

WESTMONT PHARMACEUTICALS, INC., UNITED LABORATORIES, INC., AND/OR JOSE YAO CAMPOS, CARLOS EJERCITO, ERNESTO SALAZAR, ELIEZER SALAZAR, JOSE SOLIDUM, JR., PETITIONERS, VS. RICARDO...

G.R. NOS. 146653-54. February 20, 2006

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

Before us are consolidated petitions for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, filed by both contending parties assailing the Decision[1]dated January 8, 2001 and the Resolution[2]dated March 9, 2001 rendered by the Court of Appeals in CA-G.R. SP No. 60400.

The factual antecedents as borne by the records are:

On May 5, 1998, Ricardo C. Samaniego filed with the Office of the Labor Arbiter, Regional Arbitration Branch (RAB) No. II, Tuguegarao City, Cagayan, a complaint for illegal dismissal and damages against Westmont Pharmaceuticals, Inc. (Westmont) and United Laboratories, Inc. (Unilab), herein respondents. Also impleaded as respondents are Unilab's officers, Jose Yao Campos, Carlos Ejercito, Ernesto Salazar, Eliezer Salazar, and Jose Solidum, Jr.

The complaint alleges that Unilab initially hired Samaniego as Professional Service Representative of its marketing arm, Westmont. Later, Unilab promoted him as Senior Business Development Associate and assigned him in Isabela as Acting District Manager of Westmont and Chairman of Unilab Special Projects. In August 1995, he was transferred to Metro Manila pending investigation of his subordinate and physicians of Region II involved in a sales discount and Rx trade-off controversy. He was then placed under "floating status" and assigned to perform duties not connected with his position, like fetching at the airport physicians coming from the provinces; making deposits in banks; fetching field men and doing messengerial works. His transfer to Metro Manila resulted in the diminution of his salary as his per diem was reduced from P13,194.00 to P2,299.00 only.

On June 26, 1998, Westmont and Unilab filed a motion to dismiss Samaniego's complaint on the ground of improper venue and lack of cause of action. They argued that the complaint should have been filed with the National Labor Relations Commission (NLRC) in Manila, not with the Office of the Labor Arbiter in Tuguegarao City, Cagayan; and that the action should only be against Westmont, Samaniego's employer.

Samaniego filed an Opposition to the motion to which Westmont and Unilab filed a Reply.

On August 13, 1998, the Labor Arbiter denied the motion to dismiss, citing Section 1, Rule IV of the NLRC New Rules of Procedure. This provision allows the Labor Arbiter to order a change of venue in meritorious cases.

The Labor Arbiter then set the case for preliminary conference during which Westmont and Unilab expressly reserved their right to contest the order denying their motion to dismiss.

On September 3, 1998, Westmont and Unilab filed with the NLRC an Urgent Petition to Change or Transfer Venue. On the same date, they filed with the Office of the Labor Arbiter in Cagayan a Motion to Suspend Proceedings in view of the pendency of their petition for change or transfer of venue in the NLRC.

On September 8, 1998, the Labor Arbiter issued an Order directing the parties to submit their respective position papers and supporting documents within twenty (20) days from notice, after which the case shall be deemed submitted for decision.

On September 22, 1998, the NLRC, acting on the petition to change venue, directed the Labor Arbiter to forward to the NLRC the records of the case. The Labor Arbiter retained the complete duplicate original copies of the records and set the case for hearing. Westmont and Unilab repeatedly filed motions for cancellation of the scheduled dates of hearing on the ground that their petition for change of venue has remained unresolved. They did not file their position papers nor did they attend the hearing. Thus, the Labor Arbiter considered the case submitted for Decision based on the records and the evidence submitted by Samaniego.

On December 16, 1998, the Labor Arbiter rendered a Decision finding that Samaniego was “illegally and unjustly dismissed constructively” and ordering his reinstatement to his former position without loss of seniority rights and privileges; and payment of his full backwages from the date of his dismissal from the service up to the date of his actual reinstatement, as well as per diem differential, profit share, and actual, moral and exemplary damages, plus 10% attorney’s fees.

