

CEBU STEVEDORING CO., INC., PETITIONER, VS. THE HONORABLE REGIONAL DIRECTOR/MINISTER OF LABOR, ARSENIO GELIG AND MARIA LUZ QUIJANO, RESPONDENTS.

G.R. No. 54285. December 08, 1988

Ponente: REGALADO, J.

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REGALADO, J.:

This is a petition for review on certiorari of the order, dated May 2, 1978, of the Regional Director of Labor Regional Office No. 7 in Cebu City, in an action for reinstatement with backwages, which order was affirmed on appeal by the then Ministry of Labor^[1] and, subsequently, by the Office of the President,^[2] and the dispositive portion whereof reads as follows:

"WHEREFORE, the respondent, Cebu Stevedoring Co. Inc., is hereby ordered to reinstate Arsenio Gelig and Maria Luz Quijano to their former positions within ten days from receipt to (sic) this order without loss of seniority rights and with full backwages from October 18, 1977 until the actual date of reinstatement."^[3]

Private respondents Arsenio Gelig and Maria Luz Quijano were former employees of the Cebu Customs Arrastre Service (hereinafter referred to as CCAS). On May 2, 1977, pursuant to Customs Administrative Order No. 21-77 of the Hon. Pio de Roda, Acting Commissioner of Customs and concurrently Acting Secretary of Finance, the CCAS was abolished "for the reason that the objectives for which it was created had already been attained".^[4] As a consequence of such abolition, all the employees of CCAS, including herein respondents, were given their termination and/or separation pay by the Bureau of Customs, Cebu City, computed up to April 30, 1977.^[5]

Thereafter, on May 1, 1977, all the employees of CCAS including herein private respondents, were absorbed by petitioner Cebu Stevedoring Co. Inc. (CSCI, for brevity), with the same positions that they held in the CCAS. Eventually, however, on October 17, 1977, private respondents were dismissed by petitioner,^[6] without prior clearance, allegedly for redundancy and other alleged grounds hereinafter discussed.^[7]

A complaint for reinstatement with backwages was filed by private respondents before Regional Office No. 7 of the Ministry of Labor, which thereafter rendered the order containing the above-quoted portion under the following rationale:

"It is to be noted that the complainants were employed by the Cebu Customs Arrastre Service long time ago whose functions were carried over when they were absorbed by the herein respondent. In other words, there is no need to employ them as probationary considering that they are already well trained in their respective functions. They were not absorbed for a definite period but instead for an indefinite period.

"A probationary period of employment means that an employee is hired for training for a certain period in order to determine whether they qualify (sic) for the position or not. In this case, the complainants cannot be mistakenly considered as probationary viewed on the theory that they have been holding the same positions for quite a long time at the Cebu Customs Arrastre Service before they were absorbed by the Cebu Stevedoring Co. Inc. with the same positions."^[8]

On appeal, the Minister of Labor affirmed the decision of the Labor Regional Director, stating that:

"x x x complainants who were employed by Cebu Arrastre Service upon being absorbed by respondent for the same function and work need not undergo another probationary test in the same line of work where they have gained a latitude of expertise." [9]

Petitioner thereafter elevated the case to the Office of the President which, through Presidential Executive Assistant Jacobo C. Clave, issued a resolution dismissing the appeal for the reason that "there is no law expressly recognizing the parties' right to appeal to this Office in cases of this nature and considering that it does not show any exceptionally meritorious cause for the exercise in this case of the constitutional power of review (control) of the President/ Prime Minister as implemented by Executive Order No. 19, series of 1966, as amended, Section 1 of which pertinently provides that 'an appeal to the Office of the President x x x is not a matter of right in the absence of statutory provision to that effect'" and further noting that the "case does not involve national interest." [10] A motion for reconsideration of the resolution was likewise denied. [11]

Petitioner's submissions in the present recourse may be synthesized into the following propositions: (1) There is a brazen disregard of the constitutional precept of "due process of law" prejudicing petitioner's rights; (2) As casuals, respondents Gelig and Quijano can be terminated within the 6-month period without need of clearance from the Ministry of Labor and neither is the employer obligated to pay them termination pay; (3) Redundancy is one of the grounds under the Labor Code justifying termination of employees; and (4) Retrenchment is another justifying circumstance for terminating the services of an employee.

