

BANK OF LUBAO, INC., PETITIONER, VS. ROMMEL J. MANABAT AND THE NATIONAL LABOR RELATIONS COMMISSION, RESPONDENTS.

G.R. No. 188722. February 01, 2012

Ponente: REYES, J.

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REYES, J.:

Nature of the Petition

This is a petition for review on certiorari under Rule 45 of the Rules of Court filed by the Bank of Lubao, Inc. (petitioner) assailing the Decision[1] dated April 24, 2009 and Resolution[2] dated July 7, 2009 issued by the Court of Appeals (CA) in CA-G.R. SP No. 106419.

The Antecedent Facts

Sometime in 2001, Rommel J. Manabat (respondent) was hired by petitioner Bank of Lubao, a rural bank, as a Market Collector. Subsequently, the respondent was assigned as an encoder at the Bank of Lubao's Sta. Cruz Extension Office, which he manned together with two other employees, teller Susan P. Lingad (Lingad) and May O. Manasan. As an encoder, the respondent's primary duty is to encode the clients' deposits on the bank's computer after the same are received by Lingad.

In November 2004, an initial audit on the Bank of Lubao's Sta. Cruz Extension Office conducted by the petitioner revealed that there was a misappropriation of funds in the amount of P3,000,000.00, more or less. Apparently, there were transactions entered and posted in the passbooks of the clients but were not entered in the bank's book of accounts. Further audit showed that there were various deposits which were entered in the bank's computer but were subsequently reversed and marked as "error in posting".

On November 17, 2004, the respondent, through a memorandum sent by the petitioner, was asked to explain in writing the discrepancies that were discovered during the audit. On November 19, 2004, the respondent submitted to the petitioner his letter-explanation which, in essence, asserted that there were times when Lingad used the bank's computer while he was out on errands.

On December 11, 2004, an administrative hearing was conducted by the bank's investigating committee where the respondent was further made to explain his side. Subsequently, the investigating committee concluded that the respondent conspired with Lingad in making fraudulent entries disguised as error corrections in the bank's computer.

On August 9, 2005, the petitioner filed several criminal complaints for qualified theft against Lingad and the respondent with the Municipal Trial Court (MTC) of Lubao, Pampanga. Thereafter, citing serious misconduct tantamount to willful breach of trust as ground, it terminated the respondent's employment effective September 1, 2005.

On September 26, 2005, the respondent filed a Complaint[3] for illegal dismissal with the Regional Arbitration

Branch of the National Labor Relations Commission (NLRC) in San Fernando City, Pampanga. In the said complaint, the respondent, to bolster his claim that there was no valid ground for his dismissal, averred that the charge against him for qualified theft was dismissed for lack of sufficient basis to conclude that he conspired with Lingad. The respondent sought an award for separation pay, full backwages, 13th month pay for 2004 and moral and exemplary damages.

For its part, the petitioner insists that the dismissal of the respondent is justified, asserting the February 14, 2006 Audit Report which confirmed the participation of the respondent in the alleged misappropriations. Likewise, the petitioner asserted that the dismissal of the qualified theft charge against the respondent is immaterial to the validity of the ground for the latter's dismissal.

The Labor Arbiter's Decision

On February 28, 2007, the Labor Arbiter (LA) rendered a decision^[4] sustaining the respondent's claim of illegal dismissal thus ordering the petitioner to reinstate the respondent to his former position and awarding the latter backwages in the amount of P111,960.00 and 13th month pay in the amount of P6,220.00. The LA opined that the petitioner failed to adduce substantial evidence that there was a valid ground for the respondent's dismissal. Further, the February 14, 2006 Audit Report that was adduced by the petitioner in evidence was disregarded by the LA since it was unsigned.

The petitioner appealed the foregoing disposition to the NLRC, submitting a new audit report dated April 30, 2007. Pending appeal, the petitioner sent the respondent a letter^[5] dated April 30, 2007 requiring him to report for work on May 4, 2007 pursuant to the reinstatement order of the LA. The said letter was served to the respondent on May 3, 2007 but he refused to receive the same.

