

## SECOND DIVISION

[ G.R. No. 152568, February 16, 2004 ]

**TOMAS CLAUDIO MEMORIAL COLLEGE, INC., PETITIONER, VS.  
COURT OF APPEALS AND PEDRO NATIVIDAD, RESPONDENTS.**

### D E C I S I O N

**CALLEJO, SR., J.:**

This is a petition for review on certiorari under Rule 45 of the Rules of Court, as amended, seeking to reverse and set aside the Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. SP No. 62651, which affirmed with modification the decision of the National Labor Relations Commission (NLRC) affirming the decision of the Labor Arbiter in NLRC Case No. RAB IV-6-9082-97. The antecedent facts are as follows:

Sometime in 1983, private respondent Pedro Natividad started working with petitioner Tomas Claudio Memorial College (TCMC) in Morong, Rizal. In time, he was promoted as "Liason Officer" of the school with the Department of Education, Culture and Sports (DECS) and with the Commission on Higher Education (CHED) with the rank of Assistant Registrar.

On June 10, 1996, the private respondent was arrested by the Morong police authorities, without any warrant therefore, for violation of the Dangerous Drugs Act (Republic Act NO. 6425). A criminal complaint was later filed against him, docketed as Criminal Case No. 5137. A preliminary investigation was conducted by the Municipal Court of Morong, Rizal which found probable cause to hold him for trial. The court, on the said date, issued a warrant for the private respondent's arrest. The records were elevated to the Office of the Provincial Prosecutor of Rizal, and was docketed as I.S. No. 96-4385.

In the interim, the petitioner, through its president, Aladdin F. Trinidad, sent a Memorandum<sup>[2]</sup> dated June 13, 1996 to the private respondent informing him that his employment was already terminated, thus:

. . .

The undersigned issued a Memorandum in cooperation with the program of the DECS denominated as "Drugless," "Smokeless" and "Violentless" School Campus intended to combat drug addiction in public and private schools.

Also, the undersigned has directed your immediate superior, Ms. Minda de la Vega to make a summary of your absences for the School Year 1995-1996 and the Summer Term of 1996 as it has been observed that you have been absenting yourself frequently and if you were asked to go to the DECS and to the CHED you do not return to TCMC anymore.

Further, discreet inquiry is ongoing because of your secretive activities which has been rumored already among those who were following your dealings with our students, we barely started our initial inquiry when the authorities arrested you as a drug "pusher" and drug "user", a just cause to terminate employment. You are now in jail as you were apprehended for possession of "shabu."

You are a dangerous employee in TCMC campus considering that we are in education.

For the above, please be informed that your services with TCMC is (sic) terminated effective upon receipt of this memorandum.

You are barred also in (sic) entering [the] TCMC campus without Administration's approval.

(SGD.) ALADDIN F.  
TRINIDAD  
President<sup>[3]</sup>

The private respondent was thenceforth barred from entering the school without the petitioner's approval. On July 5, 1996, the private respondent posted a bail bond in Criminal Case No. 5137 and was released from his detention cell.<sup>[4]</sup> He did not, however, file any complaint against the petitioner with the NLRC on account of his dismissal.

On October 2, 1996, the State Prosecutor issued a Resolution dismissing the criminal complaint in I.S. No. 96-4385 filed against the private respondent for lack of merit.<sup>[5]</sup> The State Prosecutor reasoned out that:

On the date of the preliminary investigation, respondents submitted their separate counter-affidavits, supported by the affidavits of their respective witnesses, and in it, both refuted the claim of the arresting officers that regulated drugs were recovered from them.

There is obviously no basis to sustain the complaints. In the first place, the basis for the invitation extended to the respondents, which is the alleged quarrel over drugs, is hearsay, as it was merely relayed to them, and they had no personal knowledge of said incident.

