

## THIRD DIVISION

[ G.R. No. 185335, June 13, 2012 ]

**PRUDENTIAL GUARANTEE AND ASSURANCE EMPLOYEE LABOR UNION AND SANDY T. VALLOTA, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION, PRUDENTIAL GUARANTEE AND ASSURANCE INC., AND/OR JOCELYN RETIZOS, RESPONDENTS.**

### DECISION

**MENDOZA, J.:**

This is a petition for review on certiorari under Rule 45 filed by petitioners Prudential Guarantee and Assurance Employee Labor Union (*Union*) and Sandy T. Vallota (*Vallota*) seeking to set aside the September 16, 2008 Decision<sup>[1]</sup> and November 10, 2008 Resolution<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 102699.

**The Facts**

Vallota commenced his employment with respondent Prudential Guarantee and Assurance, Inc. (PGAI) on May 16, 1995 as a Junior Programmer assigned to the Electronic Data Processing (EDP) Department. He reported directly to Gerald Dy Victory, then head of the EDP, until his replacement by respondent Jocelyn Retizos (*Retizos*) sometime in 1997.

In August of 2005, Vallota was elected to the Board of Directors of the Union.

On November 11, 2005, PGAI's Human Resource Manager, Atty. Joaquin R. Rillo (*Atty. Rillo*), invited Union President, Mike Apostol (*Apostol*) to his office. Atty. Rillo informed Apostol that PGAI was going to conduct an on-the-spot security check in the Information and Technology (IT) Department. Atty. Rillo also requested that Union representatives witness the inspection to which Apostol agreed.

The inspection team proceeded to the IT Department, and the EDP head, through PGAI network administrator Angelo Gutierrez (*Gutierrez*), initiated the spot check of IT Department computers, beginning with the one assigned to Vallota. After exploring the contents of all the folders and subfolders in the "My Documents" folder, Gutierrez apparently did not find anything unusual with Vallota's computer and said "*Wala naman, saan dito?*" Retizos insisted, "*Nandyang yan,*" and took over the inspection until she found a folder named "MAA." She then exclaimed, "Heto oh! Ano to? Bakit may MAA dito?" Retizos asked Vallota, "*Are you working for MAA?*" Vallota replied, "*Hindi po, MAA mutual life po yan na makikita po sa internet.*" Gutierrez saved a copy of the contents of the MAA folder in a floppy disk.<sup>[3]</sup>

Sensing that Vallota was being singled out, Apostol insisted that all the computers in the IT Department, including that of Retizos, be also subjected to a spot security

check. Later, at Retizos' office, and in the presence of Atty. Rillo, Vallota was informed that Retizos and Atty. Rillo would print the files found in his computer under the folder "MAA." Vallota did not object. After the files were printed, Vallota and the Union Secretary were asked to sign each page of the printout. Vallota, however, was not given a copy of the printed file.

On November 14, 2005, Vallota received a memorandum<sup>[4]</sup> directing him to explain within 72 hours why highly confidential files were stored in his computer. The case was assigned Reference No. AC-05-02. The same memorandum also informed him that he was being placed under preventive suspension for 30 days effective upon receipt of the said notice. A second memorandum,<sup>[5]</sup> also dated November 14, 2005, notified Vallota of the extension of his preventive suspension for another 30 days, in view of the fact that the management needed more time to evaluate the administrative case against him.

Vallota responded in writing on November 21, 2005.<sup>[6]</sup> Three days later, on November 24, 2005, PGAI sent him another memorandum<sup>[7]</sup> requesting further details on some of the matters he raised in his response. In a letter<sup>[8]</sup> dated December 6, 2005, Vallota requested a conference, to be attended by a Union representative and counsel. In reply, PGAI sent Vallota another memorandum<sup>[9]</sup> dated December 7, 2005, which, among others, set a new deadline for Vallota to submit his reply and evidence in his defense.

In compliance with the deadline set, Vallota submitted his reply-memorandum<sup>[10]</sup> dated December 12, 2005, outlining his response to the charges.

