664 Phil. 154

SECOND DIVISION

[G.R. No. 182262, April 13, 2011]

ROMULO B. DELA ROSA, PETITIONER, VS. MICHAELMAR PHILIPPINES, INC., SUBSTITUTED BY OSG SHIPMANAGEMENT MANILA, INC.,* AND/OR MICHAELMAR SHIPPING SERVICES, INC., RESPONDENTS.

DECISION

NACHURA, J.:

Petitioner Romulo B. dela Rosa (Dela Rosa) appeals by *certiorari* under Rule 45 of the Rules of Court the August 22, 2007 Amended Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 93115, and the March 18, 2008 Resolution[2] denying its reconsideration.

The antecedents -

Dela Rosa was hired by respondent Michaelmar Philippines, Inc., for and on behalf of its principal Michaelmar Shipping Services, Inc. (respondent), as 3rd Engineer on board the vessel MT "Goldmar" for a period of nine months.[3] He boarded MT "Goldmar" on February 15, 2003. However, on April 14, 2003, he was discharged for his alleged poor performance, and was repatriated to the Philippines.

Claiming termination without just cause and due process, Dela Rosa filed a complaint[4] for illegal dismissal, nonpayment of salaries/wages, payment of moral and exemplary damages and attorney's fees with the Labor Arbiter (LA), against respondents.

Traversing the complaint, respondents alleged that Dela Rosa was validly terminated. They averred that Dela Rosa's work performance was unsatisfactory, and that despite the advice given to him by his superiors, Dela Rosa's job performance did not improve; he continued to be incompetent and inefficient. On March 16, 2003, Chief Engineer Stephen B. Huevas (Engr. Huevas) issued a *warning letter* to Dela Rosa, but he refused to receive the same. Worse, on April 9, 2003, Dela Rosa simply stopped working. Left with no recourse, Engr. Huevas sent a letter dated April 9, 2003 to the principal, communicating his intention to disembark Dela Rosa. On April 14, 2003, Dela Rosa was repatriated upon payment of all the benefits due him. Respondents, therefore, prayed for the dismissal of the complaint.[5]

On March 31, 2004, the LA rendered a decision[6] dismissing the complaint. In so ruling, the LA made much of Dela Rosa's failure to deny or rebut respondents' allegations that he refused to receive the *warning letter* on March 16, 2003, and then stopped working on April 9, 2003, without any valid reason. Dela Rosa's failure to rebut these serious allegations, the LA held, gave rise to an inference that the same were true. The LA further lent credence to the entries in the logbook and

further declared that Dela Rosa already waived his right to contest the said entries because he refused to receive the *warning letter* addressed to him. The LA disposed, thus:

> WHEREFORE, a Decision is hereby rendered DISMISSING the case for lack of merit.[7]

Dela Rosa appealed to the National Labor Relations Commission (NLRC). On July 29, 2005, the NLRC issued a Resolution[8] dismissing the appeal and affirming the LA. In so ruling, the NLRC sustained respondents' claim that Dela Rosa neglected his duty as 3rd Engineer and abandoned his job, justifying the termination of his employment.

Dela Rosa filed a motion for reconsideration,[9] but the NLRC denied it on November 24, 2005.[10]

Dela Rosa then went to the CA via *certiorari*. On January 31, 2007, the CA rendered a Decision[11] reversing the NLRC. It held that respondents failed to allege and prove with particularity the charges against Dela Rosa. The particular acts which would indicate Dela Rosa's unsatisfactory performance were neither specified nor described in the *warning letter* and were never entered in the ship's logbook. It declared respondents' pieces of evidence as self-serving, which could not support the findings of lawful termination. The CA added that Dela Rosa's alleged incompetence, disobedience, and refusal to work while on board MT "Goldmar" did not constitute a clear case of insubordination and abandonment of work that would warrant his termination.

