

## FIRST DIVISION

**[ G.R. No. 97067, September 26, 1996 ]**

### **HOMEOWNERS SAVINGS AND LOAN ASSOCIATION, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND MARILYN CABATBAT, RESPONDENTS.**

#### **D E C I S I O N**

##### **HERMOSISIMA, JR., J.:**

The Philippine Constitution, while inexorably committed towards the protection of the working class from exploitation and unfair treatment, nevertheless mandates the policy of social justice so as to strike a balance between an avowed predilection for labor, on the one hand, and the maintenance of the legal rights of capital, the proverbial hen that lays the golden egg, on the other. Indeed, we should not be unmindful of the legal norm that justice is in every case for the deserving, to be dispensed with in the light of established facts, the applicable law, and existing jurisprudence.

In the case at bench, we tip the scales of justice in favor of the employer.

Private respondent Marilyn Cabatbat, a full-fledged Certified Public Accountant was employed and had started working as Branch Accountant in petitioner's branch office in San Carlos City (Pangasinan) on September 10, 1975. On December 18, 1981, she was re-assigned to the Sta. Barbara (Pangasinan) branch office of petitioner. After her brief stint in Sta. Barbara, she was returned to her old post in San Carlos City, likewise as Branch Accountant.

On September 14, 1984, petitioner through its Assistant Vice-President Johnny L. Tuason, issued Memorandum No. 0984<sup>[1]</sup> addressed to all branches, announcing management's decision to promote five (5) junior officers and to move four (4) of its employees to new assignments. The latter group of employees were made to retain their original items. Private respondent was among those moved from her old post in San Carlos Branch. She was transferred to the petitioner's branch in Urdaneta, also in Pangasinan. Both the promoted and the transferred employees received corresponding increases in their salaries.

On the same day, private respondent received a separate memorandum<sup>[2]</sup> from J.L. Tuason informing her of her new assignment to Urdaneta Branch pursuant to Memorandum No. 0984.

Fellow employees Flordeliza Galvan, Wilma Taaca and Ethel Cariaga were also notified separately of their new assignments.<sup>[3]</sup>

On the other hand, Reynaldo Bondoc, Nelson Nieva, Laureta Soliven, Leonida Cabrera and Leonor Espinoza received notices of promotion to various positions.<sup>[4]</sup>

In a letter, dated October 3, 1984, private respondent requested deferment of her new assignment, citing as her reason the fact that she was on her sixth month of pregnancy. The request was granted.<sup>[5]</sup>

On February 18, 1985,<sup>[6]</sup> after private respondent's delivery, petitioner again ordered private respondent to report to her new assignment. Private respondent again requested that the order to re-assign her be reconsidered because of some very personal reasons, particularly based on the need to maintain "harmonious relationship with her parents-in-law" with whom she then lives.<sup>[7]</sup> On February 19, 1985, she wrote AVP Tuason protesting her new assignment and reiterated her appeal for the reconsideration of the order for her transfer maintaining that "my new assignment would entail additional expenses and physical exhaustion as Urdaneta is too far for me to commute everyday."<sup>[8]</sup>

On February 20, 1985, petitioner issued the following Memorandum No. 0285-10,<sup>[9]</sup> addressed to private respondent:

"MEMO NO. : 0285-10  
TO: MARILYN CABATBAT  
FROM: BRANCHES DIVISION  
DATE : FEBRUARY 20, 1985  
SUBJECT: ASSIGNMENT TO URDANETA BRANCH

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This has reference to your letters wherein you signified your protest on your assignment to Urdaneta Branch as its Branch Accountant due to personal reasons.

Let it be known that your transfer is due to the exigency to uplift the operational efficiency of the branch. Record would show that your assignment to Urdaneta Branch was required September, 1984 yet which was deferred for some reasons even considering your maternity leave. Your continuous failure to report to Urdaneta Branch has caused deterioration in its recordkeeping and a deficiency in its supervision.

It may be of some help to you if you will spend this coming days until February 25, 1985 to try to settle any personal problems that you may have, and reconsider your position on this matter. We, however, expect you to report on February 26, 1985 to Urdaneta Branch in time for the month-end reportorial requirements.

