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THIRD DIVISION

[G.R. No. 152101, September 08, 2009]

EMCOR INCORPORATED, PETITIONER, VS. MA. LOURDES D. SIENES, RESPONDENT.

D E C I S I O N

PERALTA, J.:

Before us is a special civil action for *certiorari* under Rule 65 of the Rules of Court filed by petitioner Emcor Incorporated seeking to set aside the Decision[1] dated May 24, 2001 and the Resolution[2] dated January 14, 2002 of the Court of Appeals (CA) in CA-G.R. SP No. 52810.

Petitioner is engaged in the business of selling, promoting and servicing National appliances and Kawasaki motorcycles and parts throughout Visayas and Mindanao. Respondent Ma. Lourdes D. Sienes was hired by petitioner on March 29, 1992 as one of its clerks assigned in its Personnel Department.

On June 6, 1996, respondent got married to a Credit Officer of petitioner who had to resign in view of petitioner's policy against husband and wife both working in the company.

On August 1, 1997, respondent was terminated from employment due to petitioner's retrenchment program.

On October 15, 1997, respondent filed a case for illegal dismissal and damages against petitioner alleging that her retrenchment was discriminatory and without basis; that when she was told on August 1, 1997 that she was being retrenched and was asked to sign a waiver and quitclaim which she refused to sign, thus, she was not allowed to report for work since then; that petitioner's alleged suffering from business reverses was belied by its continuous hiring of new employees from January to July 1997; that she was the third most senior of the seven clerks assigned to the Personnel Department and yet she was chosen to be retrenched when there was no evaluation of her performance before her termination; that petitioner committed bad faith in forcing her husband to resign in the guise of the alleged prohibition on spouses working in the same company. Respondent prayed for moral and exemplary damages.

In its position paper, petitioner argued that respondent was retrenched as part of its cost-cutting measures in order to prevent further losses; that she was served a one-month advance notice, receipt of which she refused to acknowledge; that it suffered financial losses in the amount of P6,321,953.00 for the year 1997 as shown by its Comparative Income Statement for the year 1996 and from February to June 1997; that it was constrained to resort to downsizing its manpower complement because of the continuous slump in the market demands for its products by reducing or

abolishing some job positions in each department and transferring the work activities of the abolished positions to the remaining job positions; that there were 5 other employees retrenched who had received their separation pay; and that respondent's termination was a valid exercise of management prerogative.

Respondent filed her Reply and petitioner filed its Rejoinder.

On May 27, 1998, the Labor Arbiter issued a Decision[3] dismissing the case.

The Labor Arbiter found that petitioner's retrenchment program was to prevent further losses, thus, a valid exercise of management prerogative; that petitioner had served the affected employees one-month advance notice, a copy furnished the DOLE Regional Office, and they were properly paid their monetary benefits; that proof of actual losses incurred by the company was not a condition *sine qua non* for retrenchment as it could be resorted to by an employer primarily to avoid or minimize business losses as provided under Article 283 of the Labor Code; and that respondent's position was not indispensable to the operation of petitioner's business. The Labor Arbiter also found that the hiring of new employees was necessary for the different stores located throughout the country; that respondent failed to show that someone was hired to take her place, and she failed to controvert petitioner's Comparative Income Statement; and that there appeared no evidence that respondent's husband was forced to resign, as he voluntarily left the company.

Aggrieved, respondent filed an appeal with the National Labor Relations Commission (NLRC). In a Decision[4] dated November 16, 1998, the NLRC dismissed the appeal and affirmed the Labor Arbiter's decision. Respondent received the NLRC decision on December 2, 1998.[5]

On December 8, 1998, respondent filed a motion for reconsideration, which was denied in a Resolution[6] dated January 11, 1999. She received the Resolution on January 25, 1999;[7] thus, she had until March 20, 1999 to file a petition for *certiorari* with the CA.

On March 25, 1999, respondent filed a petition for *certiorari* with the CA. After the parties had filed their respective pleadings, the case was submitted for Decision.