The NLRC's Decision

On July 21, 2008, the NLRC rendered a Decision^[6] affirming the February 28, 2007 Decision of the LA. The NLRC held that it was sufficiently established that only Lingad was the one responsible for the said misappropriations. Further, the NLRC asserted that the February 14, 2006 and April 30, 2007 audit reports presented by the petitioner could not be given evidentiary weight as the same were executed after the respondent had already been dismissed. The petitioner sought reconsideration of the said July 21, 2008 Decision but it was denied by the NLRC in its Resolution^[7] dated September 22, 2009.

Subsequently, the petitioner filed a Petition for Certiorari^[8] with the CA alleging that the NLRC and the LA gravely abused their discretion in ruling that the respondent had been illegally dismissed.

The CA Decision

On April 24, 2009, the CA rendered the herein assailed decision^[9] denying the petition for certiorari filed by the petitioner. However, the CA held that the respondent is entitled to separation pay equivalent to one-month salary for every year of service in lieu of reinstatement and backwages to be computed from the time of his illegal dismissal until the finality of the said decision.

The CA agreed with the LA and the NLRC that the petitioner failed to establish by substantial evidence that there was indeed a valid ground for the respondent's dismissal. Nevertheless, the CA held that the petitioner should pay the respondent separation pay since the latter did not pray for reinstatement before the LA and that the same would be in the best interest of the parties considering the animosity and antagonism that exist between them. The CA stated the following:

With respect to monetary awards, a finding that an employee has been illegally dismissed ordinarily entitles him to reinstatement to his former position without loss of seniority rights and to the payment of backwages. In

this case, however, private respondent did not pray for reinstatement before the Labor Arbiter. This being the case, the employer should pay him separation pay in lieu [of] reinstatement. This is only just and practical because reinstatement of private respondent will no longer be in the best interest of both parties considering the animosity and antagonism that exist between them brought about by the filing of charges in the criminal as well as in the labor proceedings. Consequently, private respondent is entitled to separation pay equivalent to one month pay for every year of service up to the finality of this judgment, as an alternative to reinstatement. With respect to his backwages, where reinstatement is no longer possible, it shall be computed from the time of the employee's illegal termination up to the finality of this decision, without qualification or deduction.[10] (citations omitted)

Hence, the fallo of the CA Decision reads:

WHEREFORE, the petition is DENIED. The assailed Decision and Resolution of the NLRC are AFFIRMED with the MODIFICATION that private respondent is entitled to separation pay equivalent to one month salary for every year of service in lieu of reinstatement and backwages to be computed from the time of his illegal dismissal until the finality of this Decision.

SO ORDERED.[11]

The petitioner's Motion for Reconsideration[12] was denied by the CA in its Resolution[13] dated July 7, 2009.

Undaunted, the petitioner instituted the instant petition for review on certiorari before this Court asserting the following arguments: (1) the CA erred in awarding separation pay in favor of the respondent in lieu of reinstatement considering that the appeal before it only involved the issue of the legality or illegality of the respondent's dismissal; (2) an award of separation pay to the respondent is not proper in this case considering that, in his complaint, he merely prayed for reinstatement and not payment of separation pay; and (3) the CA erred in awarding backwages in favor of the respondent since it acted in good faith when it terminated the respondent's employment.

In his Comment,[14] the respondent asserted that the CA did not err in ordering the payment of separation pay in his favor in lieu of reinstatement since there is already a strained relationship between him and the petitioner. He intimated that the petitioner had previously filed various criminal charges against him for qualified theft thus effectively rendering his reinstatement to his former position in the Bank of Lubao impracticable.

Issues

In sum, the issues to be resolved by this Court in the instant case are the following: (1) whether the CA erred in ordering the petitioner to pay the respondent separation pay in lieu of reinstatement; and (2) whether the respondent is entitled to payment of backwages.

The Court's Ruling

This Court notes that the LA, the NLRC and the CA unanimously ruled that the respondent was illegally dismissed. Factual findings of quasi-judicial bodies like the NLRC, if supported by substantial evidence, are accorded respect and even finality by this Court, more so when they coincide with those of the LA. Such factual findings are given more weight when the same are affirmed by the CA. We find no reason to depart from the foregoing rule.

