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FIRST DIVISION

[G.R. No. 196573, October 16, 2013]

VICTORINO OPINALDO, PETITIONER, VS. NARCISA RAVINA, RESPONDENT.

D E C I S I O N

VILLARAMA, JR., J.:

On appeal under Rule 45 is the Decision[1] dated October 19, 2010 and Resolution[2] dated March 17, 2011 of the Court of Appeals (CA), Cebu City, in CA-G.R. SP No. 04479 which reversed and set aside the Decision[3] and Resolution[4] of the National Labor Relations Commission (NLRC), Cebu City, and dismissed petitioner's complaint for illegal dismissal against respondent.

The facts follow.

Respondent Narcisa Ravina (Ravina) is the general manager and sole proprietor of St. Louisse Security Agency (the Agency). Petitioner Victorino Opinaldo (Opinaldo) is a security guard who had worked for the Agency until his alleged illegal dismissal by respondent on December 22, 2006. The Agency hired the services of petitioner on October 5, 2005, with a daily salary of P176.66 and detailed him to PAIJR Furniture Accessories (PAIJR) in Mandaue City.[5]

In a letter dated August 15, 2006, however, the owner of PAIJR submitted a written complaint to respondent stating as follows:

> I have two guard[s] assigned here in my company[,] namely[,] SG. Opinaldo and SGT. Sosmenia. Hence, ... I hereby formalize our request to relieve one of our company guard[s] and I [choose] SG. VICTORINO B. OPINALDO[,] detailed/assigned at PAIJR FURNITURE ACCESSORIES located at TAWASON, MANDAUE CITY. For the reason: He is no longer physically fit to perform his duties and responsibilities as a company guard because of his health condition.
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> Looking forward to your immediate action. Thank [y]ou.[6]

Acceding to PAIJR's request, respondent relieved petitioner from his work. Respondent also required petitioner to submit a medical certificate to prove that he is physically and mentally fit for work as security guard.

On September 6, 2006, respondent reassigned petitioner to Gomez Construction at Mandaue City. After working for a period of two weeks for Gomez Construction and upon receipt of his salary for services rendered within the said two-week period,

petitioner ceased to report for work.[7] The records show that petitioner's post at Gomez Construction was the last assignment given to him by respondent.

On November 7, 2006, petitioner filed a complaint[8] against respondent with the Department of Labor and Employment (DOLE) Regional Office in Cebu City for underpayment of salary and nonpayment of other labor standard benefits. The parties agreed to settle and reached a compromise agreement. On November 27, 2006, petitioner signed a Quitclaim and Release[9] before the DOLE Regional Office in Cebu City for the amount of P5,000.[10]

After almost four weeks from the settlement of the case, petitioner returned to respondent's office on December 22, 2006. Petitioner claims that when he asked respondent to sign an SSS[11] Sickness Notification which he was going to use in order to avail of the discounted fees for a medical check- up, respondent allegedly refused and informed him that he was no longer an employee of the Agency. Respondent allegedly told him that when he signed the quitclaim and release form at the DOLE Regional Office, she already considered him to have quit his employment.[12] Respondent, on the other hand, counterclaims that she did not illegally dismiss petitioner and that it was a valid exercise of management prerogative that he was not given any assignment pending the submission of the required medical certificate of his fitness to work.[13]

On January 26, 2007, petitioner filed a Complaint[14] for Illegal Dismissal with a prayer for the payment of separation pay in lieu of reinstatement against respondent and the Agency before the NLRC Regional Arbitration Branch No. VII, Cebu City. After trial and hearing, Labor Arbiter Maria Christina S. Sagmit rendered a Decision[15] on June 18, 2008 holding respondent and the Agency liable for illegal dismissal and ordering them to pay petitioner separation pay and back wages. The Labor Arbiter ruled,

> In the instant case, respondents failed to establish that complainant was dismissed for valid causes. For one, there is no evidence that complainant was suffering from physical illness which will explain his lack of assignment. Further, there is no admissible proof that Ravina even required complainant to submit a medical certificate. Thus, complainant could not be deemed to have refused or neglected to comply with this order.
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> Considering that there is no evidence that complainant was physically unfit to perform his duties, respondents must be held liable for illegal dismissal. Ordinarily, complainant will be entitled to reinstatement and full backwages. However, complainant has expressed his preference not to be reinstated. Hence, respondents must be ordered to give complainant separation pay *in lieu* of reinstatement equivalent to one month's salary for every year of service. Complainant is also entitled to full backwages from the time he was terminated until the date of this Decision.

> WHEREFORE, respondents Narcisa Ravina and/or St. Louis[s]e Security Agency are ordered to pay complainant the total amount EIGHTY[-]TWO THOUSAND THREE HUNDRED FORTY PESOS (P82,340.00), consisting of P22,500.00 in separation pay and P59,840.00 in full backwages.
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> SO ORDERED.[16]

Respondent appealed to the NLRC which, however, affirmed the decision of the Labor Arbiter and dismissed the appeal for lack of merit.[17]

The NLRC ruled that there was no just and authorized cause for dismissal and held that "[w]ithout a certification from a competent public authority that [petitioner] suffers from a disease of such nature or stage that cannot be cured within a period of six (6) months even with proper medical attendance, respondents are not justified in refusing [petitioner's] presence in [the] workplace."[18] The NLRC also ruled that neither did petitioner abandon his job as his failure to work was due to "respondents turn[ing] him down."[19]

Respondent moved for reconsideration but the motion was denied in a Resolution[20] dated June 30, 2009 where the NLRC reiterated its finding of illegal dismissal given the absence of any just or authorized cause for the termination of petitioner and the failure to prove abandonment on his part.

