

**ROBINSONS GALLERIA/ROBINSONS SUPERMARKET CORPORATION
AND/OR JESS MANUEL, PETITIONERS, VS. IRENE R. RANCHEZ,
RESPONDENT.**

G.R. No. 177937. January 19, 2011

Ponente: NACHURA, J.

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NACHURA, J.:

Before the Court is a petition for review on certiorari under Rule 45 of the Rules of Court, assailing the Decision[1] dated August 29, 2006 and the Resolution[2] dated May 16, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 91631.

The Facts

The facts of the case are as follows.

Respondent was a probationary employee of petitioner Robinsons Galleria/Robinsons Supermarket Corporation (petitioner Supermarket) for a period of five (5) months, or from October 15, 1997 until March 14, 1998.[3] She underwent six (6) weeks of training as a cashier before she was hired as such on October 15, 1997.[4]

Two weeks after she was hired, or on October 30, 1997, respondent reported to her supervisor the loss of cash amounting to Twenty Thousand Two Hundred Ninety-Nine Pesos (P20,299.00) which she had placed inside the company locker. Petitioner Jess Manuel (petitioner Manuel), the Operations Manager of petitioner Supermarket, ordered that respondent be strip-searched by the company guards. However, the search on her and her personal belongings yielded nothing.[5]

Respondent acknowledged her responsibility and requested that she be allowed to settle and pay the lost amount. However, petitioner Manuel did not heed her request and instead reported the matter to the police. Petitioner Manuel likewise requested the Quezon City Prosecutor's Office for an inquest.[6]

On November 5, 1997, an information for Qualified Theft was filed with the Quezon City Regional Trial Court. Respondent was constrained to spend two weeks in jail for failure to immediately post bail in the amount of Forty Thousand Pesos (P40,000.00).[7]

On November 25, 1997, respondent filed a complaint for illegal dismissal and damages.[8]

On March 12, 1998, petitioners sent to respondent by mail a notice of termination and/or notice of expiration of probationary employment dated March 9, 1998.[9]

On August 10, 1998, the Labor Arbiter rendered a decision,[10] the fallo of which reads:

CONFORMABLY WITH THE FOREGOING, judgment is hereby rendered dismissing the claim of illegal dismissal for lack of merit.

Respondents are ordered to accept complainant to her former or equivalent work without prejudice to any

action they may take in the premises in connection with the missing money of P20,299.00.

SO ORDERED.[11]

In dismissing the complaint for illegal dismissal, the Labor Arbiter ratiocinated that at the time respondent filed the complaint for illegal dismissal, she was not yet dismissed by petitioners. When she was strip-searched by the security personnel of petitioner Supermarket, the guards were merely conducting an investigation. The subsequent referral of the loss to the police authorities might be considered routine. Respondent's non-reporting for work after her release from detention could be taken against her in the investigation that petitioner supermarket would conduct.[12]

On appeal, the National Labor Relations Commission (NLRC) reversed the decision of the Labor Arbiter in a decision[13] dated October 20, 2003. The dispositive portion of the decision reads:

WHEREFORE, the appealed decision is SET ASIDE. The respondents are hereby ordered to immediately reinstate complainant to her former or equivalent position without loss of seniority rights and privileges and to pay her full backwages computed from the time she was constructively dismissed on October 30, 1997 up to the time she is actually reinstated.

SO ORDERED.[14]

In reversing the decision of the Labor Arbiter, the NLRC ruled that respondent was denied due process by petitioners. Strip-searching respondent and sending her to jail for two weeks certainly amounted to constructive dismissal because continued employment had been rendered impossible, unreasonable, and unlikely. The wedge that had been driven between the parties was impossible to ignore.[15] Although respondent was only a probationary employee, the subsequent lapse of her probationary contract of employment did not have the effect of validly terminating her employment because constructive dismissal had already been effected earlier by petitioners.[16]

Petitioners filed a motion for reconsideration, which was denied by the NLRC in a resolution[17] dated July 21, 2005.

Petitioners filed a petition for certiorari under Rule 65 of the Rules of Court before the CA. On August 29, 2006, the CA rendered a Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, the challenged Decision of the National Labor Relations Commission is AFFIRMED with MODIFICATION in that should reinstatement be no longer possible in view of the strained relation between the parties, Petitioners are ordered to pay Respondent separation pay equivalent to one (1) month pay in addition to backwages from the date of dismissal until the finality of the assailed decision.

