MA. FININA E. VICENTE, PETITIONER, VS. THE HON. COURT OF APPEALS, FORMER SEVENTEENTH DIVISION AND CINDERELLA MARKETING CORPORATION, RESPONDENTS.

G.R. No. 175988. August 24, 2007

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This Petition for Review on Certiorari assails the Decision and Resolution of the Court of Appeals dated August 18, 2006[1] and December 13, 2006,[2] respectively, in CA-G.R. SP No. 88140 which reversed and set aside the Decision of the National Labor Relations Commission (NLRC) dated June 21, 2004[3] and its Resolution dated October 14, 2004,[4] and declared that petitioner was not constructively dismissed but voluntarily resigned from her employment.

The antecedent facts are as follows:

Petitioner Finina E. Vicente was employed by respondent Cinderella Marketing Corporation (Cinderella) as Management Coordinator in January 1990. Prior to her resignation in February 2000, she held the position of Consignment Operations Manager with a salary of P27,000.00 a month.[5] She was tasked with the oversight, supervision and management of the Consignment Department dealing directly with Cinderella's consignors.[6]

Petitioner alleged that it has been a practice among the employees of Cinderella to obtain cash advances by charging the amount from the net sales of Cinderella's suppliers/consignors. Mr. Miguel Tecson (AVP-Finance) approves the requests for cash advances, Mr. Arthur Coronel (AVP-Merchandising) issues the memos instructing the accounting department to issue the corporate checks and finally, Ms. Theresa Santos (General Manager) rediscounts them by issuing her personal checks.[7]

After some time, one of Cinderella's suppliers complained about the unauthorized deductions from the net sales due them. Accordingly, an investigation was conducted and upon initial review of respondent's business records, it appears that petitioner was among those involved in the irregular and fraudulent preparation and encashment of respondent's corporate checks amounting to at least P500,000.00.[8]

Petitioner alleged that Mr. Tecson demanded her resignation on several occasions. On February 15, 2000, Mr. Tecson allegedly told her "MAG-RESIGN KANA AGAD KASI MAIIPIT KAMI," in the presence of Lizz Villafuerte, the Accounting Manager.[9] As a result of this alleged force and intimidation, petitioner tendered her resignation letter.

On January 13, 2003, or three years after her resignation, petitioner filed a complaint against Cinderella alleging that her severance from employment was involuntary amounting to constructive dismissal.[10]

Cinderella denied the charge of constructive dismissal. It claimed that petitioner voluntarily resigned from office before the internal audit was completed and before any formal investigation was initiated. She tendered her resignation on February 7, 2000, then submitted another resignation letter on February 15, 2000 where she

confirmed the first resignation letter. Respondent alleged that the complaint for constructive dismissal was a mere afterthought demonstrated by the long delay of filing the same.[11]

On October 21, 2003, the Labor Arbiter rendered a Decision[12] finding that petitioner was constructively and illegally dismissed. The Labor Arbiter ruled that Cinderella was not able to controvert petitioner's assertion that she was forced to resign; that the resignation letter relied upon by respondent to show the voluntariness of the resignation was fabricated and without evidentiary weight since it does not bear petitioner's signature; that there was no basis to terminate petitioner on the ground of loss of confidence since her involvement in the fraudulent transactions was doubtful as shown by the Confidential Memo clearing her of any liability. The dispositive portion of the Labor Arbiter's decision reads:

> WHEREFORE, premises all considered, judgment is hereby rendered ordering respondent Cinderella Marketing Corporation to:
>
> - pay complainant separation pay in lieu of reinstatement computed at one (1) month for every year of service in the amount of P270,000.00; and
>
> - pay complainant full backwages from the time she filed this complaint in the amount of P270,000.00.
>
> SO ORDERED.[13]

On appeal, the NLRC affirmed the decision of the Labor Arbiter. It held that the statement of Mr. Tecson informing petitioner, to wit: "MAG-RESIGN KANA AGAD KASI MAIIPIT KAMI," was the proximate cause for petitioner's decision to resign. Thus, the resignation cannot be deemed voluntary notwithstanding the execution of the two resignation letters.

Respondent company's motion for reconsideration was denied hence, it filed a Petition for Certiorari under Rule 65 with the Court of Appeals.

On August 18, 2006, the Court of Appeals rendered its decision finding that the totality of evidence on record showed that petitioner voluntarily resigned from her employment; that the subsequent acts of petitioner belie the claim of constructive dismissal; that after the alleged forced resignation, petitioner attended the meetings concerning her involvement in the anomalous transactions and even arranged for the settlement of her consequent liabilities as may be determined during the investigation; that the belated filing of the complaint militates against petitioner because it is hardly expected from an aggrieved employee to wait three years before instituting the case.

