

## SECOND DIVISION

[ G.R. No. 176377, November 16, 2011 ]

**FUNCTIONAL, INC. PETITIONER, VS. SAMUEL C. GRANFIL,  
RESPONDENT.**

### DECISION

**PEREZ, J.:**

Assailed in this petition for review<sup>[1]</sup> filed under Rule 45 of the *1997 Rules of Civil Procedure* is the Decision dated 22 November 2006 rendered by the then Tenth Division of the Court of Appeals (CA) in CA-G.R. SP No. 94851,<sup>[2]</sup> the dispositive portion of which states:

WHEREFORE, premises considered, the petition is GRANTED. The Resolution dated April 20, 2005 and the order dated January 26, 2006 of public respondent NLRC, First Division in NLRC NCR Case No. 09-07126-02 NLRC NCR CA No. 035887-03 sustaining the findings of the Labor Arbiter are hereby REVERSED and SET ASIDE. Private respondent Functional, Inc. is hereby ORDERED to reinstate petitioner Granfil without loss of seniority rights and other privileges, and to pay the latter his full backwages, inclusive of allowances and other benefits, from July 31, 2002 up to the time of his actual reinstatement.

SO ORDERED.<sup>[3]</sup>

### The Facts

Sometime in 1992, respondent Samuel C. Granfil was hired as key operator by petitioner Functional, Inc. (FI), a domestic corporation engaged in the business of sale and rental of various business equipments, including photocopying machines. As Key Operator, Granfil was tasked to operate the photocopying machine rented by the National Bookstore (NBS) at its SM Megamall Branch. There is no dispute regarding the fact that, in the evening of 30 July 2002, Granfil attended to a customer by the name of Cosme Cavaldeja (Cavaldeja) who, together with his wife, asked to have their flyers photocopied. It appears that Bonnel Dechavez, the security guard assigned at said establishment, saw Cavaldeja handing money to Granfil after the transaction was finished.<sup>[4]</sup> After investigating the matter, Dechavez submitted the following incident report to NBS Branch Manager Lucy Genegaban (Genegaban), to wit:

At around 1940 on July 30, 2002 at NBS SM Megamall Dona Julia Vargas Ave., Mandaluyong City, I checked one customer and asked if he already

paid for his xerox[ed] item's (sic) and he said "yes." Upon asking for a receipt, he pointed to Sammy the Xerox operator [to] whom he g[a]ve payment, instead of paying to the cashier. Sammy came and it was only then that he brought the customer to the counter 09 for payment [of] the amount of [the] xerox[ed] item's (sic) is P250.[5]

On 3 September 2002, Granfil filed a complaint against FI, its President, Romeo Bautista (Bautista), its Marketing Manager, Freddie Tenorio (Tenorio), its Office Supervisor, Julius Ballesteros (Ballesteros), and its Area Supervisor, Joel Dizon (Dizon), for illegal dismissal, unpaid 13<sup>th</sup> month pay, moral and exemplary damages and attorney's fees. In support of his complaint which was docketed as NLRC NCR Case No. 09-07126-2002 before the arbitral level of the National Labor Relations Commission (NLRC),[6] Granfil alleged, among other matters, that the money which Dechavez saw him receive from Cavaldeja was a P200 tip said customer gave him in appreciation of his assistance in xeroxing and organizing the batches of voluminous materials he asked to be photocopied; that payment for the materials was, however, already paid per batch by Cavaldeja's wife who, by that time, had already left the premises; and, that rather than listening to his explanation and simply verifying the meter of the photocopy machine as well as the paper allotted to it, Dechavez submitted his incident report which, in turn, caused Tenorio to tell him, "*Mr. Granfil, magpahinga ka muna. Mabuti pa, pumirma ka nalang ng resignation letter para may makuha ka pa.*"[7]

Granfil further asseverated that, with said incident report having been telefaxed to FI's head office, he was asked to report thereat in the morning of 31 July 2002; that instead of allowing him to explain, however, Ballesteros peremptorily ordered his termination from employment; that wishing to explain his side, he sought out Dizon who merely ignored and tersely advised him, "*Magpahinga ka na lang*"; that refused entry when he tried to report for work on 1 August 2002, he subsequently sought out Cavaldeja whose corroboration of his version of the incident also fell on deaf ears; that having been terminated without just cause and observance of due process, he was constrained to file the 3 September 2002 complaint from which the instant suit originated; that aside from the reinstatement to which he is clearly entitled as an illegally dismissed employee, he should be paid full backwages and 13<sup>th</sup> month pay for the year 2002; and, that in view of the malice and bad faith which characterized his dismissal from employment, Bautista, Tenorio, Ballesteros and Dizon should be held jointly and severally liable with FI for the payment of said indemnities as well as his claims for moral and exemplary damages and attorney's fees.[8]

In their position paper, FI and its corporate officers, in turn, averred that having been apprised of the incident, Genegaban requested for Granfil's relief as Key Operator of the photocopying machine installed at the NBS SM Megamall Branch; that for the good of all concerned, FI informed Granfil that he was going to be transferred to a different assignment, without demotion in rank or diminution of his salaries, benefits and other privileges; that required to report to FI's main office to act as emergency reliever to other Key Operators while waiting for his new assignment, Granfil misconstrued his transfer as a punishment for his guilt and refused to heed said directive which was within the management's prerogative to issue; that an employee's right to security of tenure does not give him such vested

right to his position as would deprive his employer of its prerogative to change his assignment or transfer him where he will be most useful; and, that aside from being guilty of insubordination, Granfil clearly abandoned his employment rather than illegally dismissed therefrom.<sup>[9]</sup>

On 29 April 2003, Labor Arbiter Eduardo Carpio rendered a decision discounting Granfil's illegal dismissal from employment in view of his failure to prove with substantial evidence overt acts of termination on the part of FI and its officers. Simply awarded the sum of P3,966.65 as proportionate 13th month pay for services rendered from January to July 2002,<sup>[10]</sup> Granfil perfected the appeal which was docketed before the First Division of the NLRC as NLRC NCR CA No. 035887-03. With the affirmance of the Labor Arbiter's decision in the 20 April 2005 Resolution issued by the NLRC<sup>[11]</sup> and the subsequent denial of his motion seeking the reconsideration of said decision,<sup>[12]</sup> Granfil elevated the case through the Rule 65 petition for certiorari docketed before the CA as CA-G.R. SP No. 94851. On 22 November 2006, the CA rendered the herein assailed 22 November 2006 Decision, reversing the NLRC's 20 April 2005 Resolution on the ground that FI failed to satisfactorily prove Granfil's supposed abandonment of his employment which, by itself, was negated by his filing of a case for illegal employment. Ordering FI to reinstate Granfil and to pay his full backwages, allowances and other benefits from 31 July 2002 until his actual reinstatement, the CA denied said employee's claims for moral and exemplary damages as well as attorney's fees for lack of factual basis.<sup>[13]</sup>

FI's motion for reconsideration of the CA's 22 November 2006 decision was denied for lack of merit in said court's 22 January 2007 resolution,<sup>[14]</sup> hence, this petition.

### **The Issues**

FI prays for the reversal and setting aside of the assailed decision on the following grounds, to wit:

#### **A.**

***The Honorable Court erred in holding that [Granfil] was illegally dismissed by FI.***

#### **B.**

***The Honorable Court erred in not giving credence to the factual findings of both the NLRC and Labor Arbiter before wh[om] the case was tried.<sup>[15]</sup>***

### **The Court's Ruling**

We find the petition bereft of merit.

The rule is long and well settled that, in illegal dismissal cases like the one at bench, the burden of proof is upon the employer to show that the employee's termination