In the second place, [the] respondents had not committed, are actually committing or are about to commit an offense when they were invited, to the police station, so the police officers had no right to invite them for questioning. Hence, the subsequent search made on the respondents had no legal basis. It follows that anything recovered from them after their unlawful arrest are inadmissible (sic) as evidence against them, the same being the fruit of the poisonous tree.<sup>[6]</sup>

On November 21, 1996, the private respondent was arrested anew by police authorities. The Morong Chief of Police filed a criminal complaint docketed as Criminal Case No. 5251 against the private respondent for violation of Section 27,

Article III of Rep. Act No. 6425, as amended.<sup>[7]</sup> On February 17, 1997, an Information therefore was filed with the Regional Trial Court of Morong docketed as Criminal Case No. 2661-M.<sup>[8]</sup> On said date, the private respondent posted a bail bond and was released from detention.

On June 11, 1997, the private respondent filed a complaint with the NLRC against the petitioner for illegal dismissal.<sup>[9]</sup> The case was docketed as NLRC Case No. RAB-IV-6-9082-97. The private respondent executed a sworn statement claiming that (a) there was no factual basis for his dismissal; and (b) he was deprived of his rights to due process.<sup>[10]</sup> He also submitted the Joint Affidavit of Rose Baruel, Ellen Alcarde, Rosario Alvarez, Rosauo Resurreccion and Aida S.D. Geronimo.<sup>[11]</sup>

Answering the complaint, the petitioner asserted that on or about March 1996, it had received an anonymous telephone call branding the private respondent as not only a "drug user" but also a "pusher." After a discreet investigation, the information was confirmed by unnamed tricycle drivers, students and school personnel. According to the petitioner, the private respondent was connected to a syndicate supplying prohibited drugs and was selling the same in a nearby billiard hall, in restaurants, and in other places immediately outside the perimeter of the school gate.<sup>[12]</sup> The petitioner further alleged that before the private respondent's activities were reported to the police authorities, he was arrested in October 1996 while at work and was jailed for violation of the Dangerous Drug Act.

On November 10, 1998, Acting Executive Labor Arbiter Pedro C. Ramos, rendered a decision dismissing the complaint for lack of legal basis, thus:

WHEREFORE, premises considered, the complaint in this case for "illegal dismissal" is hereby ordered dismissed for lack of legal basis.

SO ORDERED.<sup>[13]</sup>

The private respondent appealed the decision to the NLRC which affirmed the same. The NLRC also denied the private respondent's motion for the reconsideration of the said decision.

However, on certiorari with the Court of Appeals, the appellate court affirmed, with modification, the decision of the NLRC, holding that although there was a valid cause for the private respondent's dismissal, the petitioner did not follow the procedure for the termination of his employment. The CA ordered the petitioner to pay backwages to the private respondent from June 13, 1996 up to the finality of the said decision. The decretal portion of the CA decision reads as follows:

WHEREFORE, the decision of the public respondent NLRC is MODIFIED such that the private respondent is hereby directed to pay the petitioner backwages from June 13, 1996 up to the finality of this judgment.<sup>[14]</sup>

The petitioner's motion for reconsideration was denied by the Court of Appeals in its Resolution dated February 14, 2002.

The petitioner assails the decision of the CA in this Court, contending that:

[The] Hon. Court of Appeals (Special Eight Division) Gravely Abused Its Discretion And Authority Amounting To Without Or In Excess Of Jurisdiction When It Reviewed The Final Decision Of The Hon. NLRC And Refused To Hear The Side Of TCMC That The Appeal In This Case Was Filed out of Time As The decision Of The Hon. NLRC Is Final Already.

. . .

[The]Hon. Court of Appeals (Special Eight Division) gravely Abused Its Discretion And Authority Amounting To Without Or In Excess Of Jurisdiction When It entertained The Petition For Certiorari Which Was Filed Beyond The Sixty (60) Day Period From Receipt Of The Order-Denying the Motion For Reconsideration And Refused To Hear The Point Raised By TCMC That [The] Subject Petition Was Filed Beyond The Sixty (60) Day Period For The Filing Of The Petition For Certiorari.

. . .

[The] Hon. Court of Appeals (Special Eight Division) Gravely Abused Its Discretion And Authority When It Disregarded The Evidence In The Record When It Modified, Altered And Changed The Final Decision Of The Hon. National Labor Relations Commission To Justify The Award Of Backwages. Which Included Even The Period When Respondent Natividad Were In Jail For Three Times.

