

LUZVIMINDA A. ANG, PETITIONER, VS. PHILIPPINE NATIONAL BANK, RESPONDENT.

G.R. No. 178762. June 16, 2010

Ponente: ABAD, J.

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ABAD, J.:

This case is about the dismissal of an employee for offenses committed during her employment in a government-owned corporation but which offenses were discovered after the privatized corporation rehired her to work for it.

The Facts and the Case

In her Position Paper,[1] petitioner Luzviminda A. Ang (Ang) claimed that respondent Philippine National Bank (PNB), then a government-owned corporation, hired her on December 4, 1967 as a probationary clerk. But she rose from the ranks, eventually becoming an Assistant Department Manager I, a position she held when the PNB was privatized on May 26, 1996 and when she, like her co-employees, was deemed automatically retired. The bank computed Ang's gratuity benefits, the monetary value of her leave credits, and the other benefits due her and cleared her of any accountability.

But the PNB re-employed Ang as Assistant Manager effective on May 27, 1996 and assigned her in its Tuguegarao, Cagayan Branch.[2] Less than four months later, however, or on September 3, 1996 the PNB administratively charged her with serious misconduct and willful breach of trust for taking part in a scam, called "kiting operation," where a depositor used a conduit bank account for depositing several unfunded checks drawn against the same depositor's other current accounts and from which conduit bank account he later withdrew those checks. The PNB alleged that Ang had allowed this illegal activity from January 2 to April 3, 1996 while she was the Assistant Department Manager I in its Tuguegarao Branch.[3]

On September 16, 1996 the PNB heaped other charges against Ang of serious misconduct and gross violation of the bank's rules and regulations as follows:

- She issued six certificates of deposit between June 5, 1992 up to January 10, 1996 in amounts exceeding the true deposit balance of various depositors;
- She issued two bank commitments dated January 24, 1994 and for providing a credit line in favor of a government contractor without authority and in violation of SEL Cir. 2-166/91 of July 10, 1996; and
- She committed tardiness and "under time" from October to December 1995 and January to March 1996 in violation of Gen. Cir. 1-61/91 of February 1, 1991.[4]

In answer to the first charge, Ang claimed that it was not a "kiting operation," but an accommodation of a very valued client. She admitted that the checks were not funded and were converted into account receivables or accommodation loans that the client had settled, including interests, penalties, and other charges. Consequently, the PNB did not suffer any loss from those transactions; it even reaped enormous profits from them.[5]

On the second charge, Ang claimed that the issuance of the certificates had been tolerated to accommodate valued clients as a marketing strategy and prevent their move to other banks. These had been open transactions, said Ang, which were known to all the officers of the branch. Again, the PNB did not suffer any loss on account of the issuance of those certificates. The clients involved maintained their loyalty to the bank.[6]

On the third charge, Ang claimed that the PNB's loan commitments in those cases amounted to mere recommendations since she had no authority to approve loans. Furthermore, she could not have violated SEL Cir. 2-166/91 dated July 10, 1996 since this was not yet in effect when she issued those commitments on January 24, 1994. Besides, the circular merely prescribed the fees to be collected.[7]

On the last charge, Ang claimed that she was not covered by the circular governing office hours because she was a bank officer. Managerial employees, according to her, worked beyond the usual eight hours and even worked on Saturdays and Sundays. She added that, since the bank had already made deductions for tardiness on her pay check, she cannot anymore be administratively charged for it.[8]

Ang further pointed out that the causes for her termination took place when she was yet a government official. The PNB had since ceased to be government-owned. If she were to be charged for those causes, the jurisdiction over her case would lie with the Civil Service Commission. Even then, since she already retired from the government service, the employment that could be terminated no longer existed.[9]

Ang added that the causes for her termination had also become academic after the PNB cleared her of any accountability when she once retired from employment with it.

Pending administrative investigation, the PNB assigned Ang to its Aparri Branch on April 3, 1997.[10] Its Inspection and Investigation Unit recommended her dismissal on June 3, 1997 to the Board of Inquiry.[11] Ang alleged that the PNB dismissed her from work on July 25, 1997, withholding her fringe benefits, gratuity benefits, monetary value of her leave credits, rights and interests in the provident fund, and other benefits due her as of May 26, 1996.[12] She sought reconsideration, but the bank denied it.

On January 27, 1998 Ang filed a complaint against the PNB before the National Labor Relations Commission (NLRC), Regional Arbitration Branch II, Tuguegarao, Cagayan in NLRC RAB II CN 01-00022-98 for illegal dismissal, illegal deductions, non-payment of 13th month pay, allowances, separation pay, and retirement benefits with prayer for payment of moral and exemplary damages, attorney's fees, and litigation expenses.

