

**PNOC DEVELOPMENT AND MANAGEMENT CORPORATION (PDMC)
PETITIONER, VS. GLORIA V. GOMEZ, RESPONDENT.***G.R. Nos. 220526-27. July 29, 2019*

Ponente: REYES, J. JR., J.

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Loss of trust and confidence, be it a principal or an analogous ground for dismissal, is not justified if it exists in vacuum. As a just cause, it requires an underlying act, deed or conduct from which a reasonable belief of untrustworthiness might be inferred. Without it, dismissals undertaken on such mere belief are arbitrary and will be outlawed. Such is the Court's resolve in this petition.

This Petition for Review[1] assails the Consolidated Decision[2] dated December 22, 2014, issued by the Court of Appeals (CA) in CA-G.R. SP Nos. 119971 and 120276, as well as the August 11, 2015 Resolution[3] in said cases denying reconsideration. The challenged decision resolved the twin petitions for certiorari each filed by respondent Gloria V. Gomez (Gomez) and the petitioner PNOC Development and Management Corporation (PDMC) from the January 31, 2011 Resolution[4] of the National Labor Relations Commission (NLRC) affirming the Labor Arbiter's September 30, 2005 Decision[5] in a case for illegal dismissal, non-payment of wages and other money claims.

The Facts

Gomez is a lawyer who used to work as Legal Manager of Petron Corporation (Petron) and availed of early retirement on April 30, 1994 when the company was privatized. On May 1, 1994, she was appointed by Filoil Refinery Corporation (Filoil) as its Corporate Secretary and Legal Counsel with the rank, compensation and benefits she used to enjoy in Petron. Filoil's privatization was then underway, hence, to facilitate the transition, its Board of Directors (Board) appointed Gomez as Administrator of a special task-force comprised of former employees of Petron who retained their respective ranks, compensation, benefits, and privileges.[6]

In the course of her administration, Gomez found several unrecorded corporate assets. Hence, the Board deferred the privatization pending assets accounting and inventory. In the meantime, Filoil was reorganized and renamed to PNOC Development and Management Corporation and, as a result, the task-force was abolished and its members were given termination notices on March 5, 1996.[7] Gomez continued to serve as corporate secretary of PDMC in the interim. On September 23, 1996, she, as credit to her service in the defunct task-force, was appointed as Administrator and Legal Counsel of the company. Gomez was due to retire on August 11, 1998. However, then incumbent PDMC president Simeon Ventura extended her term as Administrator effective until August 11, 2004.[8]

In the meantime, a new Board of Directors took over, which, on March 29, 1999, removed Gomez from her post as corporate secretary. In a succeeding board meeting, the new set of directors also questioned Gomez's continued employment as Administrator. While Gomez presented the appointment letter signed by Ventura, the Board, based on the advice of its legal department, expressed the view that the term extension in the appointment letter

was ultra vires – this, because Gomez's position was functionally that of a vice-president or general manager whose extension of term should have been made with the Board's approval and in accordance with the by-laws. The Board believed that Gomez's de facto tenure could be validly terminated.[9]

Sought for opinion on the matter, the Office of the Government Corporate Counsel intimated to the Board that while indeed the latter did not approve the creation of the position of Administrator, Gomez's incumbency therein since 1994 was deemed ratified by inaction; however, with respect to the extension of her term beyond retirement age, the same would have been valid had it been approved by the Board. Addressing this opinion, Gomez argued that she was a corporate officer owing to her position as corporate secretary, but that she became a regular managerial employee when she was named as Administrator whose appointment as such – both original and for the extended term – was within the authority of the former president and did not need prior Board approval.[10]

While the matter was pending before the Board, Gomez's salary between November 16 and 30, 1999, was withheld. Thus, on December 8, 1999, she filed a complaint for non-payment of wages, damages and attorney's fees before the Labor Arbiter. She later amended the complaint to include other money claims as well. On December 29, 1999, the Board resolved to terminate her services retroactive to the date of her supposed retirement. This development led to yet another amendment in the complaint to include the charge of illegal dismissal.[11]

