

**PEPSI COLA BOTTLING CO. OF THE PHILIPPINES, PETITIONER, VS.
HON. VICENTE LEOGARDO, JR., AND MANUEL MARTINEZ,
RESPONDENTS.**

G.R. No. 62820. April 28, 1983

Ponente: VASQUEZ, J.

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VASQUEZ, J.:

This is a petition to annul an order of Deputy Minister of Labor Vicente Leogardo, Jr. dated November 23, 1982, the dispositive portion of which reads as follows:

"WHEREFORE, premises considered, the Order, appealed from is hereby SET ASIDE, and a new judgment rendered dissolving the clearance issued by the Regional Director on 1 February, 1970.

Respondent is further ordered to reinstate the complainant to his former position in Cebu, with full backwages for a period of two (2) years without qualification pursuant to the final and executory decision of the voluntary arbitrator dated 14 April, 1976."

Private respondent Manuel Martinez was employed by the petitioner as salesman in Cebu City. Sometime in 1976, the petitioner terminated his employment on the ground of abandonment of work. Martinez questioned the action of the petitioner and the matter became the subject of voluntary arbitration. In an order dated April 3, 1976, the Arbitrator declared that Martinez did not abandon his job and directed the petitioner to reinstate him to his former position with backwages in the amount of P16,192.00. Said decision had become final and executory.

The route in Cebu City in which Martinez was assigned having been abolished, the petitioner transferred him as salesman in Tubigon, Bohol. Private respondent Martinez refused this assignment and brought action before NLRC Executive Labor Arbiter Alberto Dalmacion. In an order dated September 29, 1978, the petitioner was directed to reinstate Martinez as a salesman in Cebu City with backwages. Complying with the said decision, the petitioner paid Martinez backwages in the amount of P17,152.00, and assigned him to Route 64 within Cebu City. Martinez again refused to accept the said assignment on the alleged ground that it violates the decision of the Labor Arbiter.

In view of the continued refusal of Martinez to report for work, the petitioner applied for clearance to dismiss him on the ground of abandonment of work. The clearance was granted ex-parte by the Labor Regional Office on February 1, 1979.

On February 20, 1979, Martinez filed a motion for the dissolution of the clearance for his dismissal on the ground that he was not heard before the same was issued. The Regional Director of the Ministry of Labor and Employment (MOLE) resolved the motion by setting the case for the reception of the evidence of Martinez on March 20, 1979, the petitioner having been already submitted documentary evidence in support of its application for clearance. The hearing was reset to March 27, 1979 on agreement of the parties. On the aforementioned date, Martinez failed to appear in view of which the Regional Director issued an order dismissing the motion of

Martinez for lack of interest on his part.

The said order of the Regional Director was appealed by Martinez to the Ministry of Labor and Employment (MOLE). The appeal was resolved in the order of Deputy Minister Vicente Leogardo, Jr., dated November 23, 1982, herein sought to be annulled. The petitioner claims that the said order was issued in excess of jurisdiction and/or grave abuse of discretion.

Commenting to the petition as counsel for public respondent, the Solicitor General expressed conformity with the prayer of the petitioner that the questioned order of November 23, 1982 be set aside. It was further prayed therein that the case be remanded to the Regional Director concerned for him to hear the evidence of the private respondent on the matter of dismissal and, thereafter, to decide the case on the basis of the evidence presented by the parties.

We concur with the recommendation of the Solicitor General. The subject-matter of the appeal taken by Martinez to the Ministry of Labor and Employment (MOLE) was not his dismissal, but the dismissal of his motion to allow him to present evidence in connection with the application of the petitioner for a clearance for his dismissal, the said application having been previously granted ex-parte by the Regional Office on February 1, 1979. His main complaint was that the clearance was issued in violation of his right to due process, he not having been given opportunity to present evidence in his behalf. When he failed to avail of that opportunity, thereby causing the dismissal of his motion, he appealed such dismissal to MOLE. It was, therefore, unwarranted for the public respondent to render a decision favorable to Martinez even before the latter presented a single piece of evidence in support of his motion to dissolve the clearance which was granted ex-parte.

The issuance of the questioned order appears to have been attended by some confusion on the part of the public respondent. The subject order erroneously assumed that Martinez was being assigned to Tubigon, Bohol. The record reveals that while there was a previous order to that effect, the same had already been set aside, and Martinez was given a new assignment right in Cebu City, although in a route different from that in which he was originally assigned. While there may be sufficient reason for Martinez to refuse his assignment in Tubigon, Bohol, his rejection of the new assignment in Cebu City itself, although different from his original route, may not constitute a valid justification for his refusal to report for work. Moreover, the order for the petitioner to pay Martinez backwages for two years had already been complied with in connection with the judgment in the previous case involving his assignment to Tubigon, Bohol.

WHEREFORE, as recommended by the Solicitor General, the questioned order of the public respondent dated November 23, 1982 is hereby SET ASIDE. The public respondent is hereby ordered to remand the case to the Regional Director of Labor Regional Office No. VII in order to receive the evidence of private respondent Manuel Martinez on his motion to annul the clearance for his dismissal granted ex-parte on February 1, 1979 and, thereafter, to decide said motion on the basis of the evidence presented by the parties.

SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Plana, Relova and Gutierrez, Jr., JJ., concur.

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