

SEGIFREDO T. VILCHEZ, PETITIONER, VS. FREE PORT SERVICE CORPORATION AND ATTY. ROEL JOHN T. KABIGTING, PRESIDENT, RESPONDENTS.

G.R. No. 183735. July 06, 2015

Ponente: PERALTA,* J.

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PERALTA,[*] J.:

Assailed in this petition for review on certiorari are the Decision[1] dated June 15, 2007 of the Court of Appeals in CA-G.R. SP No. 94627 and the Resolution[2] dated July 7, 2008 denying reconsideration thereof.

Private respondent Free Port Service Corporation (FSC) is a wholly-owned subsidiary of the Subic Bay Metropolitan Authority (SBMA) engaged in the business of providing general services such as security and safety services for the protection of properties and property custodianship exclusively within the Subic Bay Freeport Zone. Respondent Atty. Roel John T. Kabigting was the former FSC President. Petitioner Segifredo T. Vilchez was respondent FSC's Physical Security Department Manager appointed on January 22, 1999.[3] As Manager, petitioner was in-charge of overseeing the successful operation/management of the Physical Security Department as well as maintaining effective measures in providing better security services.

In March 1999, petitioner advised the respondent FSC management of the need to secure PNP SOSIA licenses for its 159 physical security officers and volunteered to take full responsibility for procuring the said licenses and other requirements. He required the amount of P127,200.00 for the payment of licenses, NBI clearances, psychiatric tests and drug tests for the 159 security officers. Thus, upon petitioner's advice and recommendation, respondent FSC prepared Disbursement Voucher No. 04308[4] dated March 25, 1999 in the amount of P127,200.00 payable to a certain Col. Angelito Gerangco which petitioner certified that the expenses were necessary and incurred under his direct supervision. To cover the amount advanced by respondent FSC, all the security personnel concerned were deducted, on the same month, the sum amounting to P800.00 each.

On August 20, 1999, the Commission on Audit (COA) issued a Notice of Suspension of the P127,200.00 transaction after finding that Gerangco was not a designated disbursing officer and, therefore, should not be given a cash advance.[5] The COA further directed the petitioner to promptly settle the suspension notice as items not settled within 90 days after receipt shall become disallowed, pursuant to Section 82 of Presidential Decree (PD) No. 1445. Despite the lapse of one (1) year, however, no settlement was made.

In a Memorandum dated April 16, 2001 addressed to petitioner, then FSC President, respondent Kabigting, wrote that an administrative action was being initiated against him for the offense of serious misconduct resulting to loss of trust and confidence, which offense constituted a ground for termination of employment under the Rules on Administration of Discipline of Freeport Service Corporation, as well as Article 282 of the Labor Code. Pertinent portions of the Memorandum read:

X X X X X X X X

Specifically, you caused the preparation of and received from the FSC on March 25, 1999 the amount of One hundred Twenty-Seven Thousand Two Hundred Pesos (P127,200.00) under Disbursement Voucher #04308 for the payment of Security Guard licenses, NBI clearance, Psychiatric Test, and Drug Test for FSC Physical Security personnel's compliance with the requirements of PNP SOSIA. To date, after two (2) years, you have not produced the clearance nor the licenses, nor have you shown any proof that the funds that you received were applied to the payment of the corresponding and appropriate fees therefore.[6]

Petitioner asked for an extension of thirty (30) days' time to file his reply. In a Memorandum dated April 23, 2001, respondents granted petitioner a ten (10)-day extension and placed petitioner under preventive suspension for thirty (30) days to have an impartial and objective investigation. Petitioner, however, failed to file his Answer.

On May 10, 2001, respondents issued a Notice of Dismissal[7] of petitioner effective as of that date.

On January 21, 2002, petitioner filed with the Labor Arbiter (LA) of San Fernando Pampanga, a Complaint for illegal dismissal, non-payment of salaries, allowances and 13[th] month pay with claims for damages and attorney's fees against respondents. In his position paper, petitioner explained that the amount of P127,200.00 intended for the payment of the licenses of security guards under Disbursement Voucher No. 04308 was not given to him but a check was made payable to Col. Angelito L. Gerangco, who collected and encashed the same; that he had sent a letter dated April 17, 2001 to Col. Gerangco asking him to liquidate the remaining unsecured license. Petitioner insisted that Col. Gerangco's non-compliance was his own misfeasance, which he could not be held liable for.

