TAMSON'S ENTERPRISES, INC., NELSON LEE, LILIBETH ONG AND JOHNSON NG, PETITIONERS, VS. COURT OF APPEALS AND ROSEMARIE L. SY, RESPONDENTS.

G.R. No. 192881. November 16, 2011

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure assailing the February 26, 2010 Decision[1] and the July 9, 2010 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 105845 which reversed the April 29, 2003 Decision[3] of the National Labor Relations Commission (NLRC) and reinstated the September 28, 2007 Decision[4] of the Executive Labor Arbiter, Herminio Suelo (ELA), in NLRC NCR Case No. 00-03-0236607, finding petitioners liable for illegal dismissal and payment of money claims.

This case stemmed from a complaint for illegal dismissal with money claims filed by respondent Rosemarie L. Sy (Sy) before the Arbitration Branch, National Capital Region, NLRC, against petitioners Tamson's Enterprises, Inc. (Tamson's), Nelson Lee (Lee), the company President; and Lilibeth Ong (Ong) and Johnson Ng (Ng), her co-employees.

From the records, it appears that on September 1, 2006, Sy was hired by Tamson's as Assistant to the President. Despite the title, she did not act as such because, per instruction of Lee, she was directed to act as payroll officer, though she actually worked as a payroll clerk.[5]

On February 24, 2007,[6] four days before she completed her sixth month of working in Tamson's, Ng, the Sales Project Manager, called her to a meeting with him and Lee. During the meeting, they informed Sy that her services would be terminated due to inefficiency. She was asked to sign a letter of resignation and quitclaim. She was told not to report for work anymore because her services were no longer needed. On her last day of work, Ong humiliated her in front of her officemates by shouting at her and preventing her from getting her personal things or any other document from the office.

During her pre-employment interview, Lee had nice comments about her good work experience and educational background. She was assured of a long-term employment with benefits. Throughout her employment, she earnestly performed her duties, had a perfect attendance record, worked even during brownouts and typhoons, and would often work overtime just to finish her work.

Sy claimed that the remarks of her superiors about her alleged inefficiency were ill-motivated and made without any basis. She had been rendering services for almost six (6) months before she was arbitrarily and summarily dismissed. Her dismissal was highly suspicious as it took place barely four (4) days prior to the completion of her six-month probationary period. The petitioners did not show her any evaluation or appraisal report regarding her alleged inefficient performance. As she was terminated without an evaluation on her performance, she was deprived of the opportunity to be regularly part of the company and to be entitled to the benefits and privileges of

a regular employee. Worse, she was deprived of her only means of livelihood.

For their part, the petitioners asserted that before Sy was hired, she was apprised that she was being hired as a probationary employee for six months from September 1, 2006 to February 28, 2007, subject to extension as a regular employee conditioned on her meeting the standards of permanent employment set by the company. Her work performance was thereafter monitored and evaluated. On February 1, 2007, she was formally informed that her employment would end on February 28, 2007 because she failed to meet the company's standards. From then on, Sy started threatening the families of the petitioners with bodily harm. They pointed out that the unpredictable attitude of Sy was one of the reasons for her not being considered for regular employment.

The foregoing circumstances prompted Sy to file a case for illegal dismissal with claims for back wages, unpaid salary, service incentive leave, overtime pay, 13th month pay, and moral and exemplary damages, and attorney's fees.

After the submission of the parties' respective pleadings, the ELA rendered a decision in favor of Sy, stating that a termination, notwithstanding the probationary status, must be for a just cause. As there was an absence of evidence showing just cause and due process, he found Sy's termination to be arbitrary and illegal. The dispositive portion of the ELA decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered finding respondents [herein petitioners] liable for illegal dismissal and payment of money claims.
>
> Accordingly, respondents [herein petitioners] are hereby ordered to reinstate complainant to her position without loss of seniority rights and other benefits, and to pay the following:
>
> 1. Complainant's full backwages, computed from the time she was illegally dismissed to the date of her actual reinstatement, which as of date amounts to P185,380.00;
>
> 2. Prorated 13[th] month pay in the sum of P4,166.00;
>
> 3. Salaries for period of February 16-28, 2007 amounting to P13,000.00;
>
> 4. 10% of the total award as attorney's fee.
>
> The reinstatement aspect of this Decision is immediately executory pursuant to Article 223 of the Labor Code, as amended. Respondents [herein petitioners] are therefore directed to submit a report of compliance thereof before this Office within ten (10) calendar days from receipt hereof.
>
> All other claims are hereby DISMISSED for lack of merit.
>
> SO ORDERED.[7]

Dissatisfied, the petitioners appealed to the NLRC on the ground that the ELA gravely abused his discretion in finding that Sy was illegally dismissed and in ordering her reinstatement and payment of backwages.

On appeal, the NLRC reversed the ELA's finding that Sy was terminated without just cause and without due process and dismissed the case.[8]

In reversing the decision of the ELA, the NLRC reasoned out that pursuant to Article 281 of the Labor Code, there are two general grounds for the services of a probationary employee to be terminated, just cause or failure to qualify as a regular employee. In effect, failure to qualify for regular employment is in itself a just cause for termination of probationary employment. To the NLRC, the petitioners were in compliance with the mandate of the said provision when Sy was notified one month in advance of the expiration of her probationary employment due to her non-qualification for regular employment.

The motion for reconsideration having been denied, Sy elevated her case to the CA via a petition for certiorari under Rule 65. She imputed grave abuse of discretion on the part of NLRC in dismissing her complaint.

On February 26, 2010, the CA rendered the assailed decision reversing the NLRC. It explained that at the time Sy was engaged as a probationary employee she was not informed of the standards that she should meet to become a regular employee. Citing the ruling in Clarion Printing House, Inc v. NLRC,[9] the CA stated that where an employee hired on probationary basis was not informed of the standards that would qualify her as a regular employee, she was deemed to have been hired from day one as a regular employee. As a regular employee, she was entitled to security of tenure and could be dismissed only for a just cause and after due compliance with procedural due process. The CA added that the petitioners did not observe due process in dismissing Sy.

Thus, the CA agreed with the ELA's conclusion that the termination of Sy's services was illegal as there was no evidence that a standard of performance had been made known to her and that she was accorded due process. The pertinent portions of the CA decision, including the dispositive portion, read:

> Public respondent NLRC committed grave abuse of discretion in reversing the findings of the Labor Arbiter and ruling that private respondents [herein petitioners] have the right to terminate the services of petitioner [herein respondent] because they found her unfit for regular employment even if there was no evidence to show the instances which made her unfit. Moreover, the NLRC erred when it found that there was a compliance with procedural due process when petitioner's [respondent's] services were terminated.
>
> WHEREFORE, the petition is GRANTED. The decision of the Labor Arbiter dated September 28, 2007 is REINSTATED. Consequently, the decision and resolution of the National Labor Relations Commission dated April 29, 2008 and July 30, 2008, respectively, are REVERSED and SET ASIDE.
>
> SO ORDERED.[10]

The petitioners sought reconsideration of the said decision. The CA, however, denied the motion in its Resolution dated July 9, 2010.

Hence, the petitioners interpose the present petition before this Court anchored on the following

> GROUNDS
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> (1)
>
> THE COURT OF APPEALS ERRED IN UPHOLDING THE DECISION OF THE LABOR ARBITER AND AWARDING BACK WAGES AND OTHER MONETARY CLAIMS IN FAVOR OF THE PRIVATE RESPONDENT.
>
> (2)
>
> THE COURT OF APPEALS ERRED IN HOLDING THAT HEREIN PRIVATE RESPONDENT BECAME A REGULAR EMPLOYEE EFFECTIVE DAY ONE OF HER EMPLOYMENT WITH PETITIONER.
>
> (3)
>
> THE COURT OF APPEALS GRAVELY ERRED IN DISREGARDING THE PROBATIONARY PERIOD OF EMPLOYMENT OF PRIVATE RESPONDENT ENDING [ON] FEBRUARY 28, 2007.[11]

The core issue to be resolved is whether the termination of Sy, a probationary employee, was valid or not.

