

THIRD DIVISION

[G.R. No. 166554, November 27, 2008]

JULITO SAGALES, PETITIONER, VS. RUSTAN'S COMMERCIAL CORPORATION, RESPONDENT.

DECISION

REYES, R.T., J.:

Labor is property, and as such merits protection. The right to make it available is next in importance to the rights of life and liberty. It lies to a large extent at the foundation of most other forms of property, and of all solid individual and national prosperity.^[1]

The exultation of labor by Mr. Justice Noah Haynes Swayne of the United States Supreme Court comes to the fore in this petition for review on *certiorari*. The employee questions the propriety of his dismissal after he was caught stealing 1.335 kilos of squid heads worth P50.00. He invokes his almost thirty-one (31) years of untarnished service and the several awards he received from the company to temper the penalty of dismissal meted on him.

The Facts

Petitioner Julito Sagales was employed by respondent Rustan's Commercial Corporation from October 1970 until July 26, 2001, when he was terminated. At the time of his dismissal, he was occupying the position of Chief Cook at the Yum Yum Tree Coffee Shop located at Rustan's Supermarket in Ayala Avenue, Makati City. He was paid a basic monthly salary of P9,880.00. He was also receiving service charge of not less than P3,000.00 a month and other benefits under the law and the existing collective bargaining agreement between respondent and his labor union.^[2]

In the course of his employment, petitioner was a consistent recipient of numerous citations^[3] for his performance. After receiving his latest award on March 27, 2001, petitioner conveyed to respondent his intention of retiring on October 31, 2001, after reaching thirty-one (31) years in service.^[4] Petitioner, however, was not allowed to retire with his honor intact.

On June 18, 2001, Security Guard Waldo Magtangob, upon instructions from Senior Guard Bonifacio Aranas, apprehended petitioner in the act of taking out from Rustan's Supermarket a plastic bag. Upon examination, it was discovered that the plastic bag contained 1.335 kilos of squid heads worth P50.00. Petitioner was not able to show any receipt when confronted. Thus, he was brought to the Security Office of respondent corporation for proper endorsement to the Makati Headquarters of the Philippine National Police. Subsequently, petitioner was brought to the Makati Police Criminal Investigation Division where he was detained. Petitioner was later ordered released pending further investigation.^[5]

Respondent alleged that prior to his detention, petitioner called up Agaton Samson, Rustan's Branch Manager, and apologized for the incident. Petitioner even begged Samson that he would just pay for the squid heads. Samson replied that it is not within his power to forgive him.^[6]

On June 19, 2001, petitioner underwent inquest proceedings for qualified theft before Assistant Prosecutor Amado Y. Pineda. Although petitioner admitted that he was in possession of the plastic bag containing the squid heads, he denied stealing them because he actually paid for them. As proof, petitioner presented a receipt. The only fault he committed was his failure to immediately show the purchase receipt when he was accosted because he misplaced it when he changed his clothes. He also alleged that the squid heads were already "scraps" as these were not intended for cooking. Neither were the squid heads served to customers. He bought the squid heads so that they could be eaten instead of being thrown away. If he intended to steal from respondent, he could have stolen other valuable items instead of scrap.^[7]

Assistant Prosecutor Pineda believed the version of petitioner and recommended the dismissal of the case for "lack of evidence."^[8] The recommendation was approved upon review by City Prosecutor Feliciano Aspi.^[9]

Notwithstanding the dismissal of the complaint, respondent, on June 25, 2001, required petitioner to explain in writing within forty-eight (48) hours why he should not be terminated in view of the June 18, 2001 incident. Respondent also placed petitioner under preventive suspension.^[10]

On June 29, 2001, petitioner was informed that a formal investigation would be conducted by the Legal Department on July 6, 2001.^[11]

Petitioner and his counsel attended the administrative investigation where he reiterated his defense before the inquest prosecutor. Also in attendance were Aranas and Magtangob, who testified on the circumstances surrounding the apprehension of petitioner; Samson, the branch manager to whom petitioner allegedly apologized for the incident; and Zenaida Castro, cashier, who testified that the squid heads were not paid.

Respondent did not find merit in the explanation of petitioner. Thus, petitioner was dismissed from service on July 26, 2001.^[12] At that time, petitioner had been under preventive suspension for one (1) month.

Aggrieved, petitioner filed a complaint for illegal dismissal against respondent. He also prayed for unpaid salaries/wages, overtime pay, as well as moral and exemplary damages, attorney's fees, and service charges.^[13]

Labor Arbiter, NLRC, and CA Dispositions

On July 24, 2002, Labor Arbiter Felipe P. Pati dismissed^[14] the complaint.

IN VIEW OF THE FOREGOING, the complaint for illegal dismissal should be DISMISSED for lack of merit.

SO ORDERED.^[15]

According to the Labor Arbiter, the nature of the responsibility of petitioner "was not that of an ordinary employee."^[16] It then went on to categorize petitioner as a supervisor in "a position of responsibility where trust and confidence is inherently infused."^[17] As such, it behooved him "to be more knowledgeable if not the most knowledgeable in company policies on employee purchases of food scrap items in the kitchen."^[18] Per the evidence presented by respondent, petitioner breached company policy which justified his dismissal.

Petitioner appealed to the National Labor Relations Commission (NLRC).^[19] On April 10, 2003, the NLRC reversed^[20] the Labor Arbiter in the following tenor:

WHEREFORE, the decision appealed from is hereby SET ASIDE and complainant's dismissal declared illegal. Further, respondent is hereby ordered to reinstate complainant to his former position without loss of seniority rights and other benefits and paid backwages computed from time of dismissal up to the finality of this decision which as of this date amounts to P269,854.16.

All other claims are denied for want of basis.