First Issue: Separation Pay in Lieu of Reinstatement

At the outset, it should be stressed that a determination of the applicability of the doctrine of strained relations is essentially a factual question and, thus, not a proper subject in the instant petition.[15]

The well-entrenched rule in our jurisdiction is that only questions of law may be entertained by this Court in a

petition for review on certiorari. This rule, however, is not ironclad and admits certain exceptions, such as when, inter alia, the findings of fact are conflicting.[16]

Here, in view of the conflicting findings of the NLRC and the CA, this Court is constrained to pass upon the propriety of the application of the doctrine of strained relations to justify the award of separation pay to the respondent in lieu of reinstatement.

The law on reinstatement is provided for under Article 279 of the Labor Code of the Philippines:

Article 279. Security of Tenure. - In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. (emphasis supplied)

Under the law and prevailing jurisprudence, an illegally dismissed employee is entitled to reinstatement as a matter of right. However, if reinstatement would only exacerbate the tension and strained relations between the parties, or where the relationship between the employer and the employee has been unduly strained by reason of their irreconcilable differences, particularly where the illegally dismissed employee held a managerial or key position in the company, it would be more prudent to order payment of separation pay instead of reinstatement.[17]

Under the doctrine of strained relations, the payment of separation pay is considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable. On one hand, such payment liberates the employee from what could be a highly oppressive work environment. On the other hand, it releases the employer from the grossly unpalatable obligation of maintaining in its employ a worker it could no longer trust.[18]

In such cases, it should be proved that the employee concerned occupies a position where he enjoys the trust and confidence of his employer; and that it is likely that if reinstated, an atmosphere of antipathy and antagonism may be generated as to adversely affect the efficiency and productivity of the employee concerned.[19]

Here, we agree with the CA that the relations between the parties had been already strained thereby justifying the grant of separation pay in lieu of reinstatement in favor of the respondent.

First, it cannot be gainsaid that the petitioner's reinstatement to his former position would only serve to intensify the atmosphere of antipathy and antagonism between the parties. Undoubtedly, the petitioner's filing of various criminal complaints against the respondent for qualified theft and the subsequent filing by the latter of the complaint for illegal dismissal against the latter, taken together with the pendency of the instant case for more than six years, had caused strained relations between the parties.

Second, considering that the respondent's former position as bank encoder involves the handling of accounts of the depositors of the Bank of Lubao, it would not be equitable on the part of the petitioner to be ordered to maintain the former in its employ since it may only inspire vindictiveness on the part of the respondent.

Third, the refusal of the respondent to be re-admitted to work is in itself indicative of the existence of strained relations between him and the petitioner. In the case of *Lagniton, Sr. v. National Labor Relations Commission*, [20] the Court held that the refusal of the dismissed employee to be re-admitted is constitutive of strained relations:

It appears that relations between the petitioner and the complainants have been so strained that the complainants are no longer willing to be reinstated. As such reinstatement would only exacerbate the

animosities that have developed between the parties, the public respondents were correct in ordering instead the grant of separation pay to the dismissed employees in the interest of industrial peace.[21]

Time and again, this Court has recognized that strained relations between the employer and employee is an exception to the rule requiring actual reinstatement for illegally dismissed employees for the practical reason that the already existing antagonism will only fester and deteriorate, and will only worsen with possible adverse effects on the parties, if we shall compel reinstatement; thus, the use of a viable substitute that protects the interests of both parties while ensuring that the law is respected.[22]

Second Issue: Backwages

Anent the second issue, the petitioner claimed that the respondent is not entitled to the payment of backwages considering that there was no bad faith on its part when it terminated the latter's employment. The petitioner insists that it is within its prerogative to dismiss the respondent on the basis of loss of trust and confidence.

We do not agree.

