

CONTINENTAL BAZAR, SODA FOUNTAIN AND RESTAURANT LABOR UNION-PAFLU AND ANTONIETA ESMERIA, PETITIONERS, VS. HON. AMADO G. INCIONG (DEPUTY MINISTER OF LABOR), P & R TRADING (OPERAT...

G.R. No. 50097. November 17, 1980

Ponente: BARRERA, J.

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BARRERA, J.:

Petition for certiorari praying that this Court annul and set aside the order of respondent Deputy Minister of Labor of November 16, 1978 as well as his decision of December 20, 1978 setting aside his own of June 9, 1978 and ordering that instead of herein petitioner Antonieta Esmeria being reinstated with full backwages and seniority rights and other privileges, she be just paid separation pay equivalent to seven months, etc.

The simple basic facts of this case on the merits are stated in the brief but clear resolution of the National Labor Relations Commission, Second Division, dated April 15, 1977 as follows:

"From the Decision dated June 30, 1976 of Labor Arbiter Manuel B. Lorenzo finding respondents guilty of unfair labor practice and ordering respondents to reinstate complainant Antonieta Esmeria with full backwages, the respondents appealed on the grounds of abuse of discretion on the part of the Labor Arbiter and that the latter committed serious error in his findings of facts which, if not corrected, would cause the respondent grave damage.

"The respondents insisted that complainant Antonieta Esmeria was lawfully dismissed for punching in the time card of her co-employee Corazon Layug on June 21, 1975, which act was a breach of company rules and regulations and should not be tolerated or countenanced.

"On this matter, the Labor Arbiter in his questioned Decision found that the complainant punched in the time card of her co-employee on June 21, 1975 by mistake as she was then rushing to work. The complainant did not deny having punched in the wrong card. In fact, to show her good faith, she immediately reported the matter to her superior Dely Ramirez. The latter admitted that indeed time cards are sometimes intentionally interchanged by some student passing by the premises where the cards rack is located. For the aforecited mistake, Corazon Layug, who happened to be absent on June 21, 1975, did not collect her pay for that day. All these facts were not denied by the respondents.

"The Commission does not believe that Antonieta Esmeria committed a breach of company rules and regulations when she mistakenly punched in the card of her co-employee in the above-mentioned circumstances. To insist therefore to dismiss the complainant on her mistake which did not harm to the respondent company would truly be to open itself to suspension of unfair motives." (Pp. 19-20, Record.)

The decision of Labor Arbiter Manuel B. Lorenzo contains the following significant findings:

"In the light of the evidences as well as the arguments adduced by both parties, this Labor Arbiter finds and so holds that individual complainant's dismissal was illegal, it having been precipitated by her active militant

union activities as president of the complaining union.

"Complainant Antonieta Esmeria does not deny having punched the time card of Corazon Layug on June 21, 1975. However, she claims that she did so by mistake as a result of her rushing to work. To show her good faith, she immediately reported the matter to her superior Dely Ramirez (affidavit of November 6, 1975) after she was advised by companions to report the same (tsn, December 5, 1975, pp. 16-17).

"Respondent presented Mrs. Fidela Ramirez who admitted that a number of students and customers pass through Gomez Street entrance, where the time cards rack is located and they can even reach these cards (tsn, January 15, 1976, pp. 15-21) and as testified to by Esmeria, some students even interchanged the time cards and this has not been rebutted by the respondent.

"Further, the records show that complainant Antonieta Esmeria rendered service to the respondent company for more than six (6) years. Mrs. Fidela Ramirez, respondent's own witness had to grudgingly accede that Esmeria has never caused the company any one single trouble, neither has she received any complaint from her co-employees or from any other source regarding Esmeria's character and attitude.

"When Corazon Layug was presented by the complainant as a witness, the former testified that she did not report for work on April 21, 1975 due to an emergency call from the province. Complainant submitted Miss Layug's pay slip where it appears that the latter was not paid for that day, thereby rebutting the previous testimony of Fidela Ramirez that she reported for work one hour late.

