

TALAGA BARANGAY WATER SERVICE COOPERATIVE, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, (THIRD DIVISION), AND NEMESIA OPENA, RESPONDENTS.

G.R. No. 94803. March 16, 1992

Ponente: PARAS, J.

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PARAS, J.:

The instant petition for certiorari seeks to annul and set aside, on ground of grave abuse of discretion amounting to lack of jurisdiction, the following:

- (a) Decision dated September 4, 1989 of respondent National Labor Relations Commission (NLRC) holding that the dismissal of private respondent Nemesia D. Opena by the Board of Directors of petitioner Talaga Barangay Water Service Cooperative is not valid and ordering the payment of backwages and separation pay to her in lieu of reinstatement; and
- (b) Resolution dated August 10, 1989 of the same respondent modifying the Decision dated September 4, 1989 by ordering the reinstatement of private respondent to her former position with full backwages not exceeding three (3) years.

Petitioner is a business entity engaged in water service and distribution among the different members within the Barangay. Private respondent started working with petitioner way back in October 1979, as bookkeeper and cash collector. She was promoted to the position of System Superintendent in September 1981. She was also a committee member of petitioner's Education and Training Committee.

On April 30, 1987, the Chairman of the Board of Directors of petitioner issued a memorandum suspending private respondent because she allegedly refused to install a water line gadget for Ramon Magpantay. The same body issued another memorandum on April 17, 1988 terminating private respondent's services effective May 1, 1988 for the following reasons:

- "1. Shortage of collection as per audited financial statement for the year 1984.
- "2. Insubordination:

'(a) refusal to accept collection as per Board Memorandum dated January 8, 1987.

'(b) Refusal to install the disconnected water service of Ramon Magpantay as per memorandum dated April 30, 1987, wherein you suffered suspension.

'(c) Recommendation of Mr. Filemon Ramos a PD's representative to dismiss you from the service based on documented evidences of suspension.

'(d) Disobeying the orders of the Vice-President in the distribution of water to different sectors of the barangay.

'(e) Cranky attitude towards members and subordinates.

‘(f) Giving derogatory remarks causing too much insult to Directors

"3. Lack of competence despite of your long experience in the service in dealing with members and subordinates as evidenced by verbal complaints likewise as indicated in Memorandum dated April 20, 1987." (pp. 28-29, Rollo)

Consequently, on July 6, 1988, private respondent filed a complaint against petitioner for illegal suspension and illegal dismissal.

The Labor Arbiter rendered his decision on April 19, 1989 declaring legal the suspension and termination of private respondent. The dispositive portion of the said decision reads:

"WHEREFORE, premises considered, judgment is hereby entered dismissing the above-entitled case for lack of merit. Respondent, however, is ordered to pay complainant financial assistance equivalent to three (3) months pay based on her latest salary.

"SO ORDERED." (p. 58, Rollo)

Private respondent appealed to the National Labor Relations Commission. On September 4, 1989, the NLRC rendered its Decision, setting aside the Decision of the Labor Arbiter on the grounds that -

"(a) Being both an officer and committee member, private respondent's termination can only be effectuated by the National Assembly pursuant to Section 3, subsection (a) of the Constitution and By-Laws of petitioner and not by the Board of Directors. This indubitably renders the dismissal of private respondent by the Board of Directors of petitioner, null, void and illegal from the outset.

"(b) The alleged infractions were not sufficiently and clearly established, and more importantly, private respondent was not culpable thereof." (p. 30, Rollo)

However, the respondent Commission merely required petitioner to pay private respondent separation pay in lieu of reinstatement and backwages, as follows:

"WHEREFORE, premises considered, the Decision dated April 19, 1989 is hereby SET ASIDE and a new one entered ordering respondent to pay complainant (1) separation pay equivalent to one-half (1/2) month's pay for every year of service, in lieu of reinstatement; and (2) backwages from May 1, 1988 up to the date of promulgation of this Decision.

"SO ORDERED." (pp. 38-39, Rollo)

Both parties moved for the reconsideration of the aforesaid decision.

