

COMSAVINGS BANK, PETITIONER, VS. THE HON. NATIONAL LABOR RELATIONS COMMISSION, THIRD DIVISION, HONORABLE LABOR ARBITER JOAQUIN S. TANODRA, IN HIS CAPACITY AS NLRC LABOR ARBITER,...

G.R. No. 98456. June 14, 1996

Ponente: TORRES, JR., J.

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TORRES, JR., J.:

As a remedy, certiorari is extra ordinem, it is out of the ordinary course, hence, it is a prerogative writ, "never issued except in the exercise of judicial discretion,[1] on a justiciable issue.

When may such "judicial discretion" be exercised?

This is the issue at bar.

Petitioner COMSAVINGS BANK comes to us by way of certiorari pursuant to Rule 65 of the Revised Rules of Court assailing the Resolution dated November 29, 1990 of the Third Division of the National Labor Relations Commission in RAB-IV-8-2525-88 entitled "Ricardo S. Portuguese, Osmundo L. Caparas, complainants-appellees - versus -COMSAVINGS BANK, respondent-appellant," the dispositive portion of which reads:[2]

"WHEREFORE, the decision appealed from is affirmed with modification as to award of moral damages which is hereby accordingly reduced to P100,000.00 for complainant Portuguese and P50,000.00 for complainant Caparas.

SO ORDERED"

The case at bar stemmed from the following antecedents:

Private respondents Ricardo S. Portuguese (Portuguez, for brevity) and Osmundo L. Caparas (Caparas, for brevity) were first employed by petitioner's predecessor-in-interest, Royal Savings Bank, sometime in 1971. Both respondents rose from the proverbial bottom. Respondent Portuguese started as utility clerk and promoted to bookkeeper, then Per-Pro and later to supervisor. In 1976, he was appointed Branch Manager of Gen. Trias Branch in Cavite. Respondent Caparas on the other hand, started as bookkeeper, then Acting Per-Pro[*] and he later became full Per-Pro in June 1, 1977.

On September 19, 1984, petitioner COMSAVINGS BANK acquired the assets of Royal Savings Bank "lock; stock and barrel". Private respondents Portuguese and Caparas were retained with official designation as Manager, job level S4 and Pro-Manager, job level S1, Gen. Trias Branch, respectively.

On May 2, 1988, Internal Auditors Jocelyn Aiim and Mafe M. Defensor found that the branch has a cash-in-vault (CIV) shortage of ten thousand (P 10,000.00) pesos representing an unposted withdrawal made by respondent Portuguese thru respondent Caparas on April 29, 1988.

On May 6, 1988, COMSAVINGS BANK Vice-President Conrado Oliveros sent a memorandum to respondent Portuguese requesting for an explanation why he made withdrawals directly from cash-in-vault and instructed the cash custodian to post the same on the following banking day[3] On the same date, respondent Caparas was directed to explain why he followed the order of his superior allowing withdrawal to be taken out directly from cash-in-vault in violation of existing policies and procedures.[4]

On May 9, 1988, respondent Portuguese submitted his explanation manifesting that it was an overnight transaction and his balance was sufficient enough to cover the withdrawals.[5]

On May 11, 1988, respondent Portuguese was directed to file comment within 24 hours on the allegations of respondent Caparas that, "(1) you instructed him not to debit the amount of P 10,000.00 from your savings account on April 29, 1988 not until your MBTC check which was returned and redeposited on April 29, 1988 was cleared; (2) you issued a post-dated MBTC check simultaneous with your signing of withdrawal slip and instructed him to post both the withdrawal and the check on May 2, 1988; and (3) you instructed him that anytime the auditors come, all shall be entered to prove that no money was lost and showed a balance transaction." [6] On May 12, 1988, respondent Portuguese filed his comment thereto.[7]

On July 4, 1988, the signing authorities of the respondents were suspended.[8]

On July 18, 1988, respondent Portuguese received his walking papers terminating his services for loss of confidence in view of the following violations, to wit:[9]

"(1) There was a temporary borrowing by the Manager (Mr. Portuguese) because the withdrawal from CIV was not posted outright to the savings deposit ledger of the depositor. It was not an overnight transaction as alleged because it was done prior to the cut-off time.