Meanwhile, the Union sent a letter<sup>[11]</sup> to PGAI President Philip K. Rico (*Rico*) requesting that a grievance committee be convened and that the contents of the computers of other IT personnel be similarly produced. The request for the convening of a grievance committee was ignored. On December 21, 2005, Vallota was given a notice of termination of his employment effective January 10, 2006 on the ground of loss of trust and confidence. The decision (AC-05-02) was embodied in a memorandum<sup>[12]</sup> dated December 21, 2005.

Thus, the petitioners filed a complaint for illegal dismissal with claims for full backwages, moral and exemplary damages, and attorney's fees. The case was docketed as NLRC-NCR Case No. 00-01-00387-06.

On March 31, 2006, Labor Arbiter Aliman D. Mangandog (LA) rendered a decision<sup>[13]</sup> in favor of the petitioners, the dispositive portion of which reads:

**WHEREFORE**, the foregoing premises considered, judgment is hereby rendered, declaring the dismissal of complainant Vallota illegal and holding the respondents for the following:

1. to reinstate complainant Vallota to his former position without loss of benefits and seniority rights.
2. to pay complainant Vallota full backwages from the time of his dismissal until actual reinstatement partially computed as of this

date amount[ing] to P60,856.00 (P18,400/mo. x 3 mos. & 8 days).  
3. to pay complainant's attorney's fee equivalent to 10% of the total monetary award.

SO ORDERED.<sup>[14]</sup>

The LA held that PGAI failed to meet its burden of evidence, and the conflicting claims of the parties were resolved in favor of Vallota for failure of PGAI to adduce substantial evidence to support its claim. The LA further held that the dismissal was not commensurate to the misconduct complained of, especially considering that it was Vallota's first offense.<sup>[15]</sup>

On the matter of the blank gate pass stored in Vallota's computer, the LA found as satisfactory his explanation that Joseph Tolentino (*Tolentino*), a PGAI employee, requested him, from time to time, to print a gate pass whenever he had to bring tools outside of the company premises. The LA cited Vallota's argument that "it is quite odd [that] despite the fact that the gate pass form was admitted by the respondents in [their] Reply as their exclusive property, complainant's possession of the same was not considered x x x Possession of Company property without authorization."<sup>[16]</sup>

The LA further found that the respondents were not able to establish that Vallota used company property for his personal benefit. Nothing on record could show that he made an attempt to defraud his employer. With regard to the charge that, without authorization, he misused or removed company documents, the LA opined that if this were true, the respondents should have conducted a thorough investigation to determine the liable persons.<sup>[17]</sup>

Finally, the LA ruled that Vallota was denied due process since the respondents refused to conduct a hearing, despite Vallota's request, to thresh out the matters raised by him in his memoranda.<sup>[18]</sup>

The respondents filed their Memorandum of Appeal<sup>[19]</sup> dated May 19, 2006. The case was docketed as NLRC NCR CA No. 049107-06(7).

On June 30, 2006, the National Labor Relations Commission (*NLRC*) issued its Resolution<sup>[20]</sup> dismissing the appeal on the ground that the respondents failed to submit a certificate of non-forum shopping in accordance with the Rules of Procedure of the NLRC.

The respondents filed their Motion for Reconsideration<sup>[21]</sup> dated July 17, 2006,<sup>[22]</sup> which the Union opposed.

On October 31, 2007, the NLRC granted the respondents' motion for reconsideration and reversed and set aside the decision of the LA.<sup>[23]</sup> The dispositive portion of the resolution reads:

WHEREFORE, premises considered, respondents' Motion for Reconsideration from the Resolution of June 30, 2006 is GRANTED. The

appealed decision is hereby REVERSED and SET ASIDE. However, respondent is hereby ordered to pay complainant financial assistance equivalent to one-half (1/2) month pay for every year of service or xx the amount of ninety two thousand pesos (₱92,000.00.)

$$\frac{P18,400 \times 10 \text{ yrs.}}{2} = P92,000.00$$

SO ORDERED.

