

THIRD DIVISION

[G.R. No. 247428, February 17, 2021]

JERRY E. ALMOGERA, JR., PETITIONER, VS. A & L FISHPOND AND HATCHERY, INC. AND AUGUSTO TYCANGCO, RESPONDENTS.

DECISION

DELOS SANTOS, J.:

Before this Court is a Petition for Review on *Certiorari*^[1] under Rule 45 of the Rules of Court assailing the Decision^[2] dated November 12, 2018 and the Resolution^[3] dated May 21, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 155442.

The Facts

Respondent A & L Fishpond and Hatchery, Inc. (A & L) is a corporation engaged in the business of breeding, production, and distribution of different kinds of aquatic products, operating in *Barangay* Sampaloc, Apalit, Pampanga. Respondent Augusto Tycangco (Tycangco) is A & L's owner and proprietor (collectively, respondents).^[4]

In October 2013, petitioner Jerry E. Almogera, Jr. (petitioner) was hired by A & L as an all-around harvester with a daily wage of P318.00. Petitioner alleged that sometime on January 5, 2017, he verbally sought permission from his immediate supervisor, Manuel Cruzada (Cruzada), to take a leave of absence for 11 days beginning January 6, 2017 until January 16, 2017 as he had to attend to a family emergency in Naga. According to petitioner, his immediate supervisor signified his approval on the request and committed to relay the same to higher management. Thereafter, petitioner left the workplace and went to Naga.^[5]

On January 25, 2017, upon reporting for work, petitioner received a letter from A & L requiring him to explain within five days why he should not be terminated for his absences without official leave covering the period January 6 to 16, 2017 pursuant to its Code of Discipline. On that same day, petitioner was also placed under preventive suspension for the period January 25 to 29, 2017. Petitioner opted not to submit any explanation. Subsequently, a formal advice of termination was served on petitioner informing him of his dismissal from employment effective January 30, 2017, for violation of A & L's Code of Discipline.^[6]

Aggrieved, petitioner filed a Complaint^[7] for illegal dismissal and underpayment/non-payment of salaries, overtime pay, holiday pay, rest day premium pay, service incentive leave pay, and separation pay, with claims for moral and exemplary damages, and attorney's fees, against respondents before the National Labor Relations Commission (NLRC)-Regional Arbitration, Branch No. III, San Fernando, Pampanga.

Petitioner contended that his dismissal was illegal and for which reason, he is entitled to his entire monetary claim.^[8] Respondents countered that petitioner's dismissal was valid considering that A & L observed substantive and procedural due process before he was terminated. They added that petitioner never submitted an explanation for his absences, whether written or verbal.^[9]

Ruling of the Labor Arbiter

On August 24, 2017, the Labor Arbiter (LA) rendered a Decision^[10] in favor of petitioner. The LA ruled that petitioner was illegally dismissed for respondents' failure to prove that he was furnished with a copy of the Code of Discipline or its contents made known to him at the time of his employment to be binding upon him; that petitioner was not underpaid of his wages; that petitioner failed to provide the particulars regarding his claims for overtime pay, holiday pay and rest day premium; and that petitioner is entitled to service incentive leave pay because respondents failed to prove payment thereof. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, complainant is found to have been illegally dismissed even as respondents are held liable therefor.

Consequently, respondent corporation is hereby ordered to pay complainant's full backwages from the time of his illegal dismissal until the finality of this decision, initially computed at this time at Php72,635.96.

Respondent corporation is likewise ordered to pay complainant's separation pay of Php33,072.00, and a service incentive leave pay of Php4,770.00.

All other claims are hereby dismissed for lack of merit.

SO ORDERED.^[11]

Respondents appealed to the NLRC imputing error on the part of the LA in ruling that petitioner was illegally terminated and adjudging respondents liable for backwages, separation pay and service incentive leave pay.

Ruling of the NLRC

In a Decision^[12] dated December 29, 2017, the NLRC reversed and set aside the LA's Decision, except with respect to the award of service incentive leave pay. It ruled that petitioner was validly dismissed for a just cause, for violation of a reasonable company rule and regulation duly made known to him at the time of his employment. His failure to comply with the requirements of vacation leave as he never accomplished and filed the required Vacation Leave Form which made him on Absence Without Official Leave (AWOL) during the 11 days he did not report for work, according to it, justified his dismissal. Moreover, it found that petitioner was accorded due process as he was given an opportunity to be heard and to defend himself, but he chose to ignore and did not submit his explanation. The NLRC disposed of the case as follows:

WHEREFORE, respondents' appeal is PARTLY GRANTED. The 24 August 2017-Decision is MODIFIED by DECLARING complainant as having been validly dismissed and REVERSING AND SETTING ASIDE the awards of backwages and separation pay.

The rest of the Decision is AFFIRMED.

SO ORDERED.^[13]

His motion for reconsideration having been denied, the petitioner filed a petition for *certiorari* before the CA.

Ruling of the CA

In its assailed Decision^[14] dated November 12, 2018, the CA upheld the NLRC's findings that petitioner was validly dismissed for cause by A & L for being on AWOL for 11 days. It found support to the NLRC's ruling that petitioner's failure to comply with the company rules and regulations on the application for vacation leaves amounted to willful disobedience which is a just cause for termination of employment.