On August 10, 1990, the respondent Commission modified its earlier Decision by ordering the reinstatement of private respondent with full backwages, not exceeding three (3) years, as follows:

"WHEREFORE, premises considered, the resolution of this Commission dated September 4, 1989 is hereby modified. Respondent is hereby ordered to reinstate complainant to her former position without loss of seniority rights and with full backwages until her reinstatement, which in no case shall exceed three (3) years." (p. 48, Rollo)

Hence, this petition. The following grounds are relied upon to warrant the grant thereof:

I

PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION IN RULING THAT IT IS NOT THE BOARD OF DIRECTORS WHO HAS THE POWER TO TERMINATE THE SERVICES OF

PRIVATE RESPONDENT NEMESIA OPENA.

II

PUBLIC RESPONDENT NLRC (THIRD DIVISION) COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO OR IN EXCESS OF JURISDICTION IN HOLDING THAT PRIVATE RESPONDENT NEMESIA OPENA WAS ILLEGALLY DISMISSED, INSPITE OF CLEAR AND CONVINCING EVIDENCE THAT HER DISMISSAL FROM THE SERVICE WAS JUSTIFIED FOR LOSS OF TRUST AND CONFIDENCE AND FOR CONDUCT INIMICAL TO THE EMPLOYER. (p. 18, Rollo)

We find the petition devoid of merit.

Section 3, subsection (a), Art. III of the Constitution and by-laws of petitioner explicitly provides that the General Assembly has the power to elect and remove directors, officers and committee members for cause. This power to remove was not given to the Board of Directors. Records show that private respondent was at the time of her dismissal, both an officer and committee member. This being the case, her removal can only be made by the General Assembly.

On this point, the Court agrees with the following observations of the respondent Commission, to wit:

"In resolving the first issue, the Commission finds the portions of the constitution and by-laws of appellee's cooperative which are submitted and marked as exhibits 12, 13, and 13-A for appellant (pp. 150-152, Records), as well as Annex J of appellee's position paper (p. 20, Records) to be the pertinent documents to consider.

"Under Section 3, subsection (a), Article III, thereof, it is explicitly stipulated that:

'Section 3. Powers and limitations of the General Assembly - The General Assembly has the powers:

'(a) To elect and remove directors, officers and committee members for causes.'

"On the other hand, under Section 15 thereof which enumerated the powers and duties of the Board of Directors, while it has been granted under subsections (d) and (e) the power to 'elect the officers of the Cooperative' and 'to appoint other employees if it deems necessary, who may not be members of the cooperative and fix their compensation' and also under Section 7, subsection (a) (Annex J, p. 20, Records) where it has been given the power to appoint the System Superintendent, nowhere do We find that it was equally granted the power or authority to remove as in the case of the General Assembly which has been expressly granted the power of removal. Under statutory construction, the rule that 'what has not been expressly included is deemed excluded' properly applies.

"There is no doubt that the position of a System Superintendent is that of an officer. It is a position created under Section 7 (Annex J) and also as classified under Section 15, subsection (m) (Exhibit 13-A, p. 152, Records) which provides:

'(m) To fix the amounts of bonds and cause the bonding of Treasurer, System Superintendent and any other accountable officers or employees charged with the custody of the Cooperative's funds and properties.'

"There is also evidence that appellant was also a committee member of the Education and Training Committee (Annex D of Respondent's position paper, No. 8 of Board of Resolution dated April 3, 1988, p. 27, Records).

"It is, therefore, clear that being both an officer and committee member, appellant's termination can only be effectuated by the General Assembly pursuant to Section 3, subsection (a) of the Constitution and By-Laws of appellee and not by the Board of Directors as was done in the case at bar. This indubitably renders the dismissal null, void and illegal from the outset." (pp. 29-30, Rollo)

We also sustain the following finding of respondent Commission that the alleged infractions were not sufficiently and clearly established and that appellant was not culpable thereof.

