

ILUMINADA VER BUISER, MA CECILIA RILLO-ACUÑA AND MA. MERCEDES P. INTENGAN, PETITIONERS, VS. HON. VICENTE LEOGARDO, JR., IN HIS CAPACITY AS DEPUTY MINISTER OF THE MINISTRY OF LAB...

G.R. No. 63316. July 31, 1984

Ponente: GUERRERO, J.

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GUERRERO, J.:

This is a petition for certiorari seeking to set aside the Order of the Deputy Minister of Labor and Employment, affirming the Order of the Regional Director, National Capital Region, in Case No. NCR-STF-5-2851-81, which dismissed the petitioners' complaint for alleged illegal dismissal and unpaid commission.

Petitioners were employed by the private respondent GENERAL TELEPHONE DIRECTORY COMPANY as sales representatives and charged with the duty of soliciting advertise-ments for inclusion in a telephone directory.

The records show that petitioners Iluminada Ver Buiser and Ma. Mercedes P. Intengan entered into an "Employment Contract (on Probationary Status)" on May 26, 1980 with private respondent, a corporation engaged in the business of publication and circulation of the directory of the Philippine Long Distance Telephone Company. Petitioner Ma. Cecilia Rillo-Acuña entered into the same employment contract on June 11, 1980 with the private respondent.

Among others, the "Employment Contract (On Probationary Status)" included the following common provisions:

"1. The company hereby employs the employee as telephone sales representative on a probationary status for a period of eighteen (18) months, i.e. from May 1980 to October 1981, inclusive. It is understood that during the probationary period of employment, the Employee may be terminated at the pleasure of the company without the necessity of giving notice of termination or the payment of termination pay.

"The Employee recognizes the fact that the nature of the telephone sales representative's job is such that the company would be able to determine his true character, conduct and selling capabilities only after the publication of the directory, and that it takes about eighteen (18) months before his worth as a telephone sales representative can be fully evaluated inasmuch as the advertisement solicited by him for a particular year are published in the directory only the following year."

Corollary to this, the private respondent prescribed sales quotas to be accomplished or met by the petitioners. Failing to meet their respective sales quotas, the petitioners were dismissed from the service by the private respondent. The records show that the private respondent terminated the services of petitioners Iluminada Ver Buiser and Cecilia Rillo-Acuña on May 14, 1981 and petitioner Ma. Mercedes P. Intengan on May 18, 1981 for their failure to meet their sales quotas.

Thus, on May 27, 1981, petitioners filed with the National Capital Region, Ministry of Labor and Employment, a

complaint for illegal dismissal with claims for back-wages, earned commissions and other benefits, docketed as Case No. NCR-STF-5-2851-81.

The Regional Director of said ministry, in an Order dated September 21, 1982, dismissed the complaints of the petitioners, except the claim for allowances which private respondent was ordered to pay. A reconsideration of the Order was sought by the petitioners in a motion filed on September 30, 1982. This motion, however, was treated as an appeal to the Minister of Labor.

On appeal, Deputy Minister Vicente Leogardo, Jr. of the Ministry of Labor issued an Order dated January 7, 1983, affirming the Regional Director's Order dated September 21, 1982, wherein it ruled that the petitioners have not attained permanent status since private respondent was justified in requiring a longer period of probation, and that the termination of petitioners' services was valid since the latter failed to meet their sales quotas.

Hence, this petition for certiorari on the alleged ground that public respondent committed grave abuse of discretion amounting to lack of jurisdiction. Specifically, petitioners submit that:

1. The Hon. Regional Director and the Hon. Deputy Minister committed grave abuse of discretion amounting to lack of jurisdiction in ruling that the probationary employment of petitioners herein is eighteen (18) months instead of the mandated six (6) months under the Labor Code, and in consequently further ruling that petitioners are not entitled to security of tenure while under said probation for 18 months.
2. The Hon. Regional Director and the Hon. Deputy Minister committed grave abuse of discretion amounting to lack of jurisdiction in ruling that petitioners were dismissed for a just and valid cause.
3. The Hon. Regional Director and the Hon. Deputy Minister committed grave abuse of discretion amounting to lack of jurisdiction in ruling that petitioners are not entitled to the commissions they have earned and accrued during their period of employment.

Petitioners contend that under Articles 281-282 of the Labor Code, having served the respondent company continuously for over six (6) months, they have become automatically regular employees notwithstanding an agreement to the contrary. Articles 281-282 read thus:

"Art. 282. Probationary Employment. Probationary employment shall not exceed six (6) months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. An employee who is allowed to work after a probationary period shall be considered a regular employee. (As amended by PD 850)."

"Art. 281. Regular and Casual Employment. - The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreements of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.

An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That, any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such actually exists. (As amended by PD 850)."

It is petitioners' submission that probationary employment cannot exceed six (6) months, the only exception

being apprenticeship and learnership agreements as provided in the Labor Code; that the Policy Instruction of the Minister of Labor and Employment nor any agreement of the parties could prevail over this mandatory requirement of the law; that this six months prescription of the Labor Code was mandated to give further efficacy to the constitutionally-guaranteed security of tenure of workers; and that the law does not allow any discretion on the part of the Minister of Labor and Employment to extend the probationary period for a longer period except in the aforesaid instances. Finally, petitioners maintain that since they are regular employees, they can only be removed or dismissed for any of the just and valid causes enumerated under Article 283 of the Labor Code.