On May 30, 2003, the LA found petitioner to have been illegally dismissed, the dispositive portion of the Decision[8] reads:

WHEREFORE, judgment is hereby rendered declaring complainant Segifredo Vilchez to have been ILLEGALLY DISMISSED. Accordingly, respondents are hereby ordered to reinstate the complainant to his former position without loss of seniority rights or at the option of the respondents to merely reinstate the complainant in the payroll and to pay complainant full backwages from the time he was illegally dismissed up to his actual reinstatement which now amounts to Five Hundred Sixty-Two Thousand Five Hundred Pesos (P562,500.00).

All other claims are hereby dismissed for lack of merit.

SO ORDERED.[9]

Respondents appealed to the NLRC. In the meantime, respondents reinstated petitioner.

On September 27, 2005, the NLRC issued a Decision[10] granting respondents' appeal, the decretal portion of which reads:

WHEREFORE, premises considered, the Decision dated 30 May 2003 is hereby reversed and set aside and a new one is entered dismissing the complaint for lack of merit.

SO ORDERED.[11]

Petitioner filed a motion for reconsideration, which the NLRC denied in its Resolution[12] dated March 9, 2006.

Petitioner filed a petition for certiorari with the CA to which respondents filed their Comment.

On June 15, 2007, the CA denied the petition and affirmed the NLRC, the dispositive portion of the decision reads:

WHEREFORE, the instant Petition is hereby DENIED. The Decision dated 27 September 2005 and the

Resolution dated 09 March 2006 of the public respondent in NLRC RAB 111-01-3768-02 is hereby AFFIRMED in toto. No pronouncement as to costs.

SO ORDERED.[13]

Petitioner's motion for reconsideration was denied by the CA in a Resolution dated July 7, 2008.

Undaunted, petitioner filed the instant petition for review on certiorari invoking the following assignment of errors committed by the CA, to wit:

PETITIONER WAS ILLEGALLY DISMISSED BECAUSE HIS DISMISSAL WAS BASED ON THE ACT OR OMISSION OF ANOTHER PERSON.

THE SUPERVENING EVENT OF PETITIONER'S RETIREMENT FROM SERVICE AS EMPLOYEE OF PRIVATE RESPONDENTS BEFORE THE NATIONAL LABOR RELATIONS COMMISSION MODIFIED THE DECISION OF LABOR ARBITER RENDERS MOOT AND ACADEMIC THE PETITIONER'S DISMISSAL FROM SERVICE BECAUSE, IN EFFECT, PETITIONER WAS ABSOLVED OF ANY INFRACTIONS WHICH THE PETITIONER ALLEGEDLY COMMITTED DURING HIS EMPLOYMENT.[14]

Petitioner contends that he was dismissed on the ground of serious misconduct resulting to loss of trust and confidence, but unfortunately the basis of which was the act or omission of another person. He claims that the amount of P127,200.00 intended for the payment of the security guards' licenses under Disbursement Voucher No. 04308 was not given to him but the check was made payable to Col. Gerangco who received and encashed the same; and that he had sent a letter dated April 17, 2001 to Gerangco asking him to liquidate the remaining security licenses; and, that he should not be held accountable for the non-compliance of Gerangco to complete the licenses.

We are not convinced.

Loss of trust and confidence will validate an employee's dismissal only upon compliance with certain requirements, namely: (1) the employee concerned must be holding a position of trust and confidence; and (2) there must be an act that would justify the loss of trust and confidence.[15] And in order to constitute a just cause for dismissal, the act complained of must be work-related such as would show employee concerned to be unfit to continue working for the employer.[16]

The first requisite for dismissal on the ground of loss of trust and confidence is that the employee concerned must be holding a position of trust and confidence. In this case, there is no doubt that petitioner held a position of trust and confidence as respondents' Physical Security Department Manager responsible for the department's operation and administration and with about 800 people under his charge.

The second requisite is that there must be an act that would justify the loss of trust and confidence. Here, petitioner was in-charge of respondents' Physical Security Department, operationally and administratively, and he was the one who advised respondents of the necessity of securing the licenses of the 159 physical security personnel. As such, he assumed to take full responsibility for procuring the said licenses and other requirements. Hence, Disbursement Voucher No. 04308 in the amount of P127,200.00 was prepared in the name of a certain Col. Angelito Gerangco and a check was issued under the same name. However, two years had already elapsed from the issuance of the check but not all the licenses of the 159 security personnel which petitioner volunteered to take responsibility for were released.

Petitioner's failure to produce the licenses of the 100 security personnel for two years and to account for the money received, is definitely an important aspect of his work as respondents' Department Manager. He failed to

perform what he had represented or what was expected of him, thus, respondents had a valid reason in losing confidence in him which justified his termination.

