534 Phil. 711

FIRST DIVISION

[G.R. NO. 160863, September 27, 2006]

NELSON ZAGALA AND FELICIANO M. ANGELES, PETITIONERS, VS. MIKADO PHILIPPINES CORPORATION, YOSHINARI KONO AND TAKEHIKO OGURA, RESPONDENTS.

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before this Court is a petition for review seeking the reversal of the Decision[1] dated August 27, 2003 of the Court of Appeals (CA) in CA-G.R. SP No. 70416 and its Resolution[2] dated November 17, 2003, denying petitioners' Motion for Reconsideration.

The facts are as follows:

Petitioners Feliciano Angeles (Angeles) and Nelson Zagala (Zagala) were hired as laborers by Mikado Philippines Corporation (Mikado) on February 1, 1991 and February 19, 1990, respectively.[3] In January of 1998, the management of Mikado reviewed the employees' attendance records for the years 1995, 1996, and 1997 and found that Angeles and Zagala were among those who exceeded the 30 absences allowed per year.[4] Zagala incurred a total of 40 absences in 1995, 34.5 in 1996, and 59.5 in 1997; while Angeles incurred a total of 32.5 absences in 1995, 35 in 1996 and 40 in 1997.[5]

Even before they received a formal memo asking for their explanations, petitioners submitted letters to the executive committee of Mikado giving reasons for their absences.[6] Angeles, in his letter dated January 17, 1998 stated that he incurred absences in 1997 due to viral influenza, confinement of his daughter in the hospital, mental illness of their maid and other family problems.[7] Zagala, meanwhile, averred in his January 19, 1998 letter that he and his family incurred ailments and problems that needed his attention.[8]

Finding said explanations to be unsatisfactory, Mikado terminated the services of petitioners on March 1, 1998.[9]

The following day, Angeles and Zagala filed a complaint for illegal dismissal against Mikado and its President, Yoshinaro[10] Kono, and Executive Vice-President, Takehiko Ogura.[11]

On October 28, 1999, the Labor Arbiter (LA) rendered a decision

ordering respondents to reinstate herein petitioners to their former positions and to pay them full backwages thus:

> WHEREFORE, premises considered, judgment is hereby rendered ordering respondent to reinstate complainant to their former position and to pay them full backwages computed as follows:
>
> **FELICIANO M. ANGELES**
>
> **Backwages:**
>
> **From March 3 to Oct. 29, 1999**
>
> = 7 mos. & 28 days of 7.93 x P6,283.00 = P49, 824.19
>
> **13th Month Pay:**
>
> 1998 = P49,824.10/12 = P 4,152.02
>
> **Service Incentive Lave:**
>
> 1998 = P241.65 x 5 = P1,208.25
>
> 1999 = P241.65 x 5 = P1,208.25 = P 2,416.50
>
> **TOTAL = P56,392.71**
>
> **NELSON A. ZAGALA**
>
> **Backwages:**
>
> **From March 1, 1998 to Oct. 29, 1999**
>
> = 7.93 x P6,948.00 = P55,097.64
>
> **13th Month Pay:**
>
> 1998 = P55,097.64/12 = P 4,591.71
>
> **Service Incentive Lave:**
>
> 1998 = P267.23 x 5 = P1,336.15
>
> 1999 = P267.23 x 5 = P1,336.15 = P 2,672.30
>
> **TOTAL = P62,361.41**
>
> **GRAND TOTAL = P118,754.12**
>
> SO ORDERED.[12]

The LA found that petitioners already received sanction for their absences in 1995 and 1996, through a memorandum with warning, thus petitioners may no longer be

dismissed for the same cause.[13] He also issued a writ of execution dated December 9, 1999 which respondents, however, did not heed.[14]

Respondents appealed to the National Labor Relations Commission (NLRC) which rendered a Resolution[15] on February 26, 2002 affirming in toto the decision of the Labor Arbiter.[16] It held that "warning" may be considered as penalty just like a reprimand; the subject absences were all properly brought to the attention of and was approved by the management; the termination of petitioners on the ground of absenteeism is not morally sound considering the rigorous stamina needed and the risk involved in the manufacture of marine propellers, and in view of petitioners' exemplary performance in their work.[17]

Respondents brought a petition to the CA under Rule 65 of the Rules of Court alleging that the NLRC committed grave abuse of discretion: in finding that the termination of petitioners due to absenteeism is not morally sound nor a valid cause for dismissal; in committing serious mistake in applying the laws and jurisprudence; and in not finding absenteeism as a just and lawful cause for the termination of petitioners.[18]

Meanwhile, petitioners filed before the LA a Motion for Recomputation and Issuance of Alias Writ of Execution[19] which was granted by the LA on November 15, 2002. [20] On November 25, 2002, the LA issued an Alias Writ of Execution ordering the sheriffs of the NLRC to effect the reinstatement of petitioners with Mikado and to collect from respondents the total amount of P659,426.07, representing petitioners' monetary award of P118,754.12 as embodied in the LA Decision of October 28, 1999, petitioners' accrued salaries of P534,638.03 for the period of October 30, 1999 to October 30, 2002, and execution fees of P6,033.92.[21]

Thus, the NLRC Sheriff issued a Notice of Garnishment dated December 9, 2002 on the Manager of the Rizal Commercial Banking Corporation EPZA, Rosario Cavite Branch anent the account of Mikado up to the amount of P659, 426.07. [22]

On August 27, 2003, the CA rendered its Decision reversing the NLRC, the dispositive portion of which reads:

> WHEREFORE, the instant petition is hereby GRANTED. Accordingly, the assailed Resolution is hereby REVERSED and SET ASIDE. Also, the Writ of Garnishment dated December 9, 2002 on the account of petitioners with RCBC, Rosario Branch is hereby lifted. No pronouncement as to cost.[23]

The CA held that Mikado was correct in contending that absenteeism is a valid cause for termination following Art. 282(c) of the Labor Code which provides that gross and habitual neglect by the employee of his duties is a just cause for termination; that both petitioners knew that the company policy was to allow only 30 absences; that although petitioners were previously warned for their absences in 1995 and 1996, still petitioners incurred absences in 1997 in violation of the company rules; and that previous offenses may be used as valid justification for dismissal from work where the infractions are related to the subsequent offense upon which the termination of employment is decreed.[24]

The CA denied petitioners' Motion for Reconsideration. [25]

Thus, the present petition where it is alleged that the CA erred:

A. **x x x IN HOLDING THAT PETITIONERS' INCURRED ABSENCES IS A JUST CAUSE FOR THEIR DISMISSAL DESPITE THE UNDISPUTED FINDING OF THE NATIONAL LABOR RELATIONS COMMISSION THAT PETITIONERS' ABSENCES WERE AUTHORIZED AND CONDONED BY THE RESPONDENTS. THIS RULING OF [SIC] NOT IN ACCORD WITH THE DECISIONS OF THIS MOST HONORABLE COURT.**

B. **x x x IN REVERSING THE FINDING OF THE NATIONAL LABOR RELATIONS COMMISSION THAT THE PENALTY LESSER THAN TERMINATION IS THE PROPER PENALTY DESPITE UNDISPUTED EVIDENCE TO THAT EFFECT. THIS RULING IS CONTRARY TO EXISTING JURISPRUDENCE.**

C. **x x x IN FINDING THAT THERE IS VALID CAUSE FOR DISMISSAL SINCE THE RESPONDENTS NEVER OVERCAME THEIR BURDEN OF PROOF.**