The dispositive portion of the Decision provides:

> WHEREFORE, the foregoing considered, the petition is GRANTED and the assailed Decision REVERSED and SET ASIDE. Private respondent's complaint a quo is hereby dismissed. No costs.
>
> SO ORDERED.[14]

Petitioner's motion for reconsideration was denied hence, the present petition for review on certiorari raising the following issues:

> I.
>
> THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN REVERSING THE FACTUAL FINDINGS OF THE LABOR ARBITER AND THE NLRC.
>
> II.
>
> THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN RULING THAT PETITIONER

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VOLUNTARILY RESIGNED FROM PRIVATE RESPONDENT.[15]

Petitioner asserts the following: (1) The factual findings of the Labor Arbiter and the NLRC are not correctible by certiorari and are binding on the Supreme Court in the absence of any showing that they are completely without any support in the evidence on record. (2) In termination cases, the employer has the burden of proof that the resignation is voluntary and not the product of coercion, intimidation or other factors that vitiate the free will. (3) The NLRC correctly gave credence to petitioner's allegation that Mr. Tecson demanded her resignation. (4) The delay in filing the complaint for illegal dismissal cannot be taken against her as the same was filed within the prescriptive period allowed by law to file such actions.

The petition lacks merit.

The primary issue in the case at bar is factual: whether petitioner was constructively dismissed. Petitioner claims that her separation from employment was a case of constructive dismissal. On the other hand, respondent argues that petitioner voluntarily resigned.

Petitioner faults the Court of Appeals for reversing the factual findings of the Labor Arbiter as affirmed by the NLRC that she was constructively dismissed relying on the principle of finality and conclusiveness of the decisions of the labor tribunals. However, it is well-settled that for want of substantial basis, in fact or in law, factual findings of an administrative agency, such as the NLRC, cannot be given the stamp of finality and conclusiveness normally accorded to it, as even decisions of administrative agencies which are declared "final" by law are not exempt from the judicial review when so warranted.[16]

In administrative proceedings, the quantum of proof required is substantial evidence, which is more than a mere scintilla of evidence, but such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[17] The Court of Appeals may review the factual findings of the NLRC and reverse its ruling if it finds that the decision of the NLRC lacks substantial basis.

In the same vein, factual findings of the Court of Appeals are generally not subject to this Court's review under Rule 45. However, the general rule on the conclusiveness of the factual findings of the Court of Appeals is also subject to well-recognized exceptions such as where the Court of Appeals' findings of facts contradict those of the lower court, or the administrative bodies, as in this case.[18] All these considered, we are compelled to make a further calibration of the evidence at hand.

Petitioner argues that the employer bears the burden of proof that the resignation is voluntary and not the product of coercion or intimidation. We agree that in termination cases, burden of proof rests upon the employer to show that the dismissal is for a just and valid cause and failure to do so would necessarily mean that the dismissal was illegal.[19] In Mobile Protective & Detective Agency v. Ompad,[20] the Court ruled that should an employer interpose the defense of resignation, as in the present case, it is still incumbent upon respondent company to prove that the employee voluntarily resigned.

From the totality of evidence on record, it was clearly demonstrated that respondent Cinderella has sufficiently discharged its burden to prove that petitioner's resignation was voluntary. In voluntary resignation, the employee is compelled by personal reason(s) to disassociate himself from employment. It is done with the intention of relinquishing an office, accompanied by the act of abandonment.[21] To determine whether the employee indeed intended to relinquish such employment, the act of the employee before and after the alleged resignation must be considered.[22]

Petitioner relinquished her position when she submitted the letters of resignation. The resignation letter submitted on February 15, 2000 confirmed the earlier resignation letter she submitted on February 7, 2000. The resignation

letter contained words of gratitude which can hardly come from an employee forced to resign.[23]

The NLRC cannot disregard the resignation letter dated February 15, 2000 on the allegation that its submission was a product of an unintelligent and confused decision due to the disdain shown by Mr. Tecson absent any sufficient proof of force or intimidation. Likewise, it was erroneous for the Labor Arbiter not to give evidentiary weight on the resignation letter on the ground that it was fabricated as it was not signed by petitioner. A careful scrutiny of the said letter shows that it bears the signature of petitioner. More importantly, petitioner admitted having submitted the said letter, albeit, due to an alleged intimidation.

Subsequently, petitioner stopped reporting for work although she met with the officers of the corporation to settle her accountabilities but never raised the alleged intimidation employed on her. Also, though the complaint was filed within the 4-year prescriptive period, its belated filing supports the contention of respondent that it was a mere afterthought.[24] Taken together, these circumstances are substantial proof that petitioner's resignation was voluntary.

Hence, petitioner cannot take refuge in the argument that it is the employer who bears the burden of proof that the resignation is voluntary and not the product of coercion or intimidation. Having submitted a resignation letter, it is then incumbent upon her to prove that the resignation was not voluntary but was actually a case of constructive dismissal[25] with clear, positive, and convincing evidence.[26] Petitioner failed to substantiate her claim of constructive dismissal.

Petitioner contends there was an orchestrated plan to intimidate her into resigning to exculpate other officers of the company from the anomaly; and that in the course of the internal investigation, Mr. Tecson forced her to resign by saying, "Mag-resign ka na. Maiipit kami." Allegedly, this caused confusion and fear which led to her uninformed decision of tendering the resignation letter on February 15, 2000.

