

BALTAZAR L. PAYNO, PETITIONER, VS. ORIZON TRADING CORP./ORATA TRADING AND FLORDELIZA LEGASPI, RESPONDENTS.

G.R. No. 175345. August 19, 2009

Ponente: NACHURA, J.

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NACHURA, J.:

This is a petition for review on certiorari of the decision[1] of the Court of Appeals (CA) dated July 18, 2006 and the resolution[2] dated November 6, 2006 denying the motion for reconsideration thereof in CA-G.R. SP No. 91418.

The antecedent facts are as follows:

On October 21, 1993, petitioner Baltazar L. Payno was employed as electrician by Orata Trading, a single proprietorship engaged in signboard and billboard advertising. He was later promoted to senior installer.

On April 11, 2000, petitioner was informed by the personnel manager that Orata Trading would cease its business operations and that Orizon Trading Corporation was taking over. Petitioner asked about the status of his employment, and further inquired if he would be receiving separation pay due to the closure of Orata Trading. He was told that no separation pay was forthcoming, since Orizon Trading Corporation was merely absorbing Orata Trading - maintaining its premises, and retaining all its officers and employees without any diminution in salary and rank. He was, however, informed that he would have to sign a new employment contract with Orizon Trading Corporation.

Perturbed with the new set-up, petitioner, on May 4, 2000, filed a complaint against Orizon Trading for payment of separation pay due to the closure of Orata Trading. Petitioner, nonetheless, continued to work with Orizon Trading Corporation.

On June 3, 2000, petitioner was called to the office, and was told not to report for work anymore if he did not sign the employment contract. The general manager, respondent Flordeliza Legaspi, offered him the amount of P7,000.00 as separation pay. Petitioner refused since it was insufficient and not commensurate to the more than seven (7) years he had worked with Orata Trading. He demanded that he should be paid separation pay in accordance with the Labor Code, since there was no proof of financial losses suffered by Orata Trading.

On June 5, 2000, petitioner filed an Amended Complaint[3] to include "illegal dismissal" as another cause of action against respondents, maintaining the relief for payment of separation pay, damages and attorney's fees.

For their part, respondents admitted that petitioner worked with Orata Trading since 1993 and with Orizon Trading Corporation when the latter took over the business. Respondents, however, alleged that petitioner already thought of resigning from his job when he learned that separation pay could not be expected as a result of the takeover of Orata Trading by Orizon Trading Corporation. This intention was eventually effected when petitioner refused to continue to work on June 3, 2000. Since he voluntarily resigned, he was not entitled to separation pay; nonetheless, the amount of P7,000.00 was offered to him by way of financial assistance.

On July 6, 2001, the Labor Arbiter rendered judgment[4] in favor of petitioner. The Labor Arbiter was not convinced that petitioner resigned. Petitioner's tenure of more than seven (7) years with Orata Trading and the immediate filing of the case ran counter to the claim that he resigned. Respondents failed to show, much less prove, the reason for the closure of Orata Trading. The status of the employees absorbed by Orizon Trading Corporation was also not clear. In this case, respondents were found guilty of having constructively dismissed petitioner when the latter was prevented from entering the workplace on June 3, 2000. Thus, petitioner should be paid separation pay of one month for every year of service and full backwages, as provided by Article 279 of the Labor Code. The dispositive portion reads as follows:

WHEREFORE, premises considered, Respondents are hereby declared to have constructively or illegally dismissed Complainant, and are hereby ORDERED to solidarily pay Complainant the following, to be computed up to the finality of this decision, but which as of Nov. 25, 2000, are as follows:

1.

separation pay: P6,500.00 x 7

(May 30, 1993 to as of Nov. 25, 2000)

-

P 45,500.00

2.

backwages (June 3 to as of Nov. 25, 2000 more or less 6 months).

-

39,000.00

3.

moral damages

-

20,000.00

Sub-total

-

P104,500.00

4.

10% attorney's fees

-

10,450.00

=====

Total

P114,950.00[5]

Both parties appealed. On December 15, 2004, the National Labor Relations Commission (NLRC) affirmed with modification the decision of the Labor Arbiter. The dispositive portion reads as follows:

WHEREFORE, the appeal filed by complainant is hereby GRANTED. The appeal filed by respondents is DENIED for lack of merit except with respect to the award of damages and of attorney's fees.

