

EDMUND YAP, PETITIONER, VS. HON. AMADO G. INCIONG, IN HIS CAPACITY AS DEPUTY MINISTER OF LABOR AND ASSOCIATED CITIZENS BANK, RESPONDENTS.

G.R. No. 51314. June 21, 1990

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This is a petition for certiorari under Rule 65 of the Rules of Court seeking the annulment of the order of the respondent Deputy Minister of Labor dated June 19, 1979 in Case No. R04-11-10474-77-T, entitled "EDMUND YAP, Complainant, versus ASSOCIATED CITIZENS BANK, Respondent," which upheld the termination of employment of petitioner and ordered the payment of separation pay to the latter.

The antecedent facts are as follows:

Petitioner Edmund Yap was employed by respondent bank from February 1, 1967 up to February 28, 1977 as Assistant Vice-President. He was assigned as branch manager of the Quiapo branch of the former Associated Banking Corporation.

In a letter dated January 13, 1977 signed by respondent's Executive Vice-President, petitioner was informed that his employment as Assistant Vice-President had been terminated effective December 31, 1976 on the ground that he was not elected by the Board of Directors to his position as Assistant Vice-President and for other reasons including redundancy. The Executive Vice-President also expressed in behalf of the bank his sincere appreciation for petitioner's stay with the bank. The aforestated termination letter reads as follows:

"13 January 1977

"Mr. Edmund Yap

658 Jose Abed Santos

San Juan, Rizal

"Dear Mr. Yap:

"We regret to inform you that following the merger of Associated Banking Corporation and Citizens Bank and Trust Company, a board resolution has been adopted declaring vacant all corporate positions, including the position you were holding as Assistant Vice-President, and that you have not been re-elected by the Board to the position of Assistant Vice-President. For this, and other reasons including redundancy, your services with the Bank are hereby formally confirmed to be terminated as of 31 December 1976.

"Permit me to express, on behalf of the Bank, a sincere appreciation for your stay in the Bank.

"Very truly yours,

"(SGD) NORBERTO K. KATIGBAK

Executive Vice-President"

(p. 36, Rollo)

The effective date of termination of petitioner's employment was later moved to February 28, 1977.

Petitioner filed a complaint for illegal dismissal with the Department of Labor against respondent bank. The case was set for hearing and notice thereof was served on the parties. At the hearing on December 19, 1977, petitioner submitted his position paper in support of his complaint. On the other hand, respondent bank filed its position paper on February 1, 1978.

On March 13, 1978, the Regional Director issued an Order, which stated in part:

"Incident to the merging of Associated Banking Corporation and Citizens Bank and Trust Company a resolution was adopted by the Board of Directors declaring all corporate position(s) to be vacant including the position held by Mr. Edmundo Yap, as Assistant Vice-President of the Associated Citizens Bank.

"Complainant is a managerial employee. As (such) he can be dismissed even without a prior clearance from this Office. Moreover, we find that sufficient grounds exist to warrant the dismissal of complainant.

"WHEREFORE, this case is hereby dismissed for lack of merit.

"SO ORDERED" (p. 26, Rollo).

Not satisfied with the aforementioned order, petitioner Yap appealed to the Secretary of Labor alleging that the dismissal was without just cause and praying that he be reinstated without loss of seniority rights, and backwages from the time of dismissal up to reinstatement.

On June 19, 1979, the then Deputy Minister of Labor, Amado G. Inciong, issued an order which partially reversed the appealed order of the Regional Director and which stated as follows:

It is apparent that one of the reasons or causes for terminating the services of complainant was due to redundancy. This being the case, complainant is entitled to termination pay. Thus, Section 9 (a), Rule I, Book VI of the Implementing Rules and Regulations of the Labor Code provides that a regular employee shall be entitled to termination pay equivalent to at least one month salary or to one month salary for every year of service, whichever is higher, a fraction of at least six (6) months being considered as one whole year in case of termination of his employment due to the installation of labor-saving device or redundancy.

"On the whole, we find for the complainant. Complainant having served for ten (10) years at the rate of P1,400.00, he is entitled P14,000.00 as separation pay.

"WHEREFORE, the appealed Order is hereby set aside, and new judgment is entered, ordering respondent to pay complainant P14,000.00 as separation pay.

"SO ORDERED." (pp. 36-37, Rollo)

Hence, this petition. The issues to be resolved in the instant case are: 1) whether or not the dismissal of petitioner was for a just and valid cause; and 2) whether or not petitioner was deprived of his constitutional right to due process in the proceedings before the Regional office of the Department of Labor.

Anent the first issue, petitioner submits that he had been illegally dismissed by respondent bank; that the ground of redundancy for which he was dismissed was false because respondent Bank immediately created (3) new positions of assistant vice-president after petitioner's dismissal. Petitioner also alleges that he was dismissed retroactively, without prior notice or hearing and without the required clearance from the Secretary of Labor.

The free will of management to conduct its own business affairs to achieve its purpose cannot be denied (*Abbot Laboratories v. NLRC*, G.R. No. 76959, October 12, 1987, 154 SCRA 713). Even as the law is solicitous of the welfare of employees, it must also protect the right of an employer to exercise what are clearly management prerogatives. Hence, management is not precluded from undertaking a reorganization within the company or entering into mergers with other companies to meet the demands of the enterprise. In such cases, the company has the prerogative to abolish managerial and confidential positions or create new ones as the necessity for them requires.