On January 21, 1999, Westmont and Unilab interposed an appeal to the NLRC. In its Resolution dated August 31, 1999, the NLRC dismissed the petition for change of venue, holding that when the cause of action arose, Samaniego’s workplace was in Isabela over which the Labor Arbiter in Cagayan has jurisdiction; and that the Labor Arbiter’s Decision is not appealable.

In the same Resolution, the NLRC declared the Labor Arbiter’s Decision null and void, finding that:

x x x the Executive Labor Arbiter below only allowed the transmittal of the official records of the instant case to the Commission. Throwing caution into the wind, he retained complete duplicate original copies of the same, conducted further proceedings and rendered his now contested Decision despite the pendency of the appeal-treated Urgent Petition for Change of Venue.

As a consequence, respondents-appellants were deprived of their opportunity to be heard and defend themselves on the issues raised in the instant case. They were therefore denied of their right to due process of law in violation of Section 1, Article III of the Constitution which provides: “No person shall be deprived of his....property without due process of law.”

The dispositive portion of the NLRC Resolution reads:

WHEREFORE, premises considered, the main Appeal and Motion to Quash are hereby PARTIALLY GRANTED and the appeal-treated Petition for Change of Venue DISMISSED for lack of jurisdiction and/or merit. Accordingly, the Decision appealed from is declared NULL and VOID and the Order appealed from SUSTAINED insofar as the denial of the Motion to Dismiss is concerned. The entire records of the instant case are DIRECTED to be immediately remanded to the Executive Labor Arbiter of origin for immediate conduct of further proceeding. The respondents-appellants are DIRECTED to pay complainant-appellee the amount of Two Hundred Thirty Thousand Seven Hundred Twenty Pesos and Thirty Centavos (P230,720.30) representing his salary from January 1, 1999 to August 31, 1999, the date of issuance of this Resolution less any salary collected by him by way of execution pending appeal.

SO ORDERED.

The parties separately filed their motions for reconsideration but were both denied by the NLRC in its Resolution dated June 27, 2000.

On January 8, 2001, the Court of Appeals, acting on the parties' petitions for certiorari, rendered its Decision setting aside the NLRC Resolutions and affirming with modification the Labor Arbiter's Decision in the sense that the award of moral damages was reduced from P5,000,000.00 to P500,000.00; and the exemplary damages from P1,000,000.00 to P300,000.00, thus:

x x x

While this Court concurs with the ruling of the Executive Labor Arbiter that there was constructive dismissal committed against Ricardo Samaniego, this Court finds the award on moral and exemplary damages unconscionable.

x x x

WHEREFORE, the NLRC's resolutions dated August 31, 1999 and June 27, 2000 are hereby SET ASIDE. The decision of the Executive Labor Arbiter dated December 16, 1998 is REINSTATED and AFFIRMED in all respect except with the following modification: the moral and exemplary damages are reduced to P500,000.00 and P300,000.00, respectively.

SO ORDERED.

Hence, these consolidated petitions for review on certiorari filed by the opposing parties.

In their petition, Westmont and Unilab allege that the Court of Appeals erred in denying their motion to dismiss by reason of improper venue and in sustaining the Labor Arbiter's Decision declaring that Samaniego was constructively dismissed; and that they were denied due process.

For his part, Samaniego maintains that the Court of Appeals did not err in its ruling. However, he claims that the Appellate Court should not have reduced the Labor Arbiter's award for moral and exemplary damages.

The petition to change or transfer venue filed by Westmont and Unilab with the NLRC is not the proper remedy to assail the Labor Arbiter's Order denying their motion to dismiss. Such Order is merely interlocutory, hence, not appealable. Section 3, Rule V of the Rules of Procedure of the NLRC, as amended, provides:

SECTION 3. Motion to Dismiss. On or before the date set for the conference, the respondent may file a motion to dismiss. Any motion to dismiss on the ground of lack of jurisdiction, improper venue, or that the cause of action is barred by prior judgment, prescription or forum shopping, shall be immediately resolved by the Labor Arbiter by a written order. An order denying the motion to dismiss or suspending its resolution until the final determination of the case is not appealable.

