

MANILA DOCTORS HOSPITAL, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (THIRD DIVISION), LABOR ARBITER VIRGINIA SON, GEORGE CANTOR AND ANTONIO PEPITO, RESPONDENTS.

G.R. No. 64897. February 28, 1985

Ponente: RELOVA, J.

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RELOVA, J.:

Petition for review by certiorari to annul and set aside the decision of the Labor Arbiter, dated July 31, 1981, which was affirmed with modification in the decision of the National Labor Relations Commission, dated February 28, 1983, on the ground that both decisions were rendered without or in excess of jurisdiction.

On August 31, 1983, the Court issued a temporary restraining order enjoining the respondents from enforcing the decisions and the writ of execution and/or garnishment issued in Case No. AB-10553-81 (NCR-STF-3-1293-81), entitled: "George Cantor, et al., Complainants-Oppositors, vs. Manila Doctors Hospital, et al., Respondents-Applicants."

The facts of the case are as follows:

On February 8, 1981, petitioner discovered discrepancies in the form of alterations or falsifications, and of over statements or additions in the numbers of x-ray films requisitioned on the original requisition slips and the corresponding stock cards. This resulted in the abnormally high rate of expenditures incurred for the x-ray films. Sister Rosamond Marie Abadesco, Administrator of petitioner Hospital, called for Jaime A. Macatubal, storeroom clerk incharge with the duty of carrying out the requisitions being made by the x-ray department and confronted him on the aforesaid anomalies. Macatubal admitted his guilt and offered to pay for whatever x-ray films that were missing and to resign.

Meanwhile, Jaime A. Macatubal sought the help of private respondents George Cantor and Antonio Pepito, Board Member and Acting Member, respectively, of petitioner Union, with the threat that "Pag hindi ninyo ako tinulungan makiusap kay Sister Rosamond Marie Abadesco ay isasabit ko kayo." Indeed, private respondents Cantor and Pepito and one Virgilio Artificio were implicated by Macatubal on the loss of x-ray films and, on February 25, 1981, the National Bureau of Investigation, on the basis of its findings referred the case of qualified theft against private respondents, Virgilio Artificio and Jaime Macatubal to the Manila Fiscal's Office. Thereafter, on February 26, 1981, petitioner reported to the National Labor Relations Commission the suspension of private respondents and Virgilio Artificio and at the same time, filed an application for clearance to terminate herein private respondents.

Relative to the case filed with the Manila Fiscal's Office, Fiscal Arturo V. Barias, Jr., issued the follow-ing resolution:

"Considering that the only evidence supporting the charge is a mere certi-fication of the Head, Asset Control

Unit, in the person of Lourdes Delfin, which is not even sworn to, all suspects are hereby ordered released and this case be filed with the CFI (sic) for further investigation. It must be noted that the written confession alleged to have been voluntarily executed by the suspects were practically disowned by them." (p. 117, Rollo)

Further investigation by Assistant City Fiscal Jose D. Cajucom resulted in the dropping of the charge of theft case against private respondents Cantor and Pepito.

On March 7, 1981, private respondents and Virgilio Artificio opposed petitioner's application for clearance and filed a case against herein petitioner for illegal dismissal, unpaid wages and unfair labor practice. The matter was referred to Labor Arbiter Virginia Son to whom the parties submitted their position papers and on the basis of which the case was deemed submitted for resolution.

As stated above, on July 31, 1981, Labor Arbiter Son rendered her decision ordering the reinstatement of private respondents, including Virgilio Artificio, "to their former positions with full back wages from the date of their dismissal and/or suspension up to their actual reinstatement without loss of seniority rights and privileges appertaining thereto. The application for clearance is hereby dismissed. Respondent (herein petitioner) is also directed to pay complainants their unpaid wages from February 16 to 24, 1981." (pp. 20-21, Rollo)

The decision was appealed to the National Labor Relations Commission which on April 13, 1983, rendered a modified judgment saying:

"x x x We differ from the ruling of the Labor Arbiter with respect to complainant-appellee Virgilio Artificio, a darkroom technician of appellant hospital. Unlike the first two individual complainants-appellees, he admitted his guilt in a sworn statement executed before NBI Agent Victor A. Bessat on 24 February 1981. Of course, he later on said that he was 'forced and threatened' by the NBI Agent into signing the statement. But let it be remembered in this regard that, 'Except for VIRGILIO ARTIFICIO, Oppositors-Complainants GEORGE CANTOR and ANTONIO PEPITO were not forced to give statement x x x' (p. 4, last par., complainants' Position Paper). Considering that the three of them were similarly implicated by Jaime Macatubal and investigated by the NBI Agent, the reason for singling him out is something that even this Commission cannot understand. Under this situation, it is easy to concede that from the point of view of appellant hospital, it has ample reason to distrust him; in which case, We can not justly deny it the authority to dismiss him.

