

ANANIAS PANDAY, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND LUZON MAHOGANY TIMBER INDUSTRIES, INC., RESPONDENTS.*G.R. No. 67664. May 20, 1992*

Ponente: GUTIERREZ, JR., J.

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This is a petition seeking the review of the order rendered by Deputy Minister Vicente Leogardo, Jr. of the Office of the Ministry of Labor and Employment dated May 29, 1984. The order authorized the separation from the service of the complainant subject to the payment by the private respondent of separation pay equivalent to one-half month salary for every year of service. It likewise ordered the payment of the complainant's 13th month pay for 1977 but dismissed his claim for living allowance for lack of merit.

There is no dispute over the facts of the case. The findings of the Ministry of Labor and Employment are as follows:

"The records show that complainant was hired by the respondent as Branch Accountant since August 23, 1973 with a salary of P536.00, living allowance of P54.00, canteen allowance of P150.00, transportation allowance of P100.00, emergency allowance of P110.00 and house rental of P30.00 or a total of P980.00.

Sometime in December, 1977 complainant was called by Martin Gaw, the owner-manager of respondent who instructed him to cut off the living allowance of the employees starting January 1, 1978. Complainant requested that a memorandum to this effect be made so that he would not be blamed by the workers. Respondent's manager got angry and shouted 'what for is the memorandum? I am telling you to do so.' At this point the General Manager suddenly butted in saying in a raised voice. 'Ano ba talaga Naning (complainant) ang ibig mong sabihin? Sa tuwing magsasalita ka, panay ka 'policy' ng companya at panay ka records'.

From the time of that incident complainant was deprived of free light. He was no longer given any accounting work. His per diem was abruptly cut off. All that was left for him to do was the simple clerical job of registering or paying SSS premiums. Still complainant continued to bear it out. In 1979, however he was totally divested of all his duties and he was compelled to approach Manager Martin Gaw to clear up matters. The latter referred him to Mr. Gerry Lumban who was supposed to give him some work to do. It turned out, however, that no such instructions were given to said Mr. Lumban. There was a time when respondent unduly delayed complainant's salary and he sought the help of the Public Assistance Office of Ilagan, Isabela, which resulted to an agreement wherein respondent promised to continue giving complainant his wages (Annex 'A').

"On April 12, 1979 complainant filed a request for vacation leave with pay for 15 days from April 14-30, 1979. On that same day he brought his son to Manila for medical treatment and stayed there up to the end of the month. Upon his return to Isabela, he asked for his salaries only to learn that his application for leave was disapproved. (Annex 'B'). Hence, he filed this case for illegal dismissal, non-payment of 13th month pay for 1977, emergency allowance under P. D. 525 since 1975 up to 1977 and unpaid wages for April 16-30, 1979. (Rollo, pp. 62-64)

The petitioner's claim for backwages, return of seniority rights, and other benefits and privileges is premised on his allegation that he was illegally terminated from employment. The Office of the Minister found and ruled that petitioner Panday was constructively dismissed from the service by the private respondent.

Respondent Leogardo ruled for the petitioner, giving the following reasons:

"The systematic manner by which complainant was gradually deprived of his duties since 1977 when he tried to object to the respondent's decision to cut off the workers' living allowance starting January 1978 clearly amounted to undue harassment of complainant calculated to make him feel that his presence in the company was no longer wanted.

When respondent did not pay complainant's salary for April 14-30, 1979 on the pretext that his leave application for the said period was disapproved, a case of constructive dismissal was committed. The fact that complainant reported back to his work upon the expiration of his leave is strong evidence that he did not abandon his job as contended by respondent. In disapproving complainant's request for leave with pay respondent did not cite any reason at all. If really respondent was considerate enough it should have at least informed him before he left for Manila that his request could not be granted. Respondent did not do so." (Rollo, p. 44)

The private respondent was ordered to comment on the petition on August 13, 1984. It had until September 3, 1984 to respond to the petitioner's averments and allegations. On January 9, 1985, we issued a resolution noting the failure of the private respondent to comply with the order to comment within the period which expired on September 3, 1984.

Since the private respondent failed to refute the arguments on illegal dismissal and the findings of the public respondent are not only founded on substantial evidence but are far from arbitrary, we affirm the factual findings.

The only complaint of the petitioner which remains is his claim that Deputy Minister Vicente Leogardo, Jr. should have ordered his reinstatement with backwages.

Since it has already been settled that there was indeed an illegal dismissal, we shall now discuss whether or not the petitioner's prayer for reinstatement should have been granted.