We agree with the Court of Appeals that it was grave error on the part of the NLRC to rely on the allegation that Mr. Tecson threatened and forced petitioner to resign. Other than being unsubstantiated and self-serving, the allegation does not suffice to support the finding of force, intimidation, and ultimately constructive dismissal.

Bare allegations of constructive dismissal, when uncorroborated by the evidence on record, cannot be given credence.[27] In St. Michael Academy v. National Labor Relations Commission,[28] we ruled that mere allegations of threat or force do not constitute substantial evidence to support a finding of forced resignation. We enumerated the requisites for intimidation to vitiate consent as follows:

> (1) that the intimidation caused the consent to be given; (2) that the threatened act be unjust or unlawful; (3) that the threat be real or serious, there being evident disproportion between the evil and the resistance which all men can offer, leading to the choice of doing the act which is forced on the person to do as the lesser evil; and (4) that it produces a well-grounded fear from the fact that the person from whom it comes has the necessary means or ability to inflict the threatened injury to his person or property. x x x[29]

None of the above requisites was established by petitioner. Other than the allegation that Mr. Tecson intimidated petitioner into resigning, there were no other proofs presented to support a finding of forced resignation to stand against respondent's denial and proof against dismissal. Neither can we consider the conduct of audits and other internal investigations as a form of harassment against petitioner. Said investigation was legitimate and justified, conducted in view of the discovery of the anomalous transaction involving the employees of the respondent including petitioner.

Moreover, we note that petitioner is holding a managerial position with a salary of P27,000.00 a month. Hence, she is not an ordinary employee with limited understanding such that she would be easily maneuvered or coerced

to resign against her will.[30] Thus, we find no compelling reason to disturb the findings and conclusions of the Court of Appeals that petitioner voluntarily resigned and was not constructively dismissed by respondent.

WHEREFORE, the petition is DENIED. The Decision of the Court of Appeals dated August 18, 2006 in CA-G.R. SP No. 88140 which reversed and set aside the Decision of the NLRC and declared that petitioner voluntarily resigned and was not constructively dismissed from her employment, and consequently ordered the dismissal of the complaint for constructive dismissal, as well as the Resolution dated December 13, 2006 denying the motion for reconsideration, are AFFIRMED.

SO ORDERED.

Austria-Martinez, Chico-Nazario, Nachura, and Reyes, JJ., concur.

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[1]Rollo, pp. 29-36. Penned by Associate Justice Josefina Guevara-Salonga and concurred in by Associate Justices Aurora Santiago-Lagman and Normandie B. Pizarro.

[2] Id. at 25-27.

[3]Id. at 176-181. Penned by Commissioner Raul T. Aquino and concurred in by Commissioner Angelita A. Gacutan.

[4]Id. at 199-200. Penned by Commissioner Raul T. Aquino and concurred in by Commissioners Victoriano R. Calaycay and Angelita A. Gacutan.

[5] Id. at 37.

[6] Id. at 40.

[7] Id. at 12.

[8] Id. at 314 and 317.

[9] Id. at 72.

[10] Id. at 12 and 37.

[11]Id. at 337-338.

[12]Id. at 75-82.

[13]Id. at 81-82.

[14] Id. at 36.

[15] Id. at 15, 16.

[16] Philippine Long Distance Telephone Company, Inc. v. Imperial, G.R. No. 149379, June 15, 2006, 490 SCRA 673, 686, 687.

[17] Id. at 686.

[18] Go v. Court of Appeals, G.R. No. 158922, May 28, 2004, 430 SCRA 358, 365.

[19] Philippine Long Distance Telephone Company, Inc. v. Tiamson, G.R. Nos. 164684-85, November 11, 2005, 474 SCRA 761, 771.

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[20] G.R. No. 159195, May 9, 2005, 458 SCRA 308, 323.

[21] Star Paper Corporation v. Simbol, G.R. No. 164774, April 12, 2006, 487 SCRA 228, 247.

[22] Fortuny Garments v. Castro, G.R. No. 150668, December 15, 2005, 478 SCRA 125, 130.

[23]See St. Michael Academy v. National Labor Relations Commission, 354 Phil. 491 (1998).

[24] See Fernandez v. National Labor Relations Commission, 349 Phil. 65, 93 (1998); Alfaro v. National Labor Relations Commission, 416 Phil. 310, 319-320 (2001).

[25] Go v. Court of Appeals, supra at 366.

[26]Machica v. Roosevelt Services Center, Inc., G.R. No. 168664, May 4, 2006, 489 SCRA 534, 544-545.

[27]Go v. Court of Appeals, supra at 366.

[28] 354 Phil. 491 (1998).

[29] Supra at 509-510.

[30] See Domondon v. National Labor Relations Commission, G.R. No. 154376, September 30, 2005, 471 SCRA 559, 568.

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