

SALVADOR O. MOJAR, EDGAR B. BEGONIA, HEIRS OF THE LATE JOSE M. CORTEZ, RESTITUTO GADDI, VIRGILIO M. MONANA, FREDDIE RANCES, AND EDSON D. TOMAS, PETITIONERS, VS. AGRO COMMERCIAL ...

G.R. No. 187188. June 27, 2012

Ponente: SERENO, J.

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SERENO, J.:

This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, seeking to annul the entire proceedings before the Court of Appeals (CA) in CA-G.R. SP No. 102201, in which it issued its Decision dated 21 July 2008 and Resolution dated 16 March 2009.[2]

Statement of Facts and of the Case

Petitioners were employed as security guards by respondent and assigned to the various branches of the Bank of Commerce in Pangasinan, La Union and Ilocos Sur.

In separate Office Orders dated 23 and 24 May 2002, petitioners were relieved from their respective posts and directed to report to their new assignments in Metro Manila effective 3 June 2002. They, however, failed to report for duty in their new assignments, prompting respondent to send them a letter dated 18 June 2002. It required a written explanation why no disciplinary action should be taken against them, but the letter was not heeded.

On 15 February 2005, petitioners filed a Complaint for illegal dismissal against respondent and the Bank of Commerce, Dagupan Branch, before the National Labor Relations Commission (NLRC). Petitioners claimed, among others, that their reassignment was a scheme to sever the employer-employee relationship and was done in retaliation for their pressing their claim for salary differential, which they had earlier filed against respondent and the Bank of Commerce before the NLRC. They also contended that the transfer to Manila was inconvenient and prejudicial, since they would incur additional expenses for board and lodging.

On 22 May 2006, the Labor Arbiter (LA) rendered a Decision[3] finding that petitioners were illegally dismissed. The dispositive portion reads:

WHEREFORE, premises considered, judgment is hereby rendered ordering respondents to reinstate all the complainants to their former assignment in Pangasinan with full backwages and if reinstatement is no longer possible, to pay separation pay of one month for every year of service each of the seven complainant security guards. (A detailed computation of the judgment award is attached as Annex “A.”)[4] (*Italicized in the original*)

On appeal, the NLRC affirmed the LA’s ruling, with the modification that the Complaint against the Bank of Commerce was dismissed.[5] The dispositive portion provides:

WHEREFORE, premises considered, the appeal of Agro Commercial Security Service Agency, Inc. is hereby

DISMISSED for lack of merit. The Appeal of Bank of Commerce is GRANTED for being impressed with merit. Accordingly, judgment is hereby rendered MODIFYING the Decision of the Labor Arbiter dated May 22, 2006 by DISMISSING the complaint against Bank of Commerce-Dagupan. All other dispositions of the Labor Arbiter not so modified, STAYS.[6]

On 23 January 2008, respondent filed a Motion for Extension to file a Petition for Certiorari before the CA. In a Resolution dated 20 February 2008, the latter granted the Motion for Extension, allowing respondent until 10 February 2008 within which to file its Petition. On 9 February 2008, respondent filed its Petition for Certiorari before the appellate court.

On 30 June 2008, the CA issued a Resolution noting that no comment on the Petition had been filed, and stating that the case was now deemed submitted for resolution.

On 21 July 2008, the CA rendered its Decision. Finding merit in the Petition, it found the Orders transferring petitioners to Manila to be a valid exercise of management prerogative. The records were bereft of any showing that the subject transfer involved a diminution of rank or salaries. Further, there was no showing of bad faith or ill motive on the part of the employer. Thus, petitioners' refusal to comply with the transfer orders constituted willful disobedience of a lawful order of an employer and abandonment, which were just causes for termination under the Labor Code. However, respondent failed to observe the due process requirements in terminating them. The dispositive portion of the CA Decision provides:

WHEREFORE, premises considered, the instant petition is GRANTED. The assailed Decision and Resolution of the NLRC dated July 31, 2007 and October 31, 2007[,] respectively, in NLRC NCR CA No. 046036-05 are REVERSED and SET ASIDE. The complaints of private respondents for illegal dismissal are hereby DISMISSED. However, petitioner is ordered to pay private respondents the sum of P10,000.00 each for having violated the latter's right to statutory due process.[7]

On 1 August 2008, petitioner Mojar filed a Manifestation[8] before the CA, stating that he and the other petitioners had not been served a copy of the CA Petition. He also said that they were not aware whether their counsel before the NLRC, Atty. Jose C. Espinas, was served a copy thereof, since the latter had already been bedridden since December 2007 until his demise on "25 February 2008." [9] Neither could their new counsel, Atty. Mario G. Aglipay, enter his appearance before the CA, as petitioners failed to "get [the] folder from the office of Atty. Espinas, as the folder can no longer be found." [10]

Thereafter, petitioners filed a Motion to Annul Proceedings[11] dated 9 September 2008 before the CA. They moved to annul the proceedings on the ground of lack of jurisdiction. They argued that the NLRC Decision had already attained finality, since the Petition before the CA was belatedly filed, and the signatory to the Certification of non-forum shopping lacked the proper authority.

In a Resolution dated 16 March 2009, the CA denied the Motion to Annul Proceedings.

Hence, this Petition.

The Petition raised the following arguments: (1) There was no proof of service attached to the Motion for Extension to file a Petition for Certiorari before the CA; thus, both the Motion and the Petition were mere scraps of paper. (2) Respondent purposely intended to exclude petitioners from the proceedings before the CA by omitting their actual addresses in the CA Petition, a mandatory requirement under Section 3, Rule 46; in relation to Section 1, Rule 65 of the Rules of Court. Further, respondent failed to prove the valid service of its CA Petition upon petitioners' former counsel of record. (3) The CA was grossly ignorant of the law in ignoring jurisprudence, which states that when the floating status of an employee lasts for more than six months, the latter may be considered to have been constructively dismissed.

On 3 September 2009, respondent filed its Comment on the Petition, pursuant to this Court's 29 June 2009 Resolution. In its Comment, it argued that the CA Decision had already become final and executory, inasmuch as the Motion to Annul Proceedings, a procedural approach not provided for in the Rules, was filed some 44 days after the service of the CA Decision on the counsel for petitioners. Further, Atty. Aglipay had then no legal standing to appear as counsel, considering that there was still no substitution of counsel at the time he filed the Motion to Annul Proceedings. In any case, petitioners are bound by the actions of their counsel, Atty. Espinas.

On 1 March 2010, this Court issued a Resolution requiring petitioners to file their reply, which petitioners complied with on 26 April 2010. In their Reply, petitioners state among others that the records of the CA case showed that there was a deliberate violation of their right to due process. The CA Petition did not contain the required affidavit of service, which alone should have caused the *motu proprio* dismissal thereof. Further, the instant Petition before this Court is an appropriate mode to contest the CA Decision and Resolution, which petitioners contend are void judgments. They also argue that there is no rule on the client's substitution in case of the death of counsel. Instead, the reglementary period to file pleadings in that case must be suspended and made more lenient, considering that the duty of substitution is transferred to a non-lawyer.

On 30 March 2011, respondent filed a Motion for Early Resolution of the case. Petitioners likewise filed a Motion for Leave (For the Admission of the Instant Comment on Private Respondent's Motion for Early Resolution), stating that they were joining respondent in moving for the early resolution of the case.

This Court will resolve the issues raised in *seriatim*.

Actual Addresses of Parties

Petitioners contend that the CA should not have taken cognizance of the Petition before it, as their actual addresses were not indicated therein as required under Section 3, Rule 46[12] of the Rules of Court, and pursuant to *Cendaña v. Avila*.^[13] In the 2008 case *Cendaña*, this Court ruled that the requirement that a petition for certiorari must contain the actual addresses of all the petitioners and the respondents is mandatory. The failure to comply with that requirement is a sufficient ground for the dismissal of a petition.

This rule, however, is not absolute. In the 2011 case *Santos v. Litton Mills Incorporated*,^[14] this Court ruled that where the petitioner clearly mentioned that the parties may be served with the court's notices or processes through their respective counsels, whose addresses have been clearly specified as in this case, this act would constitute substantial compliance with the requirements of Section 3, Rule 46. The Court further observed that the notice required by law is notice to counsel if the party has already appeared by counsel, pursuant to Section 2, Rule 13 of the Rules of Court.

