805 Phil. 155

SECOND DIVISION

[G.R. No. 196110, February 06, 2017]

PNCC SKYWAY CORPORATION (PSC), PETITIONER, VS. THE SECRETARY OF LABOR & EMPLOYMENT, PNCC SKYWAY TRAFFIC MANAGEMENT, AND SECURITY DIVISION WORKERS ORGANIZATION, RESPONDENTS.

D E C I S I O N

PERALTA, J.:

This is a Petition for Review on *Certiorari* under Rule 45[1] of the Rules of Court seeking the reversal of the Decision[2] dated July 22, 2010 and Resolution[3] dated March 10, 2011 of the Court of Appeals in CA-G.R. SP No. 111200.

The facts are as follows:

Sometime in March 1977, the Philippine National Construction Corporation (*PNCC*) was awarded by the Toll Regulatory Board (*TRB*) with the franchise of constructing, operating and maintaining the north and south expressways, including the South Metro Manila Skyway (*Skyway*). On December 15, 1998, it created petitioner PNCC Skyway Corporation (*PSC*) for the purpose of taking charge of its traffic safety, maintaining its facilities and collecting toll.

Eight years later, or on July 18, 2007, the Citra Metro Manila Tollway Corporation (*Citra*), a private investor under a build-and-transfer scheme, entered into an agreement with the TRB and the PNCC to transfer the operation of the Skyway from petitioner PSC to the Skyway O & M Corporation (*SOMCO*). The said transfer provided for a five-month transition period from July 2007 until the full torn-over of the Skyway at 10:00 p.m. of December 31, 2007 upon which petitioner PSC will close its operation.

On December 28, 2007, or three (3) days before the flail transfer of the operation of the Skyway to SOMCO, petitioner PSC served termination letters to its employees, many of whom were members of private respondent PNCC Skyway Traffic Management and Security Division Worker's Organization (*Union*). According to the letter, PSC has no choice but to close its operations resulting in the termination of its employees effective January 31, 2008. However, the employees are entitled to receive separation pay amounting to 250% of the basic monthly pay for every year of service, among others things. Petitioner PSC, likewise, served a notice of termination to the Department of Labor and Employment (*DOLE*).

On that same day of December 28, 2007, private respondent Union, immediately upon receipt of the termination letters, filed a Notice of Strike before the DOLE alleging that the closure of the operation of PSC is tantamount to union-busting because it is a means of terminating employees who are members thereof.

Furthermore, the notices of termination were served on its employees three (3) days before petitioner PSC ceases its operations, thereby violating the employees' right to due process. As a matter of fact, the employees were no longer allowed to work as of January 1, 2008. Private respondent Union, thus, prayed that petitioner PSC be held guilty of unfair labor practice and illegal dismissal. It, likewise, prayed for the reinstatement of all dismissed employees, along with the award of backwages, moral and exemplary damages, and attorney's fees.

For its defense, PSC denied that the closure of its operation was intended to remove employees who are members of private respondent Union. Instead, it claimed that it was done in good faith and in the exercise of management prerogative, considering that it was anchored on an agreement between the TRB, the PNCC and the private investor Citra. PSC likewise denied that it had violated the right to due process of its employees, considering that the notices of termination were served on December 28, 2007 while the termination was effective only on January 31, 2008, PSC alleged that the Union was guilty of an illegal strike when it started a strike on the same day it filed a notice of strike on December 28, 2007.

On August 29, 2008, public respondent Secretary of Labor and Employment (*SOLE*), in its assailed Decision,[4] found that there was an authorized cause for the closure of the operation of PSC *albeit* it failed to comply with the procedural requirements set forth under Article 283 of the Labor Code. The dispositive portion of the Decision reads, as thus:

> WHEREFORE, premises considered, judgment is hereby rendered:
>
> 1. HOLDING there was lawful cause to terminate the employees and deny their claims for reinstatement as there was valid cessation of PSC's operation.
>
> 2. DISMISSING the charges of unfair labor practice and union-busting for lack of basis.
>
> 3. DISMISSING the charge of illegal strike against the Union and its members for lack of basis.
>
> 4. HOLDING there was failure on the part of the PNCC Skyway Corporation to comply with the procedural notice requirements of Article 283 of the Labor Code.
>
> 5. DENYING the payment of moral and exemplary damages, and attorney's fees for lack of bases.
>
> As it had previously offered, PSC is hereby ORDERED to pay the affected employees their separation pay in the amount of no less than 250% of their respective basic monthly pay per year of service, a gratuity pay of Php40,000 each employee, plus all their remaining benefits like 13th month pay, rice subsidy, cash conversion of vacation and sick leaves, and medical reimbursement.
>
> Likewise, PSC is ordered to pay the amount of Php30,000 as indemnity to each dismissed employee covered by this case, who were not validly

notified in writing of their termination on 31 December 2007 pursuant to Article 283 of the Labor Code.

SO ORDERED.

Both PSC and private respondent Union file their respective motions for partial reconsideration but was denied for lack of merit in a Resolution[5] dated August 26, 2009.

Thus, on October 30, 2009, before the Court of Appeals, PSC filed a Petition for *Certiorari*[6] alleging grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the SOLE when it additionally directed payment of an additional P30,000.00 to PSC's former employees pursuant to Article 283 of the Labor Code.

On July 22, 2010, in its disputed Decision,[7] the Court of Appeals dismissed PSC's petition. The appellate court held that the Secretary of Labor was correct in saying that the extension of the employee's employment in paper only and the payment of the employee's salaries for said period cannot substitute for the PSC's failure to comply with the due process requirements. Thus, the SOLE cannot be said to have acted capriciously or whimsically, in the exercise of his official duties.

Petitioner moved for reconsideration, but was denied in a Resolution[8] dated March 10, 2011. Thus, the instant petition for review on *certiorari* under Rule 45 of the Rules of Court raising the following issues:

> WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN UPHOLDING THE LABOR SECRETARY'S FINDINGS THAT PSC FAILED TO COMPLY WITH THE PROCEDURAL REQUIREMENTS OF ARTICLE 283 OF THE LABOR CODE ON NOTICE.
>
> WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN UPHOLDING THE LABOR SECRETARY'S FAILURE TO CONSIDER THAT THE EMPLOYEES WERE PAID OF THEIR SALARIES AND BENEFITS FOR THE MONTH OF JANUARY 2008 WHICH IS CONSIDERED AS SUBSTANTIAL COMPLIANCE WITH THE REQUIREMENTS OF ARTICLE 283 OF THE LABOR CODE.
>
> WHETHER THE AGABON AND SERRANO CASES ARE INAPPLICABLE IN THIS CASE.

In essence, the PSC insists that there was substantial compliance with the procedural requirements of Article 283 of the Labor Code considering that the alleged effectivity of the termination was made one (1) month from the notice of termination and that the affected employees were paid for the said month.

The petition lacks merit.

In *Montoya v. Transmed Manila Corporation/Mr. Ellena, et al.*,[9] the Court had the occasion to lay down the proper interpretation of the question of law that the Court must resolve in a Rule 45 petition, as in this case, assailing a CA decision on a Rule 65 petition, to wit: