

FILIPINAS MANUFACTURERS BANK, PETITIONER, VS. THE NATIONAL LABOR RELATIONS COMMISSION AND LUISITO FLORES, RESPONDENTS.

G.R. No. 72805. February 28, 1990

Ponente: PARAS, J.

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PARAS, J.:

Petitioner Filipinas Manufacturers Bank seeks by this petition for certiorari (1) to annul or set aside public respondent's resolution dated August 27, 1984 in connection with NLRC-NCR Case No. RB IV-95-30-77 entitled "Luisito Flores vs. Filipinas Manufacturers Bank" which affirmed the Labor Arbiter's decision dated June 19, 1980, ordering petitioner bank to reinstate private respondent Flores to his position of branch accountant and to pay him backwages, including holiday and 13[th] month pay, from the date his salary was withheld until the date of his actual reinstatement; (2) the issuance of a writ of injunction and/or restraining order to enjoin the NLRC from enforcing its aforesaid resolution.

The facts of the case, as synthesized by the public respondent in its assailed resolution, are as follows:

"From, the evidence adduced, it is established that complainant Luisito Flores was first employed by respondent Filipinas Manufacturers Bank on October 5, 1964 as Distributing Clerk. Through hard work, he was promoted to the position of Branch Accountant, first, at the Paco branch of respondent bank, and in October 1975 to the Shaw Boulevard Branch, holding the same position with a salary of P800.00 and an allowance of P300.00 a month.

Sometime in August 1976, the Central Bank conducted its annual audit on respondent's branch at Shaw Boulevard, Mandaluyong, Metro Manila and the result showed that the books of the Branch were in good order. Immediately thereafter, a spot internal audit was conducted by the head office and it is alleged that certain irregularities were discovered to have been committed by some of the ranking officials of the branch office. Subsequently, criminal charges were filed against those allegedly involved with the Fiscal's Office in Pasig, Metro Manila and among those charged was herein complainant, Luisito Flores.

On September 29, 1976 complainant received a memorandum from the bank President transferring him to the Branches and Administration Division of the Head Office. When he went to the personnel department to get his salary for the period from October 16 to 31, 1976, he was informed that his salary for said period was withheld. There being no reason given for such action, he sent a letter to Feliciano Recio, the Vice-President for Branches and Administration Division, informing the latter about the withholding of his salary and requesting for a clarification on the status of the investigation being conducted in the Shaw Boulevard Branch. Atty. Nicolas Gotera of respondent's legal department sent a reply letter to the complainant on November 11, 1976 disclaiming any official order for the withholding of the latter's salary for the period from October 16 to 31, 1976, and stating that if he is found to be innocent of the alleged irregularities, he will be reinstated at once to his former position of Branch Accountant. Thereafter, Flores was allowed to receive his salary but his salary for the succeeding 15 days (Nov. 1 to 15) was again withheld. He was allegedly informed by a certain Marietta Martinez that he was suspended effective November 4, 1976."^[1]

The main issue in this petition is whether or not the suspension leading to private respondent's dismissal is legal.

It is the contention of private respondent Flores that his suspension and consequent dismissal were illegal because it was done in bad faith and that he has not received any notice of his suspension and dismissal up to the present.

Petitioner Filipinas Manufacturers Bank, on the other hand, maintains that the suspension and eventual termination of Luisito Flores were legal and made pursuant to Article 283 of the Labor Code as amended by Batas Pambansa Bilang 130 which provides:

"ART. 283. Termination by employer. An employer may terminate an employment for any of the following just causes:

a) x x x

b) Gross and habitual neglect by the employee of his duties;

c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

d) x x x

e) x x x."[2]

Private respondent, as branch accountant, occupied a highly sensitive and critical position. His failure to detect any anomaly in the records of the bank for a period of eight (8) months resulting in a loss of approximately P2,000,000.00 amount to gross negligence and incompetence. It would not be amiss to suppose that private respondent was a party to the irregularities who directly or indirectly benefited from the fruits of the fraudulent scheme.

It is also the averment of petitioner that even if private respondent had no actual and direct participation in the alleged anomalies, he is at the very least guilty of gross negligence and incompetence which are justifiable grounds for a managerial employee's dismissal. Being a branch accountant, Flores was a managerial employee and as such may be dismissed for a just cause as loss of trust and confidence.

Petitioner invokes the case of *Lepanto Consolidated Mining Co. vs. CA*, 1 SCRA 1251, among others, which enunciates that "where the position calls for a high degree of trust and confidence, there is sufficient cause for dismissal where the employer asserts a loss of such trust and confidence and there is reasonable basis therefor." Petitioner claims that it had all justification in losing trust and confidence in private respondent.

There is no merit in this petition.