1. Petitioner contends that it was denied procedural due process because no hearing was conducted before the Labor Regional Director and neither did private respondents Gelig and Quijano file their position papers as provided in the Labor Code; that upon the abolition of the CCAS, all its employees were given separation pay, and thus, when the employees, including herein private respondents, were absorbed by petitioner when it took over the arrastre operations on May 3, 1977, they were all employed as casuals; that when the company terminated the services of private respondents, together with 52 others, on October 18, 1977 they had served CSCI for barely 5-1/2 months and were still on probation, hence no clearance was required for their termination; that since the positions occupied by herein private respondents with the former CCAS are identical with the positions already filled up and with the same functions being discharged in the main office of CSCI, private respondents may be terminated for redundancy; and that financial losses incurred by petitioner likewise justify the retrenchment of its employees. [12]

Public respondent, in its Comment, [13] points out that although private respondents failed to submit their position paper, they substantiated their complaint in a hearing before the labor arbiter on April 5, 1978; that although petitioner, through an error in the subpoena but also with its contributory fault, was deprived of the opportunity to appear at the scheduled hearing of April 5, 1978, it does not mean an outright denial of due process considering that petitioner availed of the remedy of appeal to the Ministry of Labor and the Office of the President; that the dismissal of private respondents is without just cause; and that the present petition raises mainly questions of fact.

We find this petition devoid of merit; the writ prayed for cannot be granted.

Petitioner's proposition that the lack of hearing before the Labor Regional Director and private respondents' failure to file their respective position papers constitute a denial of due process, deserves meagre consideration.

We agree that no rule is better established, under the due process clause of the Constitution, than that which requires notice and the opportunity to be heard before any person can be lawfully deprived of his rights. [14] The right to be heard, as a preliminary step essential to the rendition of an enforceable judgment, constitutes a basic element of the constitutional requirement of due process of law. [15]

However, while in this case petitioner was not afforded an opportunity to be heard by oral argument on its position paper due to its absence at the scheduled hearing, as already explained, it is likewise true that it was required to, as in fact it actually did, submit a position paper which, together with the evidence presented during the hearing, became the basis of the questioned order of the Regional Director. From this order, to repeat, petitioner appealed to the Labor Minister, and then to the Office of the President. It is, therefore, apparent that petitioner was not denied adequate remedies from the alleged procedural infirmities imputed to the rendition of the Regional Director's order. The entire record of the case was reviewed and duly considered on appeal to the Labor Minister, which appellate proceeding remedied any inadequacy in the procedural due process with which the trial proceedings are being faulted.

Thus, We have consistently adhered to the decisional rule that appellate review is curative in character on the issue of an alleged denial of due process for lack of a hearing in the case.[16]

This Court has never lost sight of the fact that one of the most important and significant State policies, enshrined in the present Constitution as it was in its two predecessors, is the promotion of social justice in all phases of national development, specifically the protection of the rights of workers and the promotion of their welfare.[17]

It was in the light of this concern in the fundamental law and the jurisprudence thereon that the Labor Code was enacted, with a specific declaration of its basic policy that &mdash

"The State shall afford protection to labor, promote full 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 human conditions of work." [18]

2. With these in mind, We approach the next issue for resolution, that is, whether herein private respondents were validly dismissed.

Petitioner submits that private respondents were merely casuals and could, therefore, be terminated even without prior clearance from the then Ministry of Labor and without entitlement to separation pay. This contention is not well-taken.