[Corollarily], the Decision of the Labor Arbiter dated 06 July 2001 as to the finding of illegal dismissal, award of separation pay computed from 30 May 1993 to the finality of this Decision is AFFIRMED. The award of backwages is hereby modified to include ECOLA, 13[th] month pay, service incentive leave and such other benefits which complainant should have received had he not been illegally dismissed, to be computed from 03 June 2000 up to the finality of this Decision. The award of attorney's fees is hereby reduced to P5,000.00 while the award of damages is deleted.

SO ORDERED.[6]

Imputing grave abuse of discretion to the NLRC, respondents filed a petition for certiorari with the CA.

On July 18, 2006, the CA rendered the assailed decision finding merit in the petition. The CA ruled that the complaint for illegal/constructive dismissal had no basis. There was no act of discrimination committed against petitioner that would render his employment unbearable. The fact that petitioner continued to work thereat and even received salary for more than a month from Orizon Trading Corporation belies the claim that he was required to sign a new contract. The CA found to be more credible and consistent with human behavior respondents' version that petitioner resigned and left his employment when his demand for a bigger separation pay was not heeded.[7] With no dismissal to speak of, whether legally or illegally, no payment of separation pay was proper, thus:

WHEREFORE, in view of the foregoing, the instant petition for certiorari is hereby GRANTED. The assailed Decision dated December 15, 2004 of the National Labor Relations Commission is hereby ANNULLED and SET ASIDE. A new one is entered DISMISSING private respondent's complaint against petitioners.

SO ORDERED.[8]

Aggrieved, petitioner filed the instant petition assailing the aforesaid decision of the CA.

The central issue in this case is whether or not petitioner was illegally dismissed.

Due to the variant findings of the CA and the labor tribunals, we are constrained to take a second look at the factual findings which, ordinarily, this Court is not duty-bound to do in petitions for review under Rule 45. After a careful review, we find that petitioner was illegally dismissed.

In termination cases, it is incumbent upon the employer to prove either the non-existence or the validity of dismissal. Inasmuch as respondents alleged petitioner's resignation as the cause of his separation from work, respondents had the burden to prove the same. The case of the employer must stand or fall on its own merits and not on the weakness of the employee's defense.[9]

Resignation is the voluntary act of an employee who is in a situation where one believes that personal reasons cannot be sacrificed in favor of the exigency of the service, and one who has no other choice but to dissociate oneself from employment. It is a formal pronouncement or relinquishment of an office, with the intention of relinquishing the office accompanied by the act of relinquishment. As the intent to relinquish must concur with the overt act of relinquishment, the acts of the employee before and after the alleged resignation must be considered in determining whether, in fact, he intended to sever his employment.[10]

In this case, we find no overt act on the part of petitioner that he was ready to sever his employment ties. The alleged resignation was actually premised by respondents only on the filing of the complaint for separation pay, but this alone is not sufficient proof that petitioner intended to resign from the company. What strongly negates the claim of resignation is the fact that petitioner filed the amended complaint for illegal dismissal immediately after he was not allowed to report for work on June 3, 2000. Resignation is inconsistent with the filing of the complaint for illegal dismissal.[11] It would have been illogical for petitioner to resign and then file a complaint for illegal dismissal later on.[12] If petitioner was determined to resign, as respondents posited, he would not have commenced the action for illegal dismissal. Undeniably, petitioner was unceremoniously dismissed in this case.

Furthermore, it must be noted that respondents admit the closure of the business of Orata Trading and the immediate takeover by Orizon Trading Corporation. Under Article 283[13] of the Labor Code, the closing or cessation of the operations of Orata Trading renders it liable for the payment of separation pay to the employees.[14] Since petitioner was informed by Orata's personnel manager that no separation pay was forthcoming, the former was constrained to file a claim therefor. Petitioner was afraid to lose all benefits to which he was entitled for the seven years he had worked with Orata Trading. This fear was not unfounded, since he was required to sign a new employment contract and considered as a new employee of Orizon Trading Corporation, and the years of service behind him would amount to nothing.[15] We quote with approval the findings of the NLRC, to wit:

As to the finding of illegal dismissal on the part of respondents and propriety of the award of separation pay, we affirm the same. We recall complainant's allegations in his position paper: (1) he was told to sign a new employment contract with Orizon Trading Corporation without payment of any separation pay for the services he rendered for Orata Trading from 1993 to 2000; (2) he refused to sign a new employment contract but was nevertheless employed by Orizon Trading Corporation when it took over Orata Trading's business operation; (3) he was not paid any separation pay. None of these was ever denied by respondents.