While it is management's prerogative to dismiss or lay-off an employee, it must nevertheless be done without abuse of discretion because what is at stake is not only the employee's position but also his means of livelihood. Thus,

"While an employer has its own interests to protect, and pursuant thereto, it may terminate a managerial employee for a just cause, such prerogative to dismiss or lay-off an employee must be exercised without abuse of discretion. Its implementation should be tempered with compassion and understanding. The employer should bear in mind that in the execution of said prerogative, what is at stake is not only the employee's position but his livelihood. The fact that one is a managerial employee does not by itself exclude him from the protection of the constitutional guarantee of security of tenure" (*Santos vs. NLRC*, G.R. No. 76991, Oct. 28, 1988).

It is not in dispute that private respondent was holding a position of responsibility at the petitioner's

Mandaluyong branch at the time the irregularities were discovered. In whatever degree, Article 283 of the Labor Code provides for termination for "just causes" and in accordance with due process requirements, namely, notice and opportunity to be heard. In the case at bar, there appears to be no just cause for private respondent's termination as the alleged loss of confidence is found to be unsubstantiated. Besides, the records of the case reveal that petitioner failed to comply with the requirements of notice and hearing. The Solicitor General correctly opined that Article 283 of the Labor Code may not be used to terminate respondent Flores on the ground that petitioner feels or suspects that there may be just cause for such action. As enunciated in the case of *General Bank & Trust Co. vs. CA*, 135 SCRA 569, viz:

"There is no question that managerial employees should enjoy the confidence of top management. This is especially true in banks where officials handle big sums of money and engage in confidential or fiduciary transactions. However, loss of confidence should not be simulated. It should not be used as a subterfuge for causes which are improper, illegal, or unjustified. Loss of confidence may not be arbitrarily asserted in the face of overwhelming evidence to the contrary. It must be genuine, not a mere afterthought to justify earlier action taken in bad faith."

It is clear from the facts and evidence on record that the suspension and eventual termination of Luisito Flores was illegal because the same was done in bad faith and without due notice. Besides, overwhelming evidence shows that Flores was not involved in the alleged anomalies. In fact, it was the very testimony of two of the bank's witnesses, namely: (1) Benildo Fermin, one of the members of the bank's audit team that audited the bank's branch office at Mandaluyong, and (2) Ramon Garcia, the bookkeeper of the same branch office of the petitioner bank that helped to clear private respondent from any involvement in such anomalies. These two (2) witnesses testified that Flores had nothing to do with the irregularities discovered by the audit team in said Mandaluyong branch. We, therefore, see neither factual nor legal basis for the suspension and eventual dismissal of Luisito Flores. Petitioner's claim that there is just cause or at least some legal basis for losing confidence on private respondent is unsubstantiated. The findings of the Labor Arbiter on this matter, as upheld by public respondent NLRC, are the quite clear. In this regard, we quote this well-settled doctrine, to wit:

x x x findings of administrative agencies which have acquired expertise because their jurisdiction is confined to specific matters are generally accorded not only respect but even finality. Judicial review by this Court does not go so far as to evaluate the sufficiency of the evidence upon which the Deputy Minister and Regional Director based their determinations but are limited to issues of jurisdiction or grave abuse of discretion (*Special Events & Central Shipping Office Workers Union v. SMC*, 122 SCRA 557).

In the instant case, the Labor Arbiter and respondent NLRC found no basis for petitioner's alleged loss of confidence in private respondent. We find no reason for disturbing such findings. The claim of loss of confidence is not duly proved and sufficiently substantiated. Hence, We fail to see how the decision complained of may be said to have been rendered in grave abuse of discretion. We have to recognize and uphold the constitutional right of private respondent to "security of tenure".

True, loss of confidence as a ground for dismissal does not require proof beyond reasonable doubt as the law requires only that there be at least some basis to justify it. Nevertheless, evidence is still required to substantiate the claim and form a legal basis for loss of confidence. In the Case at bar, there exists no basis at all to justify petitioner's claim of loss of confidence.

Finally, on the argument that private respondent is at the very least guilty of gross negligence which is also a just cause for termination by the employer of his employee, We hold that although Flores may be grossly negligent in the discharge of his duties as branch accountant, dismissal from the service is too harsh a penalty. Unrebutted evidence on record shows that private respondent had never been warned or reprimanded during his twelve (12)

years of service with the petitioner. Considering, therefore, private respondent's length of service with the company, and considering further that this was Flores' first offense (gross negligence), the penalty of dismissal was certainly not commensurate with his alleged misconduct.

WHEREFORE, the charge against private respondent, having been found unsubstantiated, We hold the so-called "loss of confidence" is without basis and may not be successfully invoked as a ground for dismissal. Petitioner is hereby ordered to REINSTATE private respondent to the last position he occupied or any other similar position of the same category and the same compensation, if another employee has in the meanwhile been appointed as branch accountant and still in occupancy of such position and to pay said private respondent backwages for three (3) years from the time of dismissal.

No costs.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

[1] Pp. 1-3, NLRC Resolution; pp. 103-105, Rollo.

[2] P. 1, Reply to Comment; p. 164, Rollo.

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