562 Phil. 167

THIRD DIVISION

[G.R. No. 159641, October 15, 2007]

CALTEX (PHILS.), INC. (NOW CHEVRON PHILIPPINES, INC.),* PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND ROMEO T. STO. TOMAS, RESPONDENTS.**

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before us is a Petition for Review on *Certiorari* under Rule 45 filed by Caltex (Philippines) Inc., now Chevron Philippines, Inc. (petitioner) seeking to annul and set aside the Decision[1] dated May 15, 2003, and the Resolution[2] dated August 21, 2003 of the Court of Appeals (CA) in CA-G.R. SP No. 65405.

Romeo T. Sto Tomas (private respondent) was a regular employee of petitioner since February 2, 1984. He was a Senior Accounting Analyst receiving a monthly salary of ₱29,860.00 at the time of his termination on July 31, 1997.

In a letter[3] dated October 21, 1996, petitioner informed the Department of Labor and Employment (DOLE) of its plan to implement a redundancy program in its Marketing Division and some departments in its Batangas Refinery for the period starting October 1996 to December 1998. The letter alleged that the redundancy program is a response to the market situation which constrained petitioner to rationalize and simplify its business processes; that petitioner undertook a review, restructuring and streamlining of its organization which resulted in consolidation, abolition and outsourcing of certain functions and in the identification of certain redundant positions. The letter also states that petitioner will provide the DOLE a list of affected employees as it implements each phase of the redundancy program.

Petitioner, through a letter[4] dated June 30, 1997, notified private respondent of his termination effective July 31, 1997 due to the redundancy of his position and awarded him a separation package in the amount of ₱559,458.90 consisting of the following:

Regular separation/retirement benefits under the New Retirement Plan; and	P352,721.25
Ex-gratia payment computed at 1/2 month's basic pay for every year of service	206,737.65
TOTAL	P559,458.90[5]

On June 8, 1998, respondent filed with the Labor Arbiter a complaint[6] for illegal dismissal against petitioner and its President and Chief Executive Officer, Mr. Clifton Hon. Private respondent alleged that: being petitioner's regular employee, he is entitled to security of tenure; he did not commit any serious misconduct, willful disobedience, gross and habitual neglect of duty or fraud and willful breach of trust to warrant the penalty of dismissal from employment; there was no independent proof or evidence presented by petitioner to substantiate its claim of redundancy nor was he afforded due process as he was not given any opportunity to present his side; he was dismissed due to his active participation in union activities; petitioner opened positions for hiring some of which offered jobs that are the same as what private respondent was performing; petitioner failed to give written notice to him and DOLE at least one month before the intended date of termination as required by the Labor Code.

In its position paper, petitioner and Mr. Hon averred that private respondent's dismissal from the service was due to redundancy of his position which was determined after petitioner's business process re-engineering study and organization review, conducted with private respondent's knowledge; that redundancy is an authorized cause to terminate an employee which is a management prerogative and cannot be interfered with absent any abuse of discretion; and that there is nothing in the law that requires petitioner to conduct impartial investigation or hearing to terminate an employee due to redundancy.

On March 31, 1999, the Labor Arbiter (LA) rendered a decision[7] dismissing the complaint without prejudice to the payment of private respondent's separation pay as required by law or as granted by petitioner pursuant to company practice whichever is higher.

The LA found that private respondent's dismissal from the service on the ground of redundancy was done in good faith and a valid exercise of management prerogative; that redundancy did not deter the employer to hire additional workers when it is deemed best for proper management; and that there is no need for petitioner to conduct an impartial investigation or hearing since private respondent's dismissal was not related to his blameworthy act or omission. While the LA found that petitioner failed to give notice to DOLE one month before the intended date of private respondent's termination, the LA ruled that non-compliance with the procedural requirement will not per se make the termination illegal and held that requirement of procedural process was not totally disregarded.

Respondent filed his appeal with the National Labor Relations Commission (NLRC) which in a Decision[8] dated January 30, 2001, reversed the decision of the LA, the dispositive portion of which reads:

> WHEREFORE, the decision of the Labor Arbiter is hereby VACATED and SET ASIDE and judgment is hereby rendered:
>
> 1. Declaring the dismissal of complainant to be without a just or authorized cause and, therefore, illegal.
>
> 2. Ordering respondent Caltex (Phils.) Inc. to reinstate the complainant to his former or substantially equivalent position, without loss of seniority rights and other privileges and to pay

> complainant his full backwages inclusive of allowance and other benefits computed from August 1, 1997 up to his actual reinstatement. However, should complainant's reinstatement be no longer feasible due to some valid reasons, respondent Caltex (Phils.) Inc., is hereby ordered to pay complainant his separation pay computed at one (1) month pay for every year of service, a fraction of at least six (6) months to be considered as one (1) whole year. The separation pay shall be in addition to complainant's full backwages.
>
> All other claims of complainant are hereby DISMISSED for lack of merit. [9]

In so ruling, the NLRC expounded that although Article 283 of the Labor Code authorizes termination due to redundancy, there must be factual basis; that the records did not disclose any evidence to show basis for respondent's termination; that neither did petitioner send notice to DOLE one month prior to respondent's dismissal.

Petitioner's Motion for Reconsideration was denied in a Resolution[10] dated March 27, 2001.

Petitioner filed with the CA a Petition for *Certiorari* alleging grave abuse of discretion committed by the NLRC in finding respondent's termination illegal.