From the facts of the case, we regret that we cannot order reinstatement. We agree with the Deputy Minister that "complainant as branch accountant occupied a position involving trust and confidence and in the light of the estranged (sic) relation between the complainant and the respondent that may not permit the full restoration of an employment relationship based on trust and confidence, we have to allow termination of the employer-employee relationship but upon the payment of separation pay equivalent to one-half (1/2) month for every year of service rendered." (p. 5, Order)

The case of *Lepanto Consolidated Mining Co. v. Court of Appeals*, 1 SCRA 1251[1961], provides us with a definition of a 'position of trust and confidence'. It is one where a person is 'entrusted with confidence on delicate matters, or with the custody, handling, or care and protection of employer's property x x x.'

A few examples were given by the Court the case *Globe-Mackay Cable and Radio Corporation v. National Labor Relations Commission and Imelda Salazar*, G. R. No. 82511, March 3, 1992, to illustrate the principle:

"x x x where the employee is a Vice-President for Marketing and as such, enjoys the full trust and confidence of top management (*Asiaworld Publishing House, Inc. v. Ople*, 152 SCRA 219 [1987]); or is the Officer-in-Charge of the extension office of the bank where he works (*Citytrust Finance Corp. v. NLRC*, 157 SCRA 87 [1988]); or is an organizer of a union who was in a position to sabotage the union's efforts to organize the workers in commercial and industrial establishments (*Bautista v. Inciong*, 158 SCRA 665 [1988]);

or is a warehouseman of a non-profit organization whose primary purpose is to facilitate and maximize voluntary gifts by foreign individuals and organizations to the Philippines (*Esmalin v. NLRC*, 177 SCRA 537 [1989]); or is a manager of its Energy Equipment Sales (*Maglutac v. NLRC*, 189 SCRA 767 [1990])."

In fact, the classification of a Credit and Collection Supervisor by management as managerial/supervisory was sustained by this Court in the case of *Tabacalera Insurance Co. v. National Labor Relations Commission*, 152 SCRA 667 [1987]. The reasons for a similar ruling apply to the position of branch accountant which the petitioner was then holding.

If the respondent had been a laborer, clerk or other rank-and-file employee, there would be no problem in ordering her reinstatement with facility. An officer in such a key position as Vice President for Marketing (or as Chief Accountant as in the present case) can work effectively only if she enjoys the full trust and confidence of top management. (See *Asiaworld Publishing House v. Ople*, 152 SCRA 219 [1987], page 227)

The case of *Metro Drug Corp. v. National Labor Relations Commission*, 143 SCRA 132 [1986] aptly describes the difference in treatment between the positions of trust on one hand and mere clerical positions on the other. It states:

"Managerial personnel and other employees occupying positions of trust and confidence are entitled to security of tenure, fair standards of employment, and the protection of labor laws. However, the rules on termination of employment, penalties for infractions, and resort to concerted action are not necessarily the same as those for ordinary employees.

"A special and unique employment relationship exists between a corporation and its cashiers. More than most key positions, that of cashier calls for the utmost trust and confidence. x x x"

"When an employee accepts a promotion to a managerial position or to an office requiring full trust and confidence she gives up some of the rigid guaranties available to ordinary workers. Infractions which if committed by others would be overlooked or condoned or penalties mitigated may be visited with more severe disciplinary action. A company's resort to acts of self-defense would be more easily justified. It would be most unfair to require an employer to continue employing as its cashier a person whom it reasonably believes is no longer capable of giving full and wholehearted trustworthiness in the stewardship of company funds."

Reinstatement in the present case is no longer possible not only because of the strained relationship between the employee and the employer but also because of the length of time that has passed from the date the incident occurred to its resolution.

Jurisprudence is replete with cases illustrating the principle.

Thus, the case of *Sealand Service, Inc v. National Labor Relations Commission* 190 SCRA 347 [1990], held:

"To order reinstatement at this juncture would no longer serve any prudent purpose. The non-enforcement of this particular relief is dictated and justified by the consideration that supervening facts and circumstances have transpired which make execution on that score unjust or render such execution inequitable. As we have observed in previous cases, the relationship between petitioners and private respondent has been severely strained by reason of their respective imputations of bad faith which is very evident from the vehement and consistent stand of petitioners in refusing to reinstate private respondent. For the same reason stated in said cases, that is, to prevent further delay in the execution of the decision to the prejudice of private respondent and to spare him from the agony of having to work anew with the petitioners under an atmosphere of antagonism, and so that the latter do not have to endure the continued services of private respondent in whom they have lost confidence, private respondent should be awarded separation pay as an alternative to reinstatement." (Emphasis supplied)

