

FIRST DIVISION

[G.R. No. 152032, July 03, 2003]

**GALLARDO U. LUCERO, PETITIONER, VS. HON. COURT OF
APPEALS AND PHILIPPINE NATIONAL BANK, RESPONDENTS.**

D E C I S I O N

VITUG, J.:

Before the Court is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, assailing the decision of the Court of Appeals in CA-G.R. SP No. 59684, entitled "Philippine National Bank vs. NLRC (Second Division) and Gallardo U. Lucero," which has reversed and set aside the decision of the National Labor Relations Commission (NLRC) on a case involving a complaint for illegal dismissal.

On 18 January 1995, petitioner Gallardo U. Lucero started working on a contractual basis with private respondent Philippine National Bank (PNB). He was hired by Excellent Manpower Services, a manning agency, which then supplied the manpower requirements of the PNB. On 06 December 1995, the PNB extended Lucero an original and permanent appointment as Liaison Officer 1, with Salary Grade II, at the bank's cash division.

On 23 May 1996, Lourdes V. Ledesma, Vice-President of the Human Resources Department (HRD) of the PNB, issued a memorandum to Linda U. Gaerlan, then Vice-President of the Cash Division, informing the latter that the management approved the termination of services of Lucero due to the "unsatisfactory" performance rating obtained by him during the probationary period of his employment. Acting on the memorandum, Gaerlan wrote to the HRD requesting that Lucero's name be dropped from the official roll of PNB employees effective at the close of business hours of 31 May 1996. Meanwhile, on 24 May 1996, Lucero was served his termination papers.

On 07 June 1996, Lucero wrote to the Civil Service Commission (CSC) protesting his dismissal by the PNB and asking for his reinstatement. The CSC referred Lucero's letter to the PNB for comment and appropriate action. In compliance with the directive of the CSC, the PNB wrote to Lucero on 25 June 1996 and furnished him with copies of the evaluation reports of his superiors at the bank. The CSC acknowledged the response of the PNB to the former's letter regarding Lucero's complaint and informed the PNB that it considered the complaint "closed." When informed of the action of the CSC, Lucero pressed for a clarification on what "closed" meant. The CSC explained that, at the time he filed his complaint on 07 June 1996, the PNB had already been privatized and that it was no longer covered by the CSC rules.

On 04 September 1996, Lucero filed a complaint for illegal dismissal against the PNB

before the Labor Arbiter. On 28 September 1998, the Labor Arbiter dismissed the complaint for lack of jurisdiction. The Labor Arbiter declared that Lucero was still a government employee when he was dismissed on 24 May 1996, the PNB having been privatized only on 27 May 1996.

On 17 December 1998, Lucero went on appeal to the NLRC. The NLRC issued its judgment, dated 14 March 2000, which reversed the assailed decision of the Labor Arbiter and held that Lucero had been illegally dismissed by the PNB. The NLRC concluded:

"WHEREFORE, the foregoing premises considered, the respondent bank is hereby declared guilty of having illegally dismissed the complainant; and it is hereby ordered:

"1) to immediately reinstate complainant without loss of seniority rights and privileges;

"2) to pay his backwages inclusive of his allowances, other benefits or their monetary equivalent, based on his last gross salary rate of P8,009.00 and computed from the time his compensation was withheld up to the time of his reinstatement, whether actual or in the payroll; and

"3) attorney's fees equivalent to 10% of the above awards.

"All other claims are dismissed for lack of factual basis to award the same."^[1]

The PNB filed in due time a motion for reconsideration which was denied by the NLRC in its resolution of 28 April 2000. Consistently with the decision of the NLRC, Lucero was meanwhile reinstated to his former position by the PNB, and he resumed his functions in the bank. The PNB, nevertheless, filed with the Court of Appeals on 07 July 2000 a petition for *certiorari* under Rule 65 of the 1997 Rules of Procedure, contending that the NLRC committed grave abuse of discretion in assuming jurisdiction over the case and in ruling that Lucero's dismissal was illegal. The PNB argued that since Lucero was dismissed on 24 May 1996, or prior to its privatization (on 27 May 1996), the case should have been decided on the basis of the Civil Service Law and not the Labor Code; that the NLRC erred in finding, even assuming that the NLRC had jurisdiction to take cognizance of the case, that Lucero was illegally dismissed; and that the probationary employment was validly terminated because of his "unsatisfactory" performance.

On 31 July 2001, the Court of Appeals rendered a decision to the effect that the NLRC properly assumed jurisdiction over the case; nevertheless, it found Lucero not to have been illegally dismissed. The appellate court held:

"WHEREFORE, the petition is GRANTED. The assailed decision of the National Labor Relations Commission is REVERSED and SET ASIDE, with the result that the complaint of Gallardo U. Lucero for illegal dismissal against the Philippine National Bank is DISMISSED."^[2]

Lucero filed a motion for reconsideration; the Court of Appeals denied, in its resolution of 24 January 2002, the motion.