

NATIVIDAD SAMPANG IN HER CAPACITY AS PRESIDENT OF GABAY NG MANGGAGAWA SA INSULAR YEBANA-FOITAF, PETITIONER, VS. HONORABLE AMADO G. INCIONG IN HIS CAPACITY AS DEPUTY MINISTER OF ...*G.R. No. 50992. June 19, 1985*

Ponente: FERNANDO, C.J.

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The constitutional guarantee of security of tenure accorded labor under the present Constitution[1] points the way to the disposition of this certiorari proceeding resulting from the dismissal of petitioner, Natividad Sampang. She was the president of the labor union of the employees of private respondent Insular Yebana Tobacco Corporation.

She seeks the reversal of an order of the then Deputy Minister of Labor, Amado G. Inciong, who sustained the Regional Director in his decision to grant clearance for her dismissal, presumably for initiating "a concerted action among the rank and file workers not to perform overtime work [amounting] to gross insubordination." [2] That charge she denied, her version being that she made "several representations with management, upon request of the members of the union, to cut-off overtime work, as this would mean more days of work and additional living allowance for the workers, but to no avail, that the overtime work was a device of management to avoid compliance with P.D. 112; that there is no exigency for the rendering of overtime work, hence, the concerted refusal to work overtime cannot be called a strike." [3]

In the Comment submitted by private respondent La Yebana Tobacco Corporation, there was admission that "the Gabay ng Manggagawa thru petitioner Natividad Sampang [requested] for the cancellation of overtime work and limit the work to eight (8) hours only." [4] It was, however, alleged that the strike on "January 12, 1978, [was unexpected, having come] without awaiting the results of the study program being prepared and undertaken by its management's staff so that work schedule could finally be set to mutual satisfaction of both parties and upon petitioner's instigation, the rank-and-file workers of the company [went on] a strike after the eight hours working period, despite pleadings of the company supervisors to finish their unfinished work. [The strike continued] up to the following day, January 13, 1978." [5] In the Comment filed by the Solicitor General, it was contended that there was authority both of the Regional Director as well as of the Deputy Minister of Labor to issue the assailed orders. It was likewise submitted in such Comment that there was no denial of procedural due process, as there were position papers filed with the Regional Director, petitioner, therefore, having been afforded all the opportunity to present and support her case.

For reasons to be hereinafter set forth, the Court holds that the petition must be granted and the decision of Deputy Minister Amado G. Inciong, acting by authority of the then Minister of Labor and Employment, set aside.

1. The basis for the dismissal of petitioner Sampang as previously noted, citing the Comment of private respondent, was the "unexpected" character of the strike on the evening of June 12, 1978, lasting until the next day, a strike the blame for which was attributed to petitioner, who allegedly instigated it. It was further stated

that the pleas made by the company supervisor for the employees to do overtime work was disregarded. As a result, according to an Annex to the Comment of private respondent "the company lost an estimated amount of P2,716.00 worth of unpacked cigarettes which were spoiled." [6] The same amount was mentioned in its memorandum to the Regional Office IV of the then Department of Labor, in well-nigh identical language: "As a result of this concerted action, the Corporation suffered irreparable losses in the amount of P2,761.00, more or less, worth of unfinished products in the form of unpacked and spoiled cigarettes." [7] What is undeniable, therefore, is that for an unexpected strike lasting for two days resulting in the loss of P2,761.00 more or less, an employee who has worked for thirty-one years was dismissed. The length of service of petitioner Sampang is found in an affidavit attached as one of the annexes of her memorandum. It read thus: "That I am working for Insular Yebana Tobacco Corporation, employed as cajista or cigar packer since 1948 or for more than 30 years." [8] There is here a case, therefore, of an employee, with more than thirty years service, having been dismissed for instigating a strike that lasted for two days and caused the loss in the amount of P2,716.00. It is quite obvious then that the constitutional mandate on security of tenure was violated. For even if her denial that she did not instigate such two-day strike be disregarded, still the penalty imposed was grossly disproportionate to the offense imputed to her.

