

SEBASTIAN F. OASAY, JR. PETITIONER, VS. PALACIO DEL GOBERNADOR CONDOMINIUM CORPORATION AND/OR OMAR T. CRUZ, RESPONDENTS.

G.R. No. 194306. February 06, 2012

Ponente: REYES, J.

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REYES, J.:

This is a petition for review on certiorari under Rule 45 of the Rules of Court filed by Sebastian F. Oasay, Jr. (petitioner) assailing the Decision[1] dated August 27, 2010 and Resolution[2] dated October 29, 2010 issued by the Court of Appeals (CA) in CA-G.R. SP No. 107843.

Respondent Palacio Del Gobernador Condominium Corporation (PDGCC) is a government-owned and controlled corporation organized for the purpose of owning and arranging the common areas of Palacio Del Gobernador Condominium. The said condominium, all the units therein having been acquired by the government, houses various government agencies such as the Commission on Elections (COMELEC), Bureau of Treasury and the Intramuros Administration. On June 1, 1994, the petitioner was appointed by the PDGCC as its Building Administrator for a three-month probationary period. Consequently, the Board of Directors of PDGCC, through its Board Resolution No. 013[3] dated October 27, 1994, appointed the petitioner as its permanent Building Administrator effective September 1, 1994.

In a Memorandum[4] dated September 27, 2005, PDGCC President Omar T. Cruz (Cruz) required the petitioner to submit a written report on the allowances and other compensation, in connection with his duties as Building Administrator, that he received from the government offices housed in the condominium. Apparently, the petitioner had been earning additional income for services that he rendered for the COMELEC.

On October 3, 2005, the petitioner submitted his written report[5] wherein he admitted that he had received additional compensation from the COMELEC for services which he rendered after his regular working hours and on Saturdays, Sundays and holidays. He explained that the COMELEC had caused the rehabilitation of the 8th floor of the condominium and that he was tasked by the former, for a stated compensation, to supervise and monitor the rehabilitation.

The PDGCC Board of Directors referred the petitioner's written report to Atty. Alberto A. Bernardo (Atty. Bernardo), the Assistant Secretary for Internal Audit, Office of the President and PDGCC Board Member, for study.

Meanwhile, Cruz sent a letter[6] dated December 9, 2005 to the petitioner requiring the latter to explain why he allowed the EGB Security Investigation and General Services, Inc., despite its lack of license to operate as a security agency, to render services to the condominium to the detriment of PDGCC. Consequently, the petitioner sent Cruz a letter[7] dated January 12, 2006 denying any liability on the said matter as he had no power to award any contract as it is the function of the Bids and Awards Committee of PDGCC.

In a letter[8] dated February 16, 2006, after investigating the allegations against the petitioner, Atty. Bernardo recommended to Cruz and the PDGCC Board of Directors the filing of appropriate charges against the petitioner for violation of Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act) and Republic Act No. 6713 (Code of Conduct and Ethical Standards for Public Officials and Employees). Attached to the said letter was a detailed outline report[9] prepared by Atty. Bernardo which specified the acts committed by the petitioner which led him to recommend the filing of appropriate charges against the latter.

With respect to the petitioner's receipt of additional compensation from the COMELEC, Atty. Bernardo opined that the services which the former rendered for the latter relates to the duties which he actually performs pursuant to the functions of his office as Building Administrator.[10] Atty. Bernardo further stated that, in rendering the said services for the COMELEC, the petitioner acted with evident bad faith as he did not seek the permission of PDGCC nor did he inform COMELEC that he was not authorized by PDGCC to do so.[11]

Likewise, Atty. Bernardo found that the petitioner, as member of the Bids and Awards Committee, maneuvered the bidding process for the security services for the condominium to favor EGB Security Investigation and General Services, Inc. – a security agency which lacks the necessary license to operate as such.[12]

In a letter[13] dated March 16, 2006, the petitioner asked the PDGCC Board of Directors and Cruz to allow him to avail of an early retirement in view of the latter's decision to hand over the administration of the condominium to the Bureau of Treasury. The foregoing request was reiterated in the petitioner's letter[14] dated May 10, 2006.

On October 28, 2006, Cruz sent the petitioner a Memorandum[15] informing him that the PDGCC Board of Directors found his answers to the allegations against him unsatisfactory and, thus the Bureau of Treasury was being appointed as the new Building Administrator. Cruz then directed the petitioner to turn over all of his accountabilities to PDGCC. The foregoing was acknowledged by the petitioner in his letter[16] to the PDGCC Board of Directors dated November 17, 2006.

