

SECOND DIVISION

[G.R. No. 219059, February 12, 2020]

GAUDIOSO ISO, JR. AND JOEL TOLENTINO PETITIONERS, VS. SALCON POWER CORPORATION (NOW SPC POWER CORPORATION) AND DENNIS VILLAREAL, RESPONDENTS.

D E C I S I O N

INTING, J.:

Before the Court is a Petition for Review on *Certiorari* under Rule 45^[1] of the Rules of Court seeking to set aside the Decision^[2] dated October 9, 2013 and the Resolution^[3] dated May 13, 2015 of the Court of Appeals (CA) in CA-G.R. CEB-SP Nos. 02781 and 06429.

The Antecedents

As briefly summarized by the CA, the antecedents of the two consolidated cases are as follows:

In **CA-G.R. CEB-SP No. 02781**, Gaudioso Iso, Jr., together with his fellow petitioners,^[4] challenge the October 11, 2006 Decision of the National Labor Relations Commission (NLRC), Cebu City, in NLRC Case No. V-000562-2006, RAB Case No. VII-01-0132-2006 and its March 6, 2007 Resolution denying their Motion for Reconsideration. However, on June 10, 2009, William J. Yap, Allan A. Balugo, Glenn E. Comendador, Mario S. Amaya, Josefino U. Cuchara, Wilson M. Pogoy, Felix C. Cabigon, Zosimo A. Abao, Efrenilo N. Garcia, Oscar G. Cañete, Eduardo T. Roble and Mariano Y. Blanco, Jr. entered into a Compromise Agreement with [respondent] SPC Power Corporation (formerly Salcon Power Corporation). Thereafter, on June 11, 2010, the rest of the petitioners also executed a Compromise Agreement with [respondent]. Thus, on April 25, 2012, this Court rendered a Decision approving said Compromise Agreements and dismissing the instant Petition. On May 30, 2012, petitioner Iso filed his Motion for Reconsideration arguing that the dismissal of the case should not affect him as he was not a signatory to any of the Compromise Agreements. In response, the [respondent] stressed, in its Comment dated August 28, 2012, that the Compromise Agreements do not concern the validly dismissed petitioner as his monetary claims are directly connected or intertwined with his continued employment with the company. On July 24, 2013, petitioner Iso filed his Reply asserting that since his case for illegal dismissal [*i.e.*, CA-G.R. CEB-SP No. 06429] is still pending with this Court, it is premature to render his claims moot as there is a possibility that his dismissal would be

declared illegal, thus entitling him to the benefits he claims.

In **CA-G.R. CEB-SP No. 06429**, petitioner Gaudioso Iso, Jr. and Joel Tolentino allege that they are the union officers of Salcon Power Independent Union (SPIU). They assert that since [respondent] refused to recognize their union, they filed a petition for certification election. On March 2007, a certification election was conducted wherein SPIU won as the employees' collective bargaining agent. On September 2007, the SPIU submitted a Collective Bargaining Agreement (CBA) proposal to [respondent]. However, [respondent] refused to submit a counterproposal. It also refused to bargain with SPIU pending its appeal with the Bureau of Labor Relations (BLR) concerning the cancellation of SPIU's union registration. On March 24, 2008, the BLR dismissed [respondent's] appeal. Thereafter, SPIU filed a notice of strike on the ground of [respondent's] refusal to bargain. On March 2, 2008, respondent gave in and agreed to bargain collectively with SPIU.

Petitioners aver that [respondent's] petition for cancellation of SPIU's union registration was a plot to remove them from the union. Likewise, petitioners assert that [respondent's] petition to purge and automatically remove supervisory employees from SPIU was filed for the same sinister purpose. Hence, SPIU decided to call a press conference on May 27, 2009. [Respondent] alleges that during the press conference, petitioners and Dr. Giovanni Tapang uttered false and malicious accusations against it. Worse, their statements were published in a newspaper of general circulation in the Visayas. Consequently, on July 27, 2009, [respondent] filed a criminal complaint for libel against petitioners and Dr. Tapang. Moreover, [respondent] filed a civil case for damages against them. On February 3, 2010, [respondent] issued show-cause notices to the petitioners, informing them that they are charged with serious misconduct, dishonesty, breach of trust and serious disobedience. Thereafter, hearings were conducted. On April 5, 2010, the petitioners were found guilty of the charges against them, which then prompted their dismissal from service. Aggrieved, the petitioners filed a complaint for illegal dismissal.^[5]