(2) There was an abuse of the privilege of overnight transactions on the part of the Manager. There was a deliberate effort to take advantage of our rules since it was being done weekly. Such attitude does not speak well of the moral scruples of an officer who is bound to protect the bank's interest, not to prejudice it.

(3) Negligence by the Manager in implementing basic internal control measures such as non-observance of dual control in the handling of key and cash safe combination by the Cash Custodian.

(4) It was also disclosed that Mr. Portuguese gave instructions that his outstanding time deposit with the branch shall not be subjected to withholding tax contrary to the provision of the National Internal Revenue Code.

(5) There was a violation of a policy constitutive of an acceptance of secondly endorsed checks in excess of approved limits."

On the other hand, the employment of respondent Caparas was terminated for loss of confidence due to the following violations, to wit:[10]

"1. Following instructions of Mr. Portuguese by allowing overnight transactions without informing higher authorities of such violation. Such transactions would not have been possible without your cooperation and authorization which is a clear disregard of the Bank's internal control measures. In your own handwriting executed on May 6, 1988, you have unequivocally and clearly admitted to management the commission of this particular violation on April 29, 1988 in which you indispensably cooperated.

2. Refusal to consent to a daily cash count of Cash-In-Vault.

3. Non-observance of dual control in handling the key and cash safe combination.

4. Administrative and professional incompetence."

Hence, on August 22, 1988, respondents filed separate complaints for "illegal dismissal with damages" docketed as NLRC Case No. RB-IV 8-2525-88 against petitioner before the National Labor Relations Commission (NLRC, for brevity), Region IV, Quezon City.[11]

On October 21, 1988, petitioner filed its position paper.[12]

On August 15, 1989, respondents filed their memorandum.[13]

On September 11, 1989, Labor Arbiter Joaquin A. Tanodra rendered a decision in favor of the respondents and against herein petitioner, the dispositive portion of which reads:[14]

"PREMISES CONSIDERED, WHEREFORE, judgment is hereby rendered as follows:

- 1) Directing the reinstatement of complainants Ricardo S. Portuguese and Osmimdo L. Caparas with full backwages and without loss of seniority rights and other privileges;
- 2) To pay, by way of moral damages, THREE HUNDRED THOUSAND (P300,000. 00) PESOS to complainant Portuguese and ONE HUNDRED THOUSAND (P 100,000.00) PESOS to complainant Caparas; and
- 3) To pay, by way of attorney's fees, ten percent of the monetary award hereto granted.

SO ORDERED."

Dissatisfied, petitioner filed an appeal before the Arbitration Branch of the NLRC.

On September 28, 1989, petitioner filed its Memorandum on appeal.[15]

On December 9, 1989, respondents filed their Opposition/Reply on the appeal.[16]

On November 29, 1990, the Third Division of the NLRC rendered the assailed decision affirming with modification the appealed judgment of the Labor Arbiter, the pertinent portion of which reads:[17]

"After a careful review of the records, We find no error in the questioned decision except as to the award of moral damages.

Rightly so, the transaction in question falls within the category of overnight transaction tolerable in the banking industry of which we find no reason why complainant Portuguese could not avail of, more so, as in obtaining circumstances of the case where said complainant was pressed for time to meet a prospective client of the bank x x x.

xxx xxx xxx

Equally important to note is the fact that the Ad Hoc Committee itself, on the alleged temporary use of bank funds which complainant can draw on weekends and still maintain his outstanding balance, admitted that they have no hard evidence to support. They merely relied on suspicion and speculation. (p. 163, Rollo, Report of Ad Hoc Committee).

It is further of interest to note that complainant Portuguese was cited by Assistant Vice-President Romulo M. Verata (sic) for attaining an increase of P2,754 (sic)[**] in making Gen. Trias Branch the second performer bankwide and from registering the highest growth with 68.8% for the period January 1987 to April 6, 1987. In like manner, complainant Caparas was recipient of appreciation Memo from Vice-President and General Manager Jose M. Damian, Jr. "for your having attended to your job and responsibility last Monday, November 14, 1977, inspite of the physical inconvenience that you had to go through. Such diligence and attention to duty is highly commendable and is worthy of emulation." These citations stand tall as proof of complainant's concern for the interest of the bank.

