

LUCKY TEXTILE MILLS, INCORPORATED, PETITIONER, VS. THE NATIONAL LABOR RELATIONS COMMISSION (THIRD DIVISION), AS PUBLIC RESPONDENT AND NESTOR J. NOLASCO, AS PRIVATE RESPONDENT, R...

G.R. No. 97977. January 18, 1994

Ponente: ROMERO, J.

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ROMERO, J.:

This petition for certiorari seeks to annul the decision of the National Labor Relations Commission dated September 14, 1990 affirming with modification the labor arbiter's decision of July 8, 1987, as well as public respondent's resolution dated March 15, 1991 denying petitioner's motion for reconsideration of the decision.

Nestor J. Nolasco was employed for seventeen (17) years as property custodian of Eastern Textile Mills, Inc. ("EASTEX" for brevity), a domestic corporation engaged in textile manufacturing with principal office at Barangay Malhacan, Meycauayan, Bulacan, receiving a monthly salary of P852.00 and a monthly living allowance of P320.00.

Sometime in 1982, EASTEX went on a "temporary shutdown" and in the process, laid off some of its employees. Shortly thereafter, the company suffered reverses and could not pay its indebtedness of \$5 million to its banks. By virtue of a writ of attachment dated October 25, 1982 issued by the Court of First Instance (now Regional Trial Court) of Manila, the company's assets were attached.

In mid-February 1983, Nolasco was ordered to stop working, the reason given being "temporary shutdown."

On September 26, 1983, EASTEX held a special meeting of its stockholders, during which a resolution was passed authorizing "the formation of a new corporation." This rehabilitation plan was approved by the Development Bank of the Philippines, with the stated condition that the P30 million initial paid-up capital as required by the plan for the new corporation be offered to its stockholders in proportion to their outstanding shares with EASTEX as of September 26, 1983.[1]

On March 20, 1984, the Securities and Exchange Commission issued SEC Registration No. 119736 to the new corporation named Lucky Textile Mills, Inc. ("LUCKY" for brevity). On April 26, 1984, the same firm was registered with the Bureau of Domestic Trade. As of June 30, 1984, EASTEX completely ceased operations. Beginning July 1, 1984, LUCKY agreed to "operate the former business" utilizing the assets of EASTEX foreclosed by DBP. At the resumption of operations, Nolasco was not hired by Lucky.

On November 16, 1984, Nolasco filed NLRC Case No. RAB-III-11-1948-84 in the Department of Labor and Employment against both corporations (Eastex and Lucky), alleging that since 1984, normal operations had been resumed but he was not given any notice to report back for duty, which amounted to his termination without cause.

On July 8, 1987, Labor Arbiter Vladimir P.L. Sampang rendered a decision in favor of Nolasco and against respondent corporations, ruling that Nolasco was not recalled by Lucky when it took over the operation of the foreclosed Eastex; that respondents were liable for his termination and must suffer the consequences of their act, having failed to comply with the one (1) month notice of termination and payment of separation pay as required by law. Respondents were ordered to jointly and severally pay complainant's separation pay equivalent to fifteen (15) days' salary for every year of service, a fraction of at least six (6) months' service considered as one (1) whole year.[2]

Not satisfied with the labor arbiter's decision, both parties appealed to the National Labor Relations Commission.

Nolasco alleged in his appeal that the award of benefits due him should not be limited to separation pay alone. On the other hand, respondents argued that the decision holding both of them jointly and severally liable to pay separation pay to Nolasco has no basis, constituting grave abuse of discretion, because in the case of Lucky Textile Mills, Inc., there was no employer-employee relationship with Nolasco, and in the case of Eastex, the reason for its closure was bankruptcy.

The NLRC delimited the issues to the following:

- whether or not respondent's corporate personalities could be pierced; and
- whether or not (a) complainant was illegally dismissed; (b) respondent's liability as to the award is joint and several.

On September 14, 1990, the Commission rendered a decision holding that there is a continuity of business between Eastex and Lucky Textile Mills, Inc., as the latter assumed the responsibilities and obligations of the former, and the liability is in solidum, since the veil of corporate fiction was used as a shield to perpetrate a fraud and/or confuse the legitimate issue, one corporation being merely a business conduit or alter ego of the other; and that the complainant was constructively dismissed when Eastex availed of the retrenchment measures afforded by law without complying with the requirements of one-month notice prior to the intended shutdown and payment of retrenchment benefits.[3] Thus, the Commission stated that:

"x x x the decision appealed from is hereby MODIFIED. Respondent Lucky Textile Mills, Inc. is hereby ordered to reinstate complainant to his former position without loss of seniority rights and to pay full backwages limited to three (3) years without qualification and deduction; or if reinstatement is no longer possible, to award complainant separation pay equivalent to one-half (1/2) month pay for every year of service, in lieu of reinstatement. A fraction of at least six (6) months shall be considered as one (1) whole year."[4]

On December 18, 1990, Lucky filed a motion for reconsideration of the decision, explaining that the matter in dispute had already been settled in the case of "Florencio Mangaran, et al. v. Eastern (Lucky) Textile Mills, Inc." [5] involving three (3) EASTEX employees who were not recalled to work by Lucky and were considered dismissed. In that case, the NLRC held that the lay-off was justified and Eastex was only liable to grant them separation pay in accordance with the Memorandum of Understanding reached between EASTEX/LUCKY and FFW/NAFLU (which represented the rank-and-file employees of Eastex) on July 18, 1984. When brought on certiorari to the Supreme Court in G.R. No. 86802, [6] the case was dismissed, absent any showing of grave abuse of discretion.[7]

On the same date (December 18, 1990), Lucky filed a Motion to Suspend Proceedings with the Arbitration Branch of San Fernando, Pampanga on the ground that they had filed a motion for reconsideration before the NLRC.

On February 28, 1991, the NLRC rendered a resolution denying the motion for reconsideration. It explained that

the Memorandum of Understanding cited in the Mangaran case was not presented or raised a quo in the instant case, even when that memo already existed at the time the Nolasco complaint was filed on November 16, 1984. In reiterating its decision, it held:

"It is very clear that Lucky Textile Mills, Inc. is a continuation and successor of the first entity, Eastern Textile Mills, Inc., and its emergence was skillfully timed and framed to avoid liability that was already attached to its predecessor, the Eastern Textile Mills, Inc. Worthy of note is the period or proximity of succession and continuity of the business; Eastern Textile Mills, Inc. agreed to operate the former's business on July 1, 1984.

It is therefore evident that the second corporation sought the protective shield of corporate fiction whose veil in the present case could and should be pierced as it was deliberately designed to evade its obligation to its employees.

From the foregoing, We find that respondents failed to comply with the requirement. There is no showing on record that complainant and the Department of Labor and Employment were duly notified of the intended shutdown at least one (1) month prior thereto. Hence, it is hardly credible that respondents adopted and availed of the retrenchment measures afforded it by law. Complainant in this case was merely ordered to stop working in the middle part of February 1983 and was not ordered to report back for work when respondent resumed its operation despite the fact that some of the workers were ordered and directed to report back for duty. In fact, respondent preferred to hire new employees. (*Italics ours*)

Thus, we find that herein complainant was constructively dismissed from his employment. As a consequence, he is entitled to reinstatement with back wages."^[8]

On April 3, 1991, Nolasco filed with the NLRC a motion for a writ of execution. Twelve days later, Lucky filed the instant petition for certiorari, praying for the nullification of the said NLRC decision of September 14, 1990 and the February 28, 1991 resolution denying the motion for reconsideration, and asking for the issuance of a temporary restraining order. The following day, April 16, 1991, it interposed its Opposition to the motion for issuance of a writ of execution because of the pending petition for certiorari.

Petitioner alleges that public respondent, in rendering the questioned decision, erred:

- in arbitrarily disregarding and failing to consider the fact that the matter in dispute had already been settled by the very same public respondent in the Florencio Mangaran, et al. v. NLRC case; and
- in ruling that the Memorandum of Understanding upon which the labor arbiter disposed of the Mangaran case had never been raised or even presented in the arbitral proceedings.

The petition is devoid of merit.

The following facts are undisputed: (1) that Nolasco was simply told to stop working in mid-February 1983, not terminated with prior notice, for a shutdown of company operations which was "merely temporary;" and (2) Eastern Textile Mills, Inc. completely ceased operations on June 30, 1984 and admittedly, Lucky Textile Mills, Inc. "resumed the operations of the factory," utilizing the assets of the former company on July 1, 1984, which was the following day.

More than six (6) months had elapsed from the time private respondent Nolasco was asked to stop working as property custodian in charge of Eastex's motor pool. Having worked faithfully for Eastex for seventeen years without any derogatory record, he waited patiently for an advice to return to work. When no notice reached him, putting him on a prolonged floating status, he was constrained to file the complaint for illegal dismissal in the Department of Labor. Applying Article 279 of the Labor Code, Nolasco, as a regular employee who enjoyed security of tenure, cannot be dismissed except for cause.^[9] Thus, he is entitled by law to the corresponding

benefits from his illegal separation.

The Memorandum of Understanding dated July 18, 1984 having already existed at the time private respondent's complaint was filed, petitioner could have easily presented said document but deliberately failed or omitted to do so. Besides, under that memorandum, although Lucky was not obliged to hire the rank-and-file employees of Eastex, the latter were paid separation benefits in the form of "financial assistance."

It is settled that when the bonafide suspension of operations of a business or undertaking exceeds six (6) months, then the worker's employment shall be deemed terminated. Indeed, Nolasco's "floating status" could not last for an unreasonable period. As it was established that he did not abandon his work, his dismissal without cause, without prior notice and hearing, was illegal.[10]

With respect to the second issue, the Mangaran case, where the pivotal basis for its decision was the Memorandum of Understanding, cannot be invoked in the case at bench as the same case had never been raised or presented in the arbitral proceedings nor in respondent's appeal. Its invocation now is unavailing and deserves scant consideration. Moreover, the facts, circumstances and issues in that case are not on all fours with the case at bar and the private respondent was neither privy nor signatory to the agreement mentioned.[11]

WHEREFORE, the assailed decision, being anchored on substantial evidence and rendered in accordance with law, is hereby **AFFIRMED**. The petition is **DISMISSED** for lack of merit.

SO ORDERED.

Feliciano, (Chairman), Bidin, Melo, and Vitug, JJ., concur.

[1] Secretary's Certificate, Records, p. 29.

[2] Annex "C" of petition, Rollo, pp. 30-43.

[3] Art. 283, Labor Code.

[4] Annex "A" of petition, Rollo, pp. 17-24.

[5] NLRC Case No. RAB-III-9-1864-84.

[6] Florencio Mangaran, et al. v. NLRC, January 8, 1990.

[7] Rollo, p. 58.

[8] Rollo, pp. 21-23.

[9] Pili v. National Labor Relations Commission, 217 SCRA 338; Art. 279 of the Labor Code which provides:

"Art. 279. Security of Tenure. - In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, 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."

[10] Lagniton v. NLRC, G.R. No. 86339, February 5, 1993, 218 SCRA 456; Agro-Commercial Security Services Agency, Inc. v. NLRC, 82823-24, July 31, 1989, 175 SCRA 790.

[11] Galicia v. Polo, G.R. No. 49668, November 14, 1989, 179 SCRA 371.

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