

## **NINETEENTH DIVISION**

**[ CA-G.R. SP. NO. 07718, January 30, 2015 ]**

**EPA AGRI-VENTURES AND XAVIERVILLE CITY CONDOMINIUM/  
SPS. EDWIN AND EMMA ALVERO, PETITIONERS, VS. NATIONAL  
LABOR RELATIONS COMMISSION (NLRC) 7<sup>TH</sup> DIVISION, CEBU  
CITY AND BERNARDITO OLITA, RESPONDENTS.**

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

**LOPEZ, J.:**

#### **The Case**

Before the Court is a Petition for Certiorari filed under Rule 65 of the Rules of Court which seeks to annul the Decision<sup>[1]</sup> dated 28 February 2013 of the National Labor Relations Commission (NLRC), 7<sup>th</sup> Division, Cebu City, affirming the Labor Arbiters' decision declaring Respondent Bernardito Olita illegally dismissed from service and its Resolution<sup>[2]</sup> dated 30 April 2013 denying Petitioners' Motion for Reconsideration<sup>[3]</sup> of the aforesaid decision.

#### **FACTUAL ANTECEDENTS**

The present petition arose out of a complaint for illegal dismissal with money claims filed by herein Private Respondent Bernardito Olita against Petitioners.

Petitioner EPA Agri-Ventures is a business entity engaged in livestock business with Edwin P. Alvero as its proprietor. Xavierville City Condominium is a domestic corporation existing under Philippine Laws with a personality separate and distinct from that of its corporate stockholders. Spouses Edwin and Emma Alvero are two of Xavierville's corporate stockholders.

It appears that Private Respondent Olita was hired by Petitioner EPA Agri-Ventures as an errand boy on 15 February 1999. Later, he was designated as a company driver. Subsequently, their relationship turned sour. Private Respondent was accused by Petitioner Edwin Alvero of spreading malicious rumors about the latter's marital affairs. According to the former, he was called to a meeting by Petitioner Alvero but was not allowed to explain his side. He was allegedly instructed to stop working despite his pleas.

Thereafter, Private Respondent filed a complaint for illegal dismissal with the Labor Arbiter. He alleged that he was not paid the minimum wage and other labor standard benefits such as 13<sup>th</sup> month pay, service incentive leave pay and holiday pay. He added that his dismissal was not proper since it was not based on any of the just causes enumerated under the Labor Code. Moreover, the alleged cause of his dismissal was merely based on suspicion and was not sufficiently proven as he was

not allowed to explain his side.

On the other hand, Petitioners countered that Private Respondent was not illegally dismissed but allegedly went on Absence Without Official Leave (AWOL). They added that a *Show Cause Notice*<sup>[4]</sup> was given to Private Respondent but the latter allegedly refused to accept the same. Moreover, Rebecca Arinas, an employee of Petitioner EPA Agri-Ventures, tried to convince Private Respondent to return to work but the latter declined. According to Petitioners, before they could send a Return to Work Notice to Private Respondent, they received summons for a mandatory conference concerning the complaint for illegal dismissal.

Furthermore, they averred that they understand the plight of their workers. As such, they have been granting Cash Advances to their employees for humanitarian reasons.<sup>[5]</sup> Likewise, they have been regularly remitting their contributions to the SSS<sup>[6]</sup> and Philhealth<sup>[7]</sup>. They added that apart from Private Respondent's salary, the latter was also granted free board and lodging in a residential house near Xavierville City Condominium.

In addition, Petitioners tried to show that Private Respondent is not a trustworthy employee. They cited several infractions that were allegedly committed by the latter during the course of his employment. Firstly, Private Respondent figured in a vehicular accident when he tried to operate the company's vehicle without the knowledge and consent of Petitioner Edwin Alvero despite the fact that he does not know how to drive. Secondly, he was caught selling steel bars from Xavierville Condominium for profit. His latest infraction was when he allegedly circulated malicious rumors about the marital affairs of Petitioner Edwin Alvero.

