

**CITY SERVICE CORP. WORKERS UNION, EMILIANO BILONOAC,
JUANITO VALENCIA, NOEL VALENCIA AND JULIETO ENOSLAY,
PETITIONERS, VS. CITY SERVICE CORPORATION, JAIME ABRAHAM,
MANUEL L. VIL...**

G.R. No. 59407. March 29, 1985

Ponente: PLANA, J.

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PLANA, J.:

This petition for certiorari seeks to partially annul the decision dated December 22, 1980 of the National Labor Relations Commission (NLRC) insofar as it grants individual petitioners separation pay instead of reinstatement with backwages after finding that they had been illegally dismissed by respondent corporation.

City Service Corporation (CSC) is an entity engaged in the business of providing janitorial and allied services to various clients. For this purpose, it maintains a pool of janitorial employees.

In 1965, CSC hired petitioner Juanito Valencia, and in 1979, the other individual petitioners, and assigned them to one of its clients, the Army and Navy Club. On February 4, 1974, CSC terminated the employment of individual petitioners on the basis of the report of the Army and Navy Club that they could have been stealing club properties. The termination was done without previous formal investigation. Nor was it previously cleared by the Secretary of Labor, as required by the then prevailing law.

Hence an illegal dismissal case was filed by petitioners against CSC. After hearing, the Labor Arbiter found individual petitioners to have been illegally dismissed and ordered their reinstatement with backwages.

On Appeal, the NLRC sustained the finding of illegal dismissal for lack of prior MOLE clearance. However, instead of ordering individual petitioners to be reinstated with backwages, the NLRC simply directed their payment of separation pay equivalent to one month's salary for every year of service.

"The individual complainants were hired and assigned by the respondent corporation at the Army and Navy Club of Manila, Inc. Their termination of employment was brought about by the request of the management of the Army and Navy Club of Manila, Inc. for their replacement because of the suspicion that one or more of them were taking out property belonging to the club. Since they were no longer acceptable by the club management, the respondent corporation had no other choice but to replace them. And since complainants could not be relocated or reassigned to other clients of the respondent corporation, while this may be considered a valid reason for their termination, the respondents, however, should have filed the requisite application for clearance to dismiss them.

"x x x Hence, we find there is a necessity for prior written clearance from the Secretary (now Minister) of Labor as required by the Presidential Decree No. 21.

"Considering further that the termination has taken place six years ago and the possibility of reinstatement to their former position has become remote, and (sic) to say, impossible, we order that each of the complainants

be given separation pay equivalent to one month pay for every year of service." (NLRC decision of December 22, 1980. Rollo, pp. 45-46.)

In the instant petition, petitioners assail the NLRC decision for failing to order the reinstatement of individual petitioners after finding them to have been illegally dismissed. The issue thus raised is whether individual petitioners are entitled to reinstatement with backwages.

The basis of the NLRC award of separation pay in lieu of reinstatement with backwages is the speculation that "the possibility of reinstatement (of individual petitioners) to their former position has become remote, and (sic) to say impossible", considering that their dismissal took place six years ago. For the record fails to show that the NLRC had verified that there were no available positions to which individual petitioners could be reinstated. It would seem that the NLRC simply assumed that individual petitioners could no longer be re-employed because of the lapse of six years since their dismissal.

It appears that CSC is still in business and continues to provide janitorial services to numerous clients. Considering the nature of the position (janitor) of individual petitioners, it would not be difficult for CSC to re-employ them.

Security of tenure is a right of paramount value. Precisely, it is given specific recognition and guarantee by the Constitution no less. The State shall afford protection to labor and "shall assure the rights of workers to... security of tenure", so runs the Constitutional mandate. (Art. II, Sec. 9.) It stands to reason that a right so highly ranked as security of tenure should not lightly be denied on so nebulous a basis as mere speculation.

Under Section 280 of the Labor Code, an employee who has been unjustly dismissed shall be entitled to reinstatement without loss of seniority rights and backwages from the time his compensation was withheld up to the time of his reinstatement. However, in the compelling interest of justice and kindred considerations, this Court in a number of illegal dismissal cases has adopted the policy of granting backwages for a limited period without deduction on account of interim earnings realized elsewhere by the dismissed employee. (See, e.g., *Mercury Drug Co., Inc. vs. Court of Industrial Relations*, 56 SCRA 694; *Philippine Airlines, Inc. vs. NLRC*, 126 SCRA 223.)

Premises considered, judgment is hereby rendered ordering respondent CSC to reinstate individual petitioners to their janitorial positions or, in the event said positions are no longer available, to substantially equivalent positions, with backwages equivalent to their compensation for three years. The NLRC decision of December 22, 1980 is accordingly so modified.

SO ORDERED.

Teehankee, Melencio-Herrera, Relova, Gutierrez, Jr., De La Fuente, and Alampay, JJ., concur.

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