

**MRS. LEONILA L. SANTIAGO, PETITIONER, VS. DR. WILSON TAN,
DANTE G. ARDIVILLA, REGIONAL DIRECTOR, MOLE, REGION VII,
CEBU CITY AND ATTY. YOLANDA D. BAGUIO, AS CITY SHERIFF OF
DUMA...**

G.R. No. 60952. March 31, 1989

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

At issue in this petition is the extent of the observance of procedural due process. A corollary question is whether or not there is a denial of due process where the investigation relating to a charge of illegal dismissal proceeded in the absence of the employer who failed to appear despite previous notice.

The facts are simple. The herein petitioner is the proprietress of the L & L Santiago Optical Clinic. Dr. Wilson B. Tan, private respondent herein, was an optometrist therein from April 11, 1977 up to December 31, 1977 when his services were terminated by the petitioner. This prompted private respondent to file a complaint for illegal dismissal against the latter before the Dumaguete District Labor Office, Region VII, Dumaguete City.[1] Hearings were scheduled and held on April 26, 1978 and May 9, 1978 for investigation purposes but petitioner failed to appear despite due notice. On the basis of the investigation conducted the hearing officer[2] submitted his report to the then regional director Francisco Arnaldo, recommending payment of private respondent's 13th month pay for the year 1977 in the amount of P350.00, and P2,000.00 as backwages. The hearing officer also recommended the reinstatement of the private respondent to his former position without adverse effect on his rank and seniority rights.

Convinced that private respondent was terminated from employment without valid cause, the regional director issued an order dated May 18, 1978, directing the reinstatement of the former and the payment of his backwages as recommended and a proportionate 13th month pay. Petitioner received the aforesaid order on June 28, 1978. She filed a memorandum of appeal only on July 17, 1978 alleging that the regional director committed a grave abuse of discretion in issuing the questioned order.[3]

Meanwhile, private respondent filed a motion for execution which the petitioner opposed on the ground that she had filed a memorandum of appeal. A hearing on the motion was scheduled and held on October 18, 1978 but petitioner failed to appear despite due notice thereof. As prayed for by private respondent, the regional director issued a writ of execution dated November 13, 1978, holding that the appeal was filed beyond the reglementary period. Said writ was later on amended on December 15, 1978 to include backwages from January 1978 to December 1978. Petitioner filed a motion to quash the writ of execution alleging that her memorandum of appeal was filed on time. By virtue of the said motion the regional director directed the city sheriff to hold the execution in abeyance until the issue raised by herein petitioner shall have been resolved. The motion was set for hearing on January 26, 1979.

Petitioner filed a motion for postponement. During the hearing, however, counsel for private respondent

manifested that the hearing may be conducted ex-parte and that since the appeal was filed out of time, the writ should be enforced. On the basis of the recommendation of the hearing officer, the regional director issued an alias writ of execution modifying the order and the writ dated December 15, 1978, and reinstating the order of May 18, 1978. Private respondent filed a motion for reconsideration whereas petitioner filed a second motion to quash the alias writ of execution on the ground that her first motion to quash has not yet been resolved.

On July 19, 1979, the regional director issued a writ of execution increasing this time the award of backwages from P2,000.00 to P7,500.00. Pursuant thereto, a public auction sale of the personal properties of petitioner was scheduled on September 12, 1979. However, the public auction sale did not push through as scheduled as both parties filed their respective motions. Private respondent maintained that an additional amount in the sum of P3,503.25 should be adjudged in his favor while petitioner prayed that the writ be quashed. On March 3, 1980, the writ dated July 19, 1979 was revoked and a new one was issued identical to the writ dated December 15, 1978. While private respondent filed a motion for immediate issuance of the writ of execution in view of the finality of the order dated March 3, 1980, petitioner filed on the other hand a motion to quash the amended writ. In the order of March 4, 1981, Assistant Director Lomuntad, as acting regional director, issued an order denying petitioner's motion to quash. Petitioner sought a restraining order before the then Court of First Instance of Negros. A restraining order was issued and the auction sale of petitioner's personal properties was again held in abeyance. Upon the lifting of the restraining order, the auction sale was scheduled anew and petitioner filed another motion to quash. In an order dated June 9, 1987, the new regional director denied petitioner's motion for lack of merit.

Hence, the present petition.

In fine, petitioner contends that the Regional Director committed a grave abuse of discretion in relying solely on the report of the investigating officer which was done in the absence of the petitioner without giving the former a chance to refute and present her side. Petitioner alleges further that the director's failure to take her evidence into account, consisting of her affidavit and that of her customer, is a denial of her right to due process.