On 19 October 2012, Labor Arbiter Emiliano Tiongco, Jr. rendered a Decision<sup>[8]</sup> finding Private Respondent to have been illegally dismissed and ordered Petitioners Edwin Alvero and EPA Agri-Ventures to pay the former backwages and separation pay in lieu of reinstatement.<sup>[9]</sup> The Labor Arbiter also awarded Private Respondent's claims for holiday pay, 13<sup>th</sup> month pay, service incentive leave pay and attorney's fees.<sup>[10]</sup>

Labor Arbiter Emiliano Tiongco, Jr. reasoned that Petitioners failed to comply with the two substantive requirements for a lawful termination. Firstly is the procedural aspect which mandates that an employee must be accorded an opportunity to be heard and to defend himself. This is essentially an aspect of due process. Secondly is the substantive aspect which mandates that the employee's dismissal must be for causes provided for under the Labor Code.

Aggrieved by the Labor Arbiter's decision, Petitioners elevated their case to the National Labor Relations Commission (NLRC), Seventh Division, Cebu City. They argued that Private Respondent failed to prove his allegation that he was illegally dismissed from service. In fact, it was Private Respondent who voluntarily dissociated himself from Petitioner EPA Agri-Ventures by absenting himself without official leave, according to Petitioners.

In a Decision<sup>[11]</sup> dated 28 February 2013, the NLRC affirmed the decision of the Labor Arbiter. It ruled that Private Respondent was able to prove his allegation that

he was illegally dismissed. According to the NLRC, Petitioners' claim that Private Respondent voluntarily dissociated himself from service by absenting himself without official leave is akin to abandonment of work. It added that abandonment is a matter of intention and cannot lightly be presumed from certain equivocal acts. Moreover, Petitioners failed to substantiate their claim that Private Respondent abandoned his work. What is more, the latter's act of filing a complaint for illegal dismissal negates any intention on his part to forsake his employment, the NLRC added.

Not satisfied, Petitioners filed a Motion for Reconsideration<sup>[12]</sup> of the NLRC's decision on 11 April 2013. The NLRC denied Petitioners' motion for reconsideration in a Resolution<sup>[13]</sup> dated 30 April 2013.

Undaunted, Petitioners filed the present Petition for Certiorari on 25 June 2013 on the following ground, to wit:

THE HONORABLE PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN RULING THAT THERE WAS ILLEGAL DISMISSAL.

In their petition for certiorari, Petitioners ascribed grave abuse of discretion on the part of NLRC when it ruled that Private Respondent was illegally dismissed. They mainly based their argument on the allegation that Private Respondent failed to prove the fact of his dismissal. They added that it is only when the latter proves the fact of his dismissal that the burden shifts to Petitioners to prove whether the dismissal was legal. Moreover, Private Respondent was not prevented from returning to work or otherwise deprived of any work assignment, according to Petitioners. Thus, Private Respondent's cessation from work was voluntary on his part.

In a Resolution<sup>[14]</sup> dated 30 August 2013, Private Respondent was directed by this Court to file a Comment to the present petition but the former opted not to file the same. Thus, the case was deemed submitted for decision.

### **RULING**

We **DENY** the present petition for lack of merit.

***Petitioners failed to prove grave abuse of discretion.***

Where a petition for certiorari under Rule 65 of the Rules of Court alleges grave abuse of discretion, the petitioner should establish that the respondent court or tribunal acted in a capricious, whimsical, arbitrary or despotic manner in the exercise of its jurisdiction as to be equivalent to lack of jurisdiction. This is so because "grave abuse of discretion" is well-defined and not an amorphous concept that may easily be manipulated to suit one's purpose.<sup>[15]</sup>

The ruling of the Supreme Court in the case of *Yu vs. Judge Reyes-Carpio*<sup>[16]</sup> is instructive, thus:

The term "grave abuse of discretion" has a specific meaning. An act of a court or tribunal can only be considered as with grave abuse of discretion when such act is done in a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." The abuse of discretion must be so patent and gross as to amount to an "evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility."

