

THE UNIVERSITY OF THE IMMACULATE CONCEPTION AND MO. MARIA ASSUMPTA DAVID, RVM, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND TEODORA AXALAN, RESPONDENTS.

G.R. No. 181146. January 26, 2011

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a petition for review on certiorari[1] of the 13 December 2007 Decision[2] of the Court of Appeals in CA-G.R. SP No. 00812 affirming the 15 August 2005 and the 24 October 2005 Resolutions[3] of the National Labor Relations Commission in NLRC CA No. M-008333-2005, which sustained the 11 October 2004 Decision[4] of the Labor Arbiter in RAB-11-12-01187-03 ordering petitioner to reinstate private respondent to her former position without loss of seniority rights and to pay her backwages, salary differentials, damages, and attorney's fees.

The Facts

Petitioner University of the Immaculate Conception is a private educational institution located in Davao City. Private respondent Teodora C. Axalan is a regular faculty member in the university holding the position of Associate Professor II. Aside from being a regular faculty member, Axalan is the elected president of the employees' union.[5]

From 18 November to 22 November 2002, Axalan attended a seminar in Quezon City on website development. Axalan then received a memorandum[6] from Dean Maria Rosa Celestial asking her to explain in writing why she should not be dismissed for having been absent without official leave.

In her letter,[7] Axalan claimed that she held online classes while attending the seminar. She explained that she was under the impression that faculty members would not be marked absent even if they were not physically present in the classroom as long as they conducted online classes.

In reply,[8] Dean Celestial relayed to Axalan the message of the university president that no administrative charge would be filed if Axalan would admit having been absent without official leave and write a letter of apology seeking forgiveness.

Convinced that she could not be deemed absent since she held online classes, Axalan opted not to write the letter of admission and contrition the university president requested.[9] The Dean wrote Axalan that the university president had created an ad hoc grievance committee to investigate the AWOL charge.[10]

From 28 January to 3 February 2003, Axalan attended a seminar in Baguio City on advanced paralegal training.

Dean Celestial wrote Axalan informing her that her participation in the paralegal seminar in Baguio City was the subject of a second AWOL charge.[11] The dean asked Axalan to explain in writing why no disciplinary action should be taken against her.[12]

In her letter,[13] Axalan explained that before going to Baguio City for the seminar, she sought the approval of Vice-President for Academics Alicia Sayson. In a letter,[14] VP Sayson denied having approved Axalan's application for official leave. The VP stated in her letter that it was the university president, Maria Assumpta David, who must approve the application.

After conducting hearings and receiving evidence, the ad hoc grievance committee found Axalan to have incurred AWOL on both instances and recommended that Axalan be suspended without pay for six months on each AWOL charge.[15] The university president approved the committee's recommendation.

The university president then wrote Axalan informing her that she incurred absences without official leave when she attended the seminars on website development in Quezon City and on advanced paralegal training in Baguio City on 18-22 November 2002 and on 28 January-3 February 2003, respectively. In the same letter, the university president informed Axalan that the total penalty of one-year suspension without pay for both AWOL charges would be effective immediately.[16]

On 1 December 2003, Axalan filed a complaint[17] against the university for illegal suspension, constructive dismissal, reinstatement with backwages, and unfair labor practice with prayer for damages and attorney's fees.

The university moved to dismiss the complaint on the ground that the Labor Arbiter had no jurisdiction over the subject matter of the complaint. The university maintained that jurisdiction lay in the voluntary arbitrator.[18]

In denying the university's motion to dismiss, the Labor Arbiter held that there being no existing collective bargaining agreement between the parties, no grievance machinery was constituted, which barred resort to voluntary arbitration.[19]

Meanwhile, upon the expiration of the one-year suspension, Axalan promptly resumed teaching at the university on 1 October 2004.