We also find worthy to mention the CA's finding that further established petitioner's willful breach of the trust reposed on him by respondents, to wit:

It must be borne in mind that as early as 20 August 1999, petitioner already knew of the COA's notice of suspension regarding the deficiency in the issuance of the P127,200.00 check to Col. Angelito Gerangco who was not a designated disbursing officer and in that notice of suspension, petitioner was found to be the payee or person responsible. Moreover, a Memorandum dated 29 November 2000 was issued by private respondent Kabigting's predecessor, then FSC President Manuel Aurelio Jr., for all concerned administrative personnel including herein petitioner, to settle not later than 05 December 2000 the COA notice of suspension. In fact, he failed to account and produce the licenses of the FSC Security personnel after two (2) years from the date of issuance of the check. This act alone by the petitioner constitutes gross misconduct and disobedience which is already a sufficient ground for his dismissal.

Furthermore, the loss of confidence was justified in the light of petitioner's continued refusal to comply with the Memoranda issued to him. The evidence presented by the private respondents were overwhelming to justify his dismissal. Petitioner insists that the subject amount of P127,200.00 was duly approved by the former President of the private respondent corporation, without informing him of the rules and regulations of the Commission on Audit to first secure their approval /clearance before the issuance of the said check. However, it is the very same reason why petitioner was given the chance to account for the expenses incurred. If only he did not defy the orders of the private respondent and immediately upon receipt of the Memorandum directing him to do so, he undertook to prepare the same, maybe he would not have been dismissed. Besides, the two years that has elapsed was already more than enough for him to explain his side.[17]

Petitioner's claim that respondents' loss of trust and confidence on him was based on the act or omission of a certain Col. Gerangco who failed to release all the licenses is not meritorious. Col. Gerangco is not an employee of the respondents and it was petitioner who advised respondents of the need to secure the licenses. As the NLRC found, petitioner, as head of the security personnel, did not dispute that he was primarily responsible for recommending and choosing contractor Col. Gerangco to undertake the procurement of licenses of the security guards. Notably, in the disbursement voucher where Col. Gerangco's name was written, petitioner had affixed his signature certifying that the expenses/cash advance was necessary, lawful and incurred under his direct supervision and also signed his name therein as the one who received the check. Thus, he could not just place the blame on Col. Gerangco when it was petitioner who had the obligation to secure the licenses as represented.

Moreover, there was no showing that petitioner had exerted efforts for the immediate release of the licenses. Petitioner claims that he wrote Col. Gerangco a letter dated April 17, 2001 asking the latter to liquidate the remaining licenses, however, such letter was written only after his receipt of respondents' notice of administrative action on his failure to secure the licenses. Such belated action showed his lack of fidelity to his duty and his breach of the trust and confidence reposed on him by respondents.

Petitioner next contends that when the LA ordered his reinstatement and pending respondents' appeal to the NLRC, respondents made him retire from service[18] upon reaching the compulsory age of 65, thus, he was absolved of any infractions, as if he was not charged of the alleged serious misconduct resulting to loss of trust and confidence.

We are not persuaded.

Petitioner was terminated as Manager on May 10, 2001, and consequently, filed a case for illegal dismissal against respondents. The LA found his dismissal illegal and awarded him backwages and ordered his

reinstatement. During the pendency of respondents' appeal with the NLRC, petitioner, whom respondents had earlier reinstated, reached the mandatory retirement age of 65, thus, he was sent a memorandum[19] notifying him of his retirement pursuant to Article 287 of the Labor Code and to report to respondents' Human Resources Management for the processing of his retirement papers and claims. Petitioner's mandatory retirement during the pendency of the case would not absolve him of his wrongdoings committed while he was still in the service.

The validity of petitioner's dismissal must be ruled upon with finality as it would bear importance on whether he is entitled to the award of backwages, or to his retirement benefits under the law. Under the Labor Code, only unjustly dismissed employees are entitled to retirement benefits and other privileges including reinstatement and backwages.[20] And since petitioner's termination on May 10, 2001 was valid, there can be no award for backwages, and there was no basis for his reinstatement and, therefore, there can be no earned retirement benefits under the law to speak of.

We find apropos to apply by analogy our decision in the *Office of Ombudsman v. Dechavez*[21] where we held that retirement from the service during the pendency of an administrative case does not render the case moot and academic. We found:

As early as 1975, we have upheld the rule that the jurisdiction that was Ours at the time of the filing of the administrative complaint was not lost by the mere fact that the respondent public official had ceased to be in office during the pendency of his case. The Court retains its jurisdiction either to pronounce the respondent official innocent of the charges or declare him guilty thereof. A contrary rule would be fraught with injustices and pregnant with dreadful and dangerous implications."

