

## SECOND DIVISION

[ G.R. No. 226240, March 06, 2019 ]

**MYRA M. MORAL, PETITIONER, V. MOMENTUM PROPERTIES  
MANAGEMENT CORPORATION, RESPONDENT.**

### D E C I S I O N

**CARPIO, J.:**

#### The Case

For resolution is a petition for review on certiorari dated 23 September 2016 filed by Myra M. Moral (petitioner) assailing the Decision<sup>[1]</sup> dated 22 March 2016 and the Resolution<sup>[2]</sup> dated 19 July 2016 of the Court of Appeals in CA-G.R. SP No. 138704.

#### The Facts

On 5 March 2014, petitioner filed a Complaint<sup>[3]</sup> for illegal dismissal against her employer, Momentum Properties Management Corporation (respondent) and/or its Chief Executive Officer, Steve Li (Li), before the National Capital Region (NCR) Arbitration Branch of the National Labor Relations Commission (NLRC).

In her Position Paper, petitioner alleged that, on 26 June 2013, respondent hired her as a probationary employee, with her designation being that of a Leasing Assistant. She worked eight hours a day from 9:00 a.m. to 6:00 p.m. Six months after her employment, specifically on 27 December 2013, she was informed of her dismissal and was advised to no longer report for work. According to petitioner, upon inquiring the reason for her dismissal, respondent coldly ignored her query and thereafter, no longer contacted her. She contended that respondent failed to provide any notice or justifiable cause as to why her employment was being severed. Because of respondent's failure to comply with both substantive and procedural due process requirements, as mandated by law, petitioner alleged that she was illegally dismissed.<sup>[4]</sup>

In its defense, respondent denied the illegal dismissal allegation of petitioner. Respondent acknowledged, however, that petitioner was hired by it as a probationary employee, particularly as a Leasing Assistant. Petitioner's probationary employment with respondent was for a period of six months, as indicated by the former's Employment Agreement with the latter. Petitioner was assigned by respondent to Solemare Parksuites, a condominium building in Bradco Avenue, Parañaque City, to render clerical and secretarial services necessary in the leasing operations of the building. As a Leasing Assistant, petitioner was required to report primarily at the project site in Parañaque City, under the supervision of the Leasing Manager, Elizabeth Tungol (Tungol).<sup>[5]</sup>

According to respondent, in line with the provisions of their Employment Agreement, petitioner was subjected to the respondent's evaluation procedure on the fifth

month of her employment. Hence, sometime in November 2013, petitioner's over-all performance and capacity to meet the demands of her work were assessed by her immediate superiors.<sup>[6]</sup>

On 29 November 2013, petitioner was likewise asked to report to respondent's head office in Makati City to take the Verbal, Non-Verbal, and Numerical Examinations which were administered by the Human Resources (HR) Department. Petitioner garnered below average (BA) scores in the aforesaid tests, rendering her qualifications for regularization doubtful under HR Standards. In addition, petitioner's over-all performance and capacity to meet the demands of her work were assessed by her immediate superior, Tungol. Based on respondent's set criteria for quantitative and qualitative performance and developmental assessment, Tungol's findings indicated that petitioner failed to satisfactorily meet the level of performance expected from her position.<sup>[7]</sup>

According to respondent, petitioner's over-all rating indicated a BA score, which made her unqualified for regularization purposes. Hence, in accordance with standard procedure, the HR and Administration Manager, Annie Ocampo (Ocampo), directed Tungol to advise petitioner to report to the head office, for the purpose of discussing her poor evaluation scores. Unfortunately, petitioner disregarded the aforesaid request.<sup>[8]</sup> Thereafter, Tungol was instructed to talk to petitioner about possibly extending her employment contract and improving her performance, during such an extension period. Unexpectedly, however, petitioner no longer reported for work as of 27 December 2013. In line with standard procedure, on 7 January 2014, Ocampo prepared a Notice of Absence without Official Leave (NAWOL) requiring petitioner to submit a written explanation as to why her employment should not be considered terminated due to her absence within five days from receipt thereof. Petitioner was likewise invited to the head office for a meeting with Ocampo.<sup>[9]</sup>

