

THIRD DIVISION

[G. R. No. 141441, June 19, 2001]

JOSE SUAN, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, IRMA FISHING AND TRADING INC., ROBERTO DEL ROSARIO AND EMILIANO ORIPAYPAY, RESPONDENTS.

D E C I S I O N

GONZAGA-REYES, J.:

This is a petition for review on *certiorari* filed by petitioner Jose Suan seeking to annul and set aside the decision dated August 17, 1999 of the respondent Court of Appeals^[1] which affirmed the decision of the NLRC and the Labor Arbiter dismissing petitioner's illegal dismissal case against private respondents and the resolution denying petitioner's motion for reconsideration.^[2]

Petitioner Jose Suan had been employed as master fisherman assigned on board a catcher vessel of the private respondent corporation Irma Fishing and Trading, Inc., with Roberto del Rosario and Emiliano Oripaypay as its President and Personnel Manager, respectively. Sometime in the later part of November, 1996, petitioner suffered a stroke while on board the vessel and had to disembark. He applied for and was granted sick leave from December 2, 1996 to May 30, 1997 to enable him to recuperate.

On May 30, 1997, petitioner reported for work but respondents allegedly refused to accept him back and was told to secure a medical certificate attesting to his physical condition; petitioner returned with a medical certificate signed by a certain Dr. Rolando S. Punzalan of Clinica Punzalan, stating that he was fit to work, to wit:

"Above patient was diagnosed to have Hypertension III (Severe) last 4/30/97. He was also found to have Ischmic Heart Disease. He was given appropriate medication and his HPN (hypertension) has been downgraded to HPN I (Mild). Although he has to take medication, he can resume working or xxx (not readable)."

but private respondent Oripaypay allegedly refused to accept him back and told him that he will just be paid his separation pay of P40,000 as he was already old and sickly; that when he reported for work on July 10, 1997, he was again told to just accept his separation pay of P35,000; that realizing that it was useless to continue reporting for work, petitioner filed the case for illegal dismissal on July 14, 1997.

Respondents denied having dismissed petitioner from his employment. They claim that petitioner filed sick leave from December 2, 1996 up to April 5, 1997 and then filed vacation leave applications from April 5, 1997 to May 4, 1997 and later

extended his leave until July 10, 1997. Petitioner went to the respondent office on July 10, 1997 and informed respondent Oripaypay of his intention to report for work and presented a medical certificate where it was stated that he was fit to work; that when respondent Oripaypay noticed petitioner's physical appearance, i.e., his left arm down to his left limb seemed to be paralyzed, he asked the latter if he was really fit to work to which petitioner allegedly said that "hindi ko pa kaya kung maari, sa "tabi" muna ako magtatrabaho"; that respondent Oripaypay told him that the matter will be referred to the management since there was no clear policy regarding a transfer of assignment from "laot" to "tabi"; that due to petitioner's apparent ill health and inability to perform his work, private respondent Oripaypay suggested that petitioner accept payment of separation pay with the company paying him one (½) month salary for every year of service, to which suggestion petitioner allegedly responded that he was willing to accept provided he will be paid one half month salary for every year of service due to the fact that he was already 15 years in the service; that respondent Oripaypay advised petitioner to extend his vacation leave up to August 10, 1997 while waiting for the answer from the higher management on his request for transfer of assignment to which petitioner allegedly agreed. However, after that meeting, petitioner filed the instant case.

On July 14, 1997, petitioner filed a complaint with the Department of Labor and Employment for illegal dismissal, reinstatement, back wages, payment of holiday pay, overtime pay, damages and attorney's fees against the private respondents.^[3]

During the pendency of this case with the labor arbiter, private respondent Oripaypay sent a letter dated August 16, 1997 to petitioner declaring him as absent without leave (AWOL) for his failure to report to the personnel office of the respondent corporation after his extended leave expired on August 10, 1997 and was required to explain why no disciplinary action should be taken against him for his absence.

Petitioner admitted having received private respondent Oripaypay's letter but claimed that such letter was an afterthought to counter-act his illegal dismissal complaint.

On March 31, 1998, a decision was rendered by Labor Arbiter Melquiades Sol D. Del Rosario declaring that petitioner was not dismissed from employment and gave respondents the option either to reinstate the petitioner without backwages or pay separation pay of P30,030.00.^[4]

Dissatisfied, petitioner appealed to the National Labor Relations Commission (NLRC)^[5] which affirmed the decision of the labor arbiter and dismissed the appeal for lack of merit.^[6]

Aggrieved, petitioner filed a petition for *certiorari*^[7] under Rule 65 with the respondent Court of Appeals alleging that the public respondents committed grave abuse of discretion in declaring that he was not dismissed by private respondents and not entitled to backwages.