However, We find the award of moral damages to complainants excessive under the circumstances of the case vis-a-vis the extent of damages they suffered. Accordingly, they must be reduced. The amount of P 100,000.00 for complainant Portuguesez and P50,000.00 for complainant Caparas is reasonable and in order."

On January 11, 1991, petitioner filed a motion for reconsideration[18] to which an opposition was filed by the respondents on January 28, 1991.[19]

On April 15, 1991, the Third Division of the NLRC issued a resolution denying the motion for reconsideration.[20]

Hence, this petition for certiorari.

Petitioner contends that public respondents NLRC and Labor Arbiter Tanodra committed grave abuse of discretion tantamount to lack or excess of jurisdiction in ordering the reinstatement of respondents Portuguesez and Caparas in spite of the overwhelming and un rebutted evidence of dishonesty presented against them, contrary to law and settled jurisprudence. It is also alleged that there was a capricious and distorted appreciation of evidence in favor of the private respondents it appearing that respondent Caparas admitted that he was instructed by respondent Portuguesez to post his withdrawal after 3:00 p.m., a practice inimical and detrimental to the interest of the bank. Petitioner maintains that it is its prerogative to dismiss private respondents who are managerial employees for loss of trust and confidence.

It is beyond dispute that the law allows an employer to dismiss an employee on account of loss of confidence provided that the loss of confidence arises from particular proven facts.[21] The law does not require proof beyond reasonable doubt of the employee's misconduct to invoke such justification. It is sufficient that there is some basis for the loss of trust or that the employer has reasonable grounds to believe that the employee is responsible for the misconduct which renders him unworthy of the trust and confidence demanded of his position.[22] In the case at bar, private respondent Portuguesez was terminated by petitioner from service for allegedly causing prejudice to the bank by instructing co-respondent Caparas not to post his withdrawal of P 10,000.00 until 3:00 p.m. in order that the same be considered an overnight transaction. Petitioner insists that the aforesaid act of respondent Portuguesez cannot be considered as an overnight transaction because the same was done prior to the cut-off time. However, petitioner was unable to prove such allegation. In the assailed resolution dated November 29, 1990 of public respondent NLRC, it was noted:[23]

"Equally important to note is the fact that the Ad Hoc Committee itself, on the alleged temporary use of bank funds which complainant can draw on weekends and still maintain his outstanding balance, admitted that they have no hard evidence to support. They merely relied on suspicion and speculations (p. 163, Rollo, Report of the Ad Hoc Committee)."

Additionally, petitioner's reliance on the May 6 and May 9, 1988 letters[24] of respondent Caparas implicating co-respondent Portuguesez as the one who instructed him not to debit the latter's withdrawal is misplaced. In an affidavit dated July 11, 1988, respondent Caparas executed an affidavit recanting his previous statements.[25] As it is, between the unverified letters and an affidavit which was executed under oath, the latter is given more credence under the law.

As it appears on record, petitioner failed to prove that the dismissal of the private respondents was on account of loss of trust and confidence, hence, the dismissal was unjustified. Petitioner's prerogative to dismiss a managerial employee must not be exercised arbitrarily so as not to render the employee's constitutional right to security of tenure nugatory. Petitioner's assault on the alleged misappreciation of facts and distorted evaluation of evidence in favor of the private respondents stands on hollow ground. Resort to a judicial review of the decisions of the National Labor Relations Commission in a petition for certiorari under Rule 65 of the Revised Rules of Court is

confined only to issues of want or excess jurisdiction and grave abuse of discretion on the part of the rendering tribunal, board or office. It does not include an inquiry as to the correctness of the evaluation of evidence which was the basis of the labor official or officer in determining his conclusion. It is not for this Court to re-examine conflicting evidence, re-evaluate the credibility of the witnesses nor substitute the findings of fact of an administrative tribunal which has gained expertise in its specialized field. Considering that the findings of fact of the Labor Arbiter and the NLRC are supported by evidence on record, the same must be accorded due respect and finality.[26]