Petitioner Yap is the Assistant Vice-President of respondent bank and at the same time the Branch Manager of the bank's Quiapo branch. There is no doubt that he is a managerial employee. Records show that Associated Banking Corporation entered into a merger with Citizens Bank and Trust Company, which resulted in the creation of respondent Associated Citizens Bank. In view thereof, the Board of Directors adopted a resolution declaring all corporate positions vacant including the position held by petitioner. When the latter was not subsequently re-appointed by the Board of Directors to the same position of Assistant Vice-President, he was notified by the bank that his services are terminated on grounds of non-reelection and redundancy. Whatever was the reason behind petitioner's non-reelection by the Board of Directors is beyond the interference of this Court. It is worthy to mention however, that petitioner had been previously found guilty by the bank for extending an overdraft without an authority in the amount of P100,000.00 to a certain Ong King, an act constituting breach of trust imposed upon him by the bank. Although he was merely suspended for such act, management has the prerogative now not to re-appoint him to its new set of officers in view of the changes being undertaken by the bank pursuant to the merger. To choose who to appoint or re-appoint as its officers and managers is part of the bank's inherent right to control and manage effectively its operations.

In the case of *Bondoc v. People's Bank and Trust Company*, No. L-43835, March 31, 1981, 103 SCRA 599, which substantially contains similar set of facts, We held:

"Bondoc was not employed for a fixed period. He held his position of department manager at the pleasure of the bank's board of directors. He occupied a managerial position and his stay therein depended on his retention of the trust and confidence of the management and whether there was any need for his services.

"Although some vindictive motivation might have impelled the abolition of his position, yet it is undeniable that the bank's board of directors possessed the power to remove him and to determine whether the interest of the bank justified the existence of his department.

"x x x.

"As already noted above, the facts of this case do not warrant the conclusion that Bondoc's right to security of tenure was oppressively abridged. He knew all along that his tenure as a department manager rested in the discretion of the bank's board of directors and that at anytime his services might be dispensed with or his position might be abolished."

Petitioner's contention concerning the alleged retroactive termination of his employment is untenable. Although the termination letter stated December 31, 1976 as the date of effectivity of the termination of his employment, petitioner was actually dismissed on February 28, 1977 as found by public respondents.

With regard to the clearance requirement imposed by the Termination Pay Law, a law earlier in force, it is correct to reiterate established rulings that as part of the procedural due process, a clearance required under the old law for the dismissal of an employee should be obtained prior to the operative act of termination. However, this rule was not without exceptions. One exception is set forth in Policy Instructions No. 8 issued by the then Secretary of Labor. This policy dispenses with the clearance requirement in cases where managerial employees are to be

dismissed. Policy instructions No. 8, in part, reads as follows:

"x x x

"The employer is not required to obtain a previous written clearance to terminate managerial employees in order to enable him to manage effectively. x x x. However, managerial employees may also not be terminated without just cause although there are causes valid for terminating managerial employees other than those applicable to the rank-and-file. For instance, elective company officials may lose their jobs as president, executive vice-president or vice-president, etc. because the stockholders or the board of directors, for one reason or another did not reelect them. General managers, department managers, etc. whose powers and functions are central to the effective operation of the company may be terminated for lack of confidence.

"This policy is essential to the effective pursuit of enterprise to effective management."

Further, the findings of facts of the Deputy Minister of Labor on the propriety of the dismissal of petitioner are binding upon this Court. Findings of administrative agencies which have acquired expertise because their jurisdiction is confined to specific matters are generally accorded not only respect but even finality. Judicial review by the Supreme Court on labor cases does not go so far as to evaluate the sufficiency of the evidence upon which the proper labor officer or office based his or its determination but are limited to issues of jurisdiction or grave abuse of discretion (*Special Events and Central Shipping Office Workers Union v. San Miguel Corporation*, Nos. L-51002-06, May 30, 1983, 122 SCRA 557).

Anent the second issue, petitioner submits that he was deprived of his right to due process during the proceedings before the Regional Director when the latter failed to conduct an actual hearing. He also contends that the position papers submitted by the parties to the Regional Director were not sufficient bases for the latter's findings that the dismissal of petitioner was valid.

The above contentions of petitioner must fail. Records show that petitioner was accorded ample opportunity to fully present his side of the case. At the hearing, petitioner filed his position paper while respondent filed its own later. When the order of the Regional Director was appealed, petitioner filed his memorandum on appeal. Thus, he had sufficient opportunity to inform the labor officers concerned of his side of the controversy.

It has been held that there is no denial of due process where although the labor officer or tribunal dispensed with the actual hearing or trial on the merits, the parties were heard through their position papers. The procedure by which issues are resolved based on position papers, affidavits and other documentary evidence is recognized as not violative of procedural due process (*B. Sta. Rita & Company, Inc. v. Arroyo and NLRC*, G.R. No. 80452, December 20, 1988, 168 SCRA 581). This is based on the principle that technical rules of evidence are not binding in labor cases. Further, the law presumes regularity in the performance of labor officials' functions in issuing the orders.

ACCORDINGLY, the petition is hereby DISMISSED and the assailed order of the Deputy Minister of Labor dated June 19, 1979 is AFFIRMED.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Griño-Aquino, JJ., concur.

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