

COLUMBIA DEVELOPMENT CORPORATION, PETITIONER, VS. HON. MINISTER OF LABOR AND EMPLOYMENT, BRENDA TADEÑA, MARILYN JOVER, LILIA FRANCISCO, AGNES ABARACOSO, ESTRELITA BALIGNASAY, RE...

G.R. No. 57769. December 29, 1986

Ponente: FERNAN, J.

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FERNAN, J.:

On February 4, 1980, petitioner filed with the Ministry of Labor and Employment, National Capital Region, an application for clearance to terminate the services of twenty-two [22] employees, including private respondents, out of a total employment force of thirty [30] due to alleged serious business reverses and continuous losses. The application was docketed as Case No. NCR-STF-2-704-80.

The seven [7] private respondents herein filed complaints for illegal dismissal which were treated as oppositions to petitioner's aforestated application.

Conciliation was fruitless, so the parties were required to submit their respective position papers. On August 7, 1980, Director Francisco L. Estrella of the Bureau of Labor Relations issued an order denying the clearance application of petitioner on the ground that the said application was not supported by clear and convincing proof. Petitioner was likewise ordered to immediately reinstate the private respondents to their former positions with full backwages without loss of seniority rights and other applicable benefits.

Petitioner appealed the order to respondent Minister of Labor, who, on April 13, 1981, issued an order dismissing the appeal. Petitioner then filed a motion for reconsideration and subsequently, a supplemental motion for reconsideration, in which it contended, for the first time, that the instant case involves intricate questions of fact and law, and should therefore have been certified to the Executive Labor Arbiter for compulsory arbitration. It likewise submitted, for the first time, the Audit Report of Gloria A. Rante, Certified Public Accountant, who prepared and examined petitioner's Balance Sheets as of December 31, 1978, 1979 and 1980, and the related Income Statements for said years.

On June 11, 1981, respondent Minister denied petitioner's motion for reconsideration. Hence this present recourse, petitioner ascribing grave abuse of discretion, excess or lack of jurisdiction on the part of the respondent Minister of Labor in:

a]

not ordering CASE no. NCR-STF-2-704-80 to be certified to the Executive Labor Arbiter for compulsory arbitration as the case allegedly involves intricate questions of facts and law, which under Article 217 of the Labor Code, is within the exclusive jurisdiction of the Labor Arbiters;

b]

totally disregarding and ignoring undisputed evidence presented by petitioner showing its serious business reverses which justified the termination of some of its employees services, thereby depriving petitioner due process of law; and,

c]

ordering petitioner to immediately reinstate private respondents to their former positions with full backwages.

Petitioner contends that the indorsement of Case No NCR-STF-2-704-80 to the Executive Labor Arbiter is mandatory under Section 3, Rule XII of the Implementing Rules and Regulations of the Labor Code, which provides as follows:

"Sec. 3. Contents of Certification. - If no settlement is reached, the Regional Director shall certify the case to the appropriate Labor Arbiter. x x x"

It must be noted at the outset that the provision relied upon by petitioner refers to "money claims, unfair labor practices and deadlocks in collective negotiations." The case at bar, on the other hand, is an application for clearance to terminate employment. The proper procedure to be followed in this case is outlined under Rule XIV of the Implementing Rules and Regulations of the Labor Code. Entitled "Clearance to Shut Down or to Dismiss", the pertinent provisions state:

"Sec. 3. Application for Clearance. - Any application for clearance to shut down or to dismiss employees shall be filed with the Regional Office having jurisdiction over the place of employment at least ten [10] days before the intended shutdown or dismissal. The application shall be under oath and shall be accompanied by proof that a copy of the application has been served upon the employees concerned. It shall also state whether the employees involved are under preventive suspension or not."

x x x x x x x x

"Sec. 5. Opposition to application. - The application for clearance may be opposed by the employee concerned within ten [10] days from receipt of the copy of the application."

x x x x x x x x

"Sec. 8. Action on opposition. - If there is an opposition, the Regional Director shall summarily investigate and decide within ten [10] days from the filing of the opposition whether to deny the application for clearance or to certify the case. x x x"

Under the last-quoted section, the Regional Director is empowered to summarily investigate the application and decide whether to deny the application for clearance or to certify the case. The import of this statement is that the regional director has the discretion of either denying the application outright or certifying the case for compulsory arbitration to the Labor Arbiter in accordance with Article 228 of the Labor Code. This discretion given to the regional director necessarily negates the mandatory character petitioner wishes to attach to the provision under consideration.

Policy Instructions No. 14 [Termination Case] confirms that certification is not mandatory. Thus,

"4. The second duty of the Regional Director where there is opposition is to determine whether to certify or to summarily investigate and decide it within 10 days after filing. The policy is for the Regional Director to certify [a] if the nature of the case does not suit summary investigation, or [b] if intricate questions of law are involved as determined by the Regional Director. If the nature of the case suits summary investigation, the Regional Director should summarily investigate and decide the case. If he does not deny the application he should immediately certify the case to the Executive Arbiter . . ."

