588 Phil. 495

THIRD DIVISION

[G.R. No. 159808, September 30, 2008]

LEOPARD INTEGRATED SERVICES, INC. AND/OR JOSE POE, PETITIONERS, VS. VIRGILIO MACALINAO, RESPONDENT.

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Herein petition for review on *certiorari* under Rule 45 of the Rules of Court originated from an illegal dismissal case filed by Virgilio Macalinao (respondent) against Leopard Integrated Services, Inc. and/or Jose Poe (petitioners). Respondent, who was a security guard in petitioners' agency, alleged that he was placed on "floating status" after he was relieved from his previous posting on September 8, 1998, until he filed the case on June 28, 1999. Petitioners belie respondent's allegation and assert that it was respondent who went on absence without leave (AWOL) by failing to report for work when ordered to do so.

In a Decision dated February 29, 2000 by the Labor Arbiter (LA), respondent's complaint for illegal dismissal, underpayment of salaries/wages, service incentive leave pay, refund of deductions, uniform allowance and attorney's fees, was dismissed for lack of merit.

On appeal to the National Labor Relations Commission (NLRC), the LA's Decision was reversed. The dispositive portion of the NLRC Resolution dated December 20, 2000 provides:

> WHEREFORE, the assailed decision of 29 February 2000 is REVERSED. Respondent LEOPARD INTEGRATED SERVICES and JOSE B. POE are hereby ordered to immediately reinstate complainant to his former position as security guard without loss of seniority rights and other benefits and privileges accruing to him with full backwages from the time of his dismissal up to the date of his actual reinstatement. Furthermore, respondents, jointly and solidarily, are ordered to pay the other money claims, otherwise computed as follows:
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> | 1.BACKWAGES | P 129,152.40 |
> | 2.REFUND OF CASH BOND | P 2,250.00 |
> | 3.UNDERPAYMENT OF WAGES | P 2,730.00 |
> | 4.SERVICE INCENTIVE LEAVE PAY | P 3,352.50 |
> | 5.13th MONTH PAY | P 10,762.70 |
> | TOTAL MONEY AWARD | P 148,247.60 |

All other money claims are dismissed for lack of merit.

SO ORDERED.[1]

Petitioners filed a motion for reconsideration but this was denied by the NLRC per Resolution dated February 1, 2002.[2]

Petitioners brought the case up to the Court of Appeals (CA), and in a Decision dated May 20, 2003, the NLRC Resolutions dated December 20, 2000 and February 1, 2002, were affirmed.[3] Petitioners' motion for reconsideration was denied per Resolution dated August 8, 2003.[4]

Petitioners thus filed the present petition on the following grounds:

A

THE COURT OF APPEALS' MISPLACED APPLICATION OF THE DOCTRINES LAID DOWN IN LABOR V. NLRC, 248 SCRA 183, 14 SEPTEMBER 1995, AND HAGONOY RURAL BANK, INC. VS. NLRC, 285 SCRA 297, 28 JANUARY 1998, IN THE CASE AT BAR RAISES A SERIOUS QUESTION OF LAW THAT SHOULD BE CLARIFIED INASMUCH AS PETITIONER COMPANY WAS ABLE TO SUBSTANTIATE THE DELIBERATE AND UNJUSTIFIED REFUSAL OF PRIVATE RESPONDENT MACALINAO TO RESUME HIS EMPLOYMENT.

B

PRIVATE RESPONDENT MACALINAO WAS NOT PLACED ON FLOATING STATUS AND FOR THIS REASON, THE COURT OF APPEALS' QUESTIONABLE APPLICATION OF THE LAW OF THE CASE IN VALDEZ VS. NLRC, 286 SCRA 87, 09 FEBRUARY 1998, AND AGRO COMMERCIAL SECURITY SERVICES, INC. VS. NLRC, 175 SCRA 790, 31 JULY 1989, MERITS A JUDICIAL REVIEW THEREOF.

C

IT IS CONTRARY TO LAW AND JURISPRUDENCE TO CONSIDER THE REINSTATEMENT OF PRIVATE RESPONDENT MACALINAO AND TO PAY HIM BACKWAGES AND ATTORNEY'S FEES.[5]

Petitioners argue that respondent was not dismissed; rather, it was respondent who voluntarily severed his employment by abandoning his work. Petitioners contend that respondent went on AWOL after he refused to report to the company's headquarters as required of him per letter-memorandum dated October 10, 1998.

On the other hand, respondent claims that he did not receive the letter-memorandum dated October 10, 1998, and that petitioners placed him on a "floating" status.

While the well-established rule is that the jurisdiction of the Court in cases brought

before it *via* Rule 45 is limited to reviewing errors of law,[6] the admitted exception is where the findings of the NLRC contradict those of the labor arbiter, then the Court, in the exercise of its equity jurisdiction, may look into the records of the case and reexamine the questioned findings.[7]

In this case, the LA's findings are not in accord with those of the NLRC and the CA. The LA sustained petitioners' contention that respondent was not dismissed but merely relieved from his post, while the NLRC and the CA accepted respondent's claim that he was placed on floating status.

The rule in labor cases is that the employer has the burden of proving that the employee was not dismissed or if dismissed, that the dismissal was not illegal, and failure to discharge the same would mean that the dismissal is not justified and therefore illegal.[8] In the present case, petitioners were able to show that respondent was neither dismissed nor placed on a "floating status."

The evidence for petitioners established that respondent was required to report for work after he was relieved from his post on September 7, 1998 at Westmont Pharma Bonaventure. Thus, in Assignment Order No. 2485 dated September 7, 1998, respondent was assigned to headquarters effective September 8, 1998, after he was relieved from his post at the Westmont Bonaventure as requested by the client. It should be noted at this juncture that most contracts for security services stipulate that the client may request the replacement of the guards assigned to it, and a relief and transfer order in itself does not sever employment relationship between a security guard and his agency.[9] Also, an employer has the right to transfer or assign its employees from one area of operation to another, or from one office to another, or in pursuit of its legitimate business interest, provided there is no demotion in rank or diminution of salary, benefits and other privileges; and the transfer is not motivated by discrimination or made in bad faith, or effected as a form of punishment or demotion without sufficient cause.[10] On this score, respondent failed to show that his relief was done in bad faith or with grave abuse of discretion.

Also, in a letter-memorandum dated October 10, 1998, respondent was "advised to report to the HRD Manager not later than October 20, 1998."[11] Respondent denies having received said letter. According to respondent, at the time the letter was sent to him, he had already transferred residence.[12] Respondent's assertion, in fact, serves to boost petitioners' claim. If he was indeed reporting for work, then there was no need to post by registered mail the letter-memorandum to his last known address as petitioners could have easily conveyed to him in person the order to report for work. Moreover, it would have been expedient for respondent to have furnished petitioners with his new address if he was actually reporting to headquarters.

The NLRC did not give credence to petitioners' allegation that the letter-memorandum was sent on October 14, 1998. The NLRC stated:

> The twist in this case lies in the purported letter sent to complainant Macalinao by respondent's HRD Manager, Cristina Villacrusis allegedly on October 10, 1998 advising the former to report to the HRD Manager not later than October 20, 1998. Otherwise, failure to report will be