. . .

[The] Hon. Court of Appeals (Special Eight Division) Gravely Abused Its Discretion And Authority When It Knowingly Rendered A Decision Which Is Bias. Unfair & Unjust, A Violation Of Art. 205 Of The Revised Penal Code In Relation To Sec (2) (E) Of RA 3019 (Anti-Graft Law) Hence The Decision Is Void.<sup>[15]</sup>

The petitioner avers that the Court of Appeals committed a grave abuse of its discretion amounting to excess or lack of jurisdiction when it gave due course to the private respondent's petition for certiorari and modified the decision of the NLRC. According to the petitioner, when the private respondent filed his petition with the CA, the decision of the NLRC had already become final and executory; thus, the said petition was filed out of time. Furthermore, the petitioner cannot be lawfully compelled to pay backwages for the period of time that the private respondent was in jail on account of his violation of the Dangerous Drugs Act, from June 10, 1996 up to July 5, 1996, and from November 21, 1996 up to February 17, 1997. It contends that the decision of the CA is void for being biased, unjust and that the issuance of the same is a felony under Article 205 of the Revised Penal Code, as well a crime under Section 2(e) of Rep. Act No. 3019, also known as the Anti-Graft and Corrupt Practices Act.

In his Comment on the petition, the private respondent avers that the petitioner failed to comply with Section 4, Rule 45 in relation to Section 2, Rule 42 of the Rules of Court, and that the petition was filed out of time. He maintains that his petition for certiorari with the CA was timely filed and that the decision of the CA is in accord with law.

The issues for resolution may be synthesized, thus: (a) whether the private respondent is proscribed from filing a petition for certiorari for the nullification of the decision of the NLRC, and its resolution denying his motion for reconsideration; (b) whether the said petition in the CA was filed on time; (c) whether the petition at bar was filed beyond the fifteen-day period in Section 2, Rule 45 of the Rules of Court, as amended; and (d) whether the CA committed a grave abuse of discretion amounting to excess or lack of jurisdiction when it modified the decision of the NLRC and ordered the petitioner to pay backwages to the private respondent.

Anent the first ground, the petitioner asserts that under Article 223 of the Labor Code, as amended, the decision of the Labor Arbiter/NLRC shall become final after ten (10) days from receipt of the decision. The decision of the NLRC had become final and executory on November 30, 2000, but the private respondent filed his petition for certiorari with the CA only on January 16, 2001, long after the NLRC decision had become final and executory. The petitioner contends that the private respondent was thus proscribed from filing his petition with the CA. Even if the private respondent was not so barred from filing his petition, still the same was filed beyond the sixty-day period under Rule 65, Section 4 of the Rules of Court, as amended.

The petitioner's contentions have no merit.

Article 223 of the Labor Code, as amended, states inter alia:

ART. 223. Appeal. — **Decisions, awards, or orders of the Labor Arbiter** are final and executory **unless** appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders.<sup>[16]</sup>

...

Clearly, Article 223 of the Labor Code applies only to appeals, from awards or final orders of the *Labor Arbiter to the NLRC* and not to appeals from the decisions, awards or orders of the NLRC to the Court of Appeals. Under Article 222 of the Labor Code, a decision of the NLRC shall be final after ten (10) calendar days from receipt thereof by the petitioner. The private respondent received the decision on January 13, 1999 and had until January 23, 1999 to perfect his appeal with the NLRC. Thus, the private respondent seasonably appealed to the NLRC. The petitioner failed to prove its claim that its copy of the appeal of the private respondent was mailed to it on a later date.

Irrefragably, the decision of the NLRC became final and executory on November 17, 2000 when the private respondent filed his petition with the CA on January 16, 2001. However, the private respondent was not proscribed from filing a petition for certiorari within a period of sixty days from the notice of the NLRC's denial of his motion for the reconsideration of the decision of the NLRC under Section 1, rule 65 of the Rules of Court. If the CA grants the petition and nullifies the decision of the NLRC on the ground of grave abuse of discretion amounting to excess or lack of jurisdiction, the decision of the NLRC is, in contemplation of law, null and void *ab initio*; hence, the decision never became final and executory.