At the initial stage of the proceedings, the Labor Arbiter, on motion of PDMC, had dismissed the complaint for lack of jurisdiction based on the notion that the case involves an intra-corporate dispute falling under the competence of the Securities and Exchange Commission. In its November 22, 2002 Decision, the NLRC reversed the Labor Arbiter and directed the remand of the case for further proceedings. At that point, as the merits were being heard for the first time, PDMC brought its jurisdictional objection before the CA[12] and eventually found its way to this Court in a petition docketed as G.R. No. 174044.[13] In our November 27, 2009 Decision in said case which had already attained finality, we affirmed that Gomez, in her capacity as PDMC Administrator, was indeed a regular managerial employee whose objection to her termination is properly and exclusively cognizable by the labor tribunal.

The Ruling of the Labor Arbiter

In the meantime, on September 30, 2005, the Labor Arbiter issued a Decision[14] finding Gomez to have been illegally dismissed, disposing as follows:

WHEREFORE, all the foregoing premises being considered, judgment is hereby rendered ordering the respondent company to pay complainant as follows:

1)

P7,930,849.50 as backwages;

2)

P225,161.55 as unpaid salaries;

3)

P660,904.12 (P7,930,849.50 divided by 12 months), as 13th month pay; and

4)

Ten percent (10)% of the total judgment award as and for attorney's fees.

Further, respondents are ordered to pay complainant all other benefits, privileges, or their monetary equivalent which the respondent company normally pays to regular employees as part of her backwages.

SO ORDERED.[15]

The Ruling of the NLRC

On appeal, the NLRC affirmed in toto the findings and conclusion of the Labor Arbiter in a Resolution[16] dated January 31, 2011. It explained that as a consequence of Gomez's illegal dismissal, she was thereby entitled to full backwages and all benefits which the company regularly pays to its employees. As to moral and exemplary damages, it found no justification therefor in the absence of showing that the dismissal was accompanied by bad faith, oppression, immorality or fraud, or that the same was carried out in a wanton and malevolent manner. This, because the Board's action to terminate Gomez was done in an honest belief that her occupancy of the position of administrator was in a de facto capacity.[17] It disposed of the appeal as follows:

WHEREFORE, premises considered, the appeal interposed by both parties are disposed for lack of merit.

The assailed decision dated September 30, 2005 issued by the Honorable Labor Arbiter Jose G. De Vera is hereby AFFIRMED in toto.

SO ORDERED.[18]

PDMC and Gomez separately moved for reconsideration, but their motions were denied in a March 31, 2011 Resolution.[19] Hence, they filed for certiorari with the CA.[20]

The Ruling of the Court of Appeals

Finding illegal dismissal, the CA dismissed PDMC's petition for failure to prove a misconduct on the part of Gomez as basis for the claim of loss of trust and confidence.[21] Partly granting Gomez's petition, it affirmed in all respects the NLRC's award of backwages, unpaid salaries, 13th month pay, and all other customary benefits and privileges, but declined to award moral and exemplary damages. In addition, it directed the payment of retirement benefits accruing to Gomez as well as attorney's fees, and imposed a 6% interest per annum on all these awards.[22] The dispositive portion of the decision reads:

WHEREFORE, premises considered, the petition in CA-G.R. SP No. 120276 is DISMISSED, while the petition in CA-GR. SP No. 119971 is PARTLY GRANTED. The Resolutions dated January 31, 2011 and March 31, 2011, respectively issued by the National Labor Relations Commission (NLRC) in NLRC LAC No. 024978-00(8) NLRC NCR CN 30-12-00856-99 are REVERSED and SET ASIDE. The Labor Arbiter Decision dated September 30, 2005 is hereby MODIFIED as follows:

1.

Respondent [PDMC] is hereby ordered to pay Petitioner Atty. Gloria Gomez:

a)

P7,930,849.50 as backwages computed from January 3, 2000 up to August 11, 2004;

b)

P225,161.55 as unpaid salaries computed from November 16, 1999 up to January 3, 2000;

c)

P660,904.12 (P7,930,849.50 divided by 12 months), as 13th month pay;

d)

All other benefits, privileges or their monetary equivalent which the respondent company normally pays to its regular employees as part of her backwages; and

e)

Legal interest at the rate of 6% per annum of the total amount of backwages, unpaid salaries, 13th month pay and other benefits and privileges, computed from January 3, 2000 until full satisfaction;

2)

Retirement benefits accruing to Petitioner Atty. Gloria Gomez from August 11, 2004, plus legal interest at the rate of 6% per annum computed from August 11, 2004 until full satisfaction; and

3)

Ten percent (10%) of the total judgment award as and for attorney's fees, plus legal interest at the rate of 6% per annum computed from the date of finality of this decision until full satisfaction.