No amicable settlement was reached before the Labor Arbiter (LA). Hence, the parties were ordered to submit their position papers. Thereafter, the LA rendered a Decision^[6] dated December 28, 2010 finding that Gaudioso B. Iso, Jr. (Iso) and Joel Tolentino (Tolentino) (collectively, petitioners) were not illegally dismissed and that there was substantial evidence to support their dismissal. The LA found that petitioners committed serious misconduct when they made malicious imputations against Salcon Power Corporation, now SPC Power Corporation (respondent SPC), which are totally unrelated to their collective bargaining negotiation efforts.^[7] The alleged malicious statements are contained in the news item authored by Elias O. Baquero (Baquero) of Sun Star Cebu entitled "*Group calls for audit on Salcon for 'refund'*"^[8] dated May 29, 2009, viz.:

A CAUSE-ORIENTED group urged the government to audit SPC Power Corp. in Naga, Cebu to validate its claim that the power firm must refund consumers P738 million in excess payments that it received from the National Power Corp. (NPC).

Dr. Giovanni Tapang, chairman of Samahan ng Nagtataguyod ng Agham at Teknolohiya para sa Sambayanan (Agham) said Cebuano power consumers have been overcharged.

Tapang and Gaudioso Iso Jr., president of Salcon Power Independent Union (SPIU), called a press conference to announce that the SPC Power Corp. has profited roughly P738 million in the past 15 years. The NPC got the amount from increased rates, they said.

Tapang and Iso said this is the reason they are supporting the call of Fr. Francisco "Paking" Silva for the Department of Energy (DOE) and the Energy Regulatory Commission (ERC) to jointly conduct an external audit on SPC Power, formerly Salcon Power.

Forum

Silva, in a DOE forum early this month, said an external audit will inform the government and the public about the situation of the Naga Power Plant Complex, which has two thermal plants, two gas turbines and six diesel plants.

Silva urged the DOE and ERC to review the contract between the SPC Power and NPC to protect the interest of the public.

In explaining how they came up with the figure, Iso and SPIU Secretary Joel Tolentino said NPC has paid SPC Power an amount equivalent to the salaries of 354 employees for 15 years already. But there are only 190 employees hired by SPC Power, or a difference of 164 employees.

At an average of P25,000 a month in salary per employee, the amount would reach P4.1 million a month. For 15 years, that means a total of P738 million which should be returned to the power consumers.

They said the P738 million is on the labor side only. If there is an external audit, it will be known that the SPC Power's "silent profit" could reach billions of pesos in terms of purchases of coal and other fuel products needed by the plant.

Profits

The SPIU leaders alleged that SPC Power raked in profits at the expense of the government because they only manage the plant without spending money for its operations.

"They (SPC Power) are paid by the NPC for the 354 employees, of which

they only absorbed and hired 190. The NPC supplied the fuel and still paid SPC Power the capacity and energy fees," Iso said.

Iso and Tolentino said this may be the reason SPC Power was able to buy NPC diesel plants in Bohol and Panay for US\$5.9 million.^[9]

To the LA, petitioners were validly terminated for uttering libelous statements against respondent SPC and not because of their union activities.

Unsatisfied with the LA's Decision, petitioners appealed to the National Labor Relations Commission (NLRC). However, the NLRC, in its Decision^[10] dated June 24, 2011, affirmed *in toto* the Decision of the LA. The NLRC found petitioners guilty of serious misconduct and breach of trust under items (a) and (c) of Article 282 (now Article 297)^[11] of the Labor Code.

Petitioners moved for reconsideration,^[12] but the motion was denied in the NLRC's Resolution^[13] dated August 31, 2011.

Aggrieved, petitioners filed a Petition for *Certiorari*^[14] with the CA.

The CA's Ruling

Before the CA, the issue raised in CA-G.R. CEB-SP No. 06429 was whether or not the NLRC, in affirming the Decision of the LA that petitioners were validly dismissed, acted with grave abuse of discretion amounting to lack or excess of jurisdiction. The determination of such issue was crucial in resolving the issue in CA-G.R. CEB-SP No. 02781 which concerned the monetary claims of petitioner Iso that were directly connected with his continued employment with the company.

On October 9, 2013, the CA rendered the herein assailed Decision,^[15] the dispositive portion of which reads:

WHEREFORE, premises considered, this Court renders the following judgment in the Petitions at bar:

- 1) In CA-G.R. CEB-SP No. 02781, the Court DENIES petitioner Gaudioso Iso, Jr.'s Motion for Reconsideration of Our April 25, 2012 Decision.
- 2) In CA-G.R. CEB-SP No. 06429, the Court DENIES the Petition for *Certiorari* of Gaudioso Iso, Jr. and Joel Tolentino for lack of merit. It AFFIRMS the assailed June 24, 2011 Decision of the public respondent NLRC and its August 31, 2011 Resolution. Costs on petitioners.

SO ORDERED.^[16]

The CA found that the findings of fact of the LA and the NLRC, with respect to the dismissal of petitioners for just causes, are fully supported by the evidence on record.^[17] It ruled that petitioners' evidence utterly failed to repudiate the fact that they uttered libelous statements against respondent SPC during the press conference that they called.^[18] It also noted that even the assistant city prosecutor found probable cause to indict petitioners for the crime of libel,^[19] and such finding was affirmed by Judge Elmo M. Alameda of Branch 150, Regional Trial Court, Makati City, as evidenced by the Order^[20] dated January 28, 2010 for the issuance of a warrant of arrest against petitioners.^[21] Hence, the CA found proper the NLRC's affirmance of the validity of petitioners' dismissal.^[22]

The CA rejected petitioners' contention that their dismissal was not commensurate to the infraction they committed.^[23] Citing *Torreda v. Toshiba Information Equipment (Phils.), Inc., et al.*,^[24] the CA held that libel is an act constituting serious misconduct which warrants dismissal from employment.^[25] The CA thus considered the dismissal of petitioners as a valid exercise of respondent SPC's management prerogative.^[26]

Consequently, the CA declared that the NLRC did not commit grave abuse of discretion in rendering its Decision which was based on factual and legal grounds and was not borne out of a whimsical exercise of judgment.^[27] As regards Iso's claims under CA-G.R. CEB-SP No. 02781, the CA ruled that these have become moot. Since Iso's monetary claims are contingent upon his continued employment with respondent SPC, the CA held that the valid termination of his employment has barred him from demanding the benefits purportedly due him.^[28]

Petitioners moved for reconsideration, but the CA denied the motion for lack of merit in its assailed Resolution^[29] dated May 13, 2015.

Hence, this petition.

Petitioners contend that on account of the length of service that they have devoted to the company plus the fact that respondent SPC failed to cite any specific damage it suffered for their alleged derogatory acts, the CA should have ruled that they are entitled to a penalty lesser than the supreme penalty of dismissal from service.^[30] They insist that they are rank-and-file employees to whom the rule on proportionate penalty should be applied.^[31]

Petitioners also point out that the instant case arose at the height of the heated collective bargaining negotiations between SPIU and respondent SPC.^[32] In the course of the negotiations, respondent SPC claimed that the demand for equal pay made by SPIU is baseless and SPIU was confusing and misleading the public with dishonest statements. As this claim of respondent SPC appeared in local papers, Iso and Tolentino, as president and secretary of SPIU, respectively, felt that it was their duty to shed clarification on the matter and to clarify to the public that their demand was reasonable and within the capacity of the company. Hence, they called a press conference. However, in the present petition, they deny having uttered libelous statements during the scheduled press conference; and granting that they did, they