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Recently, we emphasized that in a case that a public official's cessation from service does not render moot an administrative case that was filed prior to the official's resignation. In the 2011 case of *Office of the Ombudsman v. Andutan Jr.* we reiterated the doctrine and laid down the line of cases supporting this principle when we ruled:

To recall, we have held in the past that a public official's resignation does not render moot an administrative case that was filed prior to the official's resignation. In *Pagano v. Nazarro, Jr.*, we held that:

In *Office of the Court Administrator v. Juan* [A.M. No. P-03-1726, 22 July 2004, 434 SCRA 654, 658], this Court categorically ruled that the precipitate resignation of a government employee charged with an offense punishable by dismissal from the service does not render moot the administrative case against him. Resignation is not a way out to evade administrative liability when facing administrative sanction. The resignation of a public servant does not preclude the finding of any administrative liability to which he or she shall still be answerable-[*Baquerfo v. Sanchez*, A.M. No. P-05-1974. 6 April 2005, 455 SCRA 13, 19-20].

Likewise, in *Baquerfo v. Sanchez*, we held:

Cessation from office of respondent by resignation or retirement neither warrants the dismissal of the administrative complaint filed against him while he was still in the service nor does it render said administrative case moot and academic. The jurisdiction that was this Court's at the time of the filing of the administrative complaint was not lost by the mere fact that the respondent public official had ceased in office during the pendency of his case. Respondent's resignation does not preclude the finding of any administrative liability to which he shall still be answerable.

Thus, from the strictly legal point of view and as we have held in a long line of cases, jurisdiction, once it attaches, cannot be defeated by the acts of the respondent, save only where death intervenes and the action does not survive.[22]

WHEREFORE, the petition for review is DENIED. The Decision dated June 15, 2007 and the Resolution dated July 7, 2008 of the Court of Appeals in CA-G.R. SP No. 94627 are hereby AFFIRMED.

SO ORDERED.

Leonardo-De Castro,[**] Villarama, Jr., Perez,[***] and Perlas-Bernabe,[****] JJ., concur.

[*] Per Special Order No. 2071 dated June 23, 2015.

[**] Designated Acting Member in lieu of Associate Justice Francis H. Jardeleza, per Special Order No. 2095 dated July 1, 2015.

[***] Designated Acting Member in lieu of Associate Justice Bienvenido L. Reyes, per Special Order No. 2084 dated June 29, 2015.

[****] Designated Acting Member in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 2072 dated June 23, 2015.

[1] Penned by Associate Justice Marlene Gonzales-Sison, with Associate Justices Juan Q. Enriquez, Jr. and Vicente S. E. Veloso, concurring; rollo, pp. 24-38.

[2] Id. at 40-42.

[3] CA rollo, p. 104-A.

[4] Id. at 103.

[5] Id. at 119-120.

[6] Id. at 91.

[7] Id. at 86-87.

[8] Rollo, pp. 44-59.

[9] NLRC Case No. RAB 111-01-3768-02, per Labor Arbiter Henry D. Isorena, id. at 44-59.

[10] Id. at 60-70, per Commissioner Angelita A. Gacutan, concurred in by Commissioner Victoriano R. Calaycay.

[11] Id. at 70.

[12] Per Commissioner Angelita A. Gacutan, concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Victoriano R. Calaycay, CA rollo, pp. 19-20.

[13] Rollo, p. 37. (Emphasis in the original)

[14] Id. at 12.

[15] Alvarez v. Golden Tri Bloc, Inc., G.R. No. 202158, September 25, 2013, 706 SCRA 406, 417-418, citing Philippine Plaza Holdings, Inc. v. Episcopo, G.R. No. 192826, February 27, 2013 692 SCRA 227 235.

[16] Jerusalem v. Keppel Monte Bank, et al, 662 Phil. 676, 685 (2011), citing Etcuban, Jr. v. Sulpicio Lines, Inc., 489 Phil. 483, 496 (2005).

[17] Rollo, pp. 33-34.

[18] Id. at 78.

[19] Id.

[20] Sy v. Metropolitan Bank and Trust Company, 537 Phil. 71, 79 (2006), citing Bongar v. National Labor Relations Commission, 356 Phil. 28, 35 (1998).

[21] G.R. No. 176702, November 13, 2013, 709 SCRA 375.

[22] Office of the Ombudsman v. Dechavez, supra, at 387-389. (Emphasis omitted)

July 28, 2015

NOTICE OF JUDGMENT

Sirs / Mesdames:

Please take notice that on July 6, 2015 a Decision, copy attached hereto, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on July 28, 2015 at 1:52 p.m.

Very truly yours,

(SGD.)

WILFREDO V. LAPITAN

Division Clerk of Court

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