SO ORDERED.[23]

Aggrieved, PDMC is now seeking recourse to this Court.

The Issues

PDMC still insists on the validity of Gomez's dismissal, and assigns the following error:

A. THE CA GRAVELY ERRED WHEN IT DISMISSED PDMC'S PETITION IN CA-G.R. SP [NO.] 120276, [IN SPITE] OF CLEAR SHOWING THAT THERE IS VALID AND ANALOGOUS GROUNDS FOR TERMINATION OF ATTY. GOMEZ'[S] SERVICES

B. THE CA GRAVELY ERRED WHEN IT PARTLY GRANTED ATTY. GOMEZ'S PETITION, NOTWITHSTANDING THE FACT THAT THERE IS NO BASIS IN GRANTING ADDITIONAL BENEFITS, LEGAL INTEREST and ATTORNEY[']S FEES.[24]

The Ruling of the Court

It bears to stress at the outset that Gomez, as Administrator of PDMC, is a regular managerial employee whose appointment as such, both original and for the term beyond the age of retirement, does not require prior Board approval and, therefore, valid and incontestable. That matter has already been finally settled by the Court in G.R. No. 174044.[25] Hence, we now only resolve the question of whether or not Gomez's separation from office was valid and, if in the negative, forthwith determine whether she is entitled to monetary awards sanctioned under labor laws.

PDMC claims that Gomez was terminated based on loss of trust and confidence and on causes analogous thereto, under paragraphs (c) and (d), Article 282[26] of the Labor Code. It explains that Gomez's position requires a high degree of trust and confidence in exercising general supervision over the staff, in running the affairs and operations of the company, and in handling the budget and contracts as well as the execution and payment of insurance premiums pertaining to the firm. That Gomez's appointment for an extended term beyond her retirement and for a term longer than she had rendered service to the company prior to it, was, according to PDMC, highly suspect and was made only to tie the hands of the new management especially considering that the appointment letter was issued only weeks before the new Board took office. Based on these circumstances, it offers the notion that Gomez may no longer be trusted to discharge the duties of her office under the new leadership.[27]

Gomez decries her termination, simply, as unjustified. She laments the arbitrariness in finding basis for her dismissal, and points out that PDMC, since the inception of these proceedings, has not shown substantial evidence to support its claim of loss of trust and confidence. Also, she stands by the favorable ruling with respect to the monetary awards.[28]

Verily, termination of employment by an employer for just causes under Article 282 of the Labor Code implies that the employee concerned has committed, or is guilty of, some violation against the employer – be it misconduct, neglect of duty, breach of trust, or a crime or offense committed against the employer or his family or representatives. Thus, it can be said that when the employee's dismissal is based on any of these just causes, it is the employee himself that initiated the dismissal process[29] by giving a just cause therefor.

The rules in the application of loss of trust and confidence as a just cause for termination vary between fiduciary rank-and-file employees and managerial employees. *Bravo v. Urios College*[30] explains –

[W]ith respect to rank-and-file personnel, loss of trust and confidence as ground for valid dismissal requires proof of involvement in the alleged events in question, and that mere uncorroborated assertions and accusations by the employer will not be sufficient. But, as regards a managerial employee, mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal. Hence, in the case of managerial employees, proof beyond reasonable doubt is not required, it being sufficient that there is some basis for such loss of confidence, such as when the employer has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein renders him unworthy of the trust and confidence demanded by his position.[31]

Thus, unlike fiduciary rank-and-file employees such as auditors, cashiers and others routinely handling significant amounts of money or property,[32] a managerial employee against whom an allegation of loss of trust is made may be validly dismissed on a mere belief that he has breached the employer's trust and confidence. However, such belief must nevertheless have an objective basis, such as an underlying act on the part of the employee concerned – either a misconduct or a participation therein – that causes the employer's trust and confidence in him to wane.[33]

As claimed by Gomez with validation by the Court of Appeals, PDMC has not at any time given substantial proof to its theory. Aside from its reiterative argument that Gomez could hardly be trusted by management owing to the circumstances of her appointment, PDMC did not offer proof, much less made a definite allegation, of any misconduct, deed, or act from which we might adjudge by legal and jurisprudential yardstick whether her continued employment would be truly detrimental to the management of the corporation as claimed.

