

LYSANDER P. GARCIA, PETITIONER, VS. MANILA TIMES/LA VANGUARDIA PUBLISHING INC. & NATIONAL LABOR RELATIONS COMMISSION (SECOND DIVISION), RESPONDENTS.

G.R. No. 99390. July 05, 1993

Ponente: QUIASON, J.

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QUIASON, J.:

This is a petition for certiorari under Rule 65 of the Rules of Court to modify the decision of the National Labor Relations Commission (NLRC), in NLRC NCR No. 00-09--03338-87, the dispositive portion of which reads as follows:

"WHEREFORE, all things considered, the appealed decision is hereby affirmed with modification in that the award of separation pay, backwages, moral and exemplary damages is deleted" (Rollo, p. 32).

The operative facts are summarized as follows:

On July 24, 1986, petitioner was hired as Special Editor of private respondent Manila Times, a daily newspaper published by private respondent La Vanguardia Publishing Inc. He was later made an Assistant News Editor.

From September 1 to September 13, 1987, petitioner had been tardy in reporting for work. Consequently, on September 15, 1987, the editor, Manuel Benitez, sent him a memorandum requiring him to explain within 24 hours why no disciplinary action should be taken against him.

On September 16, 1987, petitioner asked for a one-week extension to submit his reply, stating that his lawyers needed more time to prepare one. This request was denied on the same day by the managing editor, Wilfredo Baun.

On September 17, 1987, petitioner received from Benitez another memorandum, removing him from his editing work and assigning him to the task of monitoring the incoming copies from the wire services. The reason given for the reassignment was his refusal to follow the style of writing set down by Benitez.

On September 19, 1987, petitioner submitted a memorandum, which described Benitez' September 17 memorandum as baseless, presumptuous, arbitrary, abusive, unprofessional, and illegal.

On September 21, 1987, Benitez terminated petitioner's services due to insubordination.

On September 24, 1987, petitioner filed a complaint for illegal dismissal with the Labor Arbiter.

On April 13, 1989, the Labor Arbiter ruled that the dismissal of petitioner was illegal. However, instead of ordering his reinstatement, the Labor Arbiter merely ordered private respondents to pay petitioner P6,500.00 as separation pay, back wages at the rate of P6,500.00 a month from September 21, 1987 up to the finality of the decision, P4,300.00 as the proportionate 13th month pay for 1987, the sum of P70,000.00 as moral and exemplary damages, and attorneys' fees equivalent to 10% of the total award. The Labor Arbiter denied the claim for legal

holiday pay.

Not satisfied with the judgment, all the parties appealed the decision of the Labor Arbiter to the NLRC.

Petitioner questioned inter alia, the award of separation pay in lieu of an order for his reinstatement. Private respondents, on the other hand, assigned as errors the Labor Arbiter's finding that the dismissal was illegal and his being entitled to the award for separation pay, back wages, and damages.

In its decision rendered on March 1, 1991, the NLRC held that there was just cause for petitioner's dismissal and set aside the monetary awards given by the Labor Arbiter. The NLRC sustained the award of the sum of P4,300.00, representing the proportionate 13th month pay for the year 1987, and the dismissal of the claim for holiday pay.

Only petitioner questioned the decision of the NLRC.

The basic issue in this case is the legality of petitioner's dismissal from his employment.

In contesting the decision of the NLRC, petitioner argued that:

1. He was not guilty of insubordination; consequently, there was no just cause for his dismissal;
2. He was denied due process because he was not heard before his employment was terminated; and
3. Granting that he was guilty of insubordination, he should only be suspended in accordance with the Company's rules, which provided:

"VI. INSUBORDINATION

Rules and Regulations are promulgated to be complied with. Anybody who refuses to adhere to company policies is subject to the following disciplinary measures.

x x x x x x x x

1st offense - Three (3) days suspension without pay

2nd offense - One (1) week suspension without pay

3rd offense - Termination of employment

1. Failure to carry out verbal or written instructions issued by the supervisor.

1st offense - One (1) day without pay suspension

2nd offense - Three (3) days without pay suspension

3rd offense - One (1) week without pay suspension

4th offense - Termination of employment" (Petition, Annex "F"; Rollo p. 69).

In affirming the non-reinstatement of petitioner, the NLRC ruled:

"In Our opinion, there were two concurring acts committed by the complainant. The first one was committed on September 16, 1987, when the complainant refused, within 24 hours, to submit an explanation for his tardiness. The other one was committed on September 19, 1987, when the complainant issued the aforementioned disrespectful memorandum to his superior.