The petitioners pray for the reversal of the CA decision arguing that Sy was a probationary employee with a limited tenure of six months subject to regularization conditioned on her satisfactory performance. They insist that they substantially complied with the requirements of the law having apprised Sy of her status as probationary

employee. The standard, though not written, was clear that her continued employment would depend on her over-all performance of the assigned tasks, and that the same was made known to her since day one of her employment. According to the petitioners, reasonable standard of employment does not require written evaluation of Sy's function. It is enough that she was informed of her duties and that her performance was later rated below satisfactory by the Management.

Citing Alcira v. NLRC[12] and Colegio San Agustin v. NLRC,[13] the petitioners further argue that Sy's constitutional protection to security of tenure ended on the last day of her probationary tenure or on February 28, 2007. It is unfair to compel regularization of an employee who was found by the Management to be unfit for the job. As they were not under obligation to extend Sy's employment, there was no illegal dismissal, but merely an expiration of the probationary contract. As such, she was not entitled to any benefits like separation pay or backwages.

Sy counters that she was illegally terminated from service and insists that the petitioners cannot invoke her failure to qualify as she was not informed of the standards or criteria which she should have met for regular employment. Moreover, no proof was shown as to her alleged poor work performance. She was unceremoniously terminated to prevent her from becoming a regular employee and be entitled to the benefits as such.

The Court finds the petition devoid of merit.

The pertinent law governing the present case is Article 281 of the Labor Code which provides as follows:

> Art. 281. Probationary employment. — Probationary employment shall not exceed six months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. The services of an employee who has been engaged in a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. An employee who is allowed to work after a probationary period shall be considered a regular employee. (Underscoring supplied)

There is probationary employment where the employee upon his engagement is made to undergo a trial period during which the employer determines his fitness to qualify for regular employment based on reasonable standards made known to him at the time of engagement.[14] The probationary employment is intended to afford the employer an opportunity to observe the fitness of a probationary employee while at work, and to ascertain whether he will become an efficient and productive employee. While the employer observes the fitness, propriety and efficiency of a probationer to ascertain whether he is qualified for permanent employment, the probationer, on the other hand, seeks to prove to the employer that he has the qualifications to meet the reasonable standards for permanent employment. Thus, the word probationary, as used to describe the period of employment, implies the purpose of the term or period, not its length.[15]

On the basis of the aforequoted provisions and definition, there is no dispute that Sy's employment with Tamson's on September 1, 2006 was probationary in character. As a probationary employee, her employment status was only temporary. Although a probationary or temporary employee with a limited tenure, she was still entitled to a security of tenure.

It is settled that even if probationary employees do not enjoy permanent status, they are accorded the constitutional protection of security of tenure. This means they may only be terminated for a just cause or when they otherwise fail to qualify as regular employees in accordance with reasonable standards made known to them by the employer at the time of their engagement.[16] Consistently, in Mercado v. AMA Computer College-Paranaque City, Inc.,[17] this Court clearly stressed that:

> Labor, for its part, is given the protection during the probationary period of knowing the company standards

> the new hires have to meet during the probationary period, and to be judged on the basis of these standards, aside from the usual standards applicable to employees after they achieve permanent status. Under the terms of the Labor Code, these standards should be made known to the [employees] on probationary status at the start of their probationary period, or xxx during which the probationary standards are to be applied. Of critical importance in invoking a failure to meet the probationary standards, is that the [employer] should show – as a matter of due process – how these standards have been applied. This is effectively the second notice in a dismissal situation that the law requires as a due process guarantee supporting the security of tenure provision, and is in furtherance, too, of the basic rule in employee dismissal that the employer carries the burden of justifying a dismissal. These rules ensure compliance with the limited security of tenure guarantee the law extends to probationary employees.[18] [Emphases supplied]

In this case, the justification given by the petitioners for Sy's dismissal was her alleged failure to qualify by the company's standard. Other than the general allegation that said standards were made known to her at the time of her employment, however, no evidence, documentary or otherwise, was presented to substantiate the same. Neither was there any performance evaluation presented to prove that indeed hers was unsatisfactory. Thus, this Court is in full accord with the ruling of the CA when it wrote that:

