

THIRD DIVISION

[G.R. Nos. 183200-01, June 29, 2016]

PHILIPPINE NATIONAL OIL COMPANY-ENERGY DEVELOPMENT CORPORATION AND/OR PAUL AQUINO AND ESTER R. GUERZON, PETITIONERS, VS. AMELYN A. BUENVIAJE, RESPONDENT.

[G.R. Nos. 183253 & 183257]

AMELYN A. BUENVIAJE, PETITIONER, VS. PHILIPPINE NATIONAL OIL COMPANY-ENERGY DEVELOPMENT CORPORATION, PAUL A. AQUINO AND ESTER R. GUERZON, RESPONDENTS.

D E C I S I O N

JARDELEZA, J.:

Before us are consolidated petitions for review on *certiorari*^[1] of the Decision^[2] dated October 31, 2007 and Resolution^[3] dated June 3, 2008 of the Court of Appeals (CA) in CA-G.R. S.P. Nos. 94359 and 94458. The CA partially modified the Resolutions^[4] of the National Labor Relations Commission (NLRC) dated September 27, 2005 and January 31, 2006, which in turn partially modified the Decision^[5] of the Labor Arbiter dated December 10, 2004.

The Facts

Philippine National Oil Company-Energy Development Corporation (PNOC-EDC) hired Amelyn Buenviaje (Buenviaje) as Assistant to the then Chairman/President and Chief Executive Officer Sergio A.F. Apostol (Apostol), her father. Buenviaje's employment contract provided that she will serve until June 30, 2004 or co-terminous with the tenure of Apostol, whichever comes first.^[6]

On August 4, 2003, Apostol approved the creation of PNOC-EDC's new Marketing Division composed of thirty (30) positions. Seven (7) of these thirty (30) positions were also newly created,^[7] one of which was that of a Marketing Division Manager.^[8] Buenviaje assumed this position as early as the time of the creation of the Marketing Division.^[9]

On January 5, 2004, Apostol filed his Certificate of Candidacy as Governor for the province of Leyte, yet continued to discharge his functions as President in PNOC-EDC.^[10] Buenviaje also continued to perform her duties as Assistant to the Chairman/President and Marketing Division Manager in PNOC-EDC.^[11]

On February 2, 2004, Paul Aquino (Aquino), the new President of PNOC-EDC,

appointed Buenviaje to the position of Senior Manager for Marketing Division effective February 1, 2004.^[12] The appointment letter partly provides:

By copy of this letter, HRMD [Human Resources Management Division] is instructed to amend your present employment status from your present position as Assistant to the President (co-terminus) to regular status and as such you will be entitled to all the rights and privileges granted to your new position under the company's benefit policies subject to existing rules and regulations. This appointment is subject to confirmation by your immediate superior based on your performance during the next six months. x x x For record purposes, please take note that your regular status is retroactive to July 1, 2001. This date will be used for the computation of your service credits, retirement and other company benefits allowed under company policy.^[13]

Pursuant to the instructions in the appointment letter, Buenviaje affixed her signature to the letter, signifying that she has read and understood its contents.^[14]

In line with PNOC-EDCs policies, Buenviaje was subjected to a performance appraisal during the first week of May 2004.^[15] She received a satisfactory grade of three (3).^[16] In her subsequent performance appraisal covering the period of May 1, 2004 to June 30, 2004, she received an unsatisfactory grade of four (4).^[17] Thus, Ester Guerzon (Guerzon), Vice President for Corporate Affairs of PNOC-EDC, informed Buenviaje that she did not qualify for regular employment.^[18] PNOC-EDC, through Guerzon, communicated in writing to Buenviaje her non-confirmation of appointment as well as her separation from the company effective July 31, 2004.^[19] On July 2, 2004, Buenviaje gave her written comments on the results of her second performance appraisal.^[20] In reply, PNOC-EDC sent her two (2) more letters reiterating her non-confirmation and separation from the company.^[21] Aquino also issued a Memorandum to Buenviaje instructing her to prepare a turnover report before her physical move-out.^[22]