Answering the complaint, the PNB claimed that it observed due process in terminating Ang, notifying her of the charges and giving her a chance to defend herself in a formal hearing but she waived this and opted to submit a position paper. The PNB Board of Inquiry informed her of its decision before implementing the same. Indeed, she even sought its reconsideration.[13] The PNB pointed out that since it separated petitioner Ang for a just cause, she was not entitled to termination pay. Further she ceased to be entitled to the benefits she claimed.[14]

The PNB also pointed out that although it cleared Ang of any accountability before her retirement as a civil servant, it premised such clearance from existing knowledge and records. The PNB had not yet discovered her frauds and omissions when it issued the clearance. Besides, what the PNB issued was not really a clearance but a certification that Ang had no pending administrative case. It issued that certification on August 12, 1996 and filed the first administrative charge against her on September 3, 1996.[15]

On March 30, 1999 the Labor Arbiter (LA) rendered a Decision,[16] finding the PNB's dismissal of Ang illegal for failure to show that the dismissal was for a valid cause and after notice and hearing. Specifically, the PNB failed to prove any basis for loss of trust. The LA ordered the reinstatement of petitioner Ang to her former position or its substantial equivalent, without loss of seniority rights and with full backwages and other benefits or

their money value from the time of her actual dismissal on July 25, 1996 up to her reinstatement.

Further, the LA ordered the PNB to pay Ang P488,567.87 in gratuity pay plus 1 percent interest per month from the time it fell due until actual payment, P1 million as moral damages, and P500,000.00 as exemplary damages plus 10 percent of the total monetary award as attorney's fees. The LA made the monetary value of her fringe benefits and others, not included in the computed amount, subject to recomputation upon the finality of the NLRC decision. In case reinstatement was not feasible, Ang was to have the option to be paid separation pay of at least one month pay for every year of her 30 years of service in addition to her full backwages and gratuity benefits.

The PNB appealed the decision to the NLRC but the latter dismissed the appeal on January 30, 2004.[17] Upon motion for reconsideration, however, on October 29, 2004 the NLRC reconsidered its finding of lack of due process, considering Ang's admission during direct examination that the PNB informed her of the charges against her and gave her a chance to present her side with the assistance of a counsel. The NLRC deleted the award of damages because of absence of bad faith on the part of the PNB officers but maintained the LA's finding that the PNB had not proved loss of trust as a ground for dismissal.

On petition for certiorari with the Court of Appeals (CA), the latter rendered a decision on January 30, 2007,[18] finding valid reason to uphold Ang's dismissal from the service for willful breach of the trust reposed in her by the PNB. As to the procedural aspect, the CA found that without doubt the PNB observed due process in dismissing Ang. She received two memoranda; first informing her of the charges against her, and second informing her of the decision to terminate her services. The CA reversed the NLRC Decision and dismissed Ang's complaint. She moved for reconsideration, but this was denied.

The Issues Presented

Petitioner presents the following issues:

1. Whether or not the CA erred in finding that the PNB dismissed Ang based on the evidence that she betrayed its trust in her as a bank officer;
2. Whether or not the CA erred in holding that the PNB accorded Ang due process when it dismissed her from the service; and
3. Whether or not the CA erred in holding that Ang was not entitled to the benefits that the PNB withheld from her.

The Court's Ruling

One. Ang claims that her dismissal by PNB, the private corporation, was illegal since she had committed no offense under its employ. The offense for which she was removed took place when the government still owned PNB and she was then a government employee. But while PNB began as a government corporation, it did not mean that its corporate being ceased and was subsequently reestablished when it was privatized. It remained the same corporate entity before, during, and after the change over with no break in its life as a corporation.

Consequently, the offenses that Ang committed against the bank before its privatization continued to be offenses against the bank after the privatization. But, since the PNB was already a private corporation when it looked into Ang's offenses, the provisions of the Labor Code governed its disciplinary action.

Ordinarily, the Court would not inquire into factual issues raised in a petition for review but, since the findings of the CA clashed with those of the LA and the NLRC, such inquiry would be justified in this case. As to the existence of just cause, it is clear to the Court that Ang did not deny the acts and omissions constituting the offense. The transcript of stenographic notes taken during her direct examination on April 22, 1998 before the

NLRC Regional Arbitration Branch in Tuguegarao, Cagayan, shows that her defense consisted in her claim that she accommodated a client's unfunded checks and issued false bank certificates with the knowledge and consent of the branch manager and comptroller.

But such uncorroborated defense is unsatisfactory, revealing a mind that was willing to disregard bank rules and regulations when other branch officers concurred. The PNB rightfully separated her from work for willful breach of the trust that it reposed in her under the Labor Code. Her defense that the PNB did not suffer any loss is of no moment. The focal point is that she betrayed the trust of the bank in her fidelity to its interest and rules.