D. **x x x IN LIFTING THE WRIT OF GARNISHMENT CONTRARY TO EXISTING LAWS AND DECISIONS OF THE SUPREME COURT.**[26]

Petitioners claim that: their absences were authorized or at the very least condoned, as such absences were all properly brought to the attention of respondents through phone calls, doctor's certificates and signed leave forms; absences, once authorized or with prior approval of the employer, may not be used as ground for termination of employment; granting, without admitting, that the absences in this case were unauthorized, still a lesser penalty than termination would be proper; the company's Working Regulations, Section 6, Art. II thereof states that "unexcused absences are subject to progressive disciplinary actions"; the memorandum on Attendance Guidelines further enumerates the disciplinary actions for unexcused leave without pay, to wit: verbal warning for the first offense, written warning for the second offense, 3-day suspension for the third offense; 6-day suspension for the fourth offense and termination for the fifth offense; respondents did not follow the progressive disciplinary actions, for if the CA's conclusions were to be followed, *i.e.*, petitioners' absences in 1997 constitute a second violation, then a written warning should be the appropriate penalty or a 3-day suspension at the most since this is the next level penalty; employers cannot apply penalties other than those provided in the company rules; respondents, as employers, have the burden of proving that the dismissal of petitioners was for a just cause and their failure to discharge such burden would result in a finding that the dismissal of the employees is wrongful; the petitioners are entitled to the salaries that they should have received had they been reinstated to their employment; granting that the CA were justified in its decision, they should not have lifted the order of garnishment issued by the Labor Arbiter, at least up to the amount equivalent to what the petitioners should have received from the date of the Labor Arbiter's decision up to the date that the CA reversed and set aside such finding since petitioners are entitled to said amount.[27]

Petitioners pray that the Decision and Resolution of the CA be set aside and that the Resolution of the NLRC and the Decision of the Labor Arbiter be affirmed.[28]

Respondents filed their Comment contending that: petitioners violated company rules and regulations for the years 1995, 1996, and 1997; the absences allegedly condoned or authorized pertains to the years 1995 and 1996; the reasons put forth by petitioners for their absences were personal problems; in *Meralco v. National Labor Relations Commission*, 263 SCRA 531, an employee who had a penchant to incur unauthorized absences and/or violation of the employer's sick leave policy was deemed properly dismissed considering that it is the totality, not the compartmentalization of company infractions that the employee has consistently committed, which justified his dismissal; the contention of petitioners that respondents failed to discharge the burden of proof is baseless; there is also no merit to petitioners' claim that they are entitled to salaries which they should have received had they been reinstated since they are terminated for a just cause. [29]

Petitioners filed a Reply[30] and a Memorandum[31] reiterating their arguments in the petition.

Respondents likewise filed a Memorandum where they further argued that Mikado actually showed remarkable tolerance for the absenteeism of petitioners for instead of immediate termination or suspension, Mikado sent petitioners memoranda with warning; that it is a fundamental rule that an employer cannot be compelled to continue with the employment of an individual who admittedly was guilty of misfeasance or malfeasance towards his employer and whose continuance in the service is inimical to the employer's interest; and that the employees' right to security of tenure cannot defeat the fact that petitioners were extremely negligent in the performance of their duties.[32]

At the center of the present petition is the issue of whether petitioners were illegally dismissed.

We find in the affirmative and therefore hereby grant the petition.

The Constitution looks with compassion on the workingman and its intent in protecting his rights.[33] A worker's employment is property in a constitutional sense[34] and while the Court recognizes the right of an employer to terminate the services of an employee for a just or authorized cause, the dismissal of an employee must be made within the parameters of law and pursuant to the tenets of equity and fair play.[35] An employer's power to discipline his employees must not be exercised in an arbitrary

manner as to erode the constitutional guarantee of security of tenure.[36]

As correctly pointed out by petitioners, the burden of proving just cause for dismissing an employee rests upon the employer, and the employer's failure to discharge such burden results in a finding that the dismissal is unjustified and therefore illegal.[37] It is the employer who must prove the validity of the termination and not the employee who must prove the reverse.[38] The employer must affirmatively show rationally adequate evidence that the dismissal was for a