The CA decreed that:

> **WHEREFORE**, the foregoing considered, the **Petition** is ***GRANTED*** and the **assailed Resolutions** are ***ANNULLED and SET ASIDE***. ***Accordingly***, Petitioner Romulo B. dela Rosa is hereby declared to have been illegally dismissed from employment and private respondents are therefore ordered to pay him his salaries corresponding to the unexpired portion of his employment contract. No costs.
>
> **SO ORDERED.**[12]

Dela Rosa's victory, however, was only fleeting because on a motion for reconsideration, the CA rendered an Amended Decision, viz.:

> After a careful study of the grounds relied upon by [respondents], this court finds the instant motion meritorious, considering that the 24 November 2005 Resolution of the National Labor Relations Commission has already become final and executory on February 28, 2006 and the corresponding entry of judgment thereon issued on June 15, 2006. Jurisprudence dictates that once a judgment becomes final, all the issues between the parties are deemed resolved and laid to rest. Litigation must end and terminate sometime and somewhere, and it is essential to an effective and efficient administration of justice that once a judgment has become final the winning party be not be deprived of the fruits of the verdict. Courts must therefore guard against any scheme calculated to bring about that result. Constituted as they are to put an end

controversies, courts should frown upon any attempt to prolong them. As such, it becomes immutable and unalterable, and may no longer be modified in any respect except only to correct clerical errors or mistake. **WHEREFORE**, the foregoing considered, the **Motion for Reconsideration** is hereby **GRANTED** and Our assailed decision considered academic.

SO ORDERED.[13]

Dela Rosa filed a motion for reconsideration on September 30, 2007. Pending resolution of petitioner's motion, respondent Michaelmar Philippines, Inc. filed a *Manifestation/Motion to Substitute Michaelmar Phils., Inc.*[14] with OSG Shipmanagement Manila, Inc. (OSG Shipmanagement). It alleged that OSG Shipmanagement is the new manning agent in the Philippines of Michaelmar Shipping Services, Inc., and it assumes the full responsibility for all contractual obligations to seafarers originally recruited and processed by Michaelmar Philippines, Inc.[15]

The CA noted and granted the motion in its Resolution[16] dated November 12, 2007, and accordingly ordered the impleading of OSG Shipmanagement as respondent, in substitution of Michaelmar Philippines, Inc.

On March 18, 2008, the CA issued a Resolution[17] denying Dela Rosa's motion for reconsideration.

Hence, this appeal by Dela Rosa, arguing that:

I

THE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW IN PROMULGATING THE AMENDED DECISION OF 22 AUGUST 2007 REVERSING AND SETTING THE EARLIER DECISION DATED 31 JANUARY 2007 ON THE GROUND THAT THE CASE HAS ALREADY BECOME MOOT AND ACADEMIC.

II

THE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF LAW IN ERRONEOUSLY APPLYING THE JURISPRUDENCE LAID DOWN IN THE CASE OF SALVA VS. CA, 304 SCRA 632.

III

THE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW IN ERRONEOUSLY APPRECIATING THE ENTRY OF JUDGMENT ISSUED BY THE NATIONAL LABOR RELATIONS COMMISSION ON JUNE 15, 2006 THEREBY GIVING THE EFFECT PF DISMANTLING THE RIGHT OF THE PETITIONER TO REMEDIAL MEASURES IN RPOTECTION OF HIS RIGHTS AS SET FORTH BY LAW.[18]

The CA dismissed Dela Rosa's petition on ground of mootness. It considered the November 24, 2005 NLRC Resolution sustaining Dela Rosa's dismissal as final and executory. As such, the resolution became immutable and unalterable.

The CA was wrong.

A decision issued by a court becomes final and executory when such decision disposes of the subject matter in its entirety or terminates a particular proceeding or

action, leaving nothing else to be done but to enforce by execution what has been determined by the court, such as when after the lapse of the reglementary period to appeal, no appeal has been perfected.[19]

The period or manner of *appeal* from the NLRC to the CA is governed by Rule 65, pursuant to the ruling of this Court in *St. Martin Funeral Home v. National Labor Relations Commission*.[20] Section 4 of Rule 65, as amended, *states that the petition may be filed not later than sixty (60) days from notice of the judgment, or resolution sought to be assailed*.

Record shows that Dela Rosa received a copy of the November 24, 2005 Resolution of the NLRC, denying his motion for reconsideration on December 8, 2005.[21] He had sixty (60) days, or until February 6, 2006, to file his petition for *certiorari*. February 6, 2006, however, was a Sunday. Thus, Dela Rosa filed his petition the next working day, or on February 7, 2006. Undoubtedly, Dela Rosa's petition was timely filed.

