389 Phil. 118

SECOND DIVISION

[G.R. No. 125303, June 16, 2000]

DANILO LEONARDO, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND REYNALDO'S MARKETING CORPORATION, ET. AL., RESPONDENTS.

[G.R. No. 126937.]

AURELIO FUERTE AND DANILO LEONARDO, PETITIONERS, VS. RAUL T. AQUINO, VICTORIANO R. CALAYCAY AND ROGELIO I. RALAYA, AS CHAIRMAN AND MEMBERS OF THE NATIONAL LABOR RELATIONS COMMISSION, SECOND DIVISION AND REYNALDO'S MARKETING AND/OR REYNALDO PADUA RESPONDENTS.

D E C I S I O N

DE LEON, JR., J.:

Before us is a consolidation of G.R. Nos. 125303 and 126937, both petitions for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure, seeking the annulment of a Decision[1] and Resolution[2] dated March 28, 1996 and May 29, 1996, respectively, of the public respondent in NLRC NCR 00-02-01024-92.

The facts are:

Petitioner AURELIO FUERTE was originally employed by private respondent REYNALDO'S MARKETING CORPORATION on August 11, 1981 as a muffler specialist, receiving P45.00 per day. When he was appointed supervisor in 1988, his compensation was increased to P122.00 a day, augmented by a weekly supervisor's allowance of P600.00. On the other hand, DANILO LEONARDO was hired by private respondent on March 4, 1988 as an auto-aircon mechanic at a salary rate of P35.00 per day. His pay was increased to P90.00 a day when he attained regular status six months later. From such time until he was allegedly terminated, he claims to have also received a monthly allowance equal to P2,500.00 as his share in the profits of the auto-aircon division.

FUERTE alleges that on January 3, 1992, he was instructed to report at private respondent's main office where he was informed by the company's personnel manager that he would be transferred to its Sucat plant due to his failure to meet his sales quota, and for that reason, his supervisor's allowance would be withdrawn. For a short time, FUERTE reported for work at the Sucat plant; however, he protested his transfer, subsequently filing a complaint for illegal termination.

On his part, LEONARDO alleges that on April 22, 1991, private respondent was approached by the same personnel manager who informed him that his services

were no longer needed. He, too, filed a complaint for illegal termination.

The case was heard by Labor Arbiter Jesus N. Rodriguez, Jr. On December 15, 1994, Labor Arbiter Emerson C. Tumanon, to whom the case was subsequently assigned, rendered judgment in favor of petitioners. The dispositive portion of the arbiter's decision[3] states:

> WHEREFORE, premises considered, respondents are hereby ordered:
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> 1. To reinstate complainant Aurelio Fuerte, to the position he was holding before the demotion, and to reinstate likewise complainant Danilo Leogardo to his former position or in lieu thereof, they be reinstated through payroll reinstatement without any of them losing their seniority rights and other privileges, inclusive of allowance and to their other benefits;
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> 2. To pay AURELIO FUERTE, the sum of TWO HUNDRED EIGHTY THOUSAND EIGHT HUNDRED NINETY-SIX PESOS and 72/100 (280,896.72);
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> 3. To pay DANILO LEOGARDO, the sum of TWO HUNDRED FORTY ONE THOUSAND NINE HUNDRED EIGHT PESOS and 67/100 (P241,908.67).
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> SO ORDERED.

On appeal, the respondent Commission modified the aforesaid decision as follows:

> WHEREFORE, premises considered, the Decision of December 15, 1994 is hereby modified as follows:
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> 1. Ordering the reinstatement of complainant Aurelio Fuerte to his former position without loss of his seniority rights but without backwages;
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> 2. Dismissing the complaint of Danilo leonardo [sic] for lack of merit; and
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> 3. Deleting the rests [sic] of the monetary award as well as the award of moral damages and attorney's fees in favor of the complainants also for lack of merit.
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> SO ORDERED.

Petitioners filed a motion for reconsideration[4] on April 30, 1996, which the Commission denied in its Resolution dated May 29, 1996.

On July 1, 1996, LEONARDO, represented by the Public Attorney's Office, filed G.R. No. 125303, a special civil action for *certiorari* assailing the Commission's decision and resolution. However, on November 15, 1996, FUERTE, again joined by LEONARDO, filed G.R. No. 126937, a similar action praying for the annulment of the same decision and resolution.

On October 7, 1997, private respondent filed its Comment[5]to the petition in G.R. No. 125303. On April 2, 1997, it filed its Comment[6] to the petition in G.R. No.

126937 with a motion to drop petitioner LEONARDO and consolidate G.R. No. 126937 with G.R. No. 125303. We granted private respondent's motion in our Resolution dated June 16, 1997.[7]

The petition in G. R. No. 126937[8] raises the following issues:

> I. RESPONDENT COMMISSIONERS GRAVELY ABUSED THEIR DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN THEY GRANTED RESPONDENTS APPEAL.
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> II. RESPONDENT COMMISSIONERS GRAVELY ABUSED THEIR DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN THEY FOUND FOR RESPONDENT REYNALDO'S MARKETING PRONOUNCING THAT THERE WAS NO ILLEGAL DISMISSAL DESPITE CONTRARY FINDINGS MADE BY THE LABOR ARBITER CONTRARY TO LAW AND EXISTING JURISPRUDENCE.

