

THIRD DIVISION

[G.R. No. 155278, September 16, 2003]

PRUDENCIO J. TANJUAN, PETITIONER, VS. PHILIPPINE POSTAL SAVINGS BANK, INC.; PEDRITO TORRES; AND CHAIRMAN AND MEMBERS OF THE BOARD, RESPONDENTS.

DECISION

PANGANIBAN, J.:

Well-settled is the rule that technical rules of procedure shall not be strictly applied in labor cases. Pursuant to this policy, employers may, on cogent grounds, be allowed to present, even on appeal, evidence of business losses to justify the retrenchment of workers.

The Case

Before us is a Petition for Review^[1] under Rule 45 of the Rules of Court, assailing the May 28, 2002 Decision^[2] and September 12, 2002 Resolution^[3] of the Court of Appeals (CA) in CA-GR SP No. 67233. The CA disposed as follows:

"WHEREFORE, premises considered, the present petition is hereby DENIED DUE COURSE and accordingly DISMISSED for lack of merit. Consequently, the Resolution dated August 31, 2001 issued by the National Labor Relations Commission in CA No. 026604-00/NCR-30-11-00567-99 is hereby AFFIRMED with MODIFICATION in the sense that in the event petitioner Prudencio J. Tanjuan is absolved from any liability arising from the act or omission complained of in OMB-0-98-2342 filed before the Office of the Ombudsman, respondent Philippine Postal Savings Bank, Inc. is hereby ordered to promptly release his separation pay, after the usual clearance/s as required by law."^[4]

The assailed Resolution denied petitioner's Motion for Reconsideration.

The Facts

The CA narrated the facts as follows:

"Petitioner Prudencio J. Tanjuan (petitioner for brevity) was employed by respondent Philippine Postal Savings Bank, Inc. (respondent PPSBI for brevity), a government financing institution and a subsidiary of the Philippine Postal Corporation (Philpost), as Property Appraisal Specialist and Officer-in-Charge of its Credit Supervision and Control Department. At the time material to this case, he was on his fourth year of service.

"On November 13, 1998, respondent Pedrito Torres (respondent Torres for brevity), PPSBI's President and Chief Executive Officer, issued

Memorandum 145-98 addressed to petitioner and five (5) other employees belonging to its Accounts Management Department and Credit Supervision and Control Department charging them with negligence in the performance of duties and misrepresentation in violation of Article VI, Sections 2 (d) and 3 (d) of the bank's rules and regulations for approving the applications for loan of Corinthian de Tagaytay and Clavecilla Marine Service. They were given five (5) days within which to submit their written explanations otherwise they shall be considered to have waived the filing of the same.

"On November 27, 1998, petitioner submitted his written explanation alleging that he merely reviewed and validated the findings of the Property Appraiser.

"On January 11, 1999, OP Order No. 003-99 was issued by respondent Torres to petitioner informing him of his preventive suspension for a period of ninety (90) days in view of the pending administrative investigation against him. The next day, petitioner, represented by counsel, wrote respondent Torres asking for the lifting of the order of preventive suspension on the ground that pursuant to Secs. 24 and 36 of The Ombudsman Act of 1989 (R.A. No. 6770), only the Ombudsman may preventively order his suspension. Respondent Torres, on January 14, 1999, replied that the preventive suspension was an internal decision of respondent PPSBI in connection with the pending administrative case against petitioner and not pursuant to any complaint filed with the Office of the Ombudsman. Moreover, being a subsidiary of a government-owned and controlled corporation with [an] original charter, the pertinent civil service rules and regulations are not applicable to respondent PPSBI.

"In riposte, petitioner countered that his preventive suspension should therefore not exceed thirty (30) days in accordance with the provisions of the Labor Code, as amended.

"As a result of petitioner's manifestation, on February 1, 1999, respondent Torres issued OP Order No. 011-99 ordering the amendment of the order of preventive suspension against the former from ninety (90) days to thirty (30) days. Consequently, petitioner's suspension would only be up to February 11, 1999, after which he could already report back to work.

"On April 27, 1999, the Board of Directors of respondent PPSBI issued Board Resolution No. 99-14 approving the bank's reorganization via retrenchment of employees and re-alignment of functions and positions for the purpose of preventing further serious losses. In furtherance of the Board's decision, a letter dated July 15, 1999 was released by respondent Torres addressed to all employees of respondent PPSBI, informing them of the impending reorganization and enjoining them to apply for their desired plantilla positions under the new organizational set-up not later than July 20, 1999, otherwise they shall not be included in the selection process and shall be deemed to have opted to be separated instead. Petitioner did not apply for any position in the new organizational set-up.

"On October 5, 1999, petitioner received a Notice of Termination dated October 4, 1999 informing him that pursuant to respondent PPSBI's adoption of a new organizational structure under Board Resolution No. 99-14, his employment therewith shall cease [at] the close of office hours on November 4, 1999 or thirty (30) calendar days from date of receipt of the notice on the ground of abolition of position. The Department of Labor and Employment was likewise seasonably notified prior to the effectivity date of petitioner's termination as required by law. However, the release of his separation pay of one and a half (1 1/2) months salary for every year of service was withheld in view of the pendency of a criminal case against him with the Office of the Ombudsman for alleged irregularities in the granting of loans for which he could likewise be held pecuniarily liable.

"Displeased with his termination, petitioner filed a complaint for illegal dismissal with money claims against respondent on November 15, 1999.