In a Decision dated May 15, 2003, the CA denied the petition. The CA ruled that there was no reason to deviate from the findings of the NLRC since the pieces of evidence presented by petitioner are not only insufficient but also baseless and self-serving; that petitioner's main argument that private respondent's dismissal on the ground of redundancy was only resorted to after a conduct of thorough business process reengineering study and research is nothing but a bare assertion; that nowhere in the records can it be found that there was indeed a study conducted by petitioner which culminated in the abolition and consolidation of certain positions in the office; that neither was there any proof that petitioner truly had a concrete redundancy program that is reflective of any financial loss or possible and obtainable substantial profits in case the program is implemented nor were there any named factors considered by the petitioner in undertaking the reduction program; that what petitioner presented was merely a copy of its letter to the DOLE informing the latter of its intention to implement a redundancy program and nothing more; and that petitioner failed to apply the criteria in effecting private respondent's dismissal due to redundancy as there was no showing that it underwent painstaking selection from among its employees to be dismissed.

The CA further found that petitioner failed to send DOLE a written notice of its implementation of the redundancy program one month prior to the intended date thereof since petitioner had admitted such failure in its Answer to respondent's appeal to the NLRC.

The CA likewise found that petitioner's belated submission to the CA of the letter dated June 30, 1997 purportedly notifying DOLE of the plan to implement a redundancy program is dubious because of petitioner's earlier admission that it did not send DOLE a written notice of termination; that petitioner should have

submitted the evidence at the earliest opportunity; and that the letter was self-serving since it did not bear any proof of receipt by the DOLE.

The CA denied petitioner's Motion for Reconsideration in a Resolution dated August 21, 2003.

Hence, herein petition filed by petitioner on the following grounds:

> THE PUBLIC RESPONDENT COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF ITS JURISDICTION WHEN IT ISSUED THE DECISION DATED MAY 15, 2003 AND THE RESOLUTION DATED AUGUST 21, 2003 AFFIRMING THE ORDERS DATED JANUARY 30, 2001 AND MARCH 27, 2001 OF THE RESPONDENT NLRC CONSIDERING THAT THEY ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.
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> THE PUBLIC RESPONDENT COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT AFFIRMED THE FINDING OF THE RESPONDENT NLRC THAT THE DISMISSAL OF THE PRIVATE RESPONDENT WAS WITHOUT JUST AND AUTHORIZED CAUSE.
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> THE PUBLIC RESPONDENT COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF ITS JURISDICTION WHEN IT AFFIRMED THE FINDING OF THE RESPONDENT NLRC DIRECTING THE REINSTATEMENT OF THE PRIVATE RESPONDENT AND THE PAYMENT OF HIS BACKWAGES COMPUTED FROM AUGUST 1, 1997.[11]

Petitioner insists that it had already informed the DOLE Secretary through a letter-notice dated October 21, 1996 of its plan to implement a redundancy program which was received on October 24, 1996; that the CA ignored such earlier notice and concentrated on its alleged failure to send notice one month prior to private respondent's termination; that the June 30, 1997 notice to DOLE was belatedly submitted since it was not easily located; that the belated submission should not be taken against petitioner; that the subsequent notice to the DOLE was only a follow up to the earlier notice dated October 21, 1996; and that there was substantial compliance with the notice requirement of the Labor Code for a valid redundancy program.

Petitioner further argues that private respondent's termination due to redundancy is valid considering that he consented to his termination by accepting and benefiting from the package given by petitioner in the total amount of ₱559,458.90; that his separation package is equivalent to 1.39 month's basic pay for every year of service, way above the minimum separation pay required by law; that if private respondent's termination is indeed illegal and that he should be reinstated with full backwages, he should be ordered to pay back petitioner the benefits he received on account of its redundancy program as he unjustly enriched himself in the amount of ₱206,737.65 representing ex-gratia benefit paid only to terminated employees on account of the redundancy program.

Petitioner further claims that private respondent was not retrenched but dismissed

on account of petitioner's redundancy program, thus, the finding that "petitioner was not able to provide proof that it truly had an extensive engineering study on account of business losses arising out of massive oil deregulation" is misplaced; that retrenchment and redundancy are two different authorized causes terminating employment relationship and the elements of one do not apply to the other; that its right to terminate respondent's employment is embodied under Article 283 of the Labor Code which required employers to give notice of redundancy to the worker and the DOLE one month before the intended date of actual termination; that the twin notice requirement is the only condition precedent mandated by law before any valid redundancy may be effected which petitioner had duly complied with; that termination due to redundancy is a valid exercise of management prerogative which courts ordinarily hesitate to interfere with unless the act is marked with bad faith.

The issues for resolution are (1) whether private respondent's termination on the ground of redundancy was valid, and (2) whether petitioner gave a written notice to DOLE as required under Article 283 of the Labor Code.

Under Rule 45 of the Rules of Court, only questions of law may be raised in this Court. However, factual issues may be considered and resolved when the findings of facts and the conclusions of the Labor Arbiter are inconsistent with those of the NLRC and the CA,[12] as obtaining in the present case.

The CA correctly dismissed herein petitioner's petition for *certiorari*. The NLRC did not commit grave abuse of discretion in finding that respondent was illegally dismissed.

Private respondent was dismissed by petitioner on the ground of redundancy, one of the authorized causes for dismissal under Article 283 of the Labor Code, to wit:

> Article 283. *Closure of establishment and reduction of personnel*.- The employer may also terminate the employment of any employee due to the installment of labor saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, **by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof**. In case of termination due to the installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or reverses, the separation pay shall be equivalent to one (1) month pay or at least one half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year (emphasis supplied).

In *Becton Dickinson Phils., Inc. v. National Labor Relations Commission*,[13] citing the leading case, *Wiltshire File Co., Inc. v. National Labor Relations Commission*,[14] we explained the nature of redundancy as an authorized cause for dismissal in the following manner: