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FIRST DIVISION

[G.R. NO. 165811, December 14, 2005]

DAP CORPORATION, FELIX PINEDA, PRESIDENT, AND DENSIL PINEDA, GENERAL MANAGER, PETITIONERS, VS. COURT OF APPEALS AND MAUREEN MARCIAL, RESPONDENTS.

D E C I S I O N

YNARES-SANTIAGO, J.:

Before us is a petition for review on certiorari of the Decision[1] of the Court of Appeals in CA-G.R. SP No. 77012 dated March 19, 2004 and the Resolution[2] dated July 29, 2004 denying petitioners' motion for reconsideration. Petitioner DAP Corporation (DAP) is a domestic enterprise engaged in the distribution of various merchandise including wines and spirits. Petitioners Felix Pineda and Densil Pineda are the corporation's president and general manager, respectively.

It appears that on May 8, 2001, DAP received a letter from International Distributors Corporation (IDC) informing it of the termination of their distributorship agreement. DAP alleges that by reason of this termination, it was constrained to cease its business operations and to terminate the employment of its employees, including respondent Maureen Marcial who had been DAP's salesperson from May 4, 2000 until July 2001.

DAP claims that it notified its employees of the termination of their employments by reason of redundancy. On July 28, 2001, DAP paid their wages and asked them to sign the payslips. It likewise informed them that they would be paid their separation pay in installments because of liquidity problems. The checks representing the separation pay were issued to the employees.

However, Marcial and 17 other employees refused to accept the checks and instead, filed a complaint for illegal dismissal, money claims for non-payment of overtime pay and separation pay and damages with the National Labor Relations Commission (NLRC) of Davao City. During the course of the proceedings before the NLRC, 16 employees withdrew their complaint. Only respondent Marcial and Jason Diapen pursued their claims.

In the Decision[3] dated November 16, 2001, the Labor Arbiter ruled that while DAP may have an authorized cause to terminate the employment of its employees because of the cancellation of the distributorship agreement, the same was implemented in violation of the law for failure to furnish the employees formal notices one month prior to the intended date of termination. Hence, it disposed of the case as follows:

> WHEREFORE, premises considered, judgment is hereby rendered, declaring the dismissal of complainants illegal. Respondents DAP

> CORPORATION/FELIX PINEDA, President-Owner, are hereby directed to jointly and solidarily pay complainants the total amount of SIXTY-FOUR THOUSAND FIVE HUNDRED SIXTY SIX PESOS and 96/100 (P64,566.96) representing their separation pay and backwages, plus 10% of the total award as attorney's fees.
>
> In case of appeal, backwages shall accrue up to the finality of the decision.
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> The claim for damages is dismissed for lack of merit.
>
> SO ORDERED.[4]

Petitioners filed an appeal with the NLRC, which affirmed[5] the decision of the Labor Arbiter. However, the NLRC found that respondent and Diapen were entitled only to one month separation pay on the basis of their length of service. Thus, it ruled:

> WHEREFORE, premises considered, the appealed decision of the Labor Arbiter is hereby MODIFIED to the extent that complainants Maureen Marcial and Jason R. Diapen shall be paid one (1) month separation pay, but the same is affirmed in all other aspects.
>
> SO ORDERED.[6]

The case was elevated to the Court of Appeals on a petition for certiorari. In the interim, Diapen withdrew his appeal. The appellate court affirmed the decision of the NLRC, thus:

> WHEREFORE, the petition is DENIED and the resolution of the National Labor Relations Commission is AFFIRMED by ordering private respondents DAP CORPORATION, FELIX PINEDA, and DENSIL PINEDA, jointly and solidarily to pay private respondent MAUREEN MARCIAL separation pay equivalent to one (1) month pay or in the amount of SIX THOUSAND PESOS (P6,000.00) and full backwages from the time her employment was terminated on July 28, 2001 up to the time the decision herein becomes final. This case is REMANDED to the Labor Arbiter for computation of the award of backwages and the ten percent (10%) of the total award as attorney's fees.
>
> SO ORDERED.[7]

Petitioners are before us now raising the following issues:

> RESPONDENT NLRC ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT CONFIRMED THE RULING OF THE LABOR ARBITER WHERE AFTER DECLARING THAT THERE WAS VALID GROUND FOR TERMINATION DUE TO REDUNDANCY, STILL IT RULED THAT THERE WAS ILLEGAL DISMISSAL.
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> RESPONDENT NLRC ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT CONFIRMED THE RULING OF THE LABOR ARBITER THAT THERE WAS LACK OF NOTICE PRIOR TO THE SEPARATION OF PRIVATE RESPONDENT MARCIAL AND ORDERED THE PAYMENT OF

BACKWAGES.

RESPONDENT NLRC ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT FAILED TO CATEGORICALLY RULE ON THE MAIN ISSUE WHICH IS WHETHER IT WAS LEGAL AND VALID FOR PETITIONER DAP TO PAY ON INSTALLMENT SEPARATION PAY TO PRIVATE RESPONDENT MARCIAL AS SAID PETITIONER WAS SUFFERING FROM SEVERE FINANCIAL LIQUIDITY.

THE SUBJECT DECISION IS CONTRARY TO LAW, CUSTOMS AND PUBLIC POLICY.[8]

We find the petition bereft of merit.

Contrary to petitioners' assertion, the issue in this case does not concern the mode of payment of separation pay. As held by the NLRC, the validity of the installment payments of DAP's employees' separation pay was rendered moot because the checks issued for these payments have already become due and demandable. There is likewise no question regarding the cause of the dismissal. Redundancy is one of the authorized causes provided by law for the termination of employment.[9] Respondent Marcial does not dispute which the three tribunals upheld, that the cancellation of DAP's distributorship agreement with IDC gave rise to a valid cause for the dismissal of DAP's employees.

The crux of the instant petition is respondent's allegation that DAP failed to comply with the notice requirement for a valid termination due to redundancy or retrenchment. Respondent claims that it was only on July 28, 2001, when the employees of DAP were given their salaries and were asked to sign the payslips, that they realized that their services were being terminated.

Petitioners argue that respondent cannot complain of lack of notice because all of DAP's employees were aware of the cancellation of the distributorship agreement and the case it filed against IDP. As such, respondent's actual knowledge of the redundancy is equivalent to notice.

We are not persuaded. Article 283 of the Labor Code clearly provides:

> Art. 283. Closure of establishment and reduction of personnel. – The employer may also terminate the employment of any employee due to the installation 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 ....**

Thus, we have held that the employer must comply with the following requisites to ensure the validity of the redundancy program: 1) a written notice served on both the employees and the Department of Labor and Employment (DOLE) at least one month prior to the intended date of retrenchment; 2) payment of separation pay equivalent to at least one month pay or at least one month pay for every year of service, whichever is higher; 3) good faith in abolishing the redundant positions;