The arguments raised by the petitioner with regard to the issue of backwages, essentially, attacks the factual findings of the CA, the NLRC and the LA. As stated earlier, subject to well-defined exceptions, factual questions may not be raised in a petition for review on certiorari under Rule 45 as this Court is not a trier of facts. The petitioner failed to assert any circumstance which would impel this Court to disregard the findings of fact of the lower tribunals on the propriety of the award of backwages in favor of the respondent.

However, the backwages that should be awarded to the respondent should be modified. Employees who are illegally dismissed are entitled to full backwages, inclusive of allowances and other benefits or their monetary equivalent, computed from the time their actual compensation was withheld from them up to the time of their actual reinstatement. But if reinstatement is no longer possible, the backwages shall be computed from the time of their illegal termination up to the finality of the decision.[23]

Thus, when there is an order of reinstatement, the computation of backwages shall be reckoned from the time of illegal dismissal up to the time that the employee is actually reinstated to his former position.

Pursuant to the order of reinstatement rendered by the LA, the petitioner sent the respondent a letter requiring him to report back to work on May 4, 2007. Notwithstanding the said letter, the respondent opted not to report for work. Thus, it is but fair that the backwages that should be awarded to the respondent be computed from the time that the respondent was illegally dismissed until the time when he was required to report for work, i.e. from September 1, 2005 until May 4, 2007. It is only during the said period that the respondent is deemed to be entitled to the payment of backwages.

The fact that the CA, in its April 4, 2009 decision, ordered the payment of separation pay in lieu of the respondent's reinstatement would not entitle the latter to backwages. It bears stressing that decisions of the CA, unlike that of the LA, are not immediately executory. Accordingly, the petitioner should only pay the respondent backwages from September 1, 2005, the date when the respondent was illegally dismissed, until May 4, 2007, the date when the petitioner required the former to report to work.

WHEREFORE, in consideration of the foregoing disquisitions, the instant petition is **PARTIALLY GRANTED**. The Decision dated April 24, 2009 and Resolution dated July 7, 2009 of the Court of Appeals in CA-G.R. SP No. 106419 are hereby **AFFIRMED** with **MODIFICATION**. The petitioner is ordered to pay the respondent backwages from September 1, 2005 until May 4, 2007. For this purpose, the case is hereby **REMANDED** to the Labor Arbiter for the computation of the amounts due the respondent.

SO ORDERED.

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

[1] Penned by Associate Justice Mariano C. Del Castillo (now a member of this Court), with Associate Justices Pampio A. Abarintos and Ricardo R. Rosario, concurring; rollo, pp. 42-52.

[2] Rollo, p. 54.

[3] Id. at 105.

[4] Id. at 56-64.

[5] Id. at 65.

[6] Id. at 69-77.

[7] Id. at 79-80.

[8] Id. at 81-96.

[9] Supra note 1.

[10] Rollo, p. 51.

[11] Id. at 51-52.

[12] Id. at 97-104.

[13] Supra note 2.

[14] Rollo, pp. 149-154.

[15] See *Cabigting v. San Miguel Foods, Inc.*, G.R. No. 167706, November 5, 2009, 605 SCRA 14.

[16] *Phil. Charter Insurance Corp. v. Unknown Owner of the Vessel M/V "National Honor"*, 501 Phil 498, 509 (2005).

[17] *Quijano v. Mercury Drug Corp.*, 354 Phil 112, 121-122 (1998). (citations omitted)

[18] *Golden Ace Builders v. Talde*, G.R. No. 187200, May 5, 2010, 620 SCRA 283, 289-290.

[19] *Globe-Mackay Cable and Radio Corporation v. NLRC*, G.R. No. 82511, March 3, 1992, 206 SCRA 701, 711.

[20] G.R. No. 86339, February 5, 1993, 218 SCRA 456.

[21] Id. at 459-460.

[22] *CRC Agricultural Trading v. NLRC*, G.R. No. 177664, December 23, 2009, 609 SCRA 138, 151-152.

[23] *Coca-Cola Bottlers Philippines, Inc. v. Del Villar*, G.R. No. 163091, October 6, 2010, 632 SCRA 293, 320.

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