Two. As to the issue of due process, a review of the transcript of stenographic notes taken during Ang's cross-examination on December 17, 1998 before the NLRC Regional Arbitration Branch in Tuguegarao, Cagayan, reveals that she admitted having received from the PNB a memorandum of September 15, 1996, containing the administrative charges against her and a memorandum of June 3, 1997 containing the decision to terminate her service.[19] She likewise admitted that the bank gave her a chance to present her side and to consult a lawyer.

Three. Ang claims that she is entitled to the monetary value of her leave credits, gratuity benefits, retirement pay, rights and interests in the provident fund, and other benefits due her as of May 26, 1996.

The PNB points out, however, that Ang did not seek reconsideration from the NLRC of its deletion of the LA's award of accrued compensation and other benefits to her. And, although she received an unfavorable decision from the CA, her motion for reconsideration did not raise the matter of accrued compensation and other benefits. Only before this Court did she raise them for the first time. But, contrary to the PNB's position, what the NLRC decision deleted was only the award of damages. It did not touch the benefits mentioned. Consequently, when the CA apparently deleted these as well, Ang has a right to elevate the issue before this Court.

Although the transformation of the PNB from a government-owned corporation to a private one did not result in a break in its life as juridical person, the same idea of continuity cannot be said of its employees. Section 27 of Presidential Proclamation 50 provided for the automatic termination of employer-employee relationship upon privatization of a government-owned and controlled corporation. Further, such privatization cannot deprive the government employees involved of their accrued benefits or compensation. Thus:

Sec. 27. Automatic Termination of Employer-Employee Relations. -- Upon the sale or other disposition of the ownership and/or controlling interest of the government in a corporation held by the Trust, or all or substantially all of the assets of such corporation, the employer-employee relations between the government and the officers and other personnel of such corporations shall terminate by operation of law. None of such officers or employees shall retain any vested right to future employment in the privatized or disposed corporation, and the new owners or controlling interest holders thereof shall have full and absolute discretion to retain or dismiss said officers and employees and to hire the replacement or replacements of any one or all of them as the pleasure and confidence of such owners or controlling interest holders may dictate.

Nothing in this section shall, however, be construed to deprive said officers and employees of their vested entitlements in accrued benefits or the compensation and other benefits incident to their employment or attaching to termination under applicable employment contracts, collective bargaining agreements, and applicable legislation.

Here, when PNB was privatized, Ang's employment with it as a government-owned corporation ceased. Indeed, the PNB already computed the retirement and other benefits to which she was entitled as a result of the cessation of her employment. Since she had no pending administrative case on the day she ceased to be a PNB employee and had been cleared of any accountability,[20] all those benefits already accrued to her on the date of her

termination.

Of course, the PNB rehired her immediately but that is another story. In the eyes of the law, her record as employee of the government-owned PNB was untarnished at the time of her separation from it. In fact, the PNB already computed the benefits to which she was entitled and readied their payment. The GSIS rule that the PNB now relies on applied only to employees with pending administrative charge at the time of their retirement. Since Ang had none of that, the cited rule did not apply to her. The Court sees no reason why she should not receive the benefits which she earned or which accrued to her as of May 26, 1996.

As for possible benefits accruing to Ang after May 26, 1996, the same should be deemed governed by the Labor Code since the PNB that rehired her on May 27, 1996 has become a private corporation. Under the Omnibus Rules Implementing the Labor Code, Book VI, Rule I, Section 7, the employee's separation from work for a just cause does not entitle her to termination pay. Thus, the PNB may rightfully withhold Ang's termination pay that accrued beginning on May 27, 1996 because of her dismissal.

WHEREFORE, the Court AFFIRMS the Court of Appeals decision dated January 30, 2007 and its resolution dated July 6, 2007 in CA-G.R. SP 88449 in favor of respondent Philippine National Bank but with the MODIFICATION that it directs the latter to pay petitioner Luzviminda A. Ang the benefits due her from the bank as of the date of her retirement on May 26, 1996.

SO ORDERED.

Carpio, (Chairperson), Nachura, Abad, and Perez,[*] JJ., concur.

[*] Designated as additional member in lieu of Associate Justice Jose C. Mendoza, per Special Order No. 842 dated June 3, 2010.

[1] Records, pp. 7-13.

[2] Id.

[3] Exhibit "2," id. at 69-77.

[4] Id.

[5] Id. at 9.

[6] Id.

[7] Id. at 9-10.

[8] Id. at 10.

[9] Id. at 93.

[10] Supra note 8.

[11] Exhibit "2," id. at 69-77.

[12] Id. at 8.

[13] Id. at 129-130.

[14] Id. at 64-68.

[15] Id.

[16] Id. at 174-189.

[17] Id. at 269-292.

[18] CA rollo, pp. 291-310.

[19] Records, TSN, December 17, 1998, pp. 137-149.

[20] Exhibit "F," records, p. 16.

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