On the procedural aspect, the CA noted that it has been established that A & L had given petitioner the requisite notices, first notice which informed him of his infraction and gave him reasonable opportunity to explain; not having received any response from him, issued the second notice of termination. As such, the CA concluded that petitioner was deemed to have admitted his guilt for the infraction, and that the prescribed penalty was rightly imposed.^[15]

The CA, thus, disposed:

WHEREFORE, the foregoing considered, the instant Petition is DENIED. The Decision dated 29 December 2017 and Resolution dated 31 January 2018 in NLRC LAC No. 11-003613-17 are SUSTAINED.

SO ORDERED.^[16]

Dissatisfied, petitioner filed his motion for reconsideration, but the same was denied in the assailed CA's Resolution^[17] dated May 21, 2019.

This prompted petitioner to file this Petition for Review on *Certiorari* anchored on the following:

Issues

I

WHETHER THE [CA GRAVELY] ERRED IN AFFIRMING THE RULING OF THE NLRC, FINDING THAT THE PETITIONER WAS NOT ILLEGALLY DISMISSED FROM WORK, AND THEREFORE, NOT ENTITLED TO ANY OF HIS MONETARY CLAIMS.

II

WHETHER THE [CA] GRAVELY ERRED IN AFFIRMING THE RULING OF THE NLRC SETTING ASIDE THE MONETARY AWARD GIVEN BY THE [LA].^[18]

Petitioner argues that the CA committed a reversible error in denying the petition for *certiorari* filed by petitioner, which, if not corrected, will cause injustice and irreparable damage to him. He reiterates his claim of illegal dismissal from work. He vehemently denies that his absences were without official leave. He insists that he had sought authority from his immediate supervisor, Cruzada who approved his request and even committed to relay the same to the management. Thus, according to him, he cannot be faulted when he relied upon Cruzada's express approval. Petitioner further maintains that the authenticated copy of A & L's rules and regulations on leave application requirement, relied upon by respondents was not presented as evidence. There was also no proof that the said company policy was even communicated to him. As a consequence, he cannot be said to have committed a violation of such policy. Even assuming that the acts imputed to him constitute just causes for termination, petitioner argues that the imposition upon him of the penalty of dismissal is too harsh. Lastly, petitioner contends that he is entitled to his entire monetary claims.^[19]

Respondents in their Comment,^[20] assert that the petition must be denied as it failed to raise questions of law, but merely raises questions of facts already threshed out during the trial before the LA and appeal before the NLRC. They additionally submit that petitioner merely rehashed his previous arguments which have already been passed upon and found unmeritorious by the NLRC and the CA. Respondents maintain that the NLRC and the CA acted in accordance with law and jurisprudence in declaring that petitioner was validly dismissed from work.

The Court's Ruling

The Petition has no merit.

At the outset, it should be stressed that the determination of whether petitioner was illegally dismissed from employment requires this Court to re-examine the facts and weigh the evidence on record, which is normally a task that is not for this Court to perform, for basic is the rule that the Court is not a trier of facts and this rule applies with greater force in labor cases. Questions of fact are for the labor tribunals to resolve. It is elementary that the scope of this Court's judicial review under Rule 45 of the Rules of Court is confined only to errors of law and does not extend to questions of fact. This case, however, falls under one of the recognized exceptions to the rule, that is, when the findings of the LA conflict with those of the NLRC and the CA.^[21] Here, as the findings of the LA, on the one hand, and those of the NLRC and the CA, on the other hand, are conflicting, the Court finds sufficient basis to look into the issue of the validity of petitioner's dismissal.

Petitioner was validly dismissed.

It is settled that for a dismissal to be valid, the rule is that the employer must comply with both substantive and procedural due process requirements. Substantive due process requires that the dismissal must be pursuant to either a just or an authorized cause under Articles 297, 298, or 299 (formerly Articles 282, 283, and

284) of the Labor Code. Procedural due process, on the other hand, mandates that the employer must observe the twin requirements of notice and hearing before a dismissal can be effected.^[22] Thus, to determine the validity of petitioner's dismissal, there is a need to discuss whether there was indeed a just cause for his termination.

In termination cases, the burden of proof to show that the dismissal was for a valid or authorized cause rests upon the employer.^[23] The failure of the employer to discharge this burden of proof would necessarily mean that the dismissal was illegal.^[24] Based on the assessment of the attending facts, however, the Court finds that this burden has been discharged by respondents.

A & L, like any other employers, in managing its business may promulgate policies, rules, and regulations on work-related activities of its employees. This includes the implementation of company rules and regulations and the imposition of disciplinary measures on its workers.^[25] On the matter of vacation leave applications of its workers, A & L's policies and regulations (A & L rules) specifically provide, viz.:

II. WORK SCHEDULE

x x x x

3. All personnel who will go on Vacation Leave (VL) should fill up a VL Form in two (2) copies at least five (5) days before his leave. The VL form should be approved by the Supervisor prior to the intended leave.

x x x x

VIOLATION OF ANY OF THE STATED POLICIES AND REGULATION WILL BE DEALT ACCORDINGLY AS PER THE COMPANY CODE OF DISCIPLINE WHICH IS HEREWITH ATTACHED.^[26]

Section I of the Code of Discipline^[27] clearly states the violations and corresponding penalties with regards to the attendance and punctuality of all personnel, thus:

CODE OF DISCIPLINE

I. ATTENDANCE

		PENALTY		
		1st	2nd	3rd
x x x	x x x	x x x	x x x	x x x
7	1/2 day to 2 days AWOL	3 days suspension	1 week suspension	dismissal
	3 to 4 days AWOL	1 week suspension	dismissal	
	5 or more days AWOL	Dismissal		

It should be recalled that petitioner failed to report for work on January 6 to 16, 2017 without prior approved leave of absence. Such act respondents considered as