

## SECOND DIVISION

[ G.R. NO. 164893, March 01, 2007 ]

**CONSTANCIA DULDULAO, PETITIONER, VS. THE COURT OF APPEALS, AND BAGUIO COLLEGES FOUNDATION, RESPONDENTS.**

### DECISION

**TINGA, J.:**

For the Court's adjudication is a petition for review under Rule 45, seeking to set aside the Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. SP No. 58291, which affirmed the 30 September 1999 Decision<sup>[2]</sup> of the National Labor Relations Commission (NLRC) in NLRC CASE RAB-CAR-02-0076-97, NLRC NCR CA NO. 018861-99.

The facts of the case, as culled from the records, follow.

Petitioner Constancia P. Duldulao was hired by respondent Baguio Colleges Foundation (BCF) as secretary/clerk-typist and assigned to the College of Law sometime in June of 1987. In August 1996, a certain law student filed a complaint against petitioner for alleged irregularities in the performance of her work. Petitioner was told to submit her answer to the complaint and given several extensions within which to do so. However, despite the extensions, she failed to submit her answer.

On 1 October 1996, Dean Honorato V. Aquino of the College of Law informed respondent's President, Atty. Edilberto B. Tenefrancia, of petitioner's failure to file her answer and recommended the assignment of petitioner outside the College of Law, not only because of such failure to answer but also her having admitted fraternizing with students of the College. On the same day, respondent's Vice President for Administration, Leonardo S. dela Cruz, issued a Department Order<sup>[3]</sup> which reads:

October 1, 1996

DEPARTMENT ORDER

To: Mrs. Constancia Duldulao

Re: Transfer of assignment

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1. Effective tomorrow 2 October 1996[,], you shall report at the office of the Principals of the High School and Elementary Departments;

2. You shall render regular duty in those offices until further notice.

3. Please be guided accordingly.

On 3 October 1996, petitioner moved for reconsideration of the Department Order and requested another five (5)-day extension within which to file her answer. Dean Aquino informed petitioner that he could no longer act on her motion for reconsideration and motion for extension since the matter had already been elevated to respondent's Executive Board due to the delay in the submission of her answer. Petitioner eventually filed her answer on 7 October 1996.

Petitioner filed a case with the BCF Grievance Committee, citing her "unceremonious, capricious, whimsical and arbitrary reassignment from her position as Secretary of the College of Law to the Elementary/High School Departments," but the case was transferred to the Administrative Investigating Committee because petitioner is not a member of the union. On 21 January 1997, the Committee found the Department Order appropriate since it was intended to prevent the controversy between petitioner and the complaining student from adversely affecting a harmonious relationship within the College of Law among all its constituents. It recommended that petitioner start reporting to her new assignment.<sup>[4]</sup> The recommendation was approved and adopted by President Tenefrancia on 7 February 1997.<sup>[5]</sup>

In the interim, upon the request of several students from the College of Law, respondent constituted a Fact-Finding Committee to investigate the allegations concerning the administrative matters and policies in the College. On 26 May 1997, the Fact Finding Committee Report<sup>[6]</sup> was submitted to the Dean. It contained, among others, a pronouncement that while petitioner was not guilty of the specific charges against her, "the implementation by the college secretary of the policies of the college, while oftentimes carrying the imprimatur of the Dean and of the Faculty, had alienated some students due to the lack of circumspection which, when coupled with ingrained perceptions, result in failure of communication."<sup>[7]</sup>

The Department Order notwithstanding, petitioner did not report for work and instead took a vacation leave and several other leave of absences from October 1996 to January 1997. Finally, on 17 February 1997, petitioner filed a complaint for constructive dismissal with prayer for moral and exemplary damages and attorney's fees before the NLRC Regional Arbitration Branch-Cordillera Administrative Region (NLRC RAB-CAR). She claimed that she was arbitrarily directed to report for work in a location far from her original place of assignment on account of which she would be incurring additional expenses in transportation. In addition, she stated that aside from being tainted with procedural lapses in violation of her right to due process, the transfer also amounted to her demotion in rank.

On 29 December 1998, Executive Labor Arbiter Jesselito B. Latoja ruled in favor of petitioner, ordering her reinstatement to her former position and awarding her moral and exemplary damages, as well as attorney's fees.<sup>[8]</sup>

On appeal, the NLRC reversed the Executive Labor Arbiter's decision, sustained petitioner's transfer, and dismissed the complaint for illegal dismissal for lack of merit.<sup>[9]</sup> In the Decision, the Commission gave weight to the argument that

petitioner was neither demoted nor dismissed, as her salary, benefits and other privileges remained the same despite her reassignment. Neither was there any violation of due process since petitioner was granted an initial period and several extensions within which to file her answer to the complaint against her. Even as petitioner continued to display a hostile attitude in work by refusing to report at her new assignment under the guise of leave of absences, respondent did not impose any disciplinary action, the Commission added.

The Court of Appeals, in turn, upheld the decision of the NLRC. The appellate court ruled that petitioner was not constructively dismissed, finding that petitioner was unable to point to any evidence that her reassignment was prompted by the malevolence or ill-will of respondent. Besides, respondent did not intend petitioner's transfer to be a disciplinary sanction against her but merely a temporary measure to prevent controversy within the College of Law.<sup>[10]</sup>

In the instant petition, petitioner reiterates her posture that her transfer was a case of constructive dismissal, tainted with bad faith and intended as punishment for an erring employee, whereupon she claims entitlement to backwages, benefits and moral damages.

On the other hand, respondent asserts that petitioner's temporary transfer from the Office of the Dean of the College of Law to the Office of the Principals of the High School and Elementary Departments was premised on certain considerations, namely: (i) the polarization of the students as a result of the controversy between petitioner and the complaining student; (ii) petitioner's failure to file her answer to the complaint against her; and (iii) petitioner's having expressly admitted her fraternization with some students.<sup>[11]</sup> Respondent justifies its reassignment of petitioner as a legitimate exercise of its management prerogative.<sup>[12]</sup>

Essentially, the issue in this case is whether petitioner's transfer as secretary/clerk-typist from the College of Law to the High School and Elementary Departments amounts to constructive dismissal.

The petition deserves rejection.

It is a well-settled rule that findings of fact of quasi-judicial agencies, like the NLRC, are accorded not only respect but at times even finality if such findings are supported by substantial evidence.<sup>[13]</sup> This is especially so in this case, where the findings of the NLRC were affirmed by the Court of Appeals. The findings of fact made therein can only be set aside upon showing of grave abuse of discretion, fraud or error of law, none of which has been shown in this case.

There is constructive dismissal if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it would foreclose any choice by him except to forego his continued employment.<sup>[14]</sup> It exists where there is cessation of work because "continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank and a diminution in pay."<sup>[15]</sup> The factual milieu in this case is different. Thus, the NLRC and the Court of Appeals both ruled that the treatment accorded petitioner does not constitute constructive dismissal.