On August 17, 1999, the respondent Court of Appeals affirmed the NLRC decision and dismissed the petition. Petitioner's motion for reconsideration was also denied in a resolution dated January 10, 2000.

Petitioner is now before us by way of a petition for review on *certiorari* alleging that the respondent court erred (a) in not ruling that the public respondents NLRC overlooked certain facts which would have altered the decision and (b) in not finding that the petitioner was illegally dismissed.

Petitioner claims that he was dismissed by respondents without notice and hearing and without any valid reason; that when he reported back to work after his illness, he was verbally told by his superior that he was already dismissed from work because he was already old and sickly and was offered separation pay. He alleges that his medical certificate stated that he was already fit to work and yet respondents refused to accept him back; that he never asked for a transfer from "laot" to "tabi".

The petition is not impressed with merit.

We find that petitioner is essentially raising a factual issue, i.e., whether petitioner was illegally dismissed from his employment by the private respondents. In petitions for review of decisions of the Court of Appeals, the jurisdiction of the Supreme Court is confined to a review of questions of law, except where the findings of fact are not supported by the record or are so glaringly erroneous as to constitute a serious abuse of discretion.^[8] It is a settled ruling that the Supreme Court is not a trier of facts.^[9]

The arguments herein raised are mere rehash of petitioner's contentions in his memorandum filed with the NLRC and in his petition for certiorari filed with the respondent court. We find no cogent reason to disturb the findings of the respondent Court of Appeals that no grave abuse of discretion was committed by the respondent NLRC and Labor Arbiter in finding and declaring that petitioner was not dismissed by the private respondent and hence not entitled to backwages. We adopt the conclusion arrived at by the Labor Arbiter which was substantially adopted by the respondent Court of Appeals as follows:

"Anent the issue of illegal dismissal, the records do not have any notice of termination issued by respondents to complainant even when he exceeded the six (6) months period that the latter used in recuperating from his stroke. Complainant's stance is that he wants to report for work because he is attested to be fit by the doctor who issued it. A close scrutiny of the medical certification issued by Dr. Juan Punzalan attest to the fact that complainant has Hypertension III (severe) and Ischemic Heart Disease. At the time of the issuance of the medical certificate on June 7, 1997, complainant was still certified to be sick with Hypertension, although downgraded to 1 (mild), but must have proper medication to resume working. Significantly, nothing was mentioned in the medical certificate about his heart ailment which is a dangerous ailment. Once afflicted with a heart disease, it cannot be cured. There could be maintenance tablets but the ailment is always there and may deteriorate under strenuous conditions. Moreover, this Arbitration Branch can take judicial notice that a person who suffers a stroke, wherein part of his body is paralyzed will no longer get back his strength in too short a time. It will take a year or more before he can recover his normal stride, and in

the case of complainant, when he was reporting for work, his recuperative period was just a little over six (6) months. His appearance therefore, before the personnel manager on June 10, 1997 could not deceive the latter because the manager noticed that complainant's left arm down to his left limb seemed to be paralyzed. And this is usually the case since the heart is inclined more to the left portion of the body of a person.

Besides, the work of a master fisherman is a strenuous one where brute physical strength is needed and involved. And definitely, complainant has not completely regained his lost physical strength. It would not be far-fetched to imagine that had complainant been allowed to return to his old job, either of two things would have happened to him on account of his heart condition, namely: a) He would again suffer a more serious severe stroke that would lead to paralysis or b) a stroke that may lead to his death.

Clearly, therefore, fully aware of his debilitated condition, his request for a transfer of work from the "laot" to "tabi" is credible. But at the time that complainant made the request on July 10, 1997 until August 10, 1997, no decision by higher management had yet been made. On August 10, 1997, management decided to send him to his former work as evidenced by the letter dated August 16, 1997, however, the instant case had already been filed.

Since there has been no dismissal of complainant, based on the records, then complainant may either be reinstated without backwages by respondents or paid in lieu of reinstatement his separation pay at one (1) month's pay or one-half (1/2) month's pay per year of service whichever is higher, a fraction of six (6) months being considered as one (1) whole year pursuant to Article 294 of the Labor Code. Said provision reads:

`An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or prejudicial to his health as well as to the health of his co-employees provided that he is paid separation pay equivalent to at least one (1) month salary or to one half (1/2) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.'"

We are convinced that petitioner's filing of illegal dismissal case against private respondents has no basis considering that at the time he filed his complaint on July 14, 1997, he was supposedly still on an extended leave, i.e., from July 10, 1997 to August 10, 1997, authorized by private respondent Oripaypay while petitioner was waiting for the action of the management on his request for transfer from "laot" to "tabi" and to be able to regain his failing health. We note that the medical certificate presented by petitioner stated that he can resume his work but nowhere was it stated that petitioner was already fit to resume working as master fisherman which would require him to be on board a fishing vessel most of the time. We affirm the