The petition is devoid of merit. Petitioner admitted that she received the notice of hearing scheduled on May 9, 1978 through counsel. Neither the petitioner nor her counsel attended the same. In the memorandum of appeal submitted by the petitioner to the office of the regional director, no effort was exerted to explain the reason for her failure to attend the said hearing. Besides, petitioner was aware that on the said date an investigation was to be conducted. In the said memorandum, petitioner insisted that it was only an investigation so she need not be present.^[4] Precisely, petitioner should have heeded the summons in order to present her side but she deliberately did not appear in the scheduled hearing. Thus, petitioner's contention that she was not given an opportunity to be heard is untenable under the circumstances.

Likewise We do not find merit in petitioner's allegation that the then regional director disregarded the evidence she presented. The questioned decision bears the date May 18, 1978 whereas the affidavits submitted by petitioner are dated May 20, 1978 and July 10, 1978 and were filed only on September 28, 1978 long after the regional director had ruled on the case.

Moreover, it should be noted that petitioner's appeal was filed beyond the ten (10) day reglementary period required by the rules. Apparently, to hide this vital jurisdictional fact, petitioner never intimated in her memorandum of appeal the date of receipt of the order dated May 18, 1978. This issue was never mentioned by petitioner when she moved to quash the writ of execution. She likewise did not raise this matter in her succeeding motions and in her reply submitted to this Court. All that the petitioner did was to insist that the regional director failed to rule on her first motion to quash.

Petitioner's counsel admitted during the hearing on September 28, 1978 that the order subject of the appeal was

received on June 28, 1978 while the memorandum appeal was filed by petitioner on July 17, 1978. However, despite the finality of the order of May 18, 1978, the regional director who is herewith charged by the petitioner of depriving her of due process actually accorded petitioner all the chances to refute the findings that private respondent was illegally dismissed. The petitioner's appeal was set for hearing, but petitioner and her counsel failed to attend the same. Again, when private respondent's motion for execution was opposed by petitioner the regional director set the case for hearing anew. Except for the failure on the part of the regional director to rule on petitioner's first motion to quash, every order and writ issued in connection with the petitioner's case clearly appears to have been in response to the pleadings filed by the parties.

Furthermore, the writ of execution prayed for by private respondent was issued over the opposition of the petitioner. Such is in effect a denial of petitioner's appeal and motion to quash. Under these facts, it is apparent that the regional director extended petitioner every opportunity to afford her the chance to be heard on all her successive moves and pleadings, despite the undisputed finality of the order dated May 18, 1978. In the span of four (4) years during which the case dragged on after the order of May 18, 1978 became final and executory, a total of seven (7) successive writs had been issued, execution of judgment was suspended four (4) times, and four (4) hearings were held to afford petitioner the right to be heard. Under the foregoing circumstances, petitioner's claim that she was not given the opportunity to be heard is obviously untenable.

On the other hand, anent petitioner's contention that the regional director erred in ruling that private respondent was illegally dismissed, settled is the rule that a direct appeal to the Supreme Court on questions of law precludes a review of the facts^[5] unless the lower court manifestly overlooked certain relevant facts not disputed by the parties which if properly considered, would justify a different conclusion.^[6] However, this is not as in the case at bar. We are convinced that private respondent was indeed illegally dismissed by the petitioner. It was admitted that a new employee is now performing the duties of private respondent. In January 1978, a certain Dr. Davila Lagarin took over the work of private respondent who, for his part, was allegedly assigned in Davao. Moreover, We find the explanations of petitioner to be conflicting. She alleged in her affidavit that private respondent was reassigned in Davao due to a treacherous act of the latter whereas in her motion for reconsideration she averred that private respondent was merely assigned to Davao as part of a rotation of employees. In the memorandum submitted to this Court, petitioner also stressed that private respondent never wanted to be reinstated as he is now maintaining an optical clinic of his own. Be that as it may, We are convinced that if private respondent later changed his mind about being reinstated, it was due to the numerous maneuvers taken by the petitioner for the purpose of ousting private respondent from his employment. The findings of the regional director that private respondent was illegally dismissed are supported by substantial evidence and are entitled to respect. The respondent regional director did not commit a grave abuse of discretion in denying the motion to quash filed by petitioner.

WHEREFORE, the petition is DISMISSED for lack of merit. The questioned decision of private respondent dated May 18, 1978 is made immediately executory. Costs against petitioner.

SO ORDERED.

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

[1] IFU Case No. 78-51.

[2] Atty. Jesus Gabor.

[3] Pages 12 to 13, Rollo.

[4] Pages 12 to 13, Rollo.

[5] *People vs. Raquinco*, 17 SCRA 914 (1966); *Abuyo vs de Suazo*, 18 SCRA 600 (1966); *Miguel vs. Catalino*, 26 SCRA 235 (1968); *Lanyan vs. Guerrero*, 29 SCRA 107 (1969); *Victorino vs. Laro*, 33 SCRA 54 (1970).

[6] *Abellana vs. Dosdos*, 13 SCRA 244 (1965); *Uytiempo vs. Aggabao*, 35 SCRA 186 (1970).

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