Buenviaje responded by filing a complaint before the Labor Arbiter for illegal dismissal, unpaid 13th month pay, illegal deduction with claim for moral as well as exemplary damages, including attorney's fees and backwages.^[23]

The Ruling of the Labor Arbiter

The Labor Arbiter rendered a decision in favor of Buenviaje, the dispositive portion of which states:

WHEREFORE, premises considered, judgment is hereby rendered declaring complainant a regular employee. As a consequence thereof, her dismissal without any basis is hereby deemed illegal. Respondents PNOC-Energy Development Corporation, and/or Paul Aquino and Ester R. Guerzon are hereby ordered to reinstate complainant to her former position without loss of seniority rights and other benefits and with full backwages reckoned from August 1, 2004 up to her actual or payroll reinstatement, which as of this date is in the amount of P718,260.40.

Further, for having acted with manifest bad faith and given the extent of the damage done to complainant who occupies a high managerial position, respondents are jointly and severally ordered to pay complainant moral damages in the amount of P1,000,000.00 and exemplary damages in the amount of P500,000.00.

Finally, respondents are hereby ordered to return to complainant the amount of P51,692.72, which they illegally deducted from her last salary and to pay the sum equivalent to ten percent of the judgment award as and by way of attorney's fees.

SO ORDERED.^[24] (Emphasis in the original.)

The Labor Arbiter held that Buenviaje was a regular employee because her appointment letter clearly says so. Any doubt caused by the statement in the appointment letter that Buenviaje's appointment was subject to confirmation must be resolved against PNOC-EDC. In addition, PNOC-EDC failed to prove that reasonable standards were explained to Buenviaje at the time of her engagement, thusly negating PNOC-EDC's claim that she was merely a probationary employee. The Labor Arbiter noted that PNOC-EDC even admitted that the alleged standards were only set and discussed with Buenviaje more than a month after her actual appointment.^[25]

The Labor Arbiter further ruled that PNOC-EDC also failed to explain why Buenviaje was allowed to enjoy benefits that were supposed to be exclusive for regular employees. As a regular employee, therefore, Buenviaje could only be dismissed for any of the just or authorized causes under Articles 282 and 283^[26] of the Labor Code. Since the cause for Buenviaje's dismissal was not included in any of the grounds enumerated in either Article, she was considered illegally dismissed. The Labor Arbiter found Guerzon and Aquino to have acted in bad faith due to their failure to explain the standards to Buenviaje, as well as why the evaluation form for regular employees was used in her evaluation. They also failed to respond to Buenviaje's allegation that the second evaluation was done in bad faith to serve as an excuse in dismissing her. The Labor Arbiter noted that the second evaluation appeared irregular because it did not bear the signature and approval of Aquino. Consequently, for lack of the required approval, the second evaluation could not serve as a valid basis to remove Buenviaje.^[27]

Both parties appealed to the NLRC.

The Ruling of the National Labor Relations Commission

In its Resolution^[28] dated September 27, 2005, the NLRC ruled:

WHEREFORE, premises considered, the appeal is partly **GRANTED** and the Decision dated 10 December 2004 is hereby **MODIFIED** ordering respondent-appellant PNOC-Energy Development Corporation to pay complainant-appellee financial assistance in the amount of P229,681.35 only and her accrued wages in the amount of P1,224,967.28 for the period covering December 2004, the date of the decision ordering her reinstatement until the date of this Resolution. The order to return to

complainant-appellee the amount of P51,692.72, which represents deduction from her salary and not raised on appeal, **STANDS**. Finally, the award of moral and exemplary damages and attorney's fees, as well as the joint and solidarily (sic) liability of individual respondents Paul A. Aquino and Ester R. Guerzon are hereby **DELETED**.

SO ORDERED.^[29] (Emphasis in the original.)

