DANILO OGALISCO, PETITIONER, VS. HOLY TRINITY COLLEGE OF GENERAL SANTOS CITY, INC., AND/OR JOSEMAR ALBANO, RESPONDENTS.

G.R. NO. 172913. August 09, 2007

Ponente: VELASCO, JR., J.

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VELASCO, JR., J.:

The Case

This is a Petition for Review on Certiorari[1] under Rule 45 which seeks to reverse and set aside the June 21, 2004 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 61754, which upheld the dismissal of petitioner Ogalisco as faculty member of respondent Holy Trinity College for valid cause. Likewise assailed is the April 17, 2006 CA Resolution[3] which denied petitioner's Motion for Reconsideration.

The Facts

Petitioner Danilo Ogalisco was employed by respondent Holy Trinity College in March 1992 as a regular faculty member. He taught Philosophy, Logic, Ethics, and Values Education. Thereafter, he became Campus Ministry In-Charge of student retreats and recollections. He also served as Faculty President from 1997 to 1998.

Sometime in 1997, the school's senior vice-president wrote petitioner, calling his attention to a widespread rumor that he was having an illicit affair with Mrs. Crisanta Hitalia, a married co-teacher. On May 20, 1998, the school's president informed petitioner that a panel of investigators would convene to formally investigate matters relating to his alleged illicit affair with Mrs. Hitalia.

On June 10, 1998, petitioner received an invitation to attend an investigation to be conducted by a panel appointed by the school president. The letter-invitation reads as follows:

> June 10, 1998
>
> Invitation To: Mr. Danilo Ogalisco
>
> Gen. Consejo Albano (Ret.)
>
> The Panel to investigate your complaint against the Holy Trinity College invites you to be present on 11 June 1998 at 2:00 P.M. at Audio Visual Room.
>
> Fail not for justice.
>
> [Signed]
> Ms. Ruby L. Tamayo
> Acting Secretary[4]

On June 11, 1998, petitioner attended the investigation, but was deeply surprised when instead of having an investigation regarding the complaints against the school, through the machinations of the school president, it

suddenly took a 180-degree turn, and became an investigation against petitioner for immorality, absenteeism, tardiness, and inefficiency. The school president presented to the panel of investigators the charges against petitioner and the witnesses to prove the charges. Petitioner was not allowed to refute the charges against him.

On June 17, 1998, petitioner received a copy of the minutes of the investigation conducted on June 11, 1998, and was given until 7:30 p.m. the next day to answer the charges against him. Petitioner submitted his comment and answer the following day. In his answer, petitioner asked the panel to annul the investigation proceedings conducted on June 11, 1998, alleging that: (1) there was no formal complaint against him, (2) he was deprived of his right to be informed of the nature and the cause of the investigation, (3) he was denied of his right to be heard, and (4) he was denied his right to directly examine the witnesses against him.

On June 19, 1998, the panel recommended the termination of complainant's employment; consequently, Holy Trinity College terminated petitioner's services on June 24, 1998.

Petitioner thereafter filed a complaint for illegal dismissal with the National Labor Relations Commission (NLRC).

On February 23, 1999, the labor arbiter rendered a Decision dismissing the complaint for lack of merit, but nevertheless awarding PhP 17,460 to petitioner as indemnity for the school's failure to afford petitioner due process. The labor arbiter held as follows:

> Morover, respondent through his witnesses has proven that complainant and Mrs. Hitalia were no ordinary friends. They were seen holding hands at the Manokan restaurant, seen walking in the street not in a way ordinary friends do, seen many times at Kimball Plaza having refreshment (alone) [sic] and acting like husband and wife, holding hands while riding in the tricycle, holding hands and complainant kissing Mrs. Hitalia and putting his hands around her inside the faculty room x x x. The foregoing were testified to by witnesses Teresa Tuling, a school staff, Mrs. Flor Hutba, a high school teacher, Fidel Fuentes, the school janitor, Ariel Lontiong, a working student, Jeffrey Lontiong and others.[5]

The fallo of the February 23, 1999 Decision reads as follows:

> WHEREFORE, for lack of merit the complaint for illegal dismissal is dismissed.
>
> However, for failure to sufficiently afford due process respondent Holy Trinity College (of General Santos City) is hereby ordered to indemnify complainant in the amount of Seventeen Thousand Four Hundred and Sixty (P17,460.00) Pesos.
>
> SO ORDERED.[6]

Petitioner then filed an appeal with the NLRC. In its March 29, 2000 Decision, the NLRC simply dismissed the appeal and affirmed the Decision of the labor arbiter. The NLRC likewise denied petitioner's Motion for Reconsideration through the August 15, 2000 Resolution.

Petitioner then filed a petition for certiorari with the CA, assailing the earlier rulings of the NLRC and the labor arbiter. However, on June 21, 2004, the CA promulgated a Decision dismissing the petition for lack of merit. It found no reason to disturb the labor arbiter's appreciation of the evidence because there was substantial evidence to prove that petitioner was having an extra-marital affair with a married co-teacher. On April 17, 2006, it denied petitioner's Motion for Reconsideration for lack of merit.

Petitioner now comes before this Court assailing the Decision and Resolution of the CA mainly on the ground that it gravely abused its discretion when it declared that petitioner was afforded due process. In passing, petitioner also assails the validity of his dismissal, arguing that the charge of illicit relationship was not adequately proven.

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The Court's Ruling

The petition is bereft of merit.

It must be stressed that in a petition for review on certiorari under Rule 45 of the Rules of Court, only questions of law must be raised.[7] The Court is not a trier of facts and is not to reassess the credibility and probative weight of the evidence of the parties and the findings and conclusions of the labor arbiter and the NLRC as affirmed by the appellate court. Moreover, the factual findings of the labor arbiter and the NLRC are accorded respect and finality when supported by substantial evidence, which means such evidence as that which a reasonable mind might accept as adequate to support a conclusion. The Court does not substitute its own judgment for that of the tribunal in determining where the weight of evidence lies or what evidence is credible.[8]

In this case, the labor arbiter, NLRC, and CA unanimously found that petitioner was validly dismissed. Petitioner, however, failed to show any extraordinary circumstance why this Court should disturb the factual findings of the labor arbiter which were affirmed by the NLRC and the CA. Indeed, substantial evidence is extant on record that showed convincingly the extra-marital affair of petitioner with his co-teacher, Hitalia. Hence, petitioner's termination is valid and legal under Article 282 of the Labor Code.

While petitioner claims that the CA committed a misstep in declaring that he was afforded due process, the Court finds that such postulation is actually a non-issue in this petition. Labor Arbiter Arturo P. Agnesto, in his February 23, 1999 Decision in Case No. RAB-XI-06-50258-98, ruled that respondent Holy Trinity College failed to afford due process to petitioner by reason of which Agnesto ordered respondent to pay indemnity of PhP 17,460 to petitioner.[9]

In the appeal to the NLRC (NLRC CA No. M-004854-99), the labor appellate tribunal made an opinion that the alleged violation of petitioner's right to due process was not supported by evidence. It found that full and ample opportunity was granted to petitioner to explain his side of the controversy. However, because of the failure of respondent Holy Trinity College to appeal the labor arbiter's Decision, the NLRC was "procedurally impotent" to delete the indemnity award.

On a certiorari petition to the CA, a similar conclusion was reached that there was no breach of the due process rights of petitioner. Nevertheless, with the dismissal of petitioner's special civil action, the labor arbiter's award of indemnity against respondent school, as affirmed by the NLRC, was in effect upheld by the CA for the same reason that respondent did not interpose a petition to have said indemnity award cancelled and recalled. The same situation applies to the petition at bench. Respondent college never bothered to ask for the deletion of said indemnity; for which reason, said award must be sustained.

However, in view of the recent jurisprudential development enunciated in Agabon v. NLRC, where it was held that the proper indemnity for the violation of an employee's right to statutory due process is nominal damages in the amount of PhP 30,000,[10] this Court deems it proper to modify the indemnity award from PhP 17,460 to PhP 30,000 in favor of petitioner.

WHEREFORE, the petition is DENIED for lack of merit. The June 21, 2004 Decision of the CA is hereby AFFIRMED, with the modification that for respondent Holy Trinity College's violation of petitioner Ogalisco's right to statutory due process, said college is hereby ORDERED to pay petitioner Ogalisco indemnity in the form of nominal damages, in the amount of PhP 30,000 instead of PhP 17,460.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Carpio-Morales, and Tinga, JJ., concur.

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[1] Rollo, pp. 4-25.

[2] Id. at 33-41. The Decision was penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Associate Justices Sesinando E. Villon and Rodrigo F. Lim, Jr.

[3] Id. at 29-31. The Resolution was penned by Associate Justice Rodrigo F. Lim, Jr. and concurred in by Associate Justices Teresita Dy-Liacco Flores and Ramon R. Garcia.

[4]Id. at 69.

[5]Id. at 90.

[6] Id. at 93-94.

[7] Sarocam v. Interorient Maritime Ent., Inc., G.R. No. 167813, June 27, 2006, 493 SCRA 502, 510; citing Telefunken Semiconductors Employees Union v. Court of Appeals, 401 Phil. 776, 791 (2000).

[8] Id.; citing Sonza v. ABS-CBN Broadcasting Corporation, G.R. No. 138051, June 10, 2004, 431 SCRA 583, 594.

[9]Rollo, p. 93.

[10] G.R. No. 158693, November 17, 2004, 442 SCRA 573, 617.

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