At this juncture, we surmise that the only positive act attributable to Gomez which appears to have animated PDMC's complaint from the beginning is the fact that she had merely accepted her extended appointment and entered into the functions of her office immediately thereafter. Yet for the Court to validate on that basis alone, the claim of loss of trust and confidence – either as a principal ground for termination or as an analogous cause – would be too far a stretch, hence, arbitrary and illegal.

Jurisprudence is replete with guidelines on citing loss of trust and confidence as ground for termination. *Bravo*,[34] to reiterate, requires the employer to not only demonstrate that the employee concerned is holding a position of trust, but also prove the existence of an act justifying the supposed loss of trust and confidence. *PJ Lhuillier, Inc. vs. Camacho*[35] declares that there should be proof of involvement in the events in question, and that mere uncorroborated assertion and accusation by the employer will not suffice.[36] *Wesleyan University-Philippines v. Reyes*[37] citing *General Bank & Trust Company v. Court of Appeals*, [38] warns that it may not be used as a subterfuge for causes which are improper, illegal, or unjustified, nor arbitrarily asserted in the face of overwhelming evidence to the contrary. More importantly, its assertion as a ground for termination

must be genuine, and not a mere afterthought to justify an earlier action taken in bad faith.[39] Indeed, this ground must be employed with much caution, lest it be open to abuse in curtailment of rights to security of tenure.

We now proceed with the consequences of Gomez's illegal dismissal.

First, ordinarily, an illegally dismissed employee is entitled to two distinct reliefs: backwages and reinstatement. Backwages are generally granted – and rightly in this case – on the ground of equity, as a form of relief that restores the income lost by reason of the unlawful dismissal, and intended to restore the earnings that, would have accrued to the dismissed employee during the period of dismissal until it is determined that the termination of employment is for a just cause.[40] However, with respect to reinstatement, the CA correctly ruled out its possibility in the instant case because Gomez's appointment was effective only until August 11, 2004, which is also why all accruing backwages were pegged only until that date.[41]

Second, separation pay is awarded when the cause for termination is not attributable to the employee's fault, as well as in cases of illegal dismissal where reinstatement is no longer feasible.[42] Here, while reinstatement is indeed not feasible for the reason that the term of Gomez's extended appointment has already ended, still, separation pay is not viable on logical considerations: that its purpose of providing wherewithal during the period of finding a new employment,[43] does not avail in the case of Gomez who, in the interim, could hardly be expected to look around for new employment in view of her retirement. In this regard, it is, thus, logical also for the CA to direct the payment of retirement benefits still accruing in her favor by the end of her extended term on August 11, 2004.

Lastly, we do not object to the grant of attorney's fees to Gomez inasmuch as she was impelled to litigate her case to protect her rights and interests,[44] and, indeed, for a protracted period of time. For this same consideration – and because Gomez has lived her years being deprived of the fruits of her labor and of her retirement for as long as this labor case has dragged on – we find to be in order the imposition of interest on all these money awards at the rate of 6% per annum, consistent with the complementary rulings in *Eastern Shipping Lines, Inc. v. Court of Appeals*[45] and *Nacar v. Gallery Frames* [46]

WHEREFORE, the petition filed by PNOC Development and Management Corporation in G.R. Nos. 220526-27 is hereby DENIED. The Decision of the Court of Appeals dated December 22, 2014 and its Resolution dated August 11, 2015 in CA-GR. SP Nos. 119971 and 120276 are AFFIRMED.

SO ORDERED.

Carpio,(Chairperson), Perlas-Bernabe, Caguioa, and Lazaro-Javier, JJ., concur.

[1] RULES OF COURT, Rule 45.

[2] Penned by Associate Justice Ramon A. Cruz, with Associate Justices Hakim S. Abdulwahid and Romeo F. Barza, concurring; rollo, pp. 47-69.

[3] Signed by the same Division, with Associate Justice Normandie B. Pizzaro replacing Associate Justice Hakim S. Abdulwahid; id. at 71-72.

[4] Signed by Commissioner Gregorio O. Bilog, III, with Presiding Commissioner Alex A. Lopez and Commissioner Pablo C. Espiritu, Jr., concurring; id. at 136-145.

[5] Signed by Labor Arbiter Jose G. De Vera; id. at 79-84.

[6] Rollo, p. 49.

[7] With proper notice to the Department of Labor and Employment.

[8] Rollo, pp. 49-50.

[9] Id. at 50.

[10] Id. at 50.

[11] Id. at 50-51.

[12] Id. at 51-52.

[13] 621 Phil. 173 (2009).

[14] Rollo, pp. 79-84.

[15] Id. at 83-84.

[16] Id. at 136-145.

[17] Id. at 142-244.

[18] Id. at 144-145.

[19] Id. at 181-182.

[20] Respectively docketed as 120276 and 119971.

[21] Id. at 61.

[22] Id. at 59-66.

[23] Id. at 66-67.

[24] Id. at 22.

[25] Having been initially hired by the company president in 1994 as administrator, then in 1996 as administrator/legal counsel, and finally in 1998 for an extended term as such – and in all cases, without the necessity of Board approval as is otherwise required for regular corporate officers – Gomez has also been consistently treated by management as an ordinary employee who enjoyed the same benefits and privileges available to other employees.

[26] 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;

(b)

Gross and habitual neglect by the employee of his duties;

(c)

Fraud or willful breach by the employee of the trust reposed in him by the employer or duly authorized representative;

(d)

Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and

(e)

Other causes analogous to the foregoing.

[27] Rollo, pp. 23-25.

[28] *Id.* at 332-342.

[29] Duka, *Labor Laws and Social Legislations*, 2008, p. 719.

[30] 810 Phil. 603 (2017), citing *Caoile v. National Labor Relations Commission*, 359 Phil. 399 (1998).

[31] *Id.* at 621-622.

[32] *PJ Lhuillier, Inc. v. Camacho*, 806 Phil 413, 426 (2017).

[33] See *Bravo v. Urios College*, *supra* note 30, at 620-622 and *PJ Lhuillier, Inc. v. Camacho*, *supra* note 32 at 425-426.

[34] *Bravo v. Urios College*, *id.* at 621.

[35] *PJ Lhuillier, Inc. v. Camacho*, *supra* note 32, at 428.

[36] *Id.*

[37] 740 Phil. 297, 311 (2014).

[38] 220 Phil. 243, 252 (1985).

[39] *Id.*

[40] *Advan Motor, Inc. v. Veneracion*, G.R. No. 190944, December 13, 2017, citing *Tomas Claudio Memorial College, Inc. v. Court of Appeals*, 461 Phil. 541, 554-555 (2004).

[41] Rollo, pp. 63-65.

[42] *Claudia's Kitchen, Inc. v. Tanguin*, 811 Phil. 784, 796-797 (2017).

[43] *Rasonable v. NLRC*, 324 Phil 191, 199 (1996).

[44] *Tangga-an v. Philippine Transmarine Carriers, Inc.*, 706 Phil. 339, 353 (2013).

[45] 304 Phil. 236, 253-254 (1994).

[46] 716 Phil. 267, 280-281 (2013). The rules on legal interest in Eastern Shipping have, however, been recently modified by Nacar in accordance with Bangko Sentral ng Pilipinas Monetary Board (BSP-MB) Circular No. 799, which became effective on July 1, 2013. Pertinently, it amended the rate of legal interest in judgments from 12% to 6% [per annum], with the qualification that the new rate be applied prospectively. Thus, the 12% [per annum] legal interest in judgments under Eastern Shipping shall apply only until June 30, 2013, and the new rate of 6% [per annum] shall be applied from July 1, 2013 onwards. *Lim v. HMR Philippines, Inc.*, 740 Phil 353, 380 (2014).

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