We are fervently hoping that this matter will be settled.

s/ J. L. Tuason  
t/ J. L. TUASON  
Asst. Vice-President"

On February 25, 1985, private respondent wrote petitioner a letter, this time bluntly refusing her assignment on the pretext that her new assignment was a promotion, in which case, she has the option to reject or accept the same.<sup>[10]</sup>

In the face of private respondent's intransigence, a warning was issued to her by the petitioner on February 27, 1985,<sup>[11]</sup> that her continued defiance of the management's directive shall be dealt with in accordance with law. Despite this warning, private respondent still continued reporting to the San Carlos Branch. The petitioner, still acting with patience and fortitude, advised her in a memorandum, dated February 28, 1985,<sup>[12]</sup> that her attendance at the San Carlos Branch was not a valid report for work. And, on March 1, 1985,<sup>[13]</sup> she was instructed once again to report immediately to the Urdaneta Branch because her services were badly needed there.

Petitioner, still unable to perceive a positive response from the private respondent, was constrained to issue the following Memorandum No. 0385<sup>[14]</sup> on March 8, 1985:

"MEMO NO.: 0385  
TO: MARILYN CABATBAT  
FROM : BRANCHES DIVISION  
DATE: MARCH 08, 1985  
SUBJECT: ASSIGNMENT TO URDANETA BRANCH

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It was brought to our knowledge that you have not assumed your assignment with Urdaneta Branch as its Branch Accountant inspite of the numerous notices given you. And notwithstanding the existing policy of the Bank for you to be reimbursed the actual cost of transportation as a result of your reassignment from San Carlos Branch to Urdaneta Branch.

Your refusal to obey the directive of the Bank warrant the termination of your employment.

Please reply within five (5) days why you should not be terminated.

s/ J. L. Tuason  
t/ J. L. TUASON  
Asst. Vice-President"

Finally, on March 14, 1985,<sup>[15]</sup> private respondent was issued a notice of termination. The fact of termination was properly reported to the then Ministry of Labor and Employment.<sup>[16]</sup>

Private respondent then filed a complaint for illegal dismissal against the petitioner. Executive Labor Arbiter Sotero Tumang dismissed the complaint in a decision, dated June 26, 1985, the dispositive portion of which states:

"WHEREFORE, IN VIEW OF THE FOREGOING, this case is hereby ORDERED DISMISSED for lack of merit.

San Fernando, La Union for Dagupan City, June 26, 1985."<sup>[17]</sup>

Private respondent appealed to the National Labor Relations Commission.

The NLRC reversed the findings of the Executive Labor Arbiter, in a decision rendered on November 26, 1990. The NLRC decreed:

"WHEREFORE, the appealed Decision is hereby REVERSED and SET ASIDE and another one ENTERED ordering the HOMEOWNERS SAVINGS and LOAN ASSN., Inc. to immediately reinstate Marilyn Cabatbat to her former positions with full backwages and other benefits for a period of three (3) years from her illegal dismissal and without loss of seniority rights and other privileges.

SO ORDERED."<sup>[18]</sup>

A Motion for Reconsideration having been filed by petitioner, the NLRC, in a Resolution dated January 17, 1991, peremptorily denied it.

Hence, this petition.

The basic issue raised in this petition is whether or not public respondent NLRC committed grave abuse of discretion amounting to lack of jurisdiction when it decided that Marilyn Cabatbat was illegally dismissed by the petitioner, it having given credence to private complainant's claim that her re-assignment from the San Carlos Branch to the Urdaneta Branch involved a promotion which she can rightfully decline without being guilty of willful disobedience, a just cause for termination.

We find merit in the petition.

Petitioner avers that private respondent's re-assignment to the Urdaneta Branch was merely a transfer to another post which she cannot validly refuse without incurring the concomitant disciplinary measures the petitioner corporation may deem fit to impose, which in this case was termination. Private respondent maintains otherwise. According to her, the new assignment was nothing less than a promotion which, under existing jurisprudence, she could not be compelled to accept. Petitioner's submission obviously holds water. The memorandum, dated September 14, 1984, issued by the Assistant Vice-President J.L. Tuason addressed to the private respondent informing her of her new assignment reads, viz.:

"TO: MARILYN CABATBAT  
FROM: BRANCHES DIVISION  
DATE: SEPTEMBER 14, 1984  
SUBJEC: NEW ASSIGNMENT

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To streamline our operation and as a recognition of your demonstrated management capabilities you are assigned to URDANETA BRANCH as its BRANCH ACCOUNTANT to assume broader responsibilities.