In its Petition before the CA, respondent clearly indicated the following:

THE PARTIES

2.0. The petitioner AGRO COMMERCIAL SECURITY SERVICE AGENCY, INC. (hereafter petitioner AGRO), is a corporation existing under Philippine laws, and may be served with process thru counsel, at his address hereunder indicated; private respondents (1) SALVADOR O. MOJAR; (2) EDGAR B. BEGONIA; (3) JOSE M. CORTEZ; (4) FREDDIE RANCES; (5) VIRGILIO MONANA; (6) RESTITUTU [sic] GADDI; and, (7) EDSON D. TOMAS, are all of age, and during the material period, were in the employ of petitioner AGRO as security guards; said respondents may be served with process thru their common counsel, ATTY. JOSE C. ESPINAS at No. 51 Scout Tuazon, Quezon City; on the other hand, respondent National Labor Relations Commission, 1st Division, Quezon City, is the agency having jurisdiction over labor disputes in the Philippines and may be served with process at offices in Quezon City;^[15]

The foregoing may thus be considered as substantial compliance with Section 3, Rule 46. In any case, and as will

be discussed further below, the CA had sufficient reason to take cognizance of the Petition.

Affidavit of Service

Section 3, Rule 46 provides that the petition for certiorari should be filed together with the proof of service thereof on the respondent. Under Section 13, Rule 13 of the Rules of Court, if service is made by registered mail, as in this case, proof shall be made by an affidavit of the person mailing and the registry receipt issued by the mailing office. Section 3, Rule 46 further provides that the failure to comply with any of the requirements shall be sufficient ground for the dismissal of the petition.

Petitioners allege that no affidavit of service was attached to the CA Petition. Neither is there any in the copy of the CA Petition attached to the instant Petition. In its Comment, respondent claims that petitioners – through their counsel, Atty. Aglipay – can be charged with knowledge of the pendency of the CA Petition. It says that on April 2008, Atty. Aglipay filed before the NLRC an Entry of Appearance and Motion for Execution Pending Appeal.[16] However, petitioners merely indicated therein that they were “respectfully mov[ing] for the execution pending appeal of the Labor Arbiter’s decision dated 22 May 2006 affirmed by the NLRC.”[17] There was no indication that they had been served a copy of the CA Petition. No other proof was presented by respondent to show petitioners’ actual receipt of the CA Petition. In any case, this knowledge, even if presumed, would not – and could not – take the place of actual service and proof of service by respondent.

In *Ferrer v. Villanueva*,[18] petitioner therein failed to append the proof of service to his Petition for Certiorari. Holding that this failure was a fatal defect, the Court stated:

There is no question that petitioner herein was remiss in complying with the foregoing Rule. In *Cruz v. Court of Appeals*, we ruled that with respect to motions, proof of service is a mandatory requirement. We find no cogent reason why this dictum should not apply and with more reason to a petition for certiorari, in view of Section 3, Rule 46 which requires that the petition shall be filed “together with proof of service thereof.” We agree with the Court of Appeals that the lack of proof of service is a fatal defect. The utter disregard of the Rule cannot be justified by harking to substantial justice and the policy of liberal construction of the Rules. Technical rules of procedure are not meant to frustrate the ends of justice. Rather, they serve to effect the proper and orderly disposition of cases and thus effectively prevent the clogging of court dockets. (Emphasis in the original)

Indeed, while an affidavit of service is required merely as proof that service has been made on the other party, it is nonetheless essential to due process and the orderly administration of justice.[19]

Be that as it may, it does not escape the attention of this Court that in the CA Resolution dated 16 March 2009, the appellate court stated that their records revealed that Atty. Espinas, petitioners’ counsel of record at the time, was duly served a copy of the following: CA Resolution dated 20 February 2008 granting respondent’s Motion for Extension of Time to file the CA Petition; CA Resolution dated 24 April 2008 requiring petitioners to file their Comment on the CA Petition; and CA Resolution dated 30 June 2008, submitting the case for resolution, as no comment was filed.

Such service to Atty. Espinas, as petitioners’ counsel of record, was valid despite the fact he was already deceased at the time. If a party to a case has appeared by counsel, service of pleadings and judgments shall be made upon his counsel or one of them, unless service upon the party is specifically ordered by the court. It is not the duty of the courts to inquire, during the progress of a case, whether the law firm or partnership representing one of the litigants continues to exist lawfully, whether the partners are still alive, or whether its associates are still connected with the firm.[20]

It is the duty of party-litigants to be in contact with their counsel from time to time in order to be informed of the

progress of their case. It is likewise the duty of parties to inform the court of the fact of their counsel's death.[21] Their failure to do so means that they have been negligent in the protection of their cause.[22] They cannot pass the blame to the court, which is not tasked to monitor the changes in the circumstances of the parties and their counsel.