In *Indiana Aerospace University v. Commission on Higher Education*,^[3] we held:

An order denying a motion to dismiss is interlocutory, and so the proper remedy in such a case is to appeal after a decision has been rendered.

Assuming that the petition to change or transfer venue is the proper remedy, still we find that the Court of Appeals did not err in sustaining the Labor Arbiter's Order denying the motion to dismiss.

Section 1(a), Rule IV of the NLRC Rules of Procedure, as amended, provides:

SECTION 1. Venue. – (a) All cases which Labor Arbiters have authority to hear and decide may be filed in the Regional Arbitration Branch having jurisdiction over the workplace of the complainant/petitioner.

For purposes of venue, workplace shall be understood as the place or locality where the employee is regularly assigned when the cause of action arose. It shall include the place where the employee is supposed to report back after a temporary detail, assignment or travel. In the case of field employees, as well as ambulant or itinerant workers, their workplace is where they are regularly assigned, or where they are supposed to regularly receive their salaries/wages or work instructions from and report the results of their assignment to, their employers.

In *Sulpicio Lines, Inc. v. NLRC*,^[4] we held:

The question of venue essentially relates to the trial and touches more upon the convenience of the parties, rather than upon the substance and merits of the case. Our permissive rules underlying provisions on venue are intended to assure convenience for the plaintiff and his witnesses and to promote the ends of justice. This axiom all the more finds applicability in cases involving labor and management because of the principle, paramount in our jurisdiction, that the State shall afford full protection to labor.

x x x

This provision is obviously permissive, for the said section uses the word "may," allowing a different venue when the interests of substantial justice demand a different one. In any case, as stated earlier, the Constitutional protection accorded to labor is a paramount and compelling factor, provided the venue chosen is not altogether oppressive to the employer.

Here, it is undisputed that Samaniego's regular place of assignment was in Isabela when he was transferred to Metro Manila or when the cause of action arose. Clearly, the Appellate Court was correct in affirming the Labor Arbiter's finding that the proper venue is in the RAB No. II at Tuguegarao City, Cagayan.

On the contention of Westmont and Unilab that they were denied due process, well settled is the rule that the essence of due process is simply an opportunity to be heard or, as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of. The requirement of due process in labor cases before a Labor Arbiter is satisfied when the parties are given the opportunity to submit their position papers to which they are supposed to attach all the supporting documents or documentary evidence that would prove their respective claims, in the event the Labor Arbiter determines that no formal hearing would be conducted or that such hearing was not necessary.^[5]

As shown by the records, the Labor Arbiter gave Westmont and Unilab, not only once, but thrice, the opportunity to submit their position papers and supporting affidavits and documents. But they were obstinate. Clearly, they were not denied their right to due process.

The ultimate issue for our resolution is whether the Court of Appeals erred in holding that Samaniego was constructively dismissed by Westmont and Unilab.

To recapitulate, Samaniego claims that upon his reassignment and/or transfer to Metro Manila, he was placed on "floating status" and directed to perform functions not related to his position. For their part, Westmont and Unilab explain that his transfer is based on a sound business judgment, a management prerogative.

In constructive dismissal, the employer has the burden of proving that the transfer of an employee is for just and valid grounds, such as genuine business necessity. The employer must be able to show that the transfer is not unreasonable, inconvenient, or prejudicial to the employee. It must not involve a demotion in rank or a diminution of salary and other benefits. If the employer cannot overcome this burden of proof, the employee's transfer shall be tantamount to unlawful constructive dismissal.^[6]

Westmont and Unilab failed to discharge this burden. Samaniego was unceremoniously transferred from Isabela

to Metro Manila. We hold that such transfer is economically and emotionally burdensome on his part. He was constrained to maintain two residences – one for himself in Metro Manila, and the other for his family in Tuguegarao City, Cagayan. Worse, immediately after his transfer to Metro Manila, he was placed “on floating status” and was demoted in rank, performing functions no longer supervisory in nature.