Respondent averred that, on 13 January 2014, as it awaited petitioner's response to various invitations for her to report to the head office, petitioner filed a Request for Assistance (RFA) before the NCR Arbitration Branch of the NLRC.<sup>[10]</sup> After conciliation and mediation efforts between petitioner and respondent failed, they submitted their respective Position Papers, Replies, and Rejoinders. Thereafter, the case was submitted for resolution.<sup>[11]</sup>

### **The Ruling of the Labor Arbiter**

On 31 July 2014, the Labor Arbiter rendered a Decision<sup>[12]</sup> in favor of petitioner. The dispositive portion of the Decision of the Labor Arbiter dated 31 July 2014 provides:

WHEREFORE, judgment is hereby rendered declaring that the Complainant was illegally dismissed. Consequently, Respondent MOMENTUM PROPERTIES MANAGEMENT CORP. is hereby ordered to pay the Complainant the following:

1. P124,280[.00] as her backwages;
2. P16,000.00 as her separation pay;
3. P20,000.00 as moral damages;
4. P20,000.00 as exemplary damages; and
5. Ten percent of the total monetary award or the amount of P18,028.00 as attorney's fees.

All other claims are dismissed for lack of merit.

SO ORDERED.<sup>[13]</sup>

The Labor Arbiter found the allegation of respondent that petitioner was guilty of abandonment untenable. It emphasized that, in order for there to be abandonment, which is a just ground for dismissal, there must be a deliberate and unjustified refusal on the part of the employee to resume employment. It held that mere absence or failure to report for work, after a notice of return is given to such employee, is not enough to amount to abandonment. Hence, it held that petitioner was illegally dismissed by respondent.<sup>[14]</sup>

The Labor Arbiter noted that, because petitioner was illegally dismissed, it naturally follows that she would be entitled to reinstatement with the payment of backwages. However, because her relationship with respondent had already become strained, the Labor Arbiter ruled that separation pay of one month for every year of service, in lieu of reinstatement, was more proper. Hence, petitioner was awarded separation pay in addition to the payment of backwages. Petitioner was further awarded moral and exemplary damages and attorney's fees. With respect to the grant of moral and exemplary damages, the Labor Arbiter ruled that there was bad faith on the part of respondent when it dismissed petitioner, because it was carried out whimsically and capriciously.<sup>[15]</sup>

The Labor Arbiter held that Li could not be held solidarity liable with respondent, because no evidence was submitted to prove that the former was guilty of bad faith.<sup>[16]</sup>

Aggrieved, respondent filed an appeal with the NLRC.

### **The Ruling of the NLRC**

On 30 September 2014, the NLRC rendered a Decision<sup>[17]</sup> modifying the Decision of the Labor Arbiter dated 31 July 2014 removing the award of moral and exemplary damages from the judgment and reducing the entire amount to P154,308.00, viz:

WHEREFORE, the decision is hereby MODIFIED. Respondent Momentum Properties Management Corp. is ordered to pay complainant the following:

Backwages	P124,280.00
Separation Pay	<u>16,000.00</u>
	140,280.00
Ten Percent (10%) Attorney's Fees	<u>14,028.00</u>
Total	P154,308.00

The other findings are affirmed.

SO ORDERED.<sup>[18]</sup>

The NLRC upheld the view of the Labor Arbiter that respondent failed to defend its argument that it did not dismiss petitioner. It held that the payroll issued by respondent did not establish petitioner's employment beyond 27 December 2013, because the document merely covered the periods of 11 and 12 December 2013. On the other hand, petitioner presented the text messages she received from Tungol, informing her that she should no longer report for work and instructing her to report to the HR Department to process her clearance and backpay.<sup>[19]</sup>

The NLRC deleted the award of moral and exemplary damages granted by the Labor Arbiter, on the ground that petitioner failed to prove through clear and convincing evidence that her termination was "carried out in an arbitrary, capricious and malicious manner, with evident personal ill-will."<sup>[20]</sup> It ruled that "the award of moral and exemplary damages cannot be justified solely upon the premise that the employer dismissed his employee without just cause or due process."<sup>[21]</sup>