On May 24, 2001, the CA rendered its assailed Decision, which reversed the decisions of the Labor Arbiter and the NLRC, the dispositive portion of which reads:

> WHEREFORE, the petition is hereby GRANTED. The assailed decision is SET ASIDE, and a new one rendered declaring Lourdes' retrenchment as illegal and ordering EMCOR to reinstate Lourdes to her former position with payment of full backwages.[8]

The CA found that the petition for *certiorari* was indeed filed out of time following SC Resolution dated July 21, 1998, which was applicable to respondent's case, as the petition was filed on March 29, 1999; that even applying SC A.M. No. 00-02-03

dated September 1, 2000, where a new period of 60 days from receipt of the denial of the motion for reconsideration is provided for, the petition was still filed out of time; nonetheless, the CA gave due course to the petition based on the merit of the case, setting aside technical rules in the higher interest of justice.

In reversing the NLRC, the CA found that petitioner failed to present the quantum of proof of its losses to justify respondent's retrenchment; that the best proof of the profit and loss performance of a company was not petitioner's Comparative Income Statement but the Income Statement for the year 1996 bearing the accountant's signature or showing that it was audited by an independent auditor; that since respondent was terminated on August 1, 1997 when fiscal year 1997 had not yet ended, petitioner should have come up with its books of accounts and profit and loss statement signed by its accountant; that petitioner's Comparative Income Statement which covered only the year 1996 and two quarters of 1997, was not sufficient to show serious business losses, as it failed to show the income or losses for the years immediately preceding 1996; that it hired new employees when it could have offered respondent any of the clerical positions for newly-hired employees. The CA also held that the required one-month notice prior to her termination was not complied with since she was no longer allowed to work on August 2, 1997 despite the fact that the notice to terminate her was made only on August 1, 1997; and that there were no fair and reasonable criteria observed in terminating her. The CA, however, found no evidence to substantiate respondent's claim for damages.

Petitioner received a copy of the CA decision on June 8, 2001 and filed a motion for reconsideration on June 20, 2001. On January 14, 2002, the CA denied the motion for reconsideration, and petitioner received a copy of the resolution on January 24, 2002.

Undaunted, petitioner filed a petition for *certiorari* raising the following issues:

> PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO EXCESS OF OR LACK OF JURISDICTION WHEN IT GAVE DUE COURSE TO THE APPEAL DESPITE THE FACT THAT IT WAS ADMITTEDLY FILED OUT OF TIME.
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> PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO EXCESS OF OR LACK OF JURISDICTION WHEN IT FURTHER REVERSED AND SET ASIDE THE CONSISTENT RULING OF BOTH THE LABOR ARBITER AND THE NATIONAL LABOR RELATIONS COMMISSION.[9]

Petitioner alleges that the CA erred in giving due course to the petition for *certiorari*, as the same was filed out of time, and a liberal application of Section 4, Rule 65 of the 1997 Rules of Civil Procedure was uncalled for; that both the Labor Arbiter and the NLRC, being experts in their field and having a good grasp of the over-all conditions then prevailing, affirmed with definiteness the soundness of petitioner's retrenchment program; and that the CA gravely erred and abused its discretion when it reversed the findings of the Labor Arbiter and the NLRC, since the policy of

the court is not to interfere with the exercise of the adjudicatory functions of the administrative bodies, unless there be a showing of arbitrary action or palpable and serious error.

In her Comment, respondent argues that the petition should be dismissed, as petitioner filed a petition for *certiorari* under Rule 65 which was a wrong remedy, since an appeal from a final disposition of the CA should be under Rule 45 of the Rules of Court; that *certiorari* cannot be used as a substitute for the lost or lapsed appeal. Respondent counters that the petition for *certiorari* filed before the CA was timely filed under A.M. No. 00-2-03- SC amending Section 4, Rule 65 of the Rules of Court; that the CA correctly reversed the decision of the administrative bodies, since petitioner presented an unsigned and unaudited Comparative Income Statement for the year 1996 and from January to June 1997; and that there were no criteria applied to the selection of the employees to be terminated.