SO ORDERED.^[21]

The NLRC held that the position of complainant is not supervisory covered by the trust and confidence rule.^[22] On the contrary, petitioner is a mere rank-and-file employee.^[23] The evidence is also wanting that petitioner committed the crime charged.^[24] The NLRC did not believe that petitioner would trade off almost thirty-one (31) years of service for P50.00 worth of squid heads.^[25]

The NLRC further ruled that petitioner was illegally dismissed as respondent failed to establish a just cause for dismissal.^[26] However, the claim for damages was denied for lack of evidence.^[27]

The motion for reconsideration^[28] having been denied,^[29] respondent brought the matter to the Court of Appeals (CA) via a petition for *certiorari* under Rule 65 of the 1997 Rules on Civil Procedure.^[30] On July 12, 2004, the CA rendered the assailed decision,^[31] with the following *fallo*:

WHEREFORE, the petition is **GRANTED**. The challenged resolutions of April 10, 2003 and July 31, 2003 of public respondent NLRC are **REVERSED** and **SET ASIDE**. The decision of the Labor Arbiter of July 24, 2002, dismissing private respondent's complaint is **REINSTATED**.

SO ORDERED.^[32]

In reversing the NLRC, the CA opined that the position of petitioner was supervisory in nature.^[33] The CA also held that the evidence presented by respondent clearly established loss of trust and confidence on petitioner.^[34] Lastly, the CA, although taking note of the long years of service of petitioner and his numerous awards, refused to award separation pay in his favor. According to the CA, "the award of separation pay cannot be sustained under the social justice theory" because the instant case "involves theft of the employer's property."^[35]

Petitioner filed a motion for reconsideration^[36] which was denied.^[37] Left with no other recourse, petitioner availed of the present remedy.^[38]

Issues

Petitioner in his Memorandum^[39] imputes to the CA the following errors, to wit:

- I. THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT CONCLUDED THAT THE POSITION OF THE PETITIONER BEING AN ASSISTANT COOK AS A SUPERVISORY POSITION FOR BEING CONTRADICTORY TO THE EVIDENCE ON RECORD.
- II. THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT CONCLUDED THAT THE DOCTRINE OF TRUST AND CONFIDENCE APPLIES AGAINST THE PETITIONER TO JUSTIFY HIS DISMISSAL FROM EMPLOYMENT FOR BEING CONTRADICTORY TO THE EVIDENCE ON RECORD.^[40] (Underscoring supplied)

For a full resolution of the issues in the instant case, the following questions should be answered: (1) Is the position of petitioner supervisory in nature which is covered by the trust and confidence rule? (2) Is the evidence on record sufficient to conclude that petitioner committed the crime charged? and (3) Assuming that the answer is in the affirmative, is the penalty of dismissal proper?

Our Ruling

I. The position of petitioner is supervisory in nature which is covered by the trust and confidence rule.

The nature of the job of an employee becomes relevant in **termination of employment by the employer** because the rules on termination of managerial and supervisory employees are different from those on the rank-and-file. Managerial employees are tasked to perform key and sensitive functions, and thus are bound by more exacting work ethics.^[41] As a consequence, managerial employees are covered by the trust and confidence rule.^[42] The same holds true for supervisory employees occupying positions of responsibility.^[43]

There is no doubt that the position of petitioner as chief cook is supervisory in nature. A chief cook directs and participates in the preparation and serving of meals; determines timing and sequence of operations required to meet serving

times; and inspects galley and equipment for cleanliness and proper storage and preparation of food.^[44] Naturally, a chief cook falls under the definition of a supervisor, i.e., one who, in the interest of the employer, effectively recommends managerial actions which would require the use of independent judgment and is not merely routinary or clerical.^[45]

It has not escaped Our attention that petitioner changed his stance as far as his actual position is concerned. In his position paper, he alleged that at the time of his dismissal, he was "Chief Cook."^[46] However, in his memorandum, he now claimed that he was an "Asst. Cook."^[47] The ploy is clearly aimed at giving the impression that petitioner is merely a rank-and-file employee. The change in nomenclature does not, however, help petitioner, as he would still be covered by the trust and confidence rule. In *Concorde Hotel v. Court of Appeals*,^[48] the Court categorically ruled:

Petitioner is correct insofar as it considered the nature of private respondent's position as assistant cook a position of trust and confidence. As assistant cook, private respondent is charged with the care of food preparation in the hotel's coffee shop. He is also responsible for the custody of food supplies and must see to it that there is sufficient stock in the hotel kitchen. He should not permit food or other materials to be taken out from the kitchen without the necessary order slip or authorization as these are properties of the hotel. Thus, the nature of private respondent's position as assistant cook places upon him the duty of care and custody of Concorde's property.^[49] (Emphasis supplied)

Of course, the ruling assumes greater significance if petitioner is the chief cook. A chief cook naturally performs greater functions and has more responsibilities than an assistant cook. *In eo quod plus sit semper inest et minimus*. The greater always includes the less. ***Ang malawak ay laging sumasakop sa maliit.***

II. The evidence on record is sufficient to conclude that petitioner committed the crime charged.

Security of tenure is a paramount right of every employee that is held sacred by the Constitution.^[50] The reason for this is that labor is deemed to be "property"^[51] within the meaning of constitutional guarantees.^[52] Indeed, as it is the policy of the State to guarantee the right of every worker to security of tenure as an act of social justice,^[53] such right should not be denied on mere speculation of any similar or unclear nebulous basis.^[54] Indeed, the right of every employee to security of tenure is all the more secured by the Labor Code by providing that "the employer shall not terminate the services of an employee except for a just cause or when authorized" by law. Otherwise, an employee who is illegally dismissed "shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement."^[55]

Necessarily then, the employer bears the burden of proof to show the basis of the termination of the employee.^[56]