SO ORDERED.[18]

Petitioners filed a motion for reconsideration. However, the CA denied the same in a Resolution dated May 16, 2007.

Hence, this petition.

Petitioners assail the reinstatement of respondent, highlighting the fact that she was a probationary employee and that her probationary contract of employment lapsed on March 14, 1998. Thus, her reinstatement was rendered moot and academic. Furthermore, even if her probationary contract had not yet expired, the offense that she committed would nonetheless militate against her regularization.[19]

On the other hand, respondent insists that she was constructively dismissed by petitioner Supermarket when she

was strip-searched, divested of her dignity, and summarily thrown in jail. She could not have been expected to go back to work after being allowed to post bail because her continued employment had been rendered impossible, unreasonable, and unlikely. She stresses that, at the time the money was discovered missing, it was not with her but locked in the company locker. The company failed to provide its cashiers with strong locks and proper security in the work place. Respondent argues that she was not caught in the act and even reported that the money was missing. She claims that she was denied due process.[20]

The Issue

The sole issue for resolution is whether respondent was illegally terminated from employment by petitioners.

The Ruling of the Court

We rule in the affirmative.

There is probationary employment when the employee upon his engagement is made to undergo a trial period during which the employer determines his fitness to qualify for regular employment based on reasonable standards made known to him at the time of engagement.[21]

A probationary employee, like a regular employee, enjoys security of tenure.[22] However, in cases of probationary employment, aside from just or authorized causes of termination, an additional ground is provided under Article 281 of the Labor Code, i.e., the probationary employee may also be terminated for failure to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of the engagement. Thus, the services of an employee who has been engaged on probationary basis may be terminated for any of the following: (1) a just or (2) an authorized cause; and (3) when he fails to qualify as a regular employee in accordance with reasonable standards prescribed by the employer.[23]

Article 277(b) of the Labor Code mandates that subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal, except for just and authorized cause and without prejudice to the requirement of notice under Article 283 of the same Code, the employer shall furnish the worker, whose employment is sought to be terminated, a written notice containing a statement of the causes of termination, and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of a representative if he so desires, in accordance with company rules and regulations pursuant to the guidelines set by the Department of Labor and Employment.

In the instant case, based on the facts on record, petitioners failed to accord respondent substantive and procedural due process. The haphazard manner in the investigation of the missing cash, which was left to the determination of the police authorities and the Prosecutor's Office, left respondent with no choice but to cry foul. Administrative investigation was not conducted by petitioner Supermarket. On the same day that the missing money was reported by respondent to her immediate superior, the company already pre-judged her guilt without proper investigation, and instantly reported her to the police as the suspected thief, which resulted in her languishing in jail for two weeks.

As correctly pointed out by the NLRC, the due process requirements under the Labor Code are mandatory and may not be supplanted by police investigation or court proceedings. The criminal aspect of the case is considered independent of the administrative aspect. Thus, employers should not rely solely on the findings of the Prosecutor's Office. They are mandated to conduct their own separate investigation, and to accord the employee every opportunity to defend himself. Furthermore, respondent was not represented by counsel when she was strip-searched inside the company premises or during the police investigation, and in the preliminary investigation before the Prosecutor's Office.

Respondent was constructively dismissed by petitioner Supermarket effective October 30, 1997. It was unreasonable for petitioners to charge her with abandonment for not reporting for work upon her release in jail. It would be the height of callousness to expect her to return to work after suffering in jail for two weeks. Work had been rendered unreasonable, unlikely, and definitely impossible, considering the treatment that was accorded respondent by petitioners.

As to respondent's monetary claims, Article 279 of the Labor Code provides that an employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges, to full backwages, inclusive of allowances, and to other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. However, due to the strained relations of the parties, the payment of separation pay has been considered an acceptable alternative to reinstatement, when the latter option is no longer desirable or viable. On the one hand, such payment liberates the employee from what could be a highly oppressive work environment. On the other, the payment releases the employer from the grossly unpalatable obligation of maintaining in its employ a worker it could no longer trust.[24]

Thus, as an illegally or constructively dismissed employee, respondent is entitled to: (1) either reinstatement, if viable, or separation pay, if reinstatement is no longer viable; and (2) backwages. These two reliefs are separate and distinct from each other and are awarded conjunctively.[25]

In this case, since respondent was a probationary employee at the time she was constructively dismissed by petitioners, she is entitled to separation pay and backwages. Reinstatement of respondent is no longer viable considering the circumstances.

However, the backwages that should be awarded to respondent shall be reckoned from the time of her constructive dismissal until the date of the termination of her employment, i.e., from October 30, 1997 to March 14, 1998. The computation should not cover the entire period from the time her compensation was withheld up to the time of her actual reinstatement. This is because respondent was a probationary employee, and the lapse of her probationary employment without her appointment as a regular employee of petitioner Supermarket effectively severed the employer-employee relationship between the parties.

In all cases involving employees engaged on probationary basis, the employer shall make known to its employees the standards under which they will qualify as regular employees at the time of their engagement. Where no standards are made known to an employee at the time, he shall be deemed a regular employee,[26] unless the job is self-descriptive, like maid, cook, driver, or messenger. However, the constitutional policy of providing full protection to labor is not intended to oppress or destroy management.[27] Naturally, petitioner Supermarket cannot be expected to retain respondent as a regular employee considering that she lost P20,299.00 while acting as a cashier during the probationary period. The rules on probationary employment should not be used to exculpate a probationary employee who acts in a manner contrary to basic knowledge and common sense, in regard to which, there is no need to spell out a policy or standard to be met.[28]

WHEREFORE, in view of the foregoing, the petition is DENIED. The Decision of the Court of Appeals in CA-G.R. SP No. 91631 is hereby AFFIRMED with the MODIFICATION that petitioners are hereby ordered to pay respondent Irene R. Sanchez separation pay equivalent to one (1) month pay and backwages from October 30, 1997 to March 14, 1998.

Costs against petitioners.

SO ORDERED.

Carpio, (Chairperson), Leonardo-De Castro,[*] Abad, and Mendoza, JJ., concur.

[*] In lieu of Associate Justice Diosdado M. Peralta per Raffle dated July 6, 2009.

[1] Penned by Associate Justice Myrna Dimaranan-Vidal, with Associate Justices Bienvenido Reyes and Fernanda Lampas Peralta, concurring; rollo, pp. 67-75.

[2] Id. at 77-78.

[3] Labor Arbiter's decision; CA rollo, p. 50.

[4] Id. at 47.

[5] Id. at 48.

[6] Labor Arbiter's decision, id.; NLRC decision, id. at 67; CA Decision, rollo, p. 68.

[7] Labor Arbiter's decision, CA rollo, p. 48; NLRC decision, CA rollo, p. 70; CA Decision, rollo, p. 68.

[8] CA Decision; rollo, p. 69.

[9] CA Decision, id. at 68; NLRC decision, CA rollo, p. 67.

[10] Penned by Labor Arbiter Melquiades Sol D. del Rosario; CA rollo, pp. 47-53.

[11] Id. at 52-53.

[12] Labor Arbiter's decision; id. at 51-52.

[13] Penned by Commissioner Vicente S.E. Veloso, with Presiding Commissioner Roy V. Señeres and Commissioner Romeo L. Go, concurring; id. at 65-72.

[14] Id. at 71.

[15] Id. at 69.

[16] Id. at 70.

[17] Penned by Commissioner Proculo T. Sarmen, with the concurrence of OIC, Office of the Chairman Raul T. Aquino and Commissioner Romeo L. Go; id. at 86-88.

[18] Rollo, p. 74.

[19] CA Decision, id. at 68-69; NLRC decision, CA rollo, p. 67.

[20] CA Decision, rollo, p. 68; NLRC decision, CA rollo, p. 67.

[21] Omnibus Rules Implementing the Labor Code, Book VI, Rule I, Sec. 6.

[22] Id.

[23] Omnibus Rules Implementing the Labor Code, Book VI, Rule I, Sec. 6(c).

[24] Coca-Cola Bottlers Phils. Inc. v. Daniel, 499 Phil. 491, 511 (2005).

[25] Siemens v. Domingo, G.R. No. 150488, July 28, 2008, 560 SCRA 86, 100.

[26] Omnibus Rules Implementing the Labor Code, Book VI, Rule I, Sec. 6(d).

[27] *Capili v. National Labor Relations Commission*, 337 Phil. 210, 216 (1997).

[28] *Aberdeen Court, Inc. v. Agustin, Jr.*, 495 Phil. 706, 716-717 (2005).

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