"The foregoing concurring acts of the complainant constitute disobedience and rank disrespect to his superior. In this jurisdiction, disobedience and discourtesy to a superior are acts of insubordination, pure and simple.

The dismissal therefore of the complainant on this account is justified. The same falls within the ambit of Article 282, paragraph (a) of the Labor Code which provides, thus:

"Art. 282. Termination by Employer. - An employer may terminate an employment for any of the following causes:

'(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;'" (Petition, Annex "A"; Rollo, p. 30).

Petitioner has not shown that the NLRC acted with grave abuse of discretion in rendering such a ruling. Such ruling is accorded not only respect but should be given the stamp of finality (*Lacorte v. Inciong*, 166 SCRA 1 [1988]).

The petitioner's claim, that under the company rules the maximum penalty that could be meted out to him is only suspension not dismissal, overlooks two things: (1) the fact that the company had reserved its right to modify the penalties provided in the company rules; and (2) the fact that his transgressions also constituted serious misconduct, which under Article 282 of the Labor Code, is one of the grounds for the termination of employment.

The company rules provide:

"The management reserves the right to review cases of employees to alter or modify any of the preceeding disciplinary measures depending on the gravity of the violation" (Rollo, p. 123).

Petitioner had been late in reporting for work for twelve (12) consecutive days, beginning September 1, 1987 until September 13, 1987. He was expected to be in the office at 4:00 P. M. but the earliest he reported for work was at 4:30 P.M. and the latest was at 7:30 P.M. Punctuality is demanded from him because of the deadlines to be met in "putting to bed" a daily newspaper. Petitioner did not even attempt to give any excuse for his tardiness. Obviously, he had none.

Petitioner also refused to follow the style of writing set down by the editor in several memoranda to the senior editors. As far as petitioner was concerned, those memoranda were merely the personal opinion of the editor on the English grammar.

The Labor Arbiter himself acknowledged the seriousness of the refusal of petitioner to follow the style prescribed by the editor, thus:

"x x x It cannot be over emphasized that, for a newspaper, writing style is not a matter to be trifled with. It is of the utmost importance and could even spell the difference between the success and early demise of the paper, x x x. Thus, to allow complainant to impose his own style preference over that laid down by the management cannot be countenanced. Management, therefore, had no other alternative but to stop complainant from editing newspaper copy as a measure of self-preservation. By itself, complainant's refusal to comply with these rules on style was sufficient to merit dismissal. xxx" (Petition, Annex "E"; Rollo, pp. 62-63).

Petitioner's memorandum dated September 19, 1987 dripped with scurrilous remarks and personal insults, which a subordinate with petitioner's position and education should not write to his superior. The Labor Arbiter ruled that said memorandum, although couched in abusive language, did not constitute insubordination. He, however, failed to consider it as a defiance by petitioner of his editor and a "serious misconduct," which is a ground for dismissal.

The discipline of employees is a management prerogative. If this prerogative is exercised in good faith for the advancement of the employer's interest and not for the purpose of defeating the rights of the employees granted by law or contract, then this Court will uphold it (*San Miguel Brewery Sales Force Union v. Ople*, 170 SCRA 25 [1989]; *Abbott Laboratories v. NLRC*, 154 SCRA 713 [1987]).

Petitioner was not denied due process when his employment was terminated on September 21, 1987. The administrative process for his discipline started on September 15, 1987 when he was served with a copy of the memorandum requiring him to explain within 24 hours why no action should be taken against him under the Company's Code of Conduct, for his tardiness on the 12 days specified therein. Petitioner never bothered to comment on this memorandum.

On September 17, 1987, petitioner was served another memorandum, informing him of his reassignment due to his "continued refusal to follow the style set down" by the editor.

His memorandum was a sufficient notice to petitioner of a new charge against him - that of insubordination. Petitioner therefore, was duly informed of the charges against him and was given the opportunity to be heard. In fact, he submitted his September 19 memorandum, which as adverted to before, was a ground by itself for his separation.

WHEREFORE, the petition is hereby DISMISSED. The questioned decision of public respondent NLRC is AFFIRMED.

SO ORDERED.

Griño-Aquino and Bellosillo, JJ., concur.

Cruz, J., (Chairman), no part, related to respondents counsel.

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