

## SECOND DIVISION

[ G.R. NO. 162468, January 23, 2007 ]

**AMA COMPUTER COLLEGE, INC., AMABLE R. AGUILUZ V, AND  
CARMELITA R. CONDENUENO, PETITIONERS, VS. ZENAIDA R.  
GARAY, RESPONDENT.**

### DECISION

#### **QUISUMBING, J.:**

The instant petition seeks to annul the August 21, 2003 Decision<sup>[1]</sup> and the January 16, 2004 Resolution<sup>[2]</sup> of the Court of Appeals in CA-G.R. SP No. 59689, which affirmed the February 11, 2000 Resolution<sup>[3]</sup> of the National Labor Relations Commission (NLRC) in NLRC CA No. 020193-99. The NLRC had affirmed the September 14, 1998 Decision<sup>[4]</sup> of the Labor Arbiter in NLRC NCR Case No. 00-08-05043-96, declaring illegal the dismissal of herein respondent Zenaida R. Garay.

Petitioner AMA Computer College, Inc. (AMACC) hired Zenaida R. Garay as a College Instructor in 1994. On May 13, 1996, she was promoted principal of the High School Department, with a monthly salary of P10,000.

On May 17, 1996, AMACC cashier, Sarah Pechardo, carried a brown envelope containing P47,299.34 to the comfort room of the high school. While inside, she placed the envelope on top of the toilet bowl tank. After she left the room, she realized the envelope was left behind, hence she returned to the comfort room, but the envelope was already gone. Pechardo reported the incident to petitioner Carmelita R. Condenueno and told her that the only person she recalled entering the comfort room after her was Garay.

Condenueno immediately ordered the investigation of Pechardo and Garay. Garay was subjected to physical inspection and her office was searched. But the petitioners did not find the envelope. Thereafter, Garay was brought to the barangay office and the incident was entered in its blotter. On May 20, 1996, she was preventively suspended.

Petitioners served on respondent several notices enjoining her to appear during the hearings and to submit her written explanation. Garay complied but the hearings were always cancelled. On June 19, 1996, the petitioners terminated Garay's employment effective June 20, 1996 but on the ground of loss of trust and confidence.

On June 21, 1996, the petitioners sent her another notice directing her to appear on the June 27, 1996 hearing and to submit a written explanation. In the meantime, the first notice of termination was set aside. The hearing was, however, cancelled. On July 1, 1996, the petitioners finally terminated Garay's employment on the same ground stated in the first termination letter.

On August 14, 1996, Garay filed a complaint for illegal dismissal with a prayer for reinstatement with payment of backwages. On September 14, 1998, Labor Arbiter Eduardo J. Carpio rendered judgment finding that Garay's employment was terminated on mere suspicion. He ruled that there was no material and direct evidence to show that Garay took the collections. According to him, while the petitioners conducted a lengthy investigation to comply with the due process requirement, there was no evidence that established Garay's guilt during this investigation. He concluded that Garay was terminated without just cause and decreed as follows:

WHEREFORE, judgment is hereby rendered declaring as illegal the termination of complainant. Respondents are ordered to immediately reinstate her to her former or substantially equal position and pay her backwages computed as of August 31, 1998 in the amount of P300,000.00 (7/1/96 to 12/31/98 = 30 mos. P10,000.00 x 30 mos. = P300,000.00). (Said computation is subject to further adjustment until complainant's physical or payroll reinstatement).

Respondents are further ordered to pay complainant the amounts of P100,000.00 and P50,000.00 by way of moral and exemplary damages, respectively.

SO ORDERED.<sup>[5]</sup>

The petitioners appealed to the NLRC, which affirmed the challenged decision, with the modification that the backwages shall include 13th month pay and five days' service incentive leave pay. The decretal part of the decision, dated February 11, 2000, reads:

WHEREFORE, the appeal of respondents-appellants is dismissed for lack of merit and the decision being impugned is AFFIRMED subject only to the modification on the computation of backwages to include 13th month pay and five days service incentive leave pay.

SO ORDERED.<sup>[6]</sup>

The NLRC was convinced that the dismissal did not rest on solid grounds. It noted that initially, Garay was suspected of having taken the money. But when the investigation revealed that there was no evidence that would show her responsibility for the loss, she was charged of having refused to extend her utmost cooperation in the investigation, resulting in the loss of trust and confidence vested on her by the petitioners. The NLRC concluded that aside from their bare assertions, the petitioners did not present evidence to support said loss. Thus, the loss of trust and confidence as the ground for dismissal was not established.

Petitioners elevated the case to the Court of Appeals, which denied their petition for certiorari and their motion for reconsideration. The petitioners then filed the instant petition for review predicated on the following issues:

A. WHETHER OR NOT THE COURT OF APPEALS COMMITTED ERRORS OF LAW WHICH SHOULD BE CORRECTED BY WAY OF PETITION FOR