Substitution of Counsel

Petitioners claim that Atty. Espinas passed away on 8 February 2008. They further claim that he was already bedridden as early as December 2007, and thus they "failed to get any information whether [he] was served with a copy of the [CA Petition]."[23]

Petitioners were negligent in the conduct of their litigation. Having known that Atty. Espinas was already bedridden as early as December 2007, they should have already obtained new counsel who could adequately represent their interests. The excuse that Atty. Aglipay could not enter his appearance before the CA "because [petitioners] failed to get [their] folder from the office of Atty. Espinas"[24] is flimsy at best.

The requirements for a valid substitution of counsel have been jurisprudentially settled in this wise:

Under Section 26, Rule 138 of the Rules of Court and established jurisprudence, a valid substitution of counsel has the following requirements: (1) the filing of a written application for substitution; (2) the client's written consent; (3) the consent of the substituted lawyer if such consent can be obtained; and, in case such written consent cannot be procured, (4) a proof of service of notice of such motion on the attorney to be substituted in the manner required by the Rules. Where death of the previous attorney is the cause of substitution of the counsel, a verified proof of the death of such attorney (usually a death certificate) must accompany the notice of appearance of the new counsel.[25]

The fact that petitioners were unable to obtain their folder from Atty. Espinas is immaterial. Proof of service upon the lawyer to be substituted will suffice where the lawyer's consent cannot be obtained. With respect to the records of the case, these may easily be reconstituted by obtaining copies thereof from the various courts involved.

Petitioners allegedly went to the CA sometime prior to 31 July 2008, or the date of filing of their Manifestation before the CA, to inquire about the status of their case. Allegedly, they "always visited the Court of Appeals for [the] development of their case." [26] It is doubtful that a person who regularly follows up the status of his case before a court would not be told, first, that a petition has been filed against him; and, second, that the court's resolutions have been sent to his counsel. It is questionable why, knowing these matters, petitioners did not seek the replacement of their counsel, if the latter was unable to pursue their case. Further, despite their manifestation that, sometime prior to 31 July 2008, they were already aware that the case had been submitted for resolution, they still waited until 9 September 2008 – or until they allegedly had knowledge of the CA Decision – before they filed the Motion to Annul Proceedings.

In *Ampo v. Court of Appeals*, [27] this Court explained the vigilance that must be exercised by a party:

We are not persuaded by petitioner's argument that he was not aware that his counsel had died or that an adverse judgment had already been rendered until he received the notice of promulgation from the RTC of Butuan City on April 20, 2005. Time and again we have stated that equity aids the vigilant, not those who slumber on their rights. Petitioner should have taken it upon himself to periodically keep in touch with his counsel, check with the court, and inquire about the status of the case. Had petitioner been more prudent, he would have found out sooner about the death of his counsel and would have taken the necessary steps to prevent his present predicament.

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Litigants who are represented by counsel should not expect that all they need to do is sit back, relax and await the outcome of their cases. Relief will not be granted to a party who seeks avoidance from the effects of the judgment when the loss of the remedy at law was due to his own negligence. The circumstances of this case plainly show that petitioner only has himself to blame. Neither can he invoke due process. The essence of due process is simply an opportunity to be heard. Due process is satisfied when the parties are afforded a fair and reasonable opportunity to explain their respective sides of the controversy. Where a party, such as petitioner, was afforded this opportunity to participate but failed to do so, he cannot complain of deprivation of due process. If said opportunity is not availed of, it is deemed waived or forfeited without violating the constitutional guarantee.

In this case, petitioners must bear the fruits of their negligence in the handling of their case. They may not decry the denial of due process, when they were indeed afforded the right to be heard in the first place.

Substantive Issue: Illegal Dismissal

Petitioners argue that they were illegally dismissed, based on the 1989 case *Agro Commercial Security Services Agency, Inc. v. NLRC*,^[28] which holds that when the floating status of employees lasts for more than six (6) months, they may be considered to have been illegally dismissed from the service.

Unfortunately, the above-mentioned case is not applicable here. In *Agro*, the service contracts of the security agency therein with various corporations and government agencies – to which the security guards were previously assigned – were terminated, generally due to the sequestration of the said offices. Accordingly, many of the security guards were placed on floating status. “Floating status” means an indefinite period of time when one does not receive any salary or financial benefit provided by law.^[29] In this case, petitioners were actually reassigned to new posts, albeit in a different location from where they resided. Thus, there can be no floating status or indefinite period to speak of. Instead, petitioners were the ones who refused to report for work in their new assignment.

In cases involving security guards, a relief and transfer order in itself does not sever the employment relationship between the security guards and their agency. Employees have the right to security of tenure, but this does not give them such a vested right to their positions as would deprive the company of its prerogative to change their assignment or transfer them where their services, as security guards, will be most beneficial to the client.^[30]

An employer has the right to transfer or assign its employees from one office or area of operation to another in pursuit of its legitimate business interest, provided there is no demotion in rank or diminution of salary, benefits, and other privileges; and the transfer is not motivated by discrimination or bad faith, or effected as a form of punishment or demotion without sufficient cause.^[31]

While petitioners may claim that their transfer to Manila will cause added expenses and inconvenience, we agree with the CA that, absent any showing of bad faith or ill motive on the part of the employer, the transfer remains valid.

WHEREFORE, the Petition is DENIED. The Court of Appeals Decision dated 21 July 2008 and Resolution dated 16 March 2009 in CA-G.R. SP No. 102201 are hereby AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Brion, Perez, and Reyes, JJ., concur.

- [1] While the caption of the Petition indicates “et. al.,” no other respondent is named.
- [2] Both the Decision dated 21 July 2008 and Resolution dated 16 March 2009 were penned by Associate Justice Estela M. Perlas-Bernabe (now a member of this Court) and concurred in by Associate Justices Lucas P. Bersamin (now a member of this Court) and Sixto C. Marella, Jr.; rollo, pp. 26-35 and 36-39.
- [3] Penned by Labor Arbiter Luis D. Flores; rollo, pp. 45-49.
- [4] Id. at 48-49.
- [5] Penned by Presiding Commissioner Gerardo C. Nograles and concurred in by Commissioners Perlita B. Velasco and Romeo L. Go; rollo, pp. 52-56.
- [6] Id. at 56.
- [7] Rollo, p. 34.
- [8] Id. at 192-193.
- [9] In their Manifestation, petitioner Mojar states that Atty. Espinas passed away on 25 February 2008. However, in the Petition, petitioners state that he passed away on 8 February 2008. Notably, no death certificate has been presented by them.
- [10] Id. at 192.
- [11] Rollo, pp. 40-44.
- [12] Rules of Court, Rule 46, Sec. 3, provides:
- SEC. 3. Contents and filing of petition; effect of non-compliance with requirements. — The petition shall contain the full names and actual addresses of all the petitioners and respondents, a concise statement of the matters involved, the factual background of the case, and the grounds relied upon for the relief prayed for.
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- The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition.
- [13] G.R. No. 168350, 31 January 2008, 543 SCRA 394.
- [14] G.R. No. 170646, 22 June 2011, 652 SCRA 510.
- [15] Rollo, p. 65.
- [16] Id. at 225-228.
- [17] Id. at 225.
- [18] G.R. No. 155025, 24 August 2007, 531 SCRA 97, 102.
- [19] Ang Biat Huan Sons Industries, Inc. v. Court of Appeals, G.R. No. 154837, 22 March 2007, 518 SCRA 697.
- [20] Salting v. Velez, G.R. No. 181930, 10 January 2011, 610 SCRA 124.
- [21] Id.
- [22] Id.
- [23] Rollo, p. 192.

[24] Id.

[25] *Bernardo v. Court of Appeals*, 341 Phil. 413, 425-426 (1997).

[26] *Rollo*, p. 17.

[27] 517 Phil. 750, 755-756 (2006).

[28] 256 Phil. 1182 (1989).

[29] Id.

[30] *Megaforce Security and Allied Services, Inc. v. Lactao*, G.R. No. 160940, 21 July 2008, 559 SCRA 110.

[31] *Salvalosa v. National Labor Relations Commission*, G.R. No. 182086, 24 November 2010, 636 SCRA 184.

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