

TACLOBAN FAR EAST MARKETING CORPORATION AND FRANCISCO Y. ROMUALDEZ, PETITIONERS, VS. THE COURT OF APPEALS, NATIONAL LABOR RELATIONS COMMISSION AND BENJAMIN Q. SABULAO, RESPONDENTS.

G.R. No. 182320. September 11, 2009

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Assailed in this petition for review on certiorari is the Decision[1] of the Court of Appeals dated August 23, 2007 in CA-G.R. SP No. 01027 which affirmed the Decision[2] of the National Labor Relations Commission (NLRC) dated June 25, 2004 and its Resolution[3] dated June 30, 2005 declaring petitioners guilty of illegal dismissal. Also assailed is the Court of Appeals' Resolution[4] denying the motion for reconsideration.

Sometime in 1989, petitioners hired private respondent Benjamin Sabulao as helper in its hardware business, then as a delivery truck driver from 1993 until May 12, 2001. During the first week of May 2001, Sabulao alleged that he asked permission to be absent for five days due to his grandfather's death; that petitioner Francisco Romualdez granted his request but when he reported for work on May 12, 2001, he was informed not to work anymore. Thereafter, he returned to his hometown and engaged in the copra business to support the needs of his family.

On August 10, 2001, Sabulao together with Mario Villanueva filed before the NLRC's Regional Arbitration Branch No. VIII, a complaint for illegal dismissal and money claims against petitioners. Eventually, Mario Villanueva executed a Statement of Quitclaim and Release hence, his complaint was dismissed.

Petitioners denied having illegally dismissed Sabulao and alleged that he abandoned his work. Allegedly, Sabulao had been a frequent absentee without notice since March and April of 2001 that petitioners would even send Edgar Enopia to fetch him to report for work. During the first week of May 2001, petitioners learned that Sabulao was already engaged in the "Ukay-Ukay" business.

On October 2, 2002, the Labor Arbiter rendered a Decision[5] finding Sabulao to have abandoned his work. At the same time, petitioners were ordered to pay Sabulao his salary differentials and service incentive leave pay. The other money claims were denied for failure to substantiate the same. The dispositive portion of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered-

1. Finding no illegal dismissal of complainant;
2. Ordering respondent to pay complainant:

a. Salary differentials:

May 11, 1998 to Dec. 31, 1999

(P153 - P130 = P23.00 x 511 days) =

P11, 753.00

Jan. 2, 2000 - Oct. 31, 2000

$(P163 - P160 = P3.00 \times 259 \text{ days}) =$

777.00

Nov. 1, 2000 - Dec. 31, 2000

$(P173 - P160 = P13.00 \times 51 \text{ days}) =$

663.00

Jan. 2, 2001 - Apr. 30, 2001 =

NIL

May 1, 2001 - May 11, 2001

$(P177.00 - P173 = P4.00 \times 10 \text{ days}) =$

40.00

P13, 233.00

b. Service Incentive Leave Pay

1998 - $P153 \times 5 \text{ days}$

=

765.00

1999 - $P153 \times 5 \text{ days}$

=

765.00

2000 - $P173 \times 5 \text{ days}$

=

865.00

P 2,395.00

GRAND TOTAL

P15,628.00

3. All other claims are denied for lack of merit.

SO ORDERED.[6]

On appeal, the NLRC reversed the decision of the Labor Arbiter, thus:

WHEREFORE, premises considered, the decision of the Labor Arbiter is hereby SET ASIDE and VACATED and a new one entered finding complainant to have been illegally dismissed. As such, respondent (Tacloban) Far East (M)arketing Corporation is hereby ORDERED to pay complainant his backwages and separation pay

from the date of dismissal up to the date of this decision. In addition, respondent is ORDERED to pay salary differentials and service incentive leave pay in the amount of P15,628.00.

SO ORDERED.[7]

The NLRC found that Sabulao's frequent absences could not by itself constitute abandonment and that no proof of overt acts was adduced showing that he intended to abandon his work; that the three-month delay in the filing of the case is not an indication of abandonment; and that the amounts mentioned in the mandatory conference before the labor arbiter should not be considered in determining the merits of the case.