Nevertheless, on January 23, 2007, the petitioner filed a Complaint[17] for constructive dismissal with the arbitration branch of the National Labor Relations Commission (NLRC) in Quezon City against PDGCC and Cruz, with claims for service incentive leave pay, retirement benefits, PERA differential as well as performance bonus and incentive bonus on important projects and damages.

For its part, PDGCC claimed that the petitioner was not a regular

employee, serving as a Building Administrator on a yearly basis depending on the PDGCC Board of Directors' discretion.[18] Further, on the assumption that the petitioner is a regular employee, PDGCC asserted that the petitioner was not illegally dismissed as it was based on a just cause for terminating an employment, i.e. loss of trust and confidence for receiving unlawful additional compensation for work rendered without its authority.[19]

On November 12, 2007, the Labor Arbiter (LA) rendered a Decision[20] dismissing the petitioner's complaint, finding that there was substantial evidence to conclude that the petitioner had breached the trust and confidence of PDGCC.

On appeal, the NLRC, on June 2, 2008, rendered a Decision[21] upholding the findings of the LA. Nonetheless, invoking equity, the NLRC awarded the petitioner separation pay equivalent to one and a half (1 ½) months pay for every year of service.

The petitioner sought a reconsideration of the June 2, 2008 Decision of the NLRC.[22] PDGCC likewise filed a motion for partial reconsideration of the same decision seeking the review of the award of separation pay to the petitioner. In a Resolution[23] dated December 23, 2008, the NLRC denied the foregoing motions. Thus, the

petitioner and PDGCC both filed a petition for certiorari with the CA, the former seeking a review of the validity of his dismissal and the latter seeking a reversal of the award for separation pay.

On August 27, 2010, the CA rendered the herein assailed Decision[24] dismissing the petition for certiorari filed by the petitioner and granted the PDGCC's prayer for a reversal of the award for separation in favor of the former. The fallo of the said decision reads:

WHEREFORE, in view of the foregoing premises, CA-G.R. SP. No. 107843 appealing the finding of just dismissal is hereby DISMISSED for lack of merit while CA-G.R. SP. No. 107925 questioning the award of separation pay to [petitioner] is hereby GRANTED. The assailed decision and resolution of the NLRC, insofar as it awards separation pay to [the petitioner], are hereby REVERSED and SET ASIDE and a new judgment is hereby entered finding [petitioner's] dismissal to be valid and for just cause and without any entitlement to separation pay.

SO ORDERED.[25]

In denying the petition for certiorari filed by the petitioner, the CA held that there was a valid ground for the petitioner's dismissal. Thus:

The services Oasay rendered for COMELEC were well within his duties as building administrator. In extending his hours of work and rendering duties within the scope of his work for a fee absent the consent from PDGCC, Oasay abused his position as building administrator and is guilty of contracting his services to PDGCC's occupants to the detriment of PDGCC. Not only did he maliciously used his position for personal gain, he also misused PDGCC's name and the goodwill it extended to its tenants by rendering his services for a fee in the guise of being authorized to do so when in truth and in fact there was no prior consent given by PDGCC regarding such matter.

On the same note, after an investigation uncovered that Oasay, in connivance with the other members of the BAC, violated the standard bidding process required by law when he allowed the employment and retention of services of EGB Security Agency despite its disqualification and paid the salaries of the agency's security guards out of PDGCC funds are enough reasons for PDGCC to breed mistrust and doubt Oasay's trustworthiness. In fact, the results of the investigation even prompted PDGCC to file criminal and administrative charges against Oasay.[26]

Moreover, the CA deleted the award of separation pay in favor of the petitioner as he was dismissed for an act which constitutes a palpable breach of trust in him.

Thereupon, the petitioner sought a reconsideration[27] of the August 27, 2010 Decision, but it was denied by the CA in its Resolution[28] dated October 29, 2010.

Undaunted, the petitioner instituted the instant petition for review on certiorari before this Court alleging the following arguments: (1) the petitioner did not violate the trust and confidence of PDCCG; (2) his right to procedural due process was violated; and (3) he was illegally dismissed and, hence, entitled to all the benefits and monetary award given to illegally dismissed employees.