Respondent elevated the case to the CA on a Petition for Certiorari.[21] On October 19, 2010, the appellate court ruled for respondent and reversed and set aside the decision and resolution of the NLRC. Ruling on the issue raised by petitioner that respondent's petition should have been dismissed outright as her motion for reconsideration before the NLRC was filed out of time, the appellate court held that the issue was rendered moot and academic when the NLRC gave due course to the motion and decided the case on the merits. The appellate court further held that petitioner should have filed his comment or opposition upon the filing of the subject motion for reconsideration and not after the termination of the proceedings before the NLRC. As to the issue of illegal dismissal, the appellate court ruled that it was petitioner himself who failed to report for work and therefore severed his employment with the Agency. The CA further held that petitioner's claims relative to his alleged illegal dismissal were not substantiated. The pertinent portions of the assailed Decision reads,

> Based from the evidence on record, the chain of events started when PAIJR sent to Ravina its 15 August 2006 letter-complaint to relieve Opinaldo. This led to Opinaldo's reassignment to work for Engr. Gomez on 06 September 2006. Upon his failure to continue working for Engr. Gomez due to his refusal to obtain a medical certificate, Opinaldo filed the complaint for money claims on 07 November 2006. This was however settled when Opinaldo and Ravina signed a quitclaim on 27 November 2006. Still, Opinaldo did not obtain the medical certificate required by Ravina. Then, Opinaldo's hasty filing of a complaint for illegal dismissal against Ravina on 26 January 2007.

x x x x

The requirement to undergo a medical examination is a lawful exercise of management prerogative on Ravina's part considering the charges that Opinaldo was not only suffering from hypertension but was also sleeping while on duty. The management is free to regulate, according to its own discretion and judgment, all aspects of employment, including hiring, work assignments, working methods, time, place and manner of work, processes to be followed, **supervision** of workers, working regulations, transfer of employees, work supervision, lay off of workers and discipline, dismissal and recall of workers.

Besides, as a security guard, the need to be physically fit cannot be downplayed. If at all, Opinaldo's obstinate refusal to submit his medical certificate is equivalent to willful disobedience to a lawful order. x x x.

x x x x

Verily, the totality of Opinaldo's acts justifies the dismissal of his complaint for illegal dismissal against Ravina. While it is true that the state affirms labor as a primary social economic force, we are also mindful that the management has rights which must also be respected and enforced.[22]

Petitioner moved for reconsideration of the Decision but his motion was denied in the questioned Resolution of March 17, 2011 on the ground that there are neither cogent reasons nor new and substantial grounds which would warrant a reversal of the appellate court's findings. Hence, petitioner filed this petition alleging that:

[I]

THE HONORABLE COURT OF APPEALS ERRED AND DECIDED THE CASE NOT IN ACCORDANCE WITH LAW AND ESTABLISHED JURISPRUDENCE WHEN IT GAVE DUE COURSE TO THE RESPONDENT'S PETITION FOR CERTIORARI UNDER RULE 65

DESPITE BEING FILED OUT OF TIME AND NOT PROPERLY VERIFIED

[II]

THE HONORABLE COURT OF APPEALS ERRED AND DECIDED THE CASE NOT IN ACCORDANCE WITH LAW AND ESTABLISHED JURISPRUDENCE WHEN IT REVERSED AND SET ASIDE THE DECISION AND RESOLUTION OF THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION, FOURTH DIVISION, BY DECLARING THAT THE DISMISSAL OF PETITIONER WAS LEGAL AND PROPER[23]

We first rule on the procedural issue.

Petitioner questions the appellate court for ruling that the issue of the timeliness of the filing of respondent's motion for reconsideration of the NLRC decision has become moot and academic when the NLRC dismissed the said motion based on the merits and affirmed its decision. It is the opinion of petitioner that "[this] should not and cannot be understood to mean that the motion for reconsideration was filed within the period allowed," and that "[t]he Commission may have accommodated the motion for reconsideration although belatedly filed and had chosen to decide it based on its merits x x x but it does not change the fact that the motion for reconsideration before the Commission was filed beyond the reglementary period." [24] Petitioner believes that respondent's filing of the motion for reconsideration on time is a precondition to the application of the rule that a petition for certiorari must be filed within 60 days from the notice of the denial of the motion for reconsideration. As petitioner puts it, "the counting of the sixty (60)[-]day period from the notice of the denial of the motion for reconsideration is proper only when the motion was filed on time."[25]

The CA, ruling that the procedural issue is already moot and academic, ratiocinated as follows:

> Anent the first issue, Ravina argues that the issue of timeliness of filing a Motion for Reconsideration with the NLRC has been dispensed with when it resolved to dismiss said Motion based on the merits and not on the mere technical issue of timeliness. Ravina further insists that had the NLRC denied said Motion based on the issue of timeliness, it would have just outrightly dismissed it based on said ground and not on the merits she raised in her Motion for Reconsideration.
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> The period within which to file a certiorari petition is 60 days as provided under Section 4, Rule 65 of the 1997 Rules of Civil Procedure as amended by Circular No. 39-98 and further amended by A.M. No. 00-2-03-SC, thusly:
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> > SECTION 4. When and where petition filed. – The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.
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> > x x x x
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> To reiterate, the NLRC promulgated its challenged Decision on 24 April 2009. Ravina alleged that her former counsel received a copy of said decision on 08 June 2009. However, she changed her counsel who, in turn, obtained a copy of the decision on 17 June 2009. The NLRC then promulgated its assailed Resolution on 30 June 2009 which Ravina received on 29 July 2009. Ravina's Petition for Certiorari, dated 28