Respondent moved for reconsideration, which was denied by the NLRC in a Resolution<sup>[22]</sup> dated 18 November 2014. Thereafter, it sought to reverse the Decision and Resolution of the NLRC dated 30 September 2014 and 18 November 2014, respectively, by filing a petition for certiorari with the Court of Appeals.<sup>[23]</sup>

### **The Ruling of the Court of Appeals**

In its Decision dated 22 March 2016, the Court of Appeals granted the petition and annulled and set aside the Decision and Resolution of the NLRC dated 30 September 2014 and 18 November 2014, respectively. The dispositive portion of the Decision of the Court of Appeals dated 22 March 2016 provides:

WHEREFORE, premises considered, the instant petition is hereby GRANTED. The assailed Decision and Resolution of the Third Division of the National Labor Relations Commission dated September 30, 2014 and November 18, 2014, respectively, are ANNULLED and SET ASIDE. However, for failure to observe procedural due process, the petitioner is hereby directed to pay nominal damages to private respondent in the amount of Php30,000.00.

SO ORDERED.<sup>[24]</sup>

Respondent argued that petitioner failed to show through substantial evidence that she was dismissed from work. It contended that the text messages purportedly from Tungol were not verified or authenticated in accordance with the Rules on Electronic Evidence. It averred that, while technical rules of procedure are not strictly observed by the NLRC, the latter remains to have a duty to comply with certain procedures, in order to determine the admissibility and probative value of the evidence sought to be presented. It further alleged that, assuming *arguendo*, that such text messages were from Tungol, the same cannot be regarded as a formal notice of petitioner's termination, because the authority to do so fully resides with the HR Department.<sup>[25]</sup>

Respondent likewise argued that it was improper for the NLRC to consider the payroll for December 2013 as basis for petitioner's dismissal. It averred that such document was merely meant to negate her claim for payment of salary and was not to be used as evidence to show that she remained under its employ beyond the covered date.<sup>[26]</sup>

The Court of Appeals held that the status of petitioner as a probationary employee was established and not contested. Hence, her employment was under respondent's observation for a period of six months. It ruled that respondent had the option of hiring petitioner or terminating her services, because she failed to qualify as a regular employee in accordance with the reasonable standards made known to her at the time of her engagement.<sup>[27]</sup>

The Court of Appeals ruled that, based on the evidence, petitioner's performance evaluation was not up to par. It was established that petitioner received abysmal scores in a series of aptitude tests that she took before her six months of probationary employment were done.<sup>[28]</sup> In the same manner, petitioner's Performance Appraisal Report (PAR) indicated that she did not meet respondent's expectations when it came to her performance at work. In most of the components of the subject PAR, petitioner received BA scores.<sup>[29]</sup> Furthermore, the Court of Appeals noted that petitioner's tests were given "appropriately, fairly and with proper notice before they were taken."<sup>[30]</sup>

Given the abovementioned circumstances and the fact that petitioner was duly apprised of her probationary status at the time of her hiring and was made aware of the evaluation that she had to undergo in order for her to become a regular employee of respondent, the Court of Appeals held that respondent had every right to refuse petitioner's regularization. However, it ruled that, while respondent had the right to terminate petitioner's employment, such termination was carried out in a manner not in accordance with the standards set forth under the law. Instead of dismissing petitioner through a formal written notice within a reasonable time, petitioner was informed of her dismissal by respondent via a series of text messages.<sup>[31]</sup> Due to the aforementioned procedural infirmity, the Court of Appeals ruled that petitioner was entitled to nominal damages.<sup>[32]</sup>

Petitioner moved for reconsideration, which the Court of Appeals denied in its Resolution dated 19 July 2016. Hence, the instant petition before this Court.

### **The Issue**

The issue in this case is whether or not petitioner was illegally dismissed by respondent.

### **The Court's Ruling**

The Court finds the instant petition bereft of merit.

It is a well-established rule that the Court is not a trier of facts. The function of the Court in a petition for review on certiorari under Rule 45 of the Rules of Court is limited to questions of law. However, this rule admits of exceptions, to wit: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of facts are contradicted by the presence of evidence on record; (8) the findings of the Court of Appeals are contrary to those of the trial court; (9) the Court of Appeals manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion;