed the petition for certiorari on technical grounds.

The case stemmed from the following facts:

Petitioner Davao Contractors Development Cooperative (DACODECO) is a duly registered cooperative engaged in the construction business. On January 5, 2004, it hired respondent Marilyn A. Pasawa (PASAWA) as General Manager with a monthly salary of P6,500.

Sometime in May 2004, the Board of Directors of DACODECO formed an evaluation committee to assess respondent's performance. The evaluation committee reported that respondent's services was just "average"; she lacked construction knowledge; and she made a false statement in the 2004 General Assembly.[3] Upon its recommendation, the Board of Directors dismissed respondent effective May 31, 2004, to wit:

> The committee on evaluation composed of different committee [chairmen] and vice board chairman Mr. Roldan P. Ibañez has submitted to the Board of Directors during our special board meeting last May 14, 2004, their findings and evaluation of your performance for the last five months. The Board of Directors intensively discussed, debated and carefully evaluated the issue presented to us and with our own opinion and observation has come up with a decision that you have not [met] the working standard of our cooperative. Therefore it is sad to say that we have decided to terminate your services effective [M]ay 31, 2004.
>
> Furthermore, we thank you for your services you have rendered with us and will miss your amiable and motherly treatment you have given to your staff and members.[4] [Emphasis supplied.]

Respondent filed a complaint for illegal dismissal and contested the findings of the evaluation committee. She asserted that she was able to establish the proper system and guidelines for DACODECO's business operations; and she was able to rectify DACODECO's mistakes and errors in the past, thus, improving its business output and boosting its revenues. However, the new Chairman of the Board of Directors disfavored the streamlining.[5] Respondent also contended that contrary to DACODECO's claim, she was engaged as a regular employee.

On March 15, 2005, the Labor Arbiter rendered a Decision[6] in respondent's favor. He ruled that respondent was a probationary employee as evidenced by Board Resolution No. 369-2003[7] which contained DACODECO's acceptance of her application as General Manager. He noted, however, that the board resolution did not specify or

inform respondent of the reasonable standards by which her advancement to regular status would be gauged. Thus, respondent's dismissal was invalid. As reinstatement was no longer possible, the Labor Arbiter ordered DACODECO to pay respondent separation pay equivalent to one month salary of P6,500 and backwages from the time of her dismissal up to the finality of his decision.

The decretal portion of the Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered declaring Complainant's dismissal as illegal. Accordingly, the Respondent DAVAO CONTRACTORS DEVELOPMENT COOPERATIVE (DACODECO) acting through its responsible officers is hereby ordered to pay the complainant the sum of SIXTY EIGHT THOUSAND TWO HUNDRED FIFTY PESOS (P68,250.00), representing her separation pay of one month salary and backwages tentatively computed to cover the period from June 1, 2004 up to the date of promulgation of this decision.
>
> SO ORDERED.[8]

Dissatisfied, DACODECO appealed to the National Labor Relations Commission (NLRC). In a Resolution[9] dated July 22, 2005, the NLRC dismissed the appeal for failure to accompany the memorandum of appeal with a certificate of non-forum shopping. Thus:

> WHEREFORE, the appeal is hereby DISMISSED for NON-PERFECTION. Accordingly, the decision appealed from is now rendered final and executory.
>
> SO ORDERED.[10]

DACODECO elevated the dismissal of its appeal to the Court of Appeals by way of petition for certiorari. But the appellate court dismissed it on technical grounds:

> Instant petition is hereby DISMISSED on the following grounds:
>
> 1) the verification and affidavit of non-forum shopping was signed by EDGAR L. CHAVEZ who does not appear to be a party to the case nor duly authorized to institute present petition in this Court, as the copy of the board resolution attached to the petition authorized Mr. CHAVEZ to represent petitioner Cooperative only before the NLRC; moreover, the copy of the board resolution was not certified nor authenticated by the Board Secretary; and
>
> 2) failure to indicate the following material dates pursuant to Section 3, Rule 46 of the Rules of Court: a) date of receipt of the assailed 22 July 2005 resolution; and b) date of filing of the motion for reconsideration.
>
> SO ORDERED.[11]

Hence, this petition wherein DACODECO alleges that the appellate court erred:

> I.
>
> ... IN DISMISSING THE PETITION FOR CERTIORARI DESPITE THE SUBSTANTIAL COMPLIANCE OF PETITIONER TO THE PROCEDURAL AND TECHNICAL REQUIREMENTS IN THE FILING THEREOF.
>
> II.
>
> ... IN DISMISSING THE PETITION FOR CERTIORARI BY GIVING MORE EMPHASIS ON TECHNICALITIES EVEN IF THE PETITION IS CLEARLY MERITORIOUS.[12]

The sole issue is: Did the Court of Appeals err in dismissing DACODECO's petition for certiorari on pure technicalities?

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Petitioner DACODECO contends that the appellate court erred in dismissing its petition for certiorari on technical grounds since it substantially complied with the required verification and certification of non-forum shopping. It alleges that affiant Edgar L. Chavez was duly authorized by its Board of Directors to represent it in the NLRC proceedings. It also avers that it substantially complied with the statement of material dates since it stated when the NLRC denied its appeal and motion for reconsideration, and when it received the denial of its motion for reconsideration. Petitioner adds that it has a meritorious appeal. It dismissed respondent for her failure to meet the reasonable standards for employment and loss of trust and confidence.

Respondent PASAWA counters that petitioner's petition for certiorari with the appellate court was properly dismissed for its failure to have the verification and certification of non-forum shopping signed by an authorized person and to state the material dates. Respondent also argues that even if technicalities were set aside, the petition would still fail since petitioner failed to inform her of the reasonable standards by which her advancement to regular status would be gauged.

Petitioner's contentions are untenable.

Under Section 3, par. 3,[13] Rule 46 of the Rules of Court, a petition for certiorari must be verified and accompanied by a sworn certification of non-forum shopping. A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records. On the other hand, a certification of non-forum shopping is a certification under oath by the plaintiff or principal party in the complaint or other initiatory pleading asserting a claim for relief or in a sworn certification annexed thereto and simultaneously filed therewith, (1) that he has not commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and no such other action or claim is pending therein; (2) if there is such other pending action or claim, a complete statement of the present status thereof; and (3) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.[14]

The reason the certification of non-forum shopping is required to be accomplished by the plaintiff or principal party himself is because he has actual knowledge of whether he has initiated similar actions or proceedings in different courts or agencies.[15] In case the plaintiff or principal party is a juridical entity, such as petitioner, the certification may be signed by an authorized person who has personal knowledge of the facts required to be established by the documents.[16]

Although petitioner submitted a verification/certification of non-forum shopping, affiant Edgar L. Chavez had no authority to sign the verification/certification of non-forum shopping attached to the petition filed in the Court of Appeals. The records disclose that the authority of Chavez was to represent petitioner only before the NLRC.[17] Moreover, the board resolution showing such authority was neither certified nor authenticated by the Corporate Secretary. The Corporate Secretary should have attested to the fact that, indeed, petitioner's Board of Directors had approved a Resolution[18] on August 11, 2005, authorizing Chavez, to file the petition and to signthe verification/certification of non-forum shopping.

On the matter of material dates, the petition for certiorari failed to indicate the material dates that would show the timeliness of the filing thereof with the Court of Appeals. It is settled that the following material dates must be stated in a petition for certiorari brought under Rule 65: first, the date when notice of the judgment or final order or resolution was received; second, the date when a motion for new trial or for reconsideration was filed; and third, the date when notice of the denial thereof was received.[19] In the case before us, petitioner failed to indicate the first and second dates, particularly the date of receipt of the NLRC resolution and the date of filing of

the motion for reconsideration.[20] As explicitly stated in Rule 65, failure to comply with any of the requirements shall be sufficient ground for the dismissal of the petition.[21]

But even if these procedural lapses could be dispensed with, the instant petition just the same merits dismissal. After an encompassing review of the records of the case, we find no facts and circumstances which would support petitioner's claim of a valid dismissal.

Under Article 281[22] of the Labor Code, a probationary employee can be legally dismissed either: (1) for a just cause; or (2) when he fails to qualify as a regular employee in accordance with the reasonable standards made known to him by the employer at the start of the employment. Nonetheless, the power of the employer to terminate the services of an employee on probation is not without limitations. First, this power must be exercised in accordance with the specific requirements of the contract. Second, the dissatisfaction on the part of the employer must be real and in good faith, not feigned so as to circumvent the contract or the law. Third, there must be no unlawful discrimination in the dismissal. In termination cases, the burden of proving just or valid cause for dismissing an employee rests on the employer.[23]

Here, petitioner did not present proof that respondent was duly notified, at the time of her employment, of the reasonable standards she needed to comply with for her continued employment.[24]

Neither can respondent be dismissed for loss of trust and confidence. To be a valid ground for dismissal, loss of trust and confidence must be based on a willful breach of trust and founded on clearly established facts. A breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It must rest on substantial grounds and not on the employer's arbitrariness, whims, caprices or suspicion; otherwise, the employee would eternally remain at the mercy of the employer. Such ground of dismissal has never been intended to afford an occasion for abuse because of its subjective nature.[25]

As the records would show, the evaluation committee did not elaborate on its finding that respondent made a false statement in the 2004 General Assembly. In fact, the termination letter merely cited respondent's failure to meet "the working standard of our cooperative" as a ground for her dismissal.[26] Even petitioner's position paper before the Labor Arbiter did not contain any allegation of loss of trust and confidence as a ground for dismissal.[27] Said loss was mentioned only for the first time in petitioner's memorandum of appeal.[28] Clearly, such submission is belated and lacks sufficient basis.

WHEREFORE, the instant petition is DENIED. The Resolutions dated February 8, 2006 and March 28, 2006 of the Court of Appeals-Mindanao Station in CA-G.R. SP No. 00822 are AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Carpio Morales, Chico-Nazario,[*] Leonardo-De Castro,[**] and Brion, JJ., concur.

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[*] Designated member of the Second Division per Special Order No. 658.

[**] Designated member of the Second Division per Special Order No. 635.

[1] Rollo, pp. 43-44. Penned by Associate Justice Myrna Dimaranan Vidal, with Associate Justices Romulo V. Borja and Ricardo R. Rosario concurring.

[2] Id. at 45-46.

[3] Id. at 121-122.

[4] Id. at 64.

[5] Id. at 53.

[6] Id. at 81-87.

[7] Id. at 119.

[8] Id. at 87.

[9] Id. at 97-98.

[10] Id.

[11] Id. at 43.

[12] Id. at 28.

[13] SEC. 3. Contents and filing of petition; effect of non-compliance with requirements. -- ...

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The petitioner shall also submit together with the petition a sworn certification that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same;...

x x x x

[14] LDP Marketing, Inc. v. Monter, G.R. No. 159653, January 25, 2006, 480 SCRA 137, 141-142.

[15] Digital Microwave Corporation v. Court of Appeals, G.R. No. 128550, March 16, 2000, 328 SCRA 286, 290.

[16] Expertravel & Tours, Inc. v. Court of Appeals, G.R. No. 152392, May 26, 2005, 459 SCRA 147, 157.

[17] See Sapitan v. JB Line Bicol Express, Inc., G.R. No. 163775, October 19, 2007, 537 SCRA 230, 241-242.

[18] Rollo, p. 124.

[19] Lapid v. Laurea, G.R. No. 139607, October 28, 2002, 391 SCRA 277, 284.

[20] Rollo, pp. 107-118.

[21] Tambong v. R. Jorge Development Corporation, G.R. No. 146068, August 31, 2006, 500 SCRA 399, 404; Cuñada v. Drilon, G.R. No. 159118, June 28, 2004, 432 SCRA 618, 621.

[22] 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.

[23] Dusit Hotel Nikko v. Gatbonton, G.R. No. 161654, May 5, 2006, 489 SCRA 671, 675-676.

[24] Athenna International Manpower Services, Inc. v. Villanos, G.R. No. 151303, April 15, 2005, 456 SCRA

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313, 322; Secon Philippines, Ltd. v. NLRC, G.R. No. 97399, December 3, 1999, 319 SCRA 685, 689.

[25] AMA Computer College, Inc. v. Garay, G.R. No. 162468, January 23, 2007, 512 SCRA 312, 316-317; C.F. Sharp & Co., Inc. v. Zialcita, G.R. No. 157619, July 17, 2006, 495 SCRA 387, 394.

[26] Rollo, p. 64.

[27] Id. at 49-50.

[28] Id. at 93-95.

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