We reject petitioners' contentions. They have no basis in law.

Generally, the probationary period of employment is limited to six (6) months. The exception to this general rule is when the parties to an employment contract may agree otherwise, such as when the same is established by company policy or when the same is required by the nature of work to be performed by the employee. In the latter case, there is recognition of the exercise of managerial prerogatives in requiring a longer period of probationary employment, such as in the present case where the probationary period was set for eighteen (18) months, i.e. from May, 1980 to October, 1981 inclusive, especially where the employee must learn a particular kind of work such as selling, or when the job requires certain qualifications, skills, experience or training.

Policy Instruction No. 11 of the Minister of Labor and Employment has clarified any and all doubts on the period of probationary employment. It states as follows:

"Probationary Employment has been the subject of misunderstanding in some quarter. Some people believe six (6) months is the probationary period in all cases. On the other hand, employees who have already served the probationary period are some-times required to serve again on probation.

Under the Labor Code, six (6) months is the general probationary period, but the probationary period is actually the period needed to determine fitness for the job. This period, for lack of a better measure-ment is deemed to be the period needed to learn the job.

The purpose of this policy is to protect the worker at the same time enable the employer to make a meaningful employee selection. This purpose should be kept in mind in enforcing this provision of the Code. This issuance shall take effect immediately."

In the case at bar, it is shown that private respondent Company needs at least eighteen (18) months to determine the character and selling capabilities of the petitioners as sales representatives. The Company is engaged in advertisement and publication in the Yellow Pages of the PLDT Telephone Directories. Publication of solicited ads are only made a year after the sale has been made and only then will the company be able to evaluate the efficiency, conduct, and selling ability of its sales representatives, the evaluation being based on the published ads. Moreover, an eighteen-month probationary period is recognized by the Labor Union in the private respondent company, which is Article V of the Collective Bargaining Agreement, thus:

"Probationary Period - New employees hired for regular or permanent shall undergo a probationary or trial period of six (6) months, except in the cases of telephone or sales representatives where the probationary period shall be eighteen (18) months."

And as indicated earlier, the very contracts of employment signed and acquiesced to by the petitioners specifically indicate that "the company hereby employs the employee as telephone sales representative on a probationary status for a period of eighteen (18) months, i.e. from May 1980 to October 1981, inclusive." This stipulation is not contrary to law, morals and public policy.

We, therefore, hold and rule that the probationary employment of petitioners set to eighteen (18) months is legal

and valid and that the Regional Director and the Deputy Minister of Labor and Employment committed no abuse of discretion in ruling accordingly.

On the second assignment of error that public respondent committed grave abuse of discretion in ruling that petitioners were dismissed for a just and valid cause, this is not the first time that this issue has been raised before this Court. Earlier, in the case of "Arthur Golez vs. The National Labor Relations Commission and General Telephone Directory Co.", G.R. No. L-64459, July 25, 1983, the petition for certiorari which raised the same issue against the herein private respondent was dismissed by this Court for lack of merit.

The practice of a company in laying off workers because they failed to make the work quota has been recognized in this jurisdiction. (Philippine American Embroideries vs. Embroidery and Garment Workers, 26 SCRA 634, 639). In the case at bar, the petitioners' failure to meet the sales quota assigned to each of them constitute a just cause of their dismissal, regardless of the permanent or probationary status of their employment. Failure to observe prescribed standards of work, or to fulfill reasonable work assignments due to inefficiency may constitute just cause for dismissal. Such inefficiency is understood to mean failure to attain work goals or work quotas, either by failing to complete the same within the allotted reasonable period, or by producing unsatisfactory results. This management prerogative of requiring standards may be availed of so long as they are exercised in good faith for the advancement of the employer's interest.

Petitioners anchor their claim for commission pay on the Collective Agreement (CBA) of September 1981, in support of their third assignment of error. Petitioners cannot avail of this agreement since their services had been terminated in May, 1981, at a time when the CBA of September, 1981 was not yet in existence.

In fine, there is nothing in the records to show any abuse or misuse of power properly vested in the respondent Deputy Minister of Labor and Employment. For certiorari to lie, "there must be capricious, arbitrary and whimsical exercise of power, the very antithesis of the judicial prerogative in accordance with centuries of both civil and common law traditions." (Panaligan vs. Adolfo, 67 SCRA 176, 180). The "abuse of discretion must be grave and patent, and it must be shown that the discretion was exercised arbitrarily or despotically." (Palma and Ignacio vs. Q. & S., Inc., et al., 17 SCRA 97, 100; Philippine Virginia Tobacco Administration vs. Lucero, 125 SCRA 337, 343).

WHEREFORE, the petition is DISMISSED for lack of merit.

SO ORDERED.

Makasiar, (Chairman), Aquino, Concepcion, Jr., Abad Santos, Escolin, and Cuevas, JJ., concur.

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