"WHEREFORE, in view of the foregoing considerations, the Decision appealed from should be, as it is hereby, MODIFIED in the sense that the application for clearance to terminate the services of Virgilio Artificio should be granted." (pp. 24-25, Rollo)

Petitioner came to this Court claiming that public respondents gravely abused their discretion in rendering summary judgment on the basis of the submitted position papers only. In short, petitioner assails the propriety of the procedures observed in the proceedings before the public respondents. It further argues that there was no legal and factual justification for the award of backwages.

We find the petition devoid of merit.

Article 221 of the Labor Code, which 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 the law or procedure, all in the interest of due process. In any proceeding, before the Commission or any Labor Arbiter, the parties may be represented by legal counsel but it shall be the duty of the Chairman, any Commissioner or any Labor Arbiter to exercise complete control of the proceedings at all

stages."

allows public respondents to decide the case on the bases of the position papers and other documents submitted without resorting to the technical rules of evidence observed in the courts of justice. And, as found by Labor Arbiter Virginia Son:

"The only evidence linking the individual complainants to the anomalies or irregularities adverted to in the preceding paragraphs of this decision is the self-serving, uncorroborated, and questionable statement given by co-employee Macatubal. The records show that Jaime Macatubal implicated the complainants-oppositors only after the lapse of twelve (12) days, a clear indication that it was an afterthought. Even respondents' position paper contained mere averments and unsupported by any sworn statements (Affidavit) as documentary evidence indicating the weakness and doubtful source. The sworn statement adduced by respondents' witnesses in the Fiscal's Office did not contain any averment that individual complainants were found to have perpetrated the aforesaid anomalies. As a matter of fact, in the sworn statements, these witnesses were positive that it was the storeroom clerk, Jaime A. Macatubal, because the alterations and falsifications in the requisition slips storecards were positively identified by them to be the handwriting of Macatubal (Exhibits '1', '2' and '3'). These witnesses stated that when confronted Macatubal offered to pay for whatever x-ray films that were missing and he also offered to resign.

"From the foregoing glaring facts and circumstances, respondents' position must perforce fall for lack of substantial evidence to sustain their charges against individual complainants. The only piece of evidence adduced by them linking said individual complainants could not be given weight or credence being an afterthought, of doubtful source and self-serving. On top of this, conspiracy has never been established. For same to prosper, there must be sufficient corroborative evidence presented which respondents miserably failed to do. They simply relied on the statement of Macatubal." (pp. 19-20, Rollo)

there is no factual or legal justification therefore for the preventive suspension, much less for the termination of private respondents. Although under Section 4, Rule XIV, Book V of the Labor Code the employer is empowered to place the employee concerned under preventive suspension, he may do so only if the continued employment of the employee poses a serious and imminent threat to the life or property of the employer or of his co-employees. And, any preventive suspension before the filing of the application for clearance shall be considered worked days, and shall be duly paid as such if the continued presence of the employee concerned does not pose a serious threat to the life and property of the employer or of his co-employees.

In the case at bar, no such threat to the life and property of the employer or of that of private respondents' co-employees is present. It was only Jaime Macatubal who admitted responsibility with respect to the loss of x-ray films. Herein private respondents were only implicated by him and, as a consequence, the fiscal's office ordered the dismissal of the case against them. Notwithstanding, petitioner withheld the salaries of private respondents during the period from February 16 to 24, 1981, in violation of the provisions of Section 4, Rule XIV, Book V, of the Labor Code aforecited and Policy Instructions No. 10, dated April 23, 1976 of the Ministry of Labor, which provides:

"x x x If the presence of the employee does not pose a serious danger, he is to order reinstatement with back-wages or prevent the employer from imposing preventive suspension. Regardless of his order, however, the employer may place the employee under preventive suspension if the employer would keep the employee in his payroll while the termination case is being resolved on the merit. x x x

By and large, petitioner was not able to prove its allegation that private respondents conspired with Jaime Macatubal and Virgilio Artificio in committing the offense charged against them. In the case of Mercury Drug Co. Inc. vs. Court of Industrial Relations (56 SCRA 694), "this Court adopted the policy of fixing the amount of backwages to a just and reasonable level without qualification and deduction to do away with the attendant delay

in awarding backwages because of the extended hearing to prove the earnings elsewhere of each and every employee." And, in the recent case of Capital Garment Corporation vs. Ople (117 SCRA 473), "this Court held that 'since this case has been pending for four (4) years We find that a period of two years for purposes of fixing the backwages of petitioner is fair and reasonable.' (Philippine Airlines, Inc. vs. NLRC, 126 SCRA 223)."

ACCORDINGLY, for lack of merit, the petition is DISMISSED and the temporary restraining order issued on August 31, 1983 is lifted. Further, petitioner is hereby ordered to pay fifty percent (50%) of the backwages of private respondents George Cantor and Antonio Pepito from the time of their suspension up to February 28, 1985.

SO ORDERED.

Teehankee, (Chairman), Melencio-Herrera, Plana, Gutierrez, Jr., De la Fuente, and Alampay, JJ., concur.

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