As a BRANCH ACCOUNTANT, your monthly remuneration shall be as follows:

	OLD	MANDATORY ADJUSTMENT	MERIT INCREASE	NEW
<b>Basic Pay</b>	P 1,430.00	- o -	P 120.00	P1,550.00
<b>COLA</b>	270.00	P 150.00	- o -	420.00
<b>TOTALS</b>	P 1,700.00	P 150.00	P 120.00	P1,970.00

The above salary shall be retroactive June 16, 1984. You may draw any differential which you have not received.

Management expects you to reciprocate by working towards the attainment of its objective, promote professionalism amongst the bank staff and uphold the interest of the Bank.

s/ J. L. Tuason  
t/ J. L. TUASON"<sup>[19]</sup>

This memorandum, however, must be read in light of Memorandum No. 0984 addressed to all branches of petitioner corporation announcing all the promotions and new assignments to be implemented by the petitioner effective September 14, 1984. The said memorandum appears in this wise:

"MEMO NO.: 0984  
TO : ALL BRANCHES  
FROM : BRANCHES DIVISION

DATE : SEPTEMBER 14, 1984  
SUBJECT: BRANCHES PROMOTIONS AND NEW ASSIGNMENTS

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In line with the Bank's commitment to streamline its operation and give recognition to deserving officers and staff, management wish to announce the following promotions and movements:

<b>A. PROMOTIONS:</b>			
	<b>JUNIOR OFFICERS</b>	<b>BRANCH</b>	<b>NEW DESIGNATION</b>
1.	Reynaldo Bondoc	Apalit Branch	Asst. Manager
2.	Nelson Nieva	Head Office	Asst. Manager
3.	Laureta Soliven	Urdaneta Branch	Asst. Manager
4.	Leonida Cabrera	San Carlos Branch	Branch Accountant
5.	Leonor Espinoza	San Carlos Branch	Cashier
<b>B. MOVEMENTS</b>			
		<b>FROM</b>	<b>TO</b>
1.	Marilyn Cabatbat	San Carlos Branch	Branch Accountant Urdaneta Branch
2.	Flordeliza Galvan	Urdaneta Branch	Officer-In-Charge Bayambang Moneyshop Officer-In-Charge
3.	Wilma Taaca	Urdaneta Branch	Binalonan Moneyshop Officer-In-Charge
4.	Ethel Cariaga	San Carlos Branch	Pozorrubio Moneyshop

We enjoin all branch staff to give their respect and support to the above-named officers and staff.

s/ J. L. Tuason  
t/ J. L. TUASON  
Asst. Vice President"[20]

A cursory reading of these two memoranda unmistakably shows that Marilyn Cabatbat is one among the four employees that was considered for "Movement" from the San Carlos Branch to the Urdaneta Branch with no corresponding change in her position as Branch Accountant. Her name does not appear below the heading "Promotions" which enumerates the five junior officers promoted to new positions, i.e., three Assistant Managers, one Branch Accountant and one Cashier. Henceforth, the clear intention of the petitioner corporation was merely to transfer, and not promote, the private respondent to a new post.

The fact that private respondent, together with the other three (3) employees who were transferred, were given salary increases should not be construed to mean that they were promoted. Promotion, as we defined in *Millares v. Subido*,<sup>[21]</sup> is "the advancement from one position to another with an increase in duties and responsibilities as authorized by law, and usually accompanied by an increase in salary." Apparently, the indispensable element for there to be a promotion is that there must be an "advancement from one position to another" or an upward vertical movement of the employee's rank or position. Any increase in salary should only be considered incidental but never determinative of whether or not a promotion is bestowed upon an employee. This can be likened to the upgrading of salaries of government employees without necessarily conferring upon them the concomitant elevation to higher positions. Here, although private respondent was moved from the San Carlos Branch to the Urdaneta Branch, she retained her old position as Branch Accountant. This is only a lateral movement which does not amount to a promotion, but a mere transfer.

Private respondent, however, insists that based on the separate memorandum issued to her by the petitioner on the same day of September 14, 1984, the petitioner corporation really intended to promote her, since said document had the marks and bearings of a notice of promotion. The recognition by the petitioner of private respondent's "demonstrated management capabilities" and the expectation of reciprocation from her "by working