Petitioner's application for clearance to terminate the services of its employees was filed on the basis of alleged losses, while private respondents, in a short joint affidavit, explained their case stating that the petitioner's application had no basis; that they were instructed to go on leave but upon their return, they were told that their employment had been terminated. The issues raised by the application and the opposition there-to did not involve intricate questions of law and were therefore correctly resolved by summary investigation and decision on the merits.

In the proceedings before the Director of the Bureau of Labor Relations, petitioner attempted to prove the alleged serious business losses thru the mayor's permits showing a pro-gressive decline in its gross sales. In rejecting said evidence, Director Estrella ruled:

"x x x if at all, the Mayor's Permit only proves that it was issued a permit to operate its business and not that it is suffering losses. The condition of business losses is normally shown by audited financial statements and similar documents and no documents of such nature were presented." [Petition, Annex "G", p. 36, Rollo]

After the respondent Minister had dismissed its appeal, petitioner presented its Balance Sheets as of December 31, 1978, 1979 and 1980 and income statement for 1979 in its supplemental motion for reconsideration. The belated offer in evidence of these financial statements was explained by petitioner in said motion in this wise:

"Admittedly, no audited financial statement and similar documents were then presented by respondent [herein petitioner] in support of its claim for serious business reverses. This was brought about by the fact that all Columbia Bargain Houses have a combined financial statement that made difficult the determination which branch suffered a loss. The performance of a particular branch of Columbia Bargain House is monitored only through its sales performance during the preceding year. Hence, the then only available evidence of complainant's poor showing was the record of its past sales performance as reflected in the Mayor's Permit which it periodically renews. And, these were the evidences [sic] which were then submitted by respondent to prove its position.

"Aware, therefore, that its duly audited financial statement is the best evidence that could possibly sustain its position in the instant case, it lately engaged the services of a Certified Public Accountant in order to be able to present its true business posture. The process was tedious, expensive and cumbersome because its sales records have been mixed up with that of the other business branches. Nevertheless, it has to be done in the interest of justice and fair play. The intention was merely to show that, indeed, respondent was suffering heavy losses that necessitates reduction of its personnel to prevent further losses.

"On account of the voluminous records and documents involved, the examination of respondent's business operation as of December 31, 1978 and 1979, with related Income Statements for the years then ended was finished on May 30, 1981. Xerox copy of the Audit Report of Gloria A. Rante, Certified Public Accountant, hereto attached as Annex '1', the Balance Sheet and related Income Statements as of December 31, 1978, as Annexes '2' and '2-A'; and the Balance Sheet and related Income Statement as of December 31, 1979, as Annexes '3' and '3-A', respectively. The foregoing documents indubitably show that in 1978, respondent suffered a net loss of P132,841.81 [Annex '2-A'], and in 1979, it had a net loss of P117,681.42 [Annex '3-A']." [Petition, Annex "K", pp. 52-53, Rollo]

To our mind, it would have been more in keeping with the directive of Article 221[1] of the Labor Code for the respondent Minister to have taken into account the evidence sought to be presented by petitioner, particularly as no full-blown hearing was conducted by the Bureau Director and more importantly, because said evidence, when accorded their due weight, would indubitably show that petitioner had a just cause for terminating private respondents' employment.

Precisely because reverses in a business venture are expected, the law recognizes the same as a just cause for

terminating an employment [Art. 283(a) of the Labor Code] and in many instances, this Court has "affirmed the right of an employer to lay off or dismiss employees because of losses in the operation of its business, lack of work and considerable reduction in the volume of his business." [LVN Pictures and Workers Asso. vs. LVN Pictures, Inc., 35 SCRA 147 and the cases cited therein]

Petitioner started operations in 1976. At the peak of its business operations, it owned a chain of stores: two [2] in Cubao, Quezon City, one in Quiapo and another one in Pasay City. At the time of the application for clearance, only the Pasay Branch where private respondents were employed remained in operation, and at the time the present petition was instituted, petitioner had only a token workforce of five [5] salesgirls employees in its Pasay store. While petitioner once occupied the whole ground floor of a building, the said store area had been subdivided into several store spaces and leased out to other business establishments. Under these circumstances, it would indeed be oppressive to compel petitioner to continue employing private respondents.

Under Article 284 of the Labor Code, the termination of employment of any employee due to retrenchment to prevent losses shall entitle the employee affected thereby to separation pay equivalent to one [1] month pay or at least one-half [1/2] month pay for every year of service, whichever is higher.

WHEREFORE, the orders dated April 13, 1981 and June 11, 1981 of the respondent Minister of Labor in Case No. NCR-STF-2-704-80 are hereby set aside. The petitioner's application to terminate the employment of private respondents is granted, without prejudice to private respondents' entitlement to separation pay as decreed under Article 284 of the Labor Code. No pronouncement as to costs.

SO ORDERED.

Feria, (Chairman), Alampay, Gutierrez, Jr., and Paras, JJ., concur.

[1] Art. 221 of the Labor Code reads:

"Art. 221 Technical rules not binding. – In any proceeding before the Commission or any of the Labor Arbiters, the rules of evidence prevailing in courts of law or equity shall not be controlling and it is the spirit and intention of this Code that the Commission and its members, and the Labor Arbiters shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure, all in the interest of due process. x x x"

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