In *Leonis Navigation Co., Inc. v. Villamater*,[22] we explained:

> [J]udicial review of decisions of the NLRC is sought via a petition for *certiorari* under Rule 65 of the Rules of Court, and the petition should be filed before the CA, following the strict observance of the hierarchy of courts. Under Rule 65, Section 4, petitioners are allowed sixty (60) days from notice of the assailed order or resolution within which to file the petition. Thus, although the petition was not filed within the 10-day period, petitioners reasonably filed their petition for *certiorari* before the CA within the 60-day reglementary period under Rule 65.
>
> Further, a petition for *certiorari* does not normally include an inquiry into the correctness of its evaluation of the evidence. Errors of judgment, as distinguished from errors of jurisdiction, are not within the province of a special civil action for *certiorari*, which is merely confined to issues of jurisdiction or grave abuse of discretion. It is, thus, incumbent upon petitioners to satisfactorily establish that the NLRC acted capriciously and whimsically in order that the extraordinary writ of *certiorari* will lie. By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, and it must be shown that the discretion was exercised arbitrarily or despotically.
>
> The CA, therefore, could grant the petition for *certiorari* if it finds that the NLRC, in its assailed decision or resolution, committed grave abuse of discretion by capriciously, whimsically, or arbitrarily disregarding evidence that is material to or decisive of the controversy; and it cannot make this determination without looking into the evidence of the parties. Necessarily, the appellate court can only evaluate the materiality or significance of the evidence, which is alleged to have been capriciously, whimsically, or arbitrarily disregarded by the NLRC, in relation to all other evidence on record. Notably, if the CA grants the petition and nullifies the decision or resolution of the NLRC on the ground of grave abuse of discretion amounting to excess or lack of jurisdiction, the decision or resolution of the NLRC is, in contemplation of law, null and void *ab initio*; hence, the decision or resolution never became final and executory.[23]

Indubitably, the issuance of an entry of judgment by the NLRC cannot render Dela Rosa's petition for *certiorari* as moot and academic. Thus, the CA erred for ruling otherwise.

On the merits of the case. Dela Rosa insists that he was illegally terminated. Respondents, on the other hand, maintain that Dela Rosa's dismissal was based on a valid and legal ground.

We sustain Dela Rosa's argument.

Dela Rosa was dismissed for his alleged poor performance. In *Eastern Overseas Employment Center, Inc. v. Bea*,[24] we explained poor performance as a ground for termination of employment, *viz*.:

> As a general concept, "poor performance" is equivalent to inefficiency and incompetence in the performance of official duties. Under Article 282 of the Labor Code, an unsatisfactory rating can be a just cause for dismissal only if it amounts to gross and habitual neglect of duties. [Thus,] the fact that an employee's performance is found to be poor or unsatisfactory does not necessarily mean that the employee is grossly and habitually negligent of his duties. Gross negligence implies a want or absence of or failure to exercise slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them.[25]

We review the records of the case and we agree with the earlier finding of the CA that no substantial evidence was presented to substantiate the cause of Dela Rosa's dismissal. The *letter warning*[26] dated March 16, 2003 and the following entries[27] in the ship's logbook:

> WARNING LETTER WAS PRESENTED TO THIRD ENGINEER R. DELA ROSA CONCERNING HIS PERFORMANCE AS THIRD ENGINEER ON BOARD MT GOLDMAR. HOWEVER, HE REFUSED TO AFFIX HIS SIGNATURE OR ACKNOWLEDGE SAID WARNING LETTER, IN SHORT, HE HAS NO INTENTION OR WHATSOEVER TO IMPROVE.[28]
>
> @0800HRS 09 APRIL '03 THIRD ENG'R R. DELA ROSA CEASES TO WORK WITHOUT MY KNOWLEDGE AND INSTRUCTION, AS WELL AS A VALID REASON NOT TO BE IN THE ENGINE ROOM TO CARRY OUT HIS ROUTINE DUTY/RESPONSIBILITIES.[29]

are insufficient to establish respondents' claim of valid dismissal. In *Talidano v. Falcon Maritime & Allied Services, Inc*.[30] and *Abacast Shipping & Management Agency, Inc. v. NLRC*,[31] we held that a ship's logbook is a respectable record that can be relied upon to authenticate the charges filed and the procedure taken against employees prior to their dismissal. In this case, however, respondents did not present the other entries in the logbook that could substantiate Dela Rosa's unsatisfactory performance.

The letter[32] dated April 14, 2003 of Engr. Huevas to Michaelmar Philippines, Inc. cited the particular acts constituting Dela Rosa's want of capacity and unsatisfactory conduct. Curiously, these acts were not entered in the ship's logbook or stated in the *warning letter*[33] allegedly given to Dela Rosa.