Private respondent contends that it never terminated petitioners' services. In FUERTE's case, private respondent claims that the latter was demoted pursuant to a company policy intended to foster competition among its employees. Under this scheme, private respondent's employees are required to comply with a monthly sales quota. Should a supervisor such as FUERTE fail to meet his quota for a certain number of consecutive months, he will be demoted, whereupon his supervisor's allowance will be withdrawn and be given to the individual who takes his place. When the employee concerned succeeds in meeting the quota again, he is re-appointed supervisor and his allowance is restored.[9]

With regard to LEONARDO, private respondent likewise insists that it never severed the former's employment. On the contrary, the company claims that it was LEONARDO who abandoned his post following an investigation wherein he was asked to explain an incident of alleged "sideline" work which occurred on April 22, 1991. It would appear that late in the evening of the day in question, the driver of a red Corolla arrived at the shop looking for LEONARDO. The driver said that, as prearranged, he was to pick up LEONARDO who would perform a private service on the vehicle. When reports of the "sideline" work reached management, it confronted LEONARDO and asked for an explanation. According to private respondent, LEONARDO gave contradictory excuses, eventually claiming that the unauthorized service was for an aunt. When pressed to present his aunt, it was then that LEONARDO stopped reporting for work, filing his complaint for illegal dismissal some ten months after his alleged termination.

Insofar as the action taken against FUERTE is concerned, private respondent's justification is well-illustrated in the record. He was unable to meet his quota for five months in 1991, from July to November of that year.[10] Yet he insists that it could not possibly be so. He argues that he must have met his quota considering that he received his supervisor's allowance for the period aforesaid. The Commission, however, negated this view, finding the alleged inconsistency to be adequately explained in the record. We quite agree. As found by the Commission, placing special emphasis on the reasoning of the labor arbiter -

> We find otherwise. Complainant Fuerte's failure to meet his sales quota which caused his demotion and the subsequent withdrawal of his allowance is fully supported by Exhibit "4" of respondents' position paper showing that his performance for the months of July 1991 to November 1991 is below par. While it is the policy of the respondent company that an employer who fails to meet his sales quota for three (3) consecutive months, he is stripped of his supervisor's designation and allowance. In the case of Fuerte, the respondents went beyond the three (3) months period before withdrawing his allowance. On this basis, the Labor Arbiter sweepingly concluded that the withdrawal of Fuerte's allowance is illegal since the respondents should have withdrawn the same after Fuerte failed to meet his sales quota for three consecutive months. *However, the apparent flaw had been sufficiently reconciled by the respondents when they state that a supervisor like Fuerte, continues to receive his allowance until he is officially stripped of his supervisor's designation and assigned to another job as ordinary employee. This is precisely the reason why complainant Fuerte continued to receive his allowance even beyond the three (3) consecutive months period to meet his sales quota considering that it was only on the fifth consecutive months when the respondent company decided to strip him of his designation as supervisor.* This is corroborated by the "Sinumpaang Salaysay" (Exh. "A" - respondents' position paper) of some employees of the respondent company who had been previously demoted for failure to meet their sales quota when they unformably stated:
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> > "5. Na alam naming kapagka hindi namin maabot and quotang nabanggit na may ilang buwan, kami'y maaring mademote at kapagka nagkaganoon ang supervisor allowance sampu ng, may mataas na parte sa profit sharing at winnings ay maalis sa amin at maibibigay sa hahalili sa amin.
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> Surprisingly, the Labor Arbiter failed to take into consideration this material allegations of the respondents in his assailed decision except his sweeping statement that the "Sinumpaang Salaysay" was purposely done with malice to justify respondents' withdrawal of Fuerte's supervisor's allowance. [italics supplied]

FUERTE nonetheless decries his transfer as being violative of his security of tenure, the clear implication being that he was constructively dismissed. We have held that an employer acts well within its rights in transferring an employee as it sees fit provided that there is no demotion in rank or diminution in pay.[11] The two circumstances are deemed badges of bad faith, and thus constitutive of constructive dismissal. In this regard, constructive dismissal is defined in the following manner:

> an involuntary resignation resorted to when continued employment becomes impossible, unreasonable, or unlikely; when there is a demotion in rank or diminution in pay; or when a clear discrimination, insensibility or disdain by an employer becomes unbearable to the employee.[12]

Yet here, the transfer was undertaken beyond the parameters as aforesaid. The instinctive conclusion would be that his transfer is actually a constructive dismissal, but oddly, private respondent never denies that it was really demoting FUERTE for cause. It should be borne in mind, however, that the right to demote an employee