In its Comment,[29] PDCCG asserts that the petitioner is not its regular employee and that the dismissal of the petitioner was for just cause, the same being part of its management prerogative.

The petition is denied.

At the crux of the instant controversy is the validity of the termination of the petitioner's employment with PDGCC.

At the outset, we stress that the question of whether the petitioner was illegally dismissed is a question of fact as

the determination of which entails an evaluation of the evidence on record. Well-entrenched is the rule in our jurisdiction that only questions of law may be entertained by this Court in a petition for review on certiorari.

In *La Union Cement Workers Union v. National Labor Relations Commission*,^[30] we stressed that:

As an overture, clear and unmistakable is the rule that the Supreme Court is not a trier of facts. Just as well entrenched is the doctrine that pure issues of fact may not be the proper subject of appeal by certiorari under

Rule 45 of the Revised Rules of Court as this mode of appeal is generally confined to questions of law. We therefore take this opportunity again to reiterate that only questions of law, not questions of fact, may be raised before the Supreme Court in a petition for review under Rule 45 of the Rules of Court. This Court cannot be tasked to go over the proofs presented by the petitioners in the lower courts and analyze, assess and weigh them to ascertain if the court a quo and the appellate court were correct in their appreciation of the evidence.^[31]

Moreover, findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect but finality when affirmed by the CA.^[32]

Verily, 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 these rules.

Nevertheless, even if we are to disregard the foregoing, the instant petition would still fail. A perusal of the allegations, issues and arguments set forth by the petitioner would readily show that the CA did not commit any reversible error as to warrant the exercise of the Court's appellate jurisdiction.

The validity of an employee's dismissal from service hinges on the satisfaction of the two substantive requirements for a lawful termination. These are, first, whether the employee was accorded due process the basic components of which are the opportunity to be heard and to defend himself. This is the procedural aspect. And second, whether the dismissal is for any of the causes provided in the Labor Code of the Philippines. This constitutes the substantive aspect.^[33]

On the substantive aspect, we find that PDGCC's termination of the petitioner's employment was for a cause provided under the Labor Code.

Article 282 of the Labor Code states:

Article 282. TERMINATION BY EMPLOYER. – An employer may terminate an employment for any of the following causes:

- (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
- (b) Gross and habitual neglect by the employee of his duties;
- (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
- (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and
- (e) Other causes analogous to the foregoing. (emphasis supplied)

In terminating the petitioner's employment, PDGCC invoked loss of trust and confidence. 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. Verily, the Court must first determine if the petitioner holds such a position.[34]

Here, it is indubitable that the petitioner holds a position of trust and confidence. The position of Building Administrator, being managerial in nature, necessarily enjoys the trust and confidence of the employer.

The second requisite is that there must be an act that would justify the loss of trust and confidence. Loss of trust and confidence, to be a valid cause for dismissal, must be based on a willful breach of trust and founded on clearly established facts. The basis for the dismissal must be clearly and convincingly established but proof beyond reasonable doubt is not necessary.[35]

PDGCC had established, by clear and convincing evidence, the petitioner's acts which justified its loss of trust and confidence on the former. On this score, the LA keenly observed that:

Complainant's breach of the trust reposed in him as Building Administrator is sufficiently supported by the evidence on record. Complainant's admission that he received remuneration from Commission on Elections (COMELEC) whose office is housed at respondent Palacio Del Gobernador Condominium justified his termination of employment. Complainant cannot assert that he rendered services to COMELEC only after office hours as his functions as Building Coordinator would definitely have favored COMELEC in the performance of his functions during regular office hours.

Likewise, as Building Administrator, his active vigilance in reporting and informing the respondents as to the expired license to operate of the EGB Security Agency and its revoked SEC Certificate of Registration was his duty and look-out. In the instant case, complainant instead of informing the respondents, kept this information from the knowledge of the respondents and allowed the security agency to render security services to the premises of respondents despite its expired license and revoked SEC Certificate of Registration.[36]

Nonetheless, the petitioner profusely claims that his receipt of additional income from overtime work rendered for the COMELEC could not be made as a basis to terminate his employment. He asserts that there is nothing amiss when he rendered overtime work as it was authorized by the COMELEC.

We disagree. What escapes the foregoing argument of the petitioner is that he is an employee of PDGCC and not of the COMELEC. It is undisputed that PDGCC did not authorize nor was it informed of the services rendered by the petitioner in favor of the COMELEC. To make matters worse, the said services rendered by the petitioner are, essentially, related to the performance of his duties as a Building Administrator of the condominium.

