

OSIAS ACADEMY, PETITIONER, VS. THE DEPARTMENT OF LABOR AND EMPLOYMENT, CONCHITA G. MERCADO AND CELERIO MERCADO, RESPONDENTS.

G.R. No. 83234. April 18, 1989

Ponente: NARVASA, J.

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NARVASA, J.:

The award by the respondent Minister of Labor[1] of separation pay, on grounds of equity, to two employees[2] of petitioner Osias Academy despite the avowedly correct grant of clearance to it to terminate the services of said employees on the ground of loss of confidence based on a satisfactory showing of embezzlement of company funds, serious misconduct, etc., is challenged in the special civil action of certiorari at bar. The award is made to rest on this Court's ruling in *San Miguel Corporation vs. the Deputy Minister of Labor and Employment, et al.*, G.R. Nos. L-61232-33, December 29, 1983, 145 SCRA 196.

A similar issue was involved in a case recently decided by this Court en banc: *Philippine Long Distance Telephone Company vs. NLRC, et al.*, G.R. No. 80609, August 23, 1988. In that case, this Court undertook a review of past precedents, sanctioning the grant of separation pay to employees dismissed for some just cause, namely, *Firestone Tire and Rubber Company of the Philippines vs. Lariosa*,[3] *Soco vs. Mercantile Corporation of Davao*,[4] *Filipro, Inc. vs. NLRC*,[5] *Metro Drug Corporation vs. NLRC*,[6] *Engineering Equipment, Inc. vs. NLRC*,[7] *New Frontier Mines, Inc. vs. NLRC*,[8] and *San Miguel Corporation vs. Deputy Minister of Labor and Employment, et al.*[9] It was noted that these cases constituted an exception to the rule in the Labor Code that a person dismissed for cause is not entitled to separation pay, the exception being based on considerations of equity. The Court observed, however, that the cited decisions had "not been consistent as to the justification for the grant of separation pay in the amount and rate of such award," and pointed out the need for a re-examination of the policy therein enunciated, in order to rationalize the exception, "to make it fair to both labor and management, especially to labor." The Court then proceeded to lay down the following principles,[10] which are hereby reaffirmed:

"There should be no question that where it comes to such valid but not iniquitous causes as failure to comply with work standards, the grant of separation pay to the dismissed employee may be both just and compassionate, particularly if he has worked for some time with the company. For example, a subordinate who has irreconcilable policy or personal differences with his employer may be validly dismissed for demonstrated loss of confidence, which is an allowable ground. A working mother who has to be frequently absent because she has also to take care of her child may also be removed because of her poor attendance, this being another authorized ground. It is not the employee's fault if he does not have the necessary aptitude for his work but on the other hand the company cannot be required to maintain him just the same at the expense of the efficiency of its operations. He too may be validly replaced. Under these and similar circumstances, however, the award to the employee of separation pay would be sustainable under the social justice policy even if the separation is for cause.

But where the cause of the separation is more serious than mere inefficiency, the generosity of the law must be more discerning. There is no doubt it is compassionate to give separation pay to a salesman if he is dismissed for his inability to fill his quota but surely he does not deserve such generosity if his offense is misappropriation of the receipts of his sales. This is no longer mere incompetence but clear dishonesty. A security guard found sleeping on the job is doubtless subject to dismissal but may be allowed separation pay since his conduct, while inept, is not depraved. But if he was in fact not really sleeping but sleeping with a prostitute during his tour of duty and in the company premises, the situation is changed completely. This is not only inefficiency but immorality and the grant of separation pay would be entirely unjustified.

We hold that henceforth separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. Where the reason for the valid dismissal is, for example, habitual intoxication or an offense involving moral turpitude, like theft or illicit sexual relations with a fellow worker, the employer may not be required to give the dismissed employee separation pay, or financial assistance, or whatever other name it is called, on the ground of social justice.

A contrary rule would, as the petitioner correctly argues, have the effect of rewarding rather than punishing the erring employee for his offense. And we do not agree that the punishment is his dismissal only and that the separation pay has nothing to do with the wrong he has committed. Of course it has. Indeed, if the employee who steals from the company is granted separation pay even as he is validly dismissed, it is not unlikely that he will commit a similar offense in his next employment because he thinks he can expect a little leniency if he is again found out. This kind of misplaced compassion is not going to do labor in general any good as it will encourage the infiltration of its ranks by those who do not deserve the protection and concern of the Constitution.

The policy of social justice is not intended to countenance wrongdoing simply because it is committed by the underprivileged. At best it may mitigate the penalty but it certainly will not condone the offense. Compassion for the poor is an imperative of every humane society but only when the recipient is not a rascal claiming an undeserved privilege. Social justice cannot be permitted to be the refuge of scoundrels any more than can equity be an impediment to the punishment of the guilty. Those who invoke social justice may do so only if their hands are clean and their motives blameless and not simply because they happen to be poor. This great policy of our Constitution is not meant for the protection of those who have proved they are not worthy of it, like the workers who have tainted the cause of labor with the blemishes of their own character."

In light of the foregoing propositions, it is evident that the grant of separation pay to the private respondents is unjustified, they having been dismissed for causes reflecting on their moral character.

WHEREFORE, the order of respondent Minister of Labor dated January 16, 1987, upholding the grant by the Regional Director to petitioner Academy of clearance to terminate the services of the respondent spouses, is **AFFIRMED** except for the grant of separation pay to the latter which is hereby **DISALLOWED**.

IT IS SO ORDERED.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Order dated Jan. 16, 1987, Rollo, pp. 12-16

[2] Celerino Mercado and his wife, Conchita Mercado, then respectively Principal/Treasurer and classroom teacher of the Osias Academy; Rollo, pp. 3, 12.

[3] 148 SCRA 187

[4] 148 SCRA 526

[5] 145 SCRA 123

[6] 143 SCRA 132

[7] 133 SCRA 752

[8] 129 SCRA 502

[9] 145 SCRA 196, *supra*.

[10] Per Mr. Justice Isagani A. Cruz

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