In synthesis, We are being asked by the petitioner to review the facts and the evidence in the instant case. Arguably, there may even be an error of judgment. This, however, is not the province of the extraordinary remedy of certiorari which is, as stated above, extra ordinem - beyond the ambit of appeal. In *Asian Construction and Development Corporation vs. Construction Industry Arbitration Commission, et al*, we ruled-

"The issues raised in the petition are mainly factual and there is no showing that the said issues have been resolved arbitrarily or without basis; on the contrary, the findings of the said Arbitration Commission are supported by evidence of record. Settled is the rule that in petitions for certiorari, as a mode of appeal, only questions of law distinctly set forth may be raised. Such questions have been defined as those that do not call for any examination of the probative value of the evidence presented by the parties." (G.R. No. 100149, Feb. 8, 1992)

Considering the foregoing premises, the instant petition cannot be given due course.

ACCORDINGLY, the instant petition for certiorari is hereby DISMISSED for lack of merit. Costs against the petitioner.

SO ORDERED.

Regalado (Chairman), Romero, Puno, and Mendoza, JJ., concur.

[1] *Nunal vs. Commission on Audit*, 169 SCRA 356.

[2] Resolution, Rollo, pp. 28-41.

[*] This is an old title given to the lowest officer, usually assigned as accountant or cashier. At present, this position is equivalent to Junior Assistant Manager.

[3] Memorandum to Ric Portuguese from Conrado Oliveros, dated May 6, 1988, Records, p. 9.

[4] Letter to Atty. Oliveros from Ric Portuguese, dated May 9, 1988, Records, p. 9.

[5] Memorandum to Mr. Caparas from Mr. Oliveros, May 6, 1988, Records, p. 31.

[6] Memorandum to Mr. Portuguese from Mr. Oliveros, May 11, 1988, Records, p. 11.

[7] Comment, Records, p. 12.

[8] Memorandum from Angel Roman, July 4, 1988, Records, p.13.

[9] Letter to Mr. Portuguese from Angel Roman, July 18, 1988, Records, pp. 14-15.

[10] Letter to Mr. Osmundo Caparas dated July 18, 1988, from Angel P. Roman, III, EVP, ComSavings Bank, Original Record, p. 35.

[11] Complaint, Rollo, pp. 1-6, 25-28.

- [12] Position Paper, Rollo, pp. 50-55.
- [13] Memorandum for complainants, Records, pp. 238-259.
- [14] Decision, Records, pp. 261-273.
- [15] Memorandum for respondent, Records, pp. 276-286.
- [16] Opposition, Records, pp. 297-310
- [17] Decision, Rollo, pp. 28-41.
- [**] This should read "P2.754 million" (Record, p. 8).
- [18] Motion, Rollo, pp. 341-357.
- [19] Opposition, Rollo, pp. 359-364.
- [20] Resolution, Rollo, pp. 366-367.
- [21] *Baguio Country Club vs. National Labor Relations Commission*, 213 SCRA 664, Sept. 4, 1992; *Ocean Terminal Services, Inc. vs. NLRC*, 197 SCRA 491, May 27, 1991.
- [22] *Ocean Terminal Services, Inc. vs. NLRC*, 197 SCRA 491, May 27, 1991.
- [23] Resolution, Rollo, pp. 28-41.
- [24] Letters to Mr. Garcia from Mr. Caparas and to Mr. Oliveros from Mr. Caparas, dated May 6, 1988 and May 9, 1988, Rollo, pp. 116-117.
- [25] Affidavit, Records, pp. 33-34.
- [26] *Sta. Fe Construction Co. vs. NLRC*, 230 SCRA 593, March 2, 1994; *Patna-anvs. NLRC*, 207 SCRA 106, March 6, 1992; *JKF Arrastre Services, Inc. vs. NLRC*, G.R. No. 105471, Jan. 12, 1994; *Candelaria vs. NLRC*, G.R. No. 106110-31, Jan. 26, 1993; *Family Planning Organization vs. NLRC*, 207 SCRA 415, March 23, 1992.

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