There may also be constructive dismissal if an act of clear insensibility or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment.[7] This was what happened to Samaniego. Thus, he is entitled to reinstatement without loss of seniority rights, full backwages, inclusive of allowances, and other benefits or their monetary equivalent, computed from the time his compensation was withheld from him up to the time of his actual reinstatement.[8]

However, the circumstances obtaining in this case do not warrant the reinstatement of Samaniego. Antagonism caused a severe strain in the relationship between him and his employer. A more equitable disposition would be an award of separation pay equivalent to at least one month pay, or one month pay for every year of service, whichever is higher (with a fraction of at least six [6] months being considered as one [1] whole year),[9] in addition to his full backwages, allowances and other benefits.[10]

Records show that Samaniego was employed from October 1982 to May 27, 1998,[11] or for sixteen (16) years and seven (7) months, with a monthly salary of P25,000.00. Hence, he is entitled to a separation pay of P425,000.00.

WHEREFORE, the assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 60400 and CA-G.R. SP No. 60478 are AFFIRMED, with MODIFICATION in the sense that Westmont and Unilab are ordered to pay Samaniego his separation pay equivalent to P425,000.00, plus his full backwages, and other privileges and benefits, or their monetary equivalent, from the time of his dismissal up to his supposed actual reinstatement. The award for moral and exemplary damages is deleted.

Costs against Westmont and Unilab.

SO ORDERED.

Puno, (Chairman), Azcuna and Garcia, JJ., concur.

Corona, J., on leave

[1] Penned by Justice Eugenio S. Labitoria and concurred in by Justice Eloy R. Bello, Jr. and Justice Perlita J. Tria Tirona (all retired), Annex “A,” Petition for Review (in G.R. Nos. 146653-54), Rollo, pp. 60-74.

[2] Annex “D,” id., p. 60.

[3] G.R. No. 139371, April 4, 2001, 356 SCRA 367, citing *Carandang v. Cabatuando*, 53 SCRA 383, 390 (1973); *Philippine Rabbit v. Galanan*, 118 SCRA 664, 667 (1982); and *De Vera v. Pineda*, 213 SCRA 434, 442 (1992).

[4] G.R. No. 117650, March 7, 1996, 254 SCRA 506.

[5] *Mariveles Shipyard Corp. v. Court of Appeals*, G.R. No. 144134, November 11, 2003, 415 SCRA 573.

[6] *Globe Telecom, Inc. v. Florendo-Flores*, G.R. No. 150092, September 27, 2002, 390 SCRA 201, 213.

[7] *Hyatt Taxi Services, Inc. v. Catino*, G.R. No. 143204, June 26, 2001, 359 SCRA 686.

[8] *Grandspan Development Corporation v. Bernardo*, G.R. No. 141464, September 21, 2005, p.13, see Article 279, Labor Code, as amended by Section 34, R.A. 6715; citing *Bolinao Security and Investigation Service, Inc. v.*

Toston, G.R. No. 139135, January 29, 2004, p.11; Cebu Marine Beach Resort v. NLRC, G.R. No. 143252, October 20, 2003; and Damasco v. NLRC, 346 SCRA 714 (2000).

[9] Ibid., citing Bolinao Security and Investigation Service, Inc. v. Toston, *ibid.*, Jardine Davies, Inc. v. NLRC, 311 SCRA 289 (1999) and Lopez v. NLRC, 297 SCRA 508 (1998).

[10] Ibid., citing Cebu Marine Beach Resort v. NLRC, *id.*, Samarca v. Arc-Men Industries, Inc., G.R. No. 146118, October 8, 2003 and Philippine Tobacco Flue-Curing and Redrying Corp. v. NLRC, *et al.*, 300 SCRA 37 (1998).

[11] On May 27, 1998, Westmont sent Samaniego a notice terminating his services for serious misconduct and breach of trust amounting to loss of confidence.

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