"Petitioner alleged that there was no just or authorized cause to warrant his termination from service and that the procedural requirements as mandated by law were not complied with. He pointed out that no other measures were first taken before resort to retrenchment or any other mode of reducing personnel was made. Moreover, respondents were guilty of bad faith in terminating its employees considering that despite the retrenchment, new positions were created for which they were invited to apply.

"In refutation, respondents averred that in view of the dwindling financial position of the bank, the Board of Directors approved the bank's reorganization plan to prevent or minimize business losses which involved the retrenchment of employees and the subsequent right-sizing of the organization through elimination or merger of overlapping functions or divisions which resulted to the abolition of thirty-six (36) positions, one (1) of which was then occupied by petitioner. Consequently, petitioner and the DOLE were served the required termination notice one (1) month before the effectivity date of his separation from service. However, the payment of his separation pay was deferred in view of the case against him which is pending resolution before the Office of the Ombudsman [and] which could x x x find him pecuniarily liable aside from the penalty of forfeiture of benefits x x x. In the event though that he is exonerated, they manifested that his separation pay and other benefits shall be promptly released to him.

"As to the required proof of business losses, a reservation was made as to its submission on the ground of confidentiality of records due to the nature of respondent PPSBI's business. However, respondents avowed that the same shall be presented if and when required by the Labor Arbiter to do so.

"On June 30, 2000, Labor Arbiter Isabel G. Panganiban-Ortiguerra rendered a Decision, the dispositive portion of which reads:

`WHEREFORE, premises considered, judgment is hereby rendered declaring Philippine Postal Savings Bank, Inc. guilty of illegal dismissal and it is hereby ordered as follows:

`1. To reinstate complainant to his former position which may now have a different title, without loss of seniority rights and with full backwages reckoned from the date of his dismissal up to his actual or payroll reinstatement as of this date is in the amount of P124,638.40; and

`2. To pay complainant's attorney's fee in an amount equivalent to 10% of whatever he may receive by virtue of this decision.

`The claims for moral and exemplary damages are dismissed for lack of merit.

`SO ORDERED.'

"Aggrieved, respondents appealed to the x x x NLRC asseverating that they were denied due process of law when Labor Arbiter Panganiban-Ortiguerra allegedly hastily decided that they did not adduce evidence to support their claim of business losses to justify retrenchment. In support of their appeal, respondents submitted in evidence the following documents: (A) Audited Consolidated Statements of Condition, Income and Loss Statements for the periods 1996-1997, 1997-1998 and 1998-1999; (B) Statement of Financial Condition for the periods June 23, 1998, December 24, 1998 and December 21, 1999; (C) COA Annual Audit Report for the years ended December 31, 1997 and 1996; (D) COA Annual Audit Report for the years ended December 31, 1998 and 1997; (E) COA Annual Audit Report for the years ended December 31, 1999 and 1998; (F) PDIC Preliminary Findings as of March 31, 1996; (G) PDIC Results of Follow-Through Examination as of March 31, 1997; (H) PDIC Preliminary Findings as of May 31, 1998; (I) BSP Letter to the PPSBI Board of Directors dated December 28, 1995; (J) BSP Letter to the PPSBI Board of Directors dated March 18, 1997, with attached detailed report; (K) BSP Letter to the PPSBI Board of Directors dated May 14, 1997; and (L) BSP Letter to the PPSBI Board of Directors dated October 25, 1999.

"Petitioner duly opposed the presentation of the aforesaid documents contending that [these] cannot be presented for the first time on appeal. Moreover, even if the same can be admitted on appeal, the aforesaid documents are insufficient to prove the existence of business losses. Finally, petitioner posits that if serious losses were in fact incurred by respondent PPSBI, the same was due to the mismanagement of its officers which should not be borne by its rank and file employees.

"On August 31, 2001, x x x NLRC issued a Resolution admitting the evidence presented by respondents on appeal and finding the same adequate to prove the existence of business losses on the part of respondent PPSBI. x x x."

Dissatisfied with the NLRC Decision, petitioner elevated the case to the CA.

Ruling of the Court of Appeals

Affirming the NLRC, the CA ruled that proof of respondents' business losses had been correctly admitted, pursuant to the NLRC Rules of Procedure and the mandate of the Labor Code that technical rules of evidence are not binding in labor cases.^[5] It noted that, before the labor arbiter, respondents had made a clear reservation to present the subject evidence if required to do so.

The CA thereafter held that the evidence presented had sufficiently proved the existence of business losses, and that petitioner's retrenchment was legal.

As to the withholding of petitioner's separation pay, the appellate court ruled that the pendency of the criminal complaint against him had barred Respondent PPSBI's issuance of a certificate clearing him of any accountability to the agency. Under the rules of the Commission on Audit, the accountability clearance is one of several supporting documents needed for the payment of separation pay.

Hence, this Petition.^[6]

Issues

Petitioner submits the following issues for our consideration:

- "A. Whether or not the petitioner was illegally dismissed by respondents;
- "B. Whether or not the Court of Appeals can disregard the findings of the Labor Arbiter [that] there was no valid retrenchment;
- "C. Whether or not respondents are estopped from attaching [as] annexes to the Memorandum on Appeal evidenc[e] not submitted to the Labor Arbiter x x x after they were given opportunity to do so."^[7]

Since the question of whether petitioner was validly retrenched hinges on the admission of evidence proving alleged business losses, we shall discuss issues A and B in reverse sequence.

The Court's Ruling

The Petition has no merit.

First Issue: **Proof of Business Losses** **May Be Admitted on Appeal**

It is well-settled that the NLRC is not precluded from receiving evidence, even for the first time on appeal, because technical rules of procedure are not binding in labor cases.^[8] This rule applies equally to both the employee and the employer. In