"It is significant to note that complainant Antonieta Esmeria was elected Union President in April 1975 and was holding the position for about two months only when she was dismissed by the respondent. Further, it is not disputed that complainant Antonieta Esmeria played an active role in the filing of all pending cases against respondent in behalf of her union and its union members before OCR, Malacañang, Department of Labor, etc. among which maybe mentioned a case filed on April 28, 1975 for violation of the collective bargaining agreement (Exhibit 'B') docketed as Case No. LR-18 21." (Pp. 102-104, Record.)

Upon appeal to the Minister (then Secretary) of Labor, the respondent, then Acting Secretary, denied said appeal and ordered immediate execution on June 9, 1978.

Private respondent then appealed to the Office of the President. On November 7, 1978, that office informed private respondent that it would not review the case because it does not involve the national interest, invoking Section 2 of Presidential Decree No. 1367 dated May 1, 1978. Respondent moved for reconsideration on November 14, 1978 and petitioners opposed the same on December 8, 1978.

Apparently believing that another procedural strategy would succeed, on November 16, 1978, even before receiving petitioners' opposition, respondent filed with the Ministry of Labor a "Motion to Treat Respondents' Appeal as a Motion for Reconsideration" and prayed at the same time for a restraining order of the execution of the decision. On the same day, respondent Deputy Minister gave due course to said motion, issued the restraining order prayed for, and on December 20, 1978 rendered a decision, pertinent parts of which read thus:

"We have gone over the records of this case and we feel that there exists a good ground to reconsider our Order dated June 9, 1978.

"The relationship between a sales girl and the Company is one involving trust and confidence, a relationship which, if strained, cannot be restored by order or decision.

"The spirit behind the industrial relations system under the Labor Code is maintenance of harmonious relations based on justice. Under such concept arbiters are called upon to look for solutions mutually acceptable to both parties and not to act as judge of who is right and who is wrong. In this case, the arbiter failed.

"As previously stated, relationships of complainant and respondent have already been strained and

reinstatement as a remedy would only worsen the situation. For how could the respondents who have lost trust and confidence on complainant Antonieta Esmeria accept her back to work in a position which requires such relationship?

"While we hold that reinstatement is not possible under the circumstances, we believe that justice and equity demand the payment of separation pay equivalent to one (1) month or one (1) month for every year of service whichever is higher. This is so because we feel that dismissal is too harsh a penalty for an act which was proven to be a mistake done in good faith." (Pp. 45-46, Record.)

In the light of the circumstances thus related, the Court holds that public respondent acted beyond the scope of his authority or, at least, committed a grave abuse of discretion in modifying his decision of June 9, 1978. Private respondent ought to have known that under P.D. 1367 aforementioned it had no right to appeal to the President. It was presumptuous on its part to think at all that its case could in any sense have an aspect of national interest. At the most, it could only come to this Court on certiorari. Not having done so within a reasonable time, the judgment of June 9, 1978 had already become final and executory.

Besides, no explanation has been given why said respondent switched back to Ministry of Labor just the day after it filed its motion for reconsideration of the refusal of the Office of the President to take cognizance of its appeal. Worse, it did not withdraw formally that motion for reconsideration. Such unexplained actuations compel Us to feel that there is something more than meets the eye in the swift action of public respondent on the switch of procedure in question.

In any event, it requires very little reflection of the considerations stated in the decisions of the Labor Arbiter and National Labor Relations Commission to comprehend that private respondent was just using the mistake of petitioner, duly reported to her superiors and explained satisfactorily by her, as an excuse to get rid of her militancy as a labor leader. Public respondent's theory of preserving harmony in employer-employee relationship must yield to the need for protection of laborers to organize and have their unions. That is a right guaranteed to them by the protection-of-labor fundamental principle of the Constitution. (Section 9, Article II)

WHEREFORE, the petition is granted. The order of public respondent of November 16, 1978 as well as his reversed decision of December 20, 1978 are hereby declared illegal and null and void and it is hereby ordered that the decision of June 9, 1978 ordering the reinstatement with full backwages, without loss of seniority and other rights of privileges of petitioner Antonieta Esmeria be the one enforced.

Aquino, Concepcion, Jr., Abad Santos, and De Castro, JJ., concur.

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