Instead of reinstating the employee, this Court has in several cases awarded separation pay although the employee was found to be illegally dismissed (*Divine Word High School v. NLRC*, 143 SCRA 346 [1986]). The case of *Globe Mackay Cable and Radio Corporation v. NLRC*, *supra*, states:

"The following reasons have been advanced by the Court for denying reinstatement under the facts of the case and the law applicable thereto: 'x x x that reinstatement can no longer be effected in view of the long passage of time (22 years of litigation) or because of the realities of the situation (*Balquezon EWTU v. Zamora*, 97 SCRA 5 [1980]); or that it would be inimical to the employer's interest (*San Miguel Corporation v. Deputy Minister of Labor and Employment*, 145 SCRA 204 [1989]); or that reinstatement may no longer be feasible (*Hydro Resources Contractors Corporation v. Pagalibuan*, 172 SCRA 404 [1989]); or that it will not serve the best interests of the parties involved (*Century Textile Mills, Inc. v. NLRC*, 161 SCRA 528 [1988]); or that the company would be prejudiced by the workers' continued employment (*Gubac v. NLRC*, 187 SCRA 412 [1990]); or that it will not serve any prudent purpose as when supervening facts have transpired which make execution on that score unjust or inequitable (*Sealand Service, Inc. v. NLRC*, 190 SCRA 347 [1990]; or, to an increasing extent, due to the resultant atmosphere of 'antipathy and antagonism' or 'strained relations' or 'irretrievable estrangement' between the employer and the employee (*Commercial Motors Corporation v. Commissioners*, 192 SCRA 191 [1990]; and other cited cases).

Considering the length of time that has transpired between the occurrence of the employee's cause of action and its resolution and the circumstances, we are constrained to grant backwages and separation pay in lieu of reinstatement.

In the case of *Mercury Drug Co., Inc. v. Court of Industrial Relations* 56 SCRA 694 [1974] we 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. Under this policy we have consistently awarded backwages to the maximum of only three (3) years. (*Feati University Faculty Club (Paflu) v. Feati University*, 58 SCRA 395 [1974]; *Lepanto Consolidated Mining Company v. Encarnacion*, 136 SCRA 256 [1985]; *Akay Printing Press v. Ministry of Labor and Employment*, 140 SCRA 381 [1985]. However, considering the peculiar circumstances of the present case, we cannot apply the three-year backwages rule.

Neither shall we apply Republic Act 6715 which provides that backwages shall be awarded to cover the period from dismissal to the employer's date of actual reinstatement because said law has no retroactive effect as held in the case of *Sealand Service, Inc. v. NLRC*, *supra*.

"It may be mentioned in passing that the amendatory provision in RA 6715, which entitled an employee who is unjustly dismissed from work to his full backwages inclusive of allowance, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement has no application in the case at bar, said amendment having taken effect on March 21, 1989, after the decision sought to be enforced in the case had become final and executory. We have ruled in *Lantion, et al. v. NLRC*, G. R. No. 82028, January 29, 1990, that said amendment has no retroactive application."

Instead, we adopt the principle in the case of *New Manila Candy Workers Union (Naconwa-Paflu) v. Court of Industrial Relations*, 86 SCRA 37 [1978], where five years backwages were awarded on account of the employer's unfair labor practices and the long number of years during which the workers have been deprived of their work and their wages.

The case further holds that:

"Where there have been serious unfair labor practices committed by the employer in laying off or shutting out

the workers, obstinacy or deceit in trying to defeat the judgment for reinstatement by unilateral closure without just cause of the plant or factory or by other similar evasive or deceitful means, and consequent prolonged non-satisfaction of the judgment for reinstatement and backwages, the Court will impose, as stated in *Davao Free Workers Front* (60 SCRA 428), 'an element of punitive damages against respondent employer by way of example and for the public good' and award the equivalent of five (5) years backwages without deduction or qualification or even more."

Obviously, the employer in this case was in bad faith when it ordered the petitioner to cut the other employees' living allowances. More so, when the petitioner requested for written authority to effect the said management order which management refused so that blame would be laid on the petitioner. This started harassment activities and the withdrawal of the petitioner's benefits, usual workload, and responsibilities. Moreover, the case has already dragged on for several years to the prejudice of the petitioner.

WHEREFORE, premises considered the prayer for reinstatement is DENIED but the order rendered by Deputy Minister Vicente Leogardo, Jr. dated May 29, 1984 is modified to cover five (5) years backwages. The order is AFFIRMED in other respects.

SO ORDERED.

Feliciano, Bidin, Davide, Jr., and Romero, JJ., concur.

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