In its Reply, petitioner argues that an appeal under Rule 45 presupposes that the inferior court had jurisdiction to entertain the case; however, the CA had no jurisdiction to entertain the same because the petition was filed beyond the 60-day period required for filing the petition. Petitioner raised for the first time respondent's failure to pay the full amount of docket fees at the time of the filing of the petition. It claims that the CA committed grave abuse of discretion amounting to lack of jurisdiction when it reversed the findings of both the Labor Arbiter and the NLRC, thus, the appropriate remedy is a petition for *certiorari*. Petitioner contends that nevertheless, the instant petition is not a substitute for a lapsed appeal; since petitioner received a copy of the CA resolution denying its motion for reconsideration on January 24, 2002, and the instant petition was filed on February 7, 2002, *i.e.*, within the 15-day period to file the petition for review on *certiorari*.

Preliminarily, we must first resolve respondent's contention that the instant petition for *certiorari* filed under Rule 65 should be summarily dismissed for being the wrong mode of appeal.

The proper remedy of a party aggrieved by a decision of the Court of Appeals is a petition for review under Rule 45, which is not identical to a petition for *certiorari* under Rule 65. Rule 45 provides that decisions, final orders or resolutions of the Court of Appeals in any case, *i.e.*, regardless of the nature of the action or proceedings involved, may be appealed to us by filing a petition for review, which would be but a continuation of the appellate process over the original case.[10] Thus, petitioner should have filed a petition for review under Rule 45 instead of a special civil action for *certiorari* under Rule 65.

Petitioner's argument that a petition for *certiorari* is the proper remedy since the CA had no jurisdiction to entertain the petition for *certiorari* filed before it as the petition was filed beyond the 60-day period for filing the same deserves scant consideration. There is no reason why such issue could not have been raised on appeal.

However, in accordance with the liberal spirit pervading the Rules of Court and in the interest of justice, we have the discretion to treat a petition for *certiorari* as having been filed under Rule 45, especially if filed within the reglementary period for filing a petition for review.[11] Petitioner received the CA resolution denying its motion for

reconsideration on January 24, 2002, and it filed the petition for *certiorari* on February 7, 2002; thus, the petition was filed within the 15-day reglementary period for filing a petition for review.

Now, on the issues raised by petitioner.

Petitioner contends that the CA erred in giving due course to respondent's petition for *certiorari* for being filed out of time.

We do not agree.

Records show that respondent received the NLRC decision on December 2, 1998 and filed her motion for reconsideration on December 8, 1998. The NLRC denied the motion for reconsideration, which respondent received on January 25, 1999. Thus, she had only 54 days, *i.e.*, until March 20, 1999, to file the petition for *certiorari* with the CA, in consonance with Circular No. 39-98, which contained the amendments to Section 4, Rule 65 of the 1997 Rules of Civil Procedure, which was in effect when the petition was filed, thus:

> SEC. 4. *Where and when petition to be filed*. - The petition may be filed not later than sixty (60) days from notice of the judgment, order or resolution sought to be assailed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, and unless otherwise provided by law or these Rules, the petition shall be filed in and cognizable only by the Court of Appeals.
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> If the petitioner had filed a motion for new trial or reconsideration in due time after notice of said judgment, order or resolution, the period herein fixed shall be interrupted. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of such denial. No extension of time to file the petition shall be granted, except for the most compelling reason and in no case to exceed fifteen (15) days.

Respondent filed the petition on March 25, 1999,[12] and not on March 29, 1999 as erroneously stated by the CA; thus, the petition was indeed filed out of time. However, on September 1, 2000, A.M. No. 00-2-03-SC took effect, amending Section 4, Rule 65 of the 1997 Rules of Civil Procedure, whereby the 60-day period within which to file the petition shall be counted from notice of the denial of the motion for reconsideration, if one is filed. We ruled that A.M. No. 00-2-03-SC, being a curative statute, should be applied retroactively.[13]

In *Narzoles v. NLRC*,[14] the rationale for the retroactive application of A.M. No. 00-