The NLRC agreed with the Labor Arbiter that Buenviaje was a regular employee of PNOC-EDC, noting that the terms of her appointment expressly grants a regular status of employment.^[30] The NLRC also found that PNOC-EDC admitted that Buenviaje has been performing the functions of a Marketing Division Manager for more than six (6) months before she was formally appointed to the said position.^[31] Nevertheless, the NLRC ruled that she was not illegally dismissed because she did not enjoy security of tenure.^[32] The NLRC noted that the condition in Buenviaje's appointment letter, which provided that her appointment is subject to confirmation by her immediate superior based on her performance during the next six (6) months, was clear and understood by her when she affixed her signature to the appointment letter.^[33] The NLRC concluded that only upon confirmation of her appointment will Buenviaje enjoy the right to security of tenure.^[34] As it was, PNOC-EDC found her performance unsatisfactory and Buenviaje failed to disprove these findings. Therefore, Buenviaje failed to complete her appointment as a regular employee and her non-confirmation cannot be considered as an illegal dismissal.^[35]

With respect to Buenviaje's prayer for moral and exemplary damages, and attorney's fees, the NLRC found no basis to grant the same. The NLRC also found no basis for the solidary liability of Aquino and Guerzon.^[36]

Both parties asked the NLRC to reconsider its Resolution, but the NLRC denied their motions. Thus, both parties filed their petitions for *certiorari* with the CA.

The Ruling of the Court of Appeals

The CA partially modified the Resolution of the NLRC. The dispositive portion of the CA Decision^[37] dated October 31, 2007 reads:

WHEREFORE, in view of all the foregoing, the September 27, 2005 and January 31, 2006 Resolutions of the NLRC are **MODIFIED** as follows:

For having been illegally dismissed, petitioner Amelyn Buenviaje is entitled to receive a separation pay equivalent to 1/2 month pay for every year of service (with a fraction of at least 6 months considered one whole year) in lieu of reinstatement. In addition she is also to receive full backwages inclusive of allowances and other benefits or their monetary equivalent, computed from the time the compensation was withheld up to the finality of this decision.

The other awards in the NLRC decision as well as the deletion of the joint and solidary liabilities of Paul A. Aquino and Ester R. Guerzon are hereby **AFFIRMED**.

SO ORDERED.^[38] (Emphasis in the original.)

The CA found no reason to disturb the findings of both the Labor Arbiter and the NLRC that Buenviaje was a regular employee of PNOC-EDC. However, it disagreed with the NLRC's ruling that Buenviaje failed to acquire security of tenure. The CA stated that where an employee has been engaged to perform activities which are usually necessary or desirable in the usual business of the employer, such employee is deemed a regular employee and is entitled to security of tenure notwithstanding the contrary provisions of his contract of employment.^[39] As a regular employee, Buenviaje may only be dismissed if there are just or authorized causes. Thus, PNOC-EDC's reasoning that she failed to qualify for the position cannot be countenanced as a valid basis for her dismissal.^[40]

Both parties filed their respective motions for reconsideration, which the CA denied. Hence, these consolidated petitions, which present the following issues:

- I. Whether Buenviaje was a permanent employee;
- II. Whether Buenviaje was illegally dismissed;
- III. Whether Buenviaje is entitled to moral and exemplary damages as well as attorney's fees;
- IV. Whether Buenviaje should be given separation pay in lieu of reinstatement; and
- V. Whether Aquino and Guerzon should be held jointly and severally liable to Buenviaje.

Our Ruling

Buenviaje was a permanent employee

Buenviaje was hired as a Marketing Division Manager, a position that performs activities that are usually necessary and desirable to the business of PNOC-EDC and is thusly, regular. As an employer, PNOC-EDC has an exclusive management prerogative to hire someone for the position, either on a permanent status right from the start or place him first on probation. In either case, the employee's right to security of tenure immediately attaches at the time of hiring.^[41] As a permanent employee, he may only be validly dismissed for a just^[42] or authorized^[43] cause. As a probationary employee, he may also be validly dismissed for a just or authorized cause, or when he fails to qualify as a regular employee in accordance with reasonable standards made known to him by the employer at the time of his engagement.^[44] Apart from the protection this last ground in the dismissal of a probationary employee affords the employee, it is also in line with the right or privilege of the employer to choose who will be accorded with regular or permanent status and who will be denied employment after the period of probation. It is within the exercise of this right that the employers may set or fix a probationary period within which it may test and observe the employee's conduct before hiring him permanently.^[45]