Petitioners filed a motion for reconsideration but it was denied by the NLRC in its Resolution dated June 30, 2005. In addition, as prayed for by Sabulao, the NLRC made a detailed computation of the award due him as follows:

Backwages: May 2001 - June 2005

P209,332.99

13[th] month pay

12,558.00

SILP

640.00

222,529.99

Salary Differentials

15,628.00

TOTAL DIFFERENTIALS

P238, 157.99[8]

Thereafter, petitioners filed a Petition for Certiorari before the Court of Appeals which rendered the herein assailed Decision denying the petition and affirming the NLRC Decision finding respondent to have been illegally dismissed.

The Court of Appeals held that the act of filing a complaint for illegal dismissal negates any intention on the part of the employee to abandon his job; that Sabulao's filing of the complaint for illegal dismissal only after three months from the time he was dismissed would not negate the finding that he did not abandon his work; that his returning to his hometown and engaging in copra business could not be taken against him; that engaging in the "Ukay-Ukay" business neither demonstrated an intention to abandon his job; that mere absence is not enough to constitute abandonment, rather, it should be coupled with overt acts showing that the employee is no longer interested to work anymore; and that Sabulao's prayer for separation pay should not be taken against him.

Petitioners' motion for reconsideration was denied on January 24, 2008; hence, this petition raising the following issues:

A.

THE QUESTIONED DECISION OF THE HONORABLE COURT OF APPEALS IS BASED ON MISAPPRECIATION OF THE EVIDENCE PRESENTED BEFORE THE LABOR ARBITER AND IT OVERLOOKED FACTS OF SUBSTANCE AND VALUE, THAT IF CONSIDERED WOULD

DEFINITELY CONCLUDE THAT PRIVATE RESPONDENT ABANDONED HIS EMPLOYMENT WITH HEREIN PETITIONER, HENCE, IN DOING SO, THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION.

B.

PUBLIC RESPONDENT THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO EXCESS OF OR LACK OF JURISDICTION WHEN IT ORDERED THE PAYMENT OF BACKWAGES AND OTHER CLAIMS TO PRIVATE RESPONDENT DESPITE A PREPONDERANCE OF EVIDENCE SHOWING AN ABANDONMENT OF WORK BY PRIVATE RESPONDENT.

The petition lacks merit.

At the outset, it must be stated that petitioners adopted the wrong mode of remedy in bringing the case before this Court. It is well-settled that the proper recourse of an aggrieved party to assail the decision of the Court of Appeals is to file a petition for review on certiorari under Rule 45 of the Rules of Court.[9] The Rules precludes recourse to the special civil action of certiorari if appeal, by way of a petition for review is available, as the remedies of appeal and certiorari are mutually exclusive and not alternative or successive.[10]

For a writ of certiorari to issue, a petitioner must not only prove that the tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction but must also show that he has no plain, speedy and adequate remedy in the ordinary course of law.[11] Certiorari cannot be used as a substitute for a lost appeal. Though there are instances when certiorari was granted despite the availability of appeal,[12] none of these recognized exceptions was shown to be present in the case at bar.

Moreover, while it is true that the Court may treat a Petition for Certiorari as having been filed under Rule 45 in the interest of substantial justice, the present petition could not be given the same leniency because it was filed beyond the 15-day reglementary period within which to file a petition for review on certiorari. The records of the case show that petitioners received a copy of the January 24, 2008 Resolution of the Court of Appeals denying the motion for reconsideration on February 5, 2008. Instead of filing a petition for review on certiorari within 15 days from receipt thereof, petitioners waited for two months before filing the instant petition. Accordingly, the decision of the Court of Appeals had already become final and executory and beyond the purview of this Court to act upon.[13] The inescapable conclusion is that the present petition was filed belatedly to make up for a lost appeal.

At any rate, even if the Court allows the present petition for certiorari, it would still be dismissible for lack of grave abuse of discretion amounting to lack of or excess of jurisdiction on the part of the Court of Appeals. For certiorari to prosper, the abuse of discretion must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility.[14]

In the instant case, there was no showing that the Court of Appeals ruled in a capricious and whimsical manner amounting to an arbitrary exercise of its powers.

It is well-settled that in termination cases, the burden of proof rests upon the employer to show that the dismissal was for a just and valid cause and failure to discharge the same would mean that the dismissal is not justified and therefore illegal. Hence, in arguing that Sabulao abandoned his work, it is incumbent upon the petitioners to prove: (1) that the employee failed to report for work or had been absent without valid or justifiable reason; and (2) that there must have been a clear intention to sever the employer-employee relationship as manifested by some overt acts. Clearly, jurisprudence dictates that the burden of proof to show that there was unjustified refusal to go back to work rests on the employer.[15]

The NLRC, as affirmed by the Court of Appeals, correctly found that petitioners failed to substantiate its claim that Sabulao abandoned his work. No evidence was presented to prove that Sabulao clearly intended to sever the employer-employee relationship as manifested by some overt acts. As regards petitioners' allegation that Sabulao is a field personnel and therefore not entitled to the money claims awarded by the NLRC, suffice it to state that the issue was raised only before the Court of Appeals in contravention to the rule that questions not raised before the tribunals a quo cannot be raised for the first time on appeal.[16] As such, it deserves no consideration by this Court.

WHEREFORE, the instant petition is DENIED for lack of merit. The August 23, 2007 Decision of the Court of Appeals in CA-G.R. SP No. 01027 which affirmed the Decision of the National Labor Relations Commission declaring petitioners guilty of illegal dismissal, and the January 24, 2008 Resolution denying the motion for reconsideration, are AFFIRMED.

SO ORDERED.

Chico-Nazario, Velaco, Jr., Nachura, and Peralta, JJ., concur.

[1] Rollo, pp. 22-31. Penned by Associate Justice Francisco P. Acosta and concurred in by Associate Justices Agustin S. Dizon and Stephen C. Cruz.

[2] Id. at 65-70. Penned by Commissioner Oscar S. Uy and concurred in by Commissioner Edgardo M. Enerlan and Presiding Commissioner Gerardo C. Nograles.

[3] Id. at 81-83. Penned by Commissioner Oscar S. Uy and concurred in by Presiding Commissioner Gerardo C. Nograles and Commissioner Aurelio D. Menzon.

[4] Id. at 33-34. Penned by Associate Justice Francisco P. Acosta and concurred in by Associate Justices Priscilla Baltazar-Padilla and Stephen C. Cruz.

[5] Id. at 44-49.

[6] Id. at 49.

[7] Id. at 70.

[8] Id. at 82.

[9] RULES OF COURT, Rule 45, Section 1. Filing of petition with Supreme Court. — A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth.

[10] *Rigor v. Tenth Division of the Court of Appeals*, G.R. No. 167400, June 30, 2006, 494 SCRA 375, 381-382.

[11] RULES OF COURT, Rule 65, Section 1. Petition for certiorari. When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof,

copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46.

[12] These exceptions include: (a) when public welfare and the advancement of public policy dictates; (b) when the broader interest of justice so requires; (c) when the writs issued are null and void; or (d) when the questioned order amounts to an oppressive exercise of judicial authority. *Iloilo La Filipina Uygongco Corporation v. Court of Appeals*, G.R. No. 170244, November 28, 2007, 539 SCRA 178, 189.

[13] See *Iloilo La Filipina Uygongco Corporation v. Court of Appeals*, *supra* note 12 at 190.

[14] *Nationwide Security and Allied Services, Inc. v. Court of Appeals*, G.R. No. 155844, July 14, 2008, 558 SCRA 148, 153.

[15] See *Macahilig v. National Labor Relations Commission*, G.R. No. 158095, November 23, 2007, 538 SCRA 375, 384-385.

[16] *Hermogenes v. Osco Shipping Services, Inc.*, G.R. No. 141505, August 18, 2005, 467 SCRA 301, 310.

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