

GEORGE R. PALENCIA, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, ABERDEEN COURT INC., AND RICARDO NG, RESPONDENTS.

G.R. No. 75763, August 21, 1987

Ponente: CORTES, J.

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CORTES, J.:

This petition for certiorari originated from a complaint filed by petitioner George R. Palencia against the Aberdeen Court, Inc. for illegal dismissal and the recovery of specified money claims. After direct and cross examination of the complainant and his witnesses before the Labor Arbiter the parties agreed to forego further presentation of other testimonial evidence. Instead they filed memoranda and supplemental position papers on the basis of which the case was submitted for resolution. Labor Arbiter Manuel R. Caday found for the complainant, the dispositive part of his decision reads:

PREMISES CONSIDERED, judgment is hereby rendered declaring the respondents guilty of illegally dismissing the complainant and ordering them to reinstate him to his former position with full backwages from the date of his dismissal on March 2, 1984, until actually reinstated without loss of seniority rights and other rights granted by law.

The claim for illegal deduction, overtime pay, premium pay for holiday and rest day, underpayment of 13th month pay, unpaid wages and commission and sick leave pay, is hereby dismissed for lack of merit.

There being no clear and sufficient evidence of moral damages, the same must also be dismissed for lack of merit.

SO ORDERED.

On appeal the Second Division of the National Labor Relations Commission (NLRC) composed of Ricardo C. Castro as Presiding Commissioner with Commissioners Cecilio T. Seno and Federico O. Borromeo as members, set aside the Labor Arbiter's award of backwages, but upheld his order of reinstatement, thus:

WHEREFORE, the decision appealed from is hereby Set Aside and a new one entered ordering complainant to report for work within ten (10) days from receipt hereof and for the respondents to accept him back without loss of seniority rights and without backwages.

SO ORDERED.

Motion for reconsideration of the NLRC decision was sought on the following grounds:

A. THAT WITH DUE RESPECT TO THE HONORABLE COMMISSION MATERIAL AND PERTINENT FACTS COULD HAVE BEEN OVERLOOKED.

B. THAT THE PRETENSION OF RESPONDENT APPELLANT THAT HEREIN COMPLAINANT APPELLEE WAS NOT DISMISSED DESERVE SCANT CONSIDERATION.

C.THAT COMPLAINANT APPELLEE IS ENTITLED TO FULL BACKWAGES AND REINSTATEMENT AND BENEFITS UNDER THE LAW, AS A MATTER OF JUSTICE AND EQUITY.

Upon denial, the present petition for certiorari was filed alleging that the NLRC had committed grave abuse of discretion amounting to lack of jurisdiction in reversing the findings and conclusions of the labor arbiter and that there is no plain, speedy, and adequate remedy available under the ordinary course of law. The following two errors are assigned:

IN FLAGRANTLY AND GRAVELY FAILING TO APPLY PETITIONER'S CONSTITUTIONAL RIGHT AGAINST SELF-INCRIMINATION, TO DUE-PROCESS, AND PERTINENT PROVISIONS OF THE LABOR CODE;

IN GROSSLY AND SERIOUSLY DISREGARDING, MISAPPRECIATING, AND MISCONCEIVING PALPABLY AND MANIFESTLY CLEAR EXISTING FACTS ON RECORD TO PETITIONER'S GRAVE DETRIMENT.

The antecedent facts are as follows: Petitioner Palencia, an employee of Aberdeen Court, Inc. was assigned as a marketer and/or collector. On February 23, 1984 after a trip to Baguio to buy vegetables for the respondent, and after the cargo had been unloaded from the company van, a plastic bag containing three (3) pieces of Baguio pechay was seen on the driver's seat. The next day according to petitioner Palencia, he underwent a series of investigations (Rollo p. 58) which started at 11:00 a.m. An investigator of the Quezon City police took the plastic bag containing the vegetables and invited Palencia to the police station. Palencia apprised of his constitutional rights invoked his right to counsel and declined to give any statement (Rollo p. 92). He was not released until about midnight of that day. The report on the police investigation of Attempted Qualified Theft was prepared on the same date addressed to the City Fiscal.

From February 25 to March 1, 1984 Palencia did not report for work. According to him he went under treatment for gastric ulcers. On March 2, 1984 he went back to Aberdeen Court but was not then admitted. He was asked to return the following day, according to the company because it wanted to consult its lawyer. Palencia did not come back. Instead on March 6, 1984 he filed the complaint for illegal dismissal.

The principal issue in the case before the labor arbiter, on appeal to the NLRC and in the present petition for certiorari is: Was Palencia dismissed or did he abandon his work?

Palencia insists that he was dismissed and the labor arbiter so found. The NLRC on review held otherwise.

The question of whether or not evidence adduced establishes dismissal or abandonment raises a factual issue. So does the first error assigned in this petition i.e., that the NLRC "flagrantly and gravely failing (failed) to apply petitioner's constitutional right against self-incrimination, to due-process, and pertinent provisions of the Labor Code". Notwithstanding its being couched in terms which appear to raise a question of law, it involves a careful examination of facts to determine if there is basis for the assertion that these constitutional rights had been disregarded. There is neither averment nor evidence that at any point in the proceedings Palencia was ever compelled to be a witness against himself. When at the police investigation he invoked the right to counsel and to the right against self-incrimination, the fact was made of record (Rollo p. 92). The assertion that the right to due process has been violated is even more tenuous. Palencia's complaint was given due course, he was afforded every opportunity to be heard, his Memoranda and other manifestations were taken into account by the labor arbiter and the NLRC acting under provisions of the Labor Code.

Following a long line of decisions this Court has consistently declined to disturb the findings of fact to the then Court of Industrial Relations whose functions the NLRC now performs. (*Pambusco Employees' Union Inc. v.*

Court of Industrial Relations, 68 Phil. 591 (1939); Manila Electric Co. v. National Labor Union, 70 Phil. 617 (1940); San Carlos Milling Co. v. Court of Industrial Relations, 111 Phil. 323 (1961), 1 SCRA 734; Philippine Educational Institution v. MLQSEA Faculty Assn., 135 Phil. 282 (1968), 26 SCRA 272; University of Pangasinan Faculty Union v. University of Pangasinan and NLRC, G.R. No. L-63122, February 20, 1984; 127 SCRA 691]. The findings of fact are conclusive and will not be disturbed in the absence of a showing that there has been grave abuse of discretion (Philippine Educational Institution v. MLQSEA Faculty Association, 26 SCRA 272, 276] and there being no indication that the findings are unsubstantiated by evidence (University of Pangasinan Faculty Union v. University of Pangasinan and NLRC, G.R. No. 63122, February 20, 1984, 127 SCRA 694, 704].

In the present case the NLRC committed no grave abuse of discretion amounting to lack of jurisdiction in setting aside the decision of the labor arbiter and entering a new one ordering the complainant to report for work within ten (10) days from receipt (hereof) and for the respondents to accept him back without loss of seniority rights and without backwages.

WHEREFORE, PREMISES CONSIDERED the petition is DISMISSED for lack of merit.

Fernan, (Chairman), Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

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