The Ruling of the Labor Arbiter

On 11 October 2004, the Labor Arbiter rendered a Decision holding that the suspension of Axalan amounted to constructive dismissal entitling her to reinstatement and payment of backwages, salary differentials, damages, and attorney's fees, thus:

WHEREFORE, premises laid, judgment is hereby rendered declaring that the suspension of complainant amounted to constructive dismissal, and as such, she is entitled to reinstatement and payment of her full backwages reckoned from the time it was withheld from her up to the time of reinstatement. Accordingly, Respondent University of the Immaculate Conception acting through its President, Respondent Mo. Maria Assumpta David, RVM, is directed to reinstate the complainant to her former position without loss of seniority rights and to pay her the sum of Five Hundred Forty Three Thousand Four Hundred Fifty Two Pesos (P543,452.00) representing her backwages, salary differentials (diminution) and damages plus ten percent (10%) thereof as attorney's fees or the sum of P54,345.20.

The Respondent UIC and its President are hereby directed to inform this Office of the mode of compliance it will avail itself by reason of the Order of reinstatement.

SO ORDERED.[20]

The university appealed the Labor Arbiter's Decision to the National Labor Relations Commission (NLRC). It challenged the jurisdiction of the Labor Arbiter insisting that the voluntary arbitrator had jurisdiction over the labor dispute. The university pointed out that when the Labor Arbiter rendered his Decision on 11 October 2004, Axalan had returned to work on 1 October 2004 upon the expiration of the one-year suspension.

The Ruling of the NLRC

The NLRC held that the Labor Arbiter, not the voluntary arbitrator, had jurisdiction as the controversy did not pertain to a dispute involving the union and the university. In its 15 August 2005 Resolution, the NLRC ruled:

WHEREFORE, for want of merit, the instant appeal is hereby DISMISSED.

SO ORDERED.[21]

NLRC Commissioner Jovito C. Cagaanan, in his dissenting opinion,[22] stressed that the parties previously agreed to submit the dispute to voluntary arbitration, which cast doubt on the jurisdiction of the Labor Arbiter.

The university moved for reconsideration of the NLRC Resolution. But the NLRC, in its 24 October 2005 Resolution,[23] denied the motion for reconsideration for lack of merit. The university challenged both Resolutions of the NLRC before the Court of Appeals via a petition for certiorari.

The Ruling of the Court of Appeals

The Court of Appeals affirmed the findings of the Labor Arbiter and the NLRC. In its 13 December 2007 Decision, the Court of Appeals dismissed the university's petition for certiorari, thus:

We find no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of public respondent in affirming the Labor Arbiter. Respondent Commission's ruling finds more than ample support in statutory and case law. It cannot, therefore, be characterized as whimsical, arbitrary, or oppressive.

WHEREFORE, the instant petition is hereby DISMISSED.

SO ORDERED.[24]

Dissatisfied, the university filed in this Court the instant petition for review on certiorari.

The Issues

The issues for resolution are (1) whether the voluntary arbitrator had jurisdiction over the labor dispute; (2) whether Axalan was constructively dismissed; and (3) whether the Labor Arbiter's computation of backwages, damages, and attorney's fees was correct.

The Court's Ruling

The petition is impressed with merit.

The university contends that based on the transcript of stenographic notes from the ad hoc grievance committee hearing held on 20 February 2003, the parties agreed that the voluntary arbitrator would have jurisdiction over the labor dispute. The university maintains that Axalan's suspension does not constitute constructive dismissal and that the Labor Arbiter's decision treating it as such is an attempt to make it appear that the voluntary arbitrator has no jurisdiction. The university points out that for constructive dismissal to exist, there must be severance of employment by the employee because of unbearable act of discrimination, insensibility, or disdain on the part of the employer leaving the employee with no choice but to forego continued employment. The university claims that on the contrary, Axalan eagerly reported for work as soon as the one-year suspension was over. The

university further argues that assuming Axalan is entitled to backwages, it should have been based on Axalan's average gross monthly income at the time she was suspended in SY2003-2004, which was P14,145.00, not on her average gross monthly income in SY2002-2003, which was P18,502.00.

Private respondent Axalan counters that the university raises the same factual issues already decided unanimously by the Labor Arbiter, the NLRC, and the Court of Appeals. On the issue of jurisdiction, Axalan stresses that the present labor case, being a complaint for constructive dismissal and unfair labor practice, is within the jurisdiction of the Labor Arbiter. On the finding of constructive dismissal, Axalan points out that the Labor Arbiter's factual finding of constructive dismissal, when affirmed by the NLRC and the Court of Appeals, binds this Court. Axalan claims that both AWOL charges against her were without basis and were only a form of harassment amounting to unfair labor practice. As to the computation of the award of backwages, Axalan points out that her average gross monthly income in SY2002-2003 was reduced in SY2003-2004 precisely because she was not given an overload of two extra assignments resulting in the diminution of her income. Axalan maintains that the award of damages was just proper considering that her suspension was without basis and amounted to unfair labor practice.

Well-settled is the rule that the jurisdiction of this Court in a petition for review on certiorari is limited to reviewing only errors of law, not of fact, unless the factual findings being assailed are not supported by the evidence on record or the impugned judgment is based on a misapprehension of facts. Patently erroneous findings of the Labor Arbiter, even when affirmed by the NLRC and the Court of Appeals, are not binding on this Court.[25]

As to the first issue, Article 217 of the Labor Code states that unfair labor practices and termination disputes fall within the original and exclusive jurisdiction of the Labor Arbiter:

ART. 217. Jurisdiction of Labor Arbiters and the Commission. - (a) Except as otherwise provided under this Code, the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide x x x the following cases involving all workers, whether agricultural or non-agricultural:

- Unfair labor practice cases;

- Termination disputes;

x x x (Emphasis supplied)

ARTICLE 262 of the same Code provides the exception:

ART. 262. Jurisdiction over other labor disputes. - The Voluntary Arbitrator or panel of Voluntary Arbitrators, upon agreement of the parties, shall also hear and decide all other labor disputes including unfair labor practices and bargaining deadlocks. (Emphasis supplied)

In *San Miguel Corp. v. NLRC*, [26] the Court ruled that for the exception to apply, there must be agreement between the parties clearly conferring jurisdiction to the voluntary arbitrator. Such agreement may be stipulated in a collective bargaining agreement. However, in the absence of a collective bargaining agreement, it is enough that there is evidence on record showing the parties have agreed to resort to voluntary arbitration.[27]

As can be gleaned from the transcript of stenographic notes of the administrative hearing held on 20 February 2003, the parties in this case clearly agreed to resort to voluntary arbitration. To quote the exact words of the parties' counsels:

Atty. Dante Sandiego: x x x So, are we to understand that the decision of the President shall be without prejudice to the right of the employees to contest the validity or legality of his dismissal or of the disciplinary action imposed upon him by asking for voluntary arbitration under the Labor Code or when applicable availing

himself of the grievance machinery under the Labor Code which ends in voluntary arbitration. That will be the steps that we will have to follow.

Atty. Sabino Padilla, Jr.: Yes, agreed.[28]

Thus, the Labor Arbiter should have immediately disposed of the complaint and referred the same to the voluntary arbitrator when the university moved to dismiss the complaint for lack of jurisdiction.

No less than Section 3, Article XIII of the Constitution declares as state policy the preferential use of voluntary modes in settling disputes, to wit:

Sec. 3. x x x x The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace. (Emphasis supplied)

As to the second issue, constructive dismissal occurs when there is cessation of work because continued employment is rendered impossible, unreasonable, or unlikely as when there is a demotion in rank or diminution in pay or when a clear discrimination, insensibility, or disdain by an employer becomes unbearable to the employee leaving the latter with no other option but to quit.[29]

In this case however, there was no cessation of employment relations between the parties. It is unrefuted that Axalan promptly resumed teaching at the university right after the expiration of the suspension period. In other words, Axalan never quit. Hence, Axalan cannot claim that she was left with no choice but to quit, a crucial element in a finding of constructive dismissal. Thus, Axalan cannot be deemed to have been constructively dismissed.

Significantly, at the time the Labor Arbiter rendered his Decision on 11 October 2004, Axalan had already returned to her teaching job at the university on 1 October 2004. The Labor Arbiter's Decision ordering the reinstatement of Axalan, who at the time had already returned to work, is thus absurd.

There being no constructive dismissal, there is no legal basis for the Labor Arbiter's order of reinstatement as well as payment of backwages, salary differentials, damages, and attorney's fees.[30] Thus, the third issue raised in the petition is now moot.

Note that on the first AWOL incident, the university even offered to drop the AWOL charge against Axalan if she would only write a letter of contrition. But Axalan adamantly refused knowing fully well that the administrative case would take its course leading to possible sanctions. She cannot now be heard that the imposition of the penalty of six-month suspension without pay for each AWOL charge is unreasonable. We are convinced that Axalan was validly suspended for cause and in accord with procedural due process.

The Court recognizes the right of employers to discipline its employees for serious violations of company rules after affording the latter due process and if the evidence warrants. The university, after affording Axalan due process and finding her guilty of incurring AWOL on two separate occasions, acted well within the bounds of labor laws in imposing the penalty of six-month suspension without pay for each incidence of AWOL.

As a learning institution, the university cannot be expected to take lightly absences without official leave among its employees, more so among its faculty members even if they happen to be union officers. To do so would send the wrong signal to the studentry and the rest of its teaching staff that irresponsibility is widely tolerated in the academe.

The law protects both the welfare of employees and the prerogatives of management.[31] Courts will not interfere with prerogatives of management on the discipline of employees, as long as they do not violate labor laws,

collective bargaining agreements if any, and general principles of fairness and justice.[32]

WHEREFORE, we GRANT the petition. The 13 December 2007 Decision of the Court of Appeals in CA-G.R. SP No. 00812 affirming the 15 August 2005 and the 24 October 2005 Resolutions of the National Labor Relations Commission in NLRC CA No. M-008333-2005, which sustained the 11 October 2004 Decision of the Labor Arbiter in RAB-11-12-01187-03, is SET ASIDE.

No pronouncement as to costs.

SO ORDERED.

Nachura, Peralta, Abad, and Mendoza, JJ., concur.

[1] Under Rule 45 of the Rules of Court.

[2] Rollo, pp. 49-70. Penned by Associate Justice Romulo V. Borja, with Associate Justices Mario V. Lopez and Elihu A. Ybañez, concurring.

[3] Id. at 112-118. 15 August 2005 Resolution penned by Presiding Commissioner Salio B. Dumarpa, with Commissioners Proculo T. Sarmen concurring and Jovito C. Cagaanan dissenting.

Id. at 121-122. 24 October 2005 Resolution penned by Presiding Commissioner Salio B. Dumarpa, with Commissioners Proculo T. Sarmen and Jovito C. Cagaanan, concurring.

[4] Id. at 123-138. Penned by Executive Labor Arbiter Elbert C. Restauero.

[5] Id. at 125.

[6] Id. at 357.

[7] Id. at 358.

[8] Id. at 361.

[9] Id. at 362.

[10] Id. at 363.

[11] Id. at 371.

[12] Id.

[13] Id. at 378.

[14] Id. at 380-382.

[15] Id. at 406.

[16] Id. at 188-190.

[17] Id. at 192-210.

[18] Id. at 273-275.

[19] Id. at 280.

[20] Id. at 137-138.

[21] Id. at 118.

[22] CA rollo, p. 53.

[23] Rollo, p. 121.

[24] Id. at 69-70.

[25] Metropolitan Bank and Trust Company v. Barrientos, G.R. No. 157028, 31 January 2006, 481 SCRA 311.

[26] 325 Phil. 401 (1996).

[27] Id. at 406.

[28] Rollo, p. 24.

[29] La Rosa v. Ambassador Hotel, G.R. No. 177059, 13 March 2009, 581 SCRA 340.

[30] Sague v. Triumph International (Phils.), Inc., G.R. No. 164804, 30 January 2009, 577 SCRA 323.

[31] Mendoza v. Rural Bank of Lucban, G.R. No. 155421, 7 July 2004, 433 SCRA 756.

[32] Id.

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