The NLRC reasoned out that the respondents had submitted substantial and sufficient evidence to prove that there existed grounds for the PGAI to lose trust and confidence in Vallota. The NLRC also found grave abuse of discretion on the part of the LA to disregard the affidavits of Tolentino, Retizos and Allan Unson, as the LA himself did not set a hearing for the purpose of cross-examining the said witnesses or verifying the statements made in their affidavits. As reflected in the decretal portion, although the NLRC ruled that the dismissal was valid, it still directed the respondents to grant Vallota financial assistance of one-half (1/2) month pay for every year of his ten (10) years of service.<sup>[24]</sup>

The petitioners moved for a reconsideration<sup>[25]</sup> of the decision, but their motion was denied in a resolution<sup>[26]</sup> dated December 28, 2007.

Dejected, the petitioners filed a petition for certiorari<sup>[27]</sup> with the CA which was docketed as CA-G.R. SP. No. 102699. On September 16, 2008, the CA denied the petition for lack of merit, and sustained the award of the NLRC.

The petitioners' motion for reconsideration was denied in a resolution dated November 10, 2008.

Hence, this petition.

### **ISSUES**

The petitioners raise the following issues:

#### **I**

**WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN GIVING LIBERALITY TO PRIVATE RESPONDENTS['] FOUR BLATANT VIOLATIONS OF THE NLRC RULES OF PROCEDURE.**

#### **II**

**WHETHER OR NOT THE HONORABLE COURT OF APPEALS GROSSLY MISAPPRECIATED THE FACT THAT NO SUBSTANTIAL EVIDENCE EXIST[S] TO JUSTIFY THE DISMISSAL OF PETITIONER VALLOTA.**

<sup>[28]</sup>

## **RULING OF THE COURT**

First, the allegation of grave abuse of discretion is misplaced, as this is an issue appropriate for a petition for certiorari under Rule 65, not a petition for review on certiorari under Rule 45. There is no question that grave abuse of discretion or errors of jurisdiction may be corrected only by the special civil action of certiorari. Such special remedy does not avail in instances of error of judgment which can be corrected by appeal or by a petition for review. Because the petitioners availed of the remedy under Rule 45, recourse to Rule 65 cannot be allowed either as an add-on or as a substitute for appeal.<sup>[29]</sup>

Regarding illegal dismissal, the core issues to be resolved here are: (1) whether Vallota was validly dismissed on the ground of loss of trust and confidence; and (2) whether the requirements of procedural due process for termination were observed.

### **Whether the petitioner was validly dismissed on the ground of loss of trust and confidence**

The Court's discussion in *Mabeza v. National Labor Relations Commission*<sup>[30]</sup> is instructive:

**Loss of confidence** as a just cause for dismissal was never intended to provide employers with a blank check for terminating their employees. Such a vague, all-encompassing pretext as loss of confidence, if unqualifiedly given the seal of approval by this Court, could readily reduce to barren form the words of the constitutional guarantee of security of tenure. Having this in mind, loss of confidence should ideally apply only to cases involving employees occupying positions of trust and confidence or to those situations where the employee is routinely charged with the care and custody of the employer's money or property. To the **first class** belong managerial employees, i.e., those vested with the powers or prerogatives to lay down management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees or effectively recommend such managerial actions; and to the **second class** belong cashiers, auditors, property custodians, etc., or those who, in the normal and routine exercise of their functions, regularly handle significant amounts of money or property. Evidently, an ordinary chambermaid who has to sign out for linen and other hotel property from the property custodian each day and who has to account for each and every towel or bedsheet utilized by the hotel's guests at the end of her shift would not fall under any of these two classes of employees for which loss of confidence, if ably supported by evidence, would normally apply. Illustrating this distinction, this Court, in *Marina Port Services, Inc. vs. NLRC*, has stated that:

To be sure, every employee must enjoy some degree of trust and confidence from the employer as that is one reason why he was employed in the first place. One certainly does not