Respondents admitted the closure of Orata Trading. This was a valid exercise of management prerogative. However, while the employer may terminate the employment of any employee due to the closing or cessation of its operation, it is required by law to pay all affected workers separation pay equivalent to at least one (1) month salary for every year of service when the closure is not due to serious losses. Complainant claimed he was not paid any separation pay by Orata Trading. Neither of the respondents claimed otherwise.

Orata Trading Personnel Manager Nini Rigor justified the non-payment of separation pay to complainant by telling him that nothing would differ with his work set-up with Orizon Trading Corporation. Respondents admitted the take over of Orata Trading's business by Orizon Trading Corporation, including its premises and its employees. We agree that under this set-up, no separation pay need be paid to Orata Trading's employees because there was no separation pay to speak of. There was continued employment from Orata Trading to Orizon Trading Corporation. However, records show that this was not the set-up intended by respondents. Complainant was required to sign a new employment contract with the new employer Orizon Trading Corporation and the new employer considered complainant's employment as to have commenced only on the day of its takeover. There was, therefore, a break in complainant's period of employment, rendering to naught complainant's seven (7) years of service with Orata Trading. Complainant was undoubtedly deprived of his separation pay under Article 283 of the Labor Code from Orata Trading.

x x x x

As already pointed out, the present complaint was filed on 04 May 2000 for recovery of separation pay pursuant to Article 283 of the Labor Code, due to closure of Orata Trading. At this time, complainant had not been dismissed and was allowed to continue working for Orizon Trading Corporation upon its take over. Complainant's dismissal was effected on 03 June 2000, after respondents received the summons in this case. The latter offered complainant P7,000.00 separation pay which he refused to accept for being insufficient.

Complainant was then disallowed to continue working. The claim of illegal dismissal was, as argued by respondent "easily" incorporated by complainant in his position paper filed on 13 July 2000 and he, thereby, prayed for separation pay in lieu of reinstatement.[16]

WHEREFORE, the petition is GRANTED. The decision of the Court of Appeals dated July 18, 2006 is SET ASIDE. The decision of the National Labor Relations Commission dated December 15, 2004 is REINSTATED.

SO ORDERED.

Carpio Morales,[*] Chico-Nazario,**] (Acting Chairperson), Velasco, Jr., and Peralta, JJ., concur.

[*] Additional member in lieu of Associate Justice Consuelo Ynares-Santiago per Special Order No. 679 dated August 3, 2009.

**] In lieu of Associate Justice Consuelo Ynares-Santiago per Special Order No. 678 dated August 3, 2009.

[1] Penned by Associate Justice Lucenito N. Tagle, with Associate Justices Marina L. Buzon and Regalado E. Maambong, concurring; rollo, pp. 34-49.

[2] Id. at 32-34.

[3] Rollo, p. 50.

[4] Id. at 94-99.

[5] Id. at 98-99.

[6] Id. at 132.

[7] Id. at 44.

[8] Id. at 48.

[9] Cabalen Management Co., Inc. v. Quiambao, G.R. No. 169494, July 24, 2007, 528 SCRA 153.

[10] BMG Records (Phils.), Inc. v. Aparecio, G.R. No. 153290, September 5, 2007, 532 SCRA 300, 302.

[11] Blue Angel Manpower and Security Services, Inc. v. Court of Appeals, G.R. No. 161196, July 28, 2008, 560 SCRA 157; Talidano v. Falcon Maritime & Allied Services, Inc., G.R. No. 172031, July 14, 2008, 558 SCRA 279, 280.

[12] Fungo v. Lourdes School of Mandaluyong, G.R. No. 152531, July 27, 2007, 528 SCRA 248.

[13] ART. 283. CLOSURE OF ESTABLISHMENT AND REDUCTION OF PERSONNEL

The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the worker and the [Department of Labor and Employment] at least one (1) month before the intended date thereof. In case of termination due to the installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay

for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered as one (1) whole year.

[14] *Elcee Farms, Inc. v. National Labor Relations Commission*, G.R. No. 126428, January 25, 2007, 512 SCRA 602, 604.

[15] *Id.*

[16] *Rollo*, pp. 128-130.

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