> Private respondents were remiss in showing that petitioner failed to qualify as a regular employee. Except for their allegations that she was apprised of her status as probationary and that she would be accorded regular status once she meets their standards, no evidence was presented of these standards and that petitioner had been apprised of them at the time she was hired as a probationary employee. Neither was it shown that petitioner failed to meet such standards.
>
> Petitioner should have been informed as to the basis of private respondents' decision not to extend her regular or permanent employment. This case is bereft of any proof like an evaluation or assessment report which would support private respondents' claim that she failed to comply with the standards in order to become a regular employee.
>
> One of the conditions before an employer can terminate a probationary employee is dissatisfaction on the part of the employer which must be real and in good faith, not feigned so as to circumvent the contract or the law. In the case at bar, absent any proof showing that the work performance of petitioner was unsatisfactory, We cannot conclude that petitioner failed to meet the standards of performance set by private respondents. This absence of proof, in fact, leads Us to infer that their dissatisfaction with her work performance was contrived so as not to regularize her employment.[19]

For failure of the petitioners to support their claim of unsatisfactory performance by Sy, this Court shares the view of the CA that Sy's employment was unjustly terminated to prevent her from acquiring a regular status in circumvention of the law on security of tenure. As the Court previously stated, this is a common and convenient practice of unscrupulous employers to circumvent the law on security of tenure. Security of tenure, which is a right of paramount value guaranteed by the Constitution, should not be denied to the workers by such a stratagem. The Court can not permit such a subterfuge, if it is to be true to the law and social justice.[20]

In its attempt to justify Sy's dismissal, the petitioners relied heavily on the case of Alcira v. NLRC[21] where the Court stressed that the constitutional protection ends on the expiration of the probationary period when the parties are free to either renew or terminate their contract of employment.

Indeed, the Court recognizes the employer's power to terminate as an exercise of management prerogative. The petitioners, however, must be reminded that such right is not without limitations. In this connection, it is well to quote the ruling of the Court in the case of Dusit Hotel Nikko v. Gatbonton, [22] where it was written:

> As Article 281 clearly states, a probationary employee can be legally terminated either: (1) for a just cause; or (2) when the employee fails to qualify as a regular employee in accordance with the reasonable standards made

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> known to him by the employer at the start of the employment. Nonetheless, the power of the employer to terminate an employee on probation is not without limitations. First, this power must be exercised in accordance with the specific requirements of the contract. Second, the dissatisfaction on the part of the employer must be real and in good faith, not feigned so as to circumvent the contract or the law; and third, there must be no unlawful discrimination in the dismissal. In termination cases, the burden of proving just or valid cause for dismissing an employee rests on the employer.[23] [Emphases supplied]

Here, the petitioners failed to convey to Sy the standards upon which she should measure up to be considered for regularization and how the standards had been applied in her case. As correctly pointed out by Sy, the dissatisfaction on the part of the petitioners was at best self-serving and dubious as they could not present concrete and competent evidence establishing her alleged incompetence. Failure on the part of the petitioners to discharge the burden of proof is indicative that the dismissal was not justified.

The law is clear that in all cases of probationary employment, the employer shall make known to the employee the standards under which he will qualify as a regular employee at the time of his engagement. Where no standards are made known to the employee at that time, he shall be deemed a regular employee.[24] The standards under which she would qualify as a regular employee not having been communicated to her at the start of her probationary period, Sy qualified as a regular employee. As held by this Court in the very recent case of Hacienda Primera Development Corporation v. Villegas,:[25]

> In this case, petitioner Hacienda fails to specify the reasonable standards by which respondent's alleged poor performance was evaluated, much less to prove that such standards were made known to him at the start of his employment. Thus, he is deemed to have been hired from day one as a regular employee. Due process dictates that an employee be apprised beforehand of the condition of his employment and of the terms of advancement therein. [Emphasis supplied]

Even on the assumption that Sy indeed failed to meet the standards set by them and made known to the former at the time of her engagement, still, the termination was flawed for failure to give the required notice to Sy. Section 2, Rule I, Book VI of the Implementing Rules provides:

> Section 2. Security of tenure. – (a) In cases of regular employment, the employer shall not terminate the services of an employee except for just or authorized causes as provided by law, and subject to the requirements of due process.
>
> (b) The foregoing shall also apply in cases of probationary employment; Provided however, that in such cases, termination of employment due to failure of the employee to qualify in accordance with the standards of the employer made known to the former at the time of engagement may also be a ground for termination of employment.
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> xxx
>
> (d) In all cases of termination of employment, the following standards of due process shall be substantially observed:
>
> xxx
>
> If the termination is brought about by the completion of a contract or phase thereof, or by failure of an employee to meet the standards of the employer in the case of probationary employment, it shall be sufficient that a written notice is served the employee, within a reasonable time from the effective date of termination. [Emphasis and Underscoring supplied]

In this case, the petitioners failed to comply with the requirement of a written notice. Notably, Sy was merely verbally informed that her employment would be terminated on February 28, 2007, as admitted by the

petitioners.[26] Considering that the petitioners failed to observe due process in dismissing her, the dismissal had no legal sanction. It bears stressing that a worker's employment is property in the constitutional sense.[27]

Being a regular employee whose termination was illegal, Sy is entitled to the twin relief of reinstatement and backwages granted by the Labor Code. Article 279 provides that an employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges, to her full backwages, inclusive of allowances, and to her other benefits or their monetary equivalent computed from the time her compensation was withheld from her up to the time of actual reinstatement. Likewise, having been compelled to come to court and to incur expenses to protect her rights and interests, the award of attorney's fees is in order.[28]

WHEREFORE, the petition is DENIED.

SO ORDERED.

Velasco, Jr., (Chairperson), Peralta, Abad, and Perez,[*] JJ., concur.

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[*] Designated as additional member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order No. 1152 dated November 11, 2011.

[1] Annex "A" of Petition, rollo, pp. 23-32. Penned by Associate Justice Pampio A. Abarintos with Associate Justice Josefina Guevara-Salonga and Associate Justice Jane Aurora C. Lantion, concurring.

[2] Annex "B" of Petition, id. at 35-36.

[3] Annex "Q" of Petition, id. at 172.

[4] Rollo, p. 121.

[5] Annex "D" of Petition, id. at 43.

[6] Id.

[7] Rollo, pp. 79-80.

[8] Id. at 178.

[9] 500 Phil. 61 (2005).

[10] Rollo, p. 32.

[11] Id. at 10-11.

[12] G.R. No. 149859, June 9, 2004, 431 SCRA 508.

[13] G.R. No. 87333, September 6, 1991, 201 SCRA 398.

[14] Robinsons Galleria/Robinsons Supermarket Corporation and/or Jess Manuel v. Ranchez, G.R. No. 177937, January 19, 2011, 640 SCRA 142, citing Omnibus Rules Implementing the Labor Code, Book VI, Rule I, Sec. 6.

[15] Magis Young Achievers' Learning Center v. Manalo, G.R. No. 178835, February 13, 2009, 579 SCRA 421, 431-432, citing International Catholic Migration Commission v. NLRC, 251 Phil. 560, 567 (1989).

[16] Alcira v. National Labor Relations Commission, G.R. No. 149859, June 9, 2004, 431 SCRA 508, citing Agoy v. National Labor Relations Commission, 322 Phil. 636, 645 (1996).

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[17] G.R. No. 183572, April 13, 2010, 618 SCRA 218.

[18] Mercado v. AMA Computer College-Paranaque City, Inc., G.R. No. 183572, April 13, 2010, 618 SCRA 218, 240-241.

[19] Rollo, p. 30.

[20] Octaviano v. National Labor Relations Commission, G.R. No. 88636, October 3, 1991, 202 SCRA 332, 337.

[21] G.R. No. 149859, June 9, 2004, 431 SCRA 508.

[22] G.R. No. 161654, May 5, 2006, 489 SCRA 671.

[23] Id. at 675-676, citing Sameer Overseas Placement Agency, Inc. v. National Labor Relations Commission, 375 Phil. 535, 540 (1999).

[24] Book VI, Rule I, Sec. 6(d) of the Implementing Rules of the Labor Code (Department Order No. 10, Series of 1997).

[25] G.R. No. 186243, April 11, 2011.

[26] Rollo, p. 37.

[27] Asuncion v. National Labor Relations Commission, 414 Phil. 329, 336 (2001).

[28] Fulache v. ABS-CBN Broadcasting Corporation, G.R. No. 183810, January 21, 2010, 610 SCRA 567, 588, citing Litonjua Group of Campanies v. Vigan, 412 Phil. 627, 643-644 (2001).

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