2. The first decision interpreting the security of tenure provision is *Philippine Air Lines, Inc. v. Philippine Air Lines Employees Association*. [9] After referring to the aforesaid security of tenure provision in the present Constitution, the opinion of the Court went on to state: "It was not that specific in the 1935 Charter. The mandate was limited to the State affording 'protection to labor, especially to working women and minors, * * *.' If by virtue of the above, it would not be legally justifiable to reverse the order of reinstatement, it becomes even more readily apparent that such a conclusion is even more unwarranted, now. To reach it would be to show lack of fealty to a constitutional command. This is not to say that dismissal for cause is now outlawed. No such thing is intimated in this opinion. It is merely to stress that where respondent Court of Industrial Relations, in the light of all the circumstances disclosed, particularly that it was a first offense after seventeen years of service, reached the conclusion, neither arbitrary nor oppressive, that dismissal was too severe a penalty, this Court should not view the matter differently." [10]

3. Less than a month later, on July 25, 1974, to be precise, this Court promulgated its decision in *Almira v. B.F. Goodrich Philippines, Inc.*, [11] affirming the above Philippine Airlines decision. There is this relevant excerpt from the opinion in *Almira* as to the liberal interpretation of the security of tenure provision: "It would imply at the very least that where a penalty less punitive would suffice, whatever missteps may be committed by labor ought not to be visited with a consequence so severe. It is not only because of the law's concern for the workingman. There is, in addition, his family to consider. Unemployment brings untold hardships and sorrows on those dependent on the wage-earner. The misery and pain attendant on the loss of jobs then could be avoided if there be acceptance of the view that under all the circumstances of this case, petitioners should not be deprived of their means of livelihood. Nor is this to condone what had been done by them. For all this while, since private respondent considered them separated from the service, they had not been paid. From the strictly juridical standpoint, it cannot be too strongly stressed, to follow Davis in his masterly work, *Discretionary Justice*, that where a decision may be made to rest on informed judgment rather than rigid rules, all the equities of the case must be accorded their due weight. Finally labor law determinations, to quote from Bultmann, should be not only *secundum rationem* but also *secundum caritatem*." [12]

4. In the recent case of *Bustillos v. Inciong*, [13] it was held that petitioner, who had been employed by private respondent for eighteen years ought not to have been dismissed and that a two-year suspension would suffice. The opinion likewise noted: "The length of service was accorded due consideration in decisions of this Tribunal ordering reinstatement, twenty years in *De Leon v. National Labor Relations Commission* and *Reyes v. Philippine Duplicators* and twenty-two years in *Union of Supervisors v. Secretary of Labor*." [14] How then justify a dismissal in this case. Considering all the circumstances, even a two-year period of suspension might be considered excessive.

5. It is thus evident that the case could be decided without considering the points raised by counsel for petitioner. It suffices to state that the competence of the Deputy Minister of Labor to pass upon the appeal cannot be disputed. He acted by "authority of" the Minister of Labor. A more extended inquiry into the factual aspects could have shed more light on the environmental circumstances. Nonetheless, since the appealed decision could be set aside, there being a violation of the security of tenure provision, the claim that procedural due process was not observed does not call for any further discussion. Suffice it to state that the motion for reconsideration, not to mention the appeal, was curative in character as held by this Court in a number of cases.

WHEREFORE, the petition for certiorari is granted and the order of the then Deputy Minister of Labor, Amado Inciong, set aside and nullified. The Court hereby orders the reinstatement of petitioner Natividad Sampang to the last position she occupied or any other similar position of the same category and the same compensation, if another employee has in the meanwhile been appointed in her place. Private respondent is likewise ordered to pay her backwages, the amount being for a three-year period. This decision is immediately executory. No costs.

Makasiar, Aquino, Concepcion, Jr., Abad Santos, Escolin, and Cuevas, JJ., concur.

[1] According to Article II, Section 9 of the Constitution: "The State shall afford protection to labor, promote full employment and equality in employment, ensure equal work opportunities regardless of sex, race, or creed, and regulate the relations between workers and employers. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work. * * *."

[2] Annex A to Petition.

[3] Ibid.

[4] Ibid, par. 6.

[5] Ibid, par. 7.

[6] Comment, Annex 3 to the Amended Complaint, par. 9.

[7] Ibid, Annex 5 to the Amended Complaint, Memorandum for the Complaint, 1.

[8] Annex F to the Memorandum of Petitioner.

[9] L-24626, June 28, 1974, 57 SCRA 489.

[10] Ibid, 495-496. The protection to labor provision is found in Article XIV, Section 6 of the 1935 Constitution.

[11] L-34974, July 25, 1974, 58 SCRA 120.

[12] Ibid, 131.

[13] L-45396, January 27, 1983, 120 SCRA 262.

[14] Ibid, 267. *De Leon v. National Labor Relations*, G.R. No. 52056, October 30, 1980, is reported in 100 SCRA 691; *Reyes v. Philippine Duplicators*, G.R. No. 54996, November 20, 1981, in 109 SCRA 489; and *Union of Supervisors v. Secretary of Labor*, L-39889, November 2, 1981, in 109 SCRA 139.

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