On the procedural aspect, we find that PDGCC had observed due process in effecting the dismissal of the petitioner.

With respect to due process requirement, the employer is bound to furnish the employee concerned with two (2) written notices before termination of employment can be legally effected. One is the notice apprising the employee of the particular acts or omissions for which his dismissal is sought and this may loosely be considered as the proper charge. The other is the notice informing the employee of the management's decision to sever his employment. This decision, however, must come only after the employee is given a reasonable period from receipt of the first notice within which to answer the charge, thereby giving him ample opportunity to be heard and defend himself with the assistance of his representative should he so desire. The requirement of notice, it has been stressed, is not a mere technicality but a requirement of due process to which every employee is entitled.[37]

Here, PDGCC complied with the "two-notice rule" stated above. PDGCC complied with the first notice requirement, i.e. notice informing the petitioner of his infractions, as shown by the following: (1) the Memorandum dated September 27, 2005 sent by Cruz to the petitioner requiring the latter to explain and to

submit his report on the additional compensation he received from COMELEC; and (2) the letter dated December 9, 2005 sent by Cruz to the petitioner requiring him to explain why he allowed the EGB Security Investigation and General Services, Inc. to render services to the condominium.

The second notice requirement was likewise complied with by PDGCC when it sent to the petitioner the Memorandum dated October 28, 2006 which, in essence, informed the latter that a new Building Administrator had been appointed. It was stated in the said Memorandum that the decision to appoint a new Building Administrator was due to the fact that the PDGCC Board of Directors found the petitioner's explanation to the charges against him unsatisfactory.

All told, we find that no error has been committed by the CA in ruling that the termination of the petitioner's employment was for a cause and that, in doing so, PDGCC complied with the "two-notice" procedural due process requirement.

WHEREFORE, in consideration of the foregoing disquisitions, the petition is DENIED. The assailed Decision dated August 27, 2010 and Resolution dated October 29, 2010 issued by the Court of Appeals in CA-G.R. SP No. 107843 are AFFIRMED.

SO ORDERED.

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

[1] Penned by Associate Justice Romeo F. Barza, with Associate Justices Rosalinda Asuncion-Vicente and Rodil V. Zalameda, concurring; rollo, pp. 29-48.

[2] Id. at 49-50.

[3] Id. at 213.

[4] Id. at 146.

[5] Id. at 147-150.

[6] Id. at 203.

[7] Id. at 246-247.

[8] Id. at 164.

[9] Id. at 166-202.

[10] Id. at 168.

[11] Id. at 169.

[12] Id. at 187, 190.

[13] Id. at 206.

[14] Id. at 207-209.

[15] Id. at 210.

[16] Id. at 212.

[17] Id. at 91-92.

[18] Id. at 115-117.

[19] Id. at 117-121.

[20] Id. at 280-286.

[21] Id. at 74-88.

[22] Id. at 321-327.

[23] Id. at 89-90.

[24] Supra note 1.

[25] Rollo, pp. 47-48.

[26] Id. at 44-45.

[27] Id. at 355-359.

[28] Supra note 2.

[29] Rollo, pp. 371-385.

[30] G.R. No. 174621, January 30, 2009, 577 SCRA 456.

[31] Id. at 462.

[32] Ortega v. Social Security Commission, G.R. No. 176150, June 25, 2008, 555 SCRA 353, 364.

[33] Erector Advertising Sign Group, Inc. v. Cloma, G.R. No. 167218, July 2, 2010, 622 SCRA 665, 674, citing Pepsi Cola Distributors of the Philippines, Inc. v. NLRC, 338 Phil 773, 779 (1997); and New Ever Marketing, Inc. v. CA, 501 Phil 575, 585 (2005).

[34] Abel v. Philex Mining Corporation, G.R. No. 178976, July 31, 2009, 594 SCRA 683, 693.

[35] Id. at 694, citing Equitable Banking Corporation v. NLRC, G.R. No. 102647, June 13, 1997, 273 SCRA 352, 376; and Garcia v. NLRC, 351 Phil 961, 971 (1998).

[36] Rollo, p. 284.

[37] Supra note 33, citing Mendoza v. NLRC, 350 Phil 486, 496-497 (1998).

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