"We have, in Our scrutiny of the records, taken note of the offenses and/or violations alleged to have been committed by the complainant. The alleged shortage of P2,140.00 incurred in 1984, (Exhibits F, G, H), which complainant explained to have been given to a deceased member of the cooperative, by the then President Mr. Lorenzo Rodriguez, substantiated by picture of the wake and tender of payment, (Rollo 143). The alleged insubordination case which led to complainant's suspension, in the matter of the complaint of Ramon Magpantay (Exhibit J), whose water disconnection was made by reason of non-payment of bills as admitted by Mr. Magpantay (Rollo 146), the libelous utterances of Magpantay as reported by Natalio Rodriguez, (Exhibit 8-A, Rollo 146), complainant report (sic) to the Board on the incident, (Rollo, 147, Exhibit 9-A). That by said incident, complainant was suspended for alleged 'harassment of the members of business' (Rollo 149). The case of water user Miguel Quilao (Exhibit C), who was accused for having been found to have magnetic piece of iron on his water meter as reported by (sic) inspector. It is surprising (sic) to note that while respondent claim as a basis for termination the alleged loss of trust and confidence by reason of the shortage in 1984 (sic), respondent other (sic) alleged incident, is the alleged refusal of complainant to perform the function as cash collector in January 9, 1987. This appears to be contradictory to (sic) other assertion of loss of trust by reason of the shortage.

"All told, we are of the considered opinion that the alleged ground and incidents cited has been satisfactorily explained by complainant." (pp. 44-45, Rollo)

The findings of fact of the NLRC are conclusive on this Court in the absence of a showing that they were arrived at arbitrarily. (*De Vera v. NLRC*, 191 SCRA 632). The petitioner has failed to show such arbitrariness.

As a rule, the Court recognizes the prerogative of the employer to order merely payment of backwages plus separation pay in lieu of reinstatement even when the employee was eventually cleared of the charges, where relations between employer and the employee are so strained or where an employee would no longer be useful because his employer has lost trust and confidence in him. However, this rule is not without exception. In the case of *Sibal v. Notre Dame of Greater Manila*, 182 SCRA 538, the Court held:

"xxx Clearly, therefore, when the assailed NLRC decision was rendered on April 11, 1986, the alleged 'strained relations' or 'irritant factors' which the Labor Arbiter capitalized on had been totally eliminated. Respondent NLRC obviously failed to consider this and thus perpetrated the error committed by the Labor Arbiter in her prior decision. The eventual replacement of Fr. Garcia all the more confirmed the discretionary and oppressive treatment which he gave petitioner. The dissenting NLRC Commissioner aptly observed thus: Moreover, it should be emphasized that no strained relations should arise from a valid and legal act of asserting one's right, such as in the instant case, for otherwise, an employee who still asserts his/her separation pay on the pretext that his/her relationship with his/her employer and already become strained relations in order that it may justify the award of separation pay in lieu of reinstatement with backwages should be such that they are so compelling, and so serious. xxx." (pp. 164-165, Rollo)

As above-stated, private respondent was illegally terminated because (a) the Board of Directors had no authority to terminate her and (b) the charges or offenses imputed against her were not substantiated and that private respondent was not guilty thereof. But she was not reinstated because of animosity giving rise to a strained relationship between Rolando Romero (the Board President) and the former. However, during the pendency of the motion for reconsideration before the NLRC, Rolando Romero died. Hence, the NLRC realizing that the obstacle to reinstate private respondent to her former position is already removed, modified its decision and ordered her reinstatement. This ruling is conformable to the aforecited case of *Sibal v. Notre Dame of Greater Manila* (supra). We therefore sustain the same. Besides, we rule that private respondent's termination can only be made by the General Assembly and not by the Board of Directors. To pay her separation pay instead of reinstatement would in

effect validate her termination which was not authorized and illegal. If petitioner believes that private respondent's continued stay would be most detrimental to the cooperative, let them present the matter to the General Assembly, in accordance with petitioner's constitution and by-laws.

WHEREFORE, for lack of merit, the petition is DISMISSED. The assailed Decision and Resolution of the respondent NLRC are AFFIRMED.

Costs against petitioner.

SO ORDERED.

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

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