We agree with the Regional Director that private respondents could not be considered probationary employees because they were already well-trained in their respective functions. This conclusion is further bolstered by the factual findings of the Labor Minister that said order of the Director was supported by substantial evidence. As stressed by the Solicitor General, while private respondents were still with the CCAS they were already clerks. Respondent Gelig had been a clerk for CCAS for more than ten (10) years, while respondent Quijano had slightly less than ten (10) years of service. They were, therefore, not novices in their jobs but experienced workers.[19]

On this particular issue, it is perhaps timely to consider well-settled principles involving decisions of administrative agencies. Findings of quasi-judicial agencies which have acquired expertise because their jurisdiction is confined to specific matters are generally accorded not only respect but, at times, even finality where such findings are supported by substantial evidence,[20] and judicial review by Us is limited to issues of jurisdiction or grave abuse of discretion.[21]

As regular employees, therefore, private respondents may not be dismissed and petitioner cannot terminate their services except for a just or authorized cause provided by law and with scrupulous observance of due process requirements.[22]

3. It is true that Article 283 of the Labor Code provides that an "employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the

closing or cessation of operation of the establishment or undertaking." However, the records fail to establish clearly and convincingly that the positions occupied by private respondents are identical with those presently existing in petitioner's office.

Furthermore, petitioner kept private respondents in its employ for almost six months without raising this issue. It does not mention which positions are allegedly duplicated by the positions held by private respondents. It does not even explain why the private respondents should be the ones to be terminated, without regard to the comparative lengths of service, qualifications and performance of all employees concerned.

4. Petitioner's submission that it is suffering financial losses is untenable since it appears that it absorbed and employed for almost six months, without any intimation of supposed financial distress, the majority of the former employees of CCAS. It never advised private respondents of a company retrenchment program; the first time this supposed program was mentioned was when petitioner was trying to justify the dismissal of the private respondents before the labor arbiter. In a futile attempt to extricate itself from liability, petitioner presented a so-called Statement of Operations[23] which, however, remains an uncorroborated and self-serving piece of evidence.

The constitutional duty of the State to protect the right of laborers to security of tenure demands that an employer may be permitted to terminate the services of an employee only under conditions allowed by and with due process of law. Under the circumstances obtaining in this case, the irresistible conclusion is that the termination of private respondents' services was unjust and illegal, as to justify their reinstatement and entitlement to backwages for three years.

WHEREFORE, this petition is hereby DISMISSED and petitioner is ordered to reinstate private respondents to their former positions at the time of their dismissal, or if such reinstatement is not possible, to substantially equivalent positions, without loss of seniority rights and other privileges appertaining thereto; and to pay private respondents three (3) years backwages, from October 18, 1977 without qualification or deduction.

In the event that reinstatement is not possible due to the supervenience of events which prevent the same, petitioner is ordered to further pay private respondents, more as a vindication of a right and less as indemnification of a loss, separation pay equivalent to one (1) months salary based on their monthly salaries as of October 17, 1977.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Sarmiento, JJ., concur.

[1] Annex E, Petition; Rollo, 45.

[2] Annex G, *ibid.*; Rollo, 54.

[3] Annex C, *ibid.*; Rollo, 38.

[4] Attachment A to Annex B, *ibid.*; Rollo, 33.

[5] Petition, 1; Rollo 9.

[6] Comment of Public Respondent, Rollo, 69.

[7] Rollo, 17-22.

[8] Rollo, 37-38.

[9] Ibid., 45; Annex E.

[10] Ibid., 54; Annex G.

[11] Ibid., 58; Annex I.

[12] Petition, 8-14; Rollo, 16-22.

[13] Rollo, 68-78.

[14] Lopez vs. Director of Lands, 47 Phil. 23, 32 (1924).

[15] Powell vs. Alabama, 297 U.S. 45, 77 L. ed. 158.

[16] Sampang vs. Inciong, et al., 137 SCRA 56 (1985); Remerco Garments Manufacturing vs. Minister of Labor and Employment, et al., 135 SCRA 167 (1985); De Leon vs. Commission on Elections, et al., 129 SCRA 117 (1984).

[17] Section 8, Article II.

[18] Article 3, Chapter I, P.D. 442.

[19] Comment, 7; Rollo, 74.

[20] Dangan vs. National Labor Relations Commission, et al., 127 SCRA 706 (1984).

[21] National Federation of Labor Union, et al. vs. Ople, et al., 143 SCRA 124 (1986).

[22] Section 1, Rule XIV, Book V, Implementing Regulations of the Labor Code.

[23] Attachment C to Annex B, Petition; Rollo, 36.

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