Furthermore, the use of a petition for certiorari is restricted only to "truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void." From the foregoing definition, it is clear that the special civil action of certiorari under Rule 65 can only strike an act down for having been done with grave abuse of discretion if the petitioner could manifestly show that such act was patent and gross. x x x. (Citations omitted)

In the case at bar, nowhere in the petition did Petitioners show that the issuance by the National Labor Relations Commission (NLRC) of its Decision dated 28 February 2013 and its Resolution dated 30 April 2013 denying Petitioners' motion for reconsideration were so patent and gross that would warrant striking them down through a petition for certiorari. Aside from the sweeping allegation of grave abuse of discretion in the general statement of the ground for the petition,<sup>[17]</sup> Petitioners failed to substantiate their imputation of grave abuse of discretion on the part of the National Labor Relations Commission (NLRC). No argument was advanced to show that the NLRC exercised its judgment capriciously, whimsically, arbitrarily or despotically by reason of passion and hostility. Petitioners did not even discuss how or why the conclusions of the NLRC were made with grave abuse of discretion.

While Petitioners cited relevant jurisprudence, their petition basically delved into discussing their version of the events, which had already been rejected both by the Labor Arbiter and the NLRC. Thus, Petitioners failed in its duty to demonstrate with definiteness the grave abuse of discretion that would justify the proper availment of a petition for certiorari under Rule 65 of the Rules of Court.

***Petitioners essentially questioned the factual findings of the Labor Arbiter and the NLRC which is not proper in a petition for certiorari.***

Petitioners reiterated in their petition that Private Respondent was not illegally dismissed. According to the former, no evidence was proffered by the latter which would show that he was dismissed from employment.<sup>[18]</sup> Essentially, Petitioners are saying that Private Respondent voluntarily dissociated himself from his work. Moreover, they alleged that Private Respondent was charged with a work violation as evidenced by a Show Cause Notice which the latter refused to sign and receive.

Evidently, these allegations question the findings of both the Labor Arbiter and the NLRC. For Petitioners to question the identical findings of the Labor Arbiter and the NLRC is to raise a question of fact. However, settled is the rule that questions of fact cannot be raised in an original action for certiorari.<sup>[19]</sup> Only established or admitted facts can be considered.<sup>[20]</sup> In a special civil action for certiorari, the issues are

confined only to errors of jurisdiction or grave abuse of discretion. The Supreme Court in the case of *Romy's Freight Service vs. Castro*<sup>[21]</sup> explained the rationale of this rule:

The sole object of the writ is to correct errors of jurisdiction or grave abuse of discretion. The phrase 'grave abuse of discretion' has a precise meaning in law, denoting abuse of discretion "too patent and gross as to amount to an evasion of a positive duty, or a virtual refusal to perform the duty enjoined or act in contemplation of law, or where the power is exercised in an arbitrary and despotic manner by reason of passion and personal hostility." **It does not encompass an error of law. Nor does it include a mistake in the appreciation of the contending parties' respective evidence or the evaluation of their relative weight.** (Emphasis supplied.)

Thus, no grave abuse of discretion may be attributed to a court or quasi-judicial agency simply because of its alleged misappreciation of facts and evidence. Moreover, the Supreme Court in *First Corporation vs. Former Sixth Division of the Court of Appeals*<sup>[22]</sup> further expounded, thus:

It is a fundamental aphorism in law that a review of facts and evidence is not the province of the extraordinary remedy of certiorari, which is extra ordinem – beyond the ambit of appeal. In certiorari proceedings, judicial review does not go as far as to examine and assess the evidence of the parties and to weigh the probative value thereof. It does not include an inquiry as to the correctness of the evaluation of evidence.

***Findings of fact made by the Labor Arbiter and affirmed by the NLRC are entitled to great weight when supported by substantial evidence.***

It is well-settled in jurisprudence that factual findings of administrative or quasi-judicial bodies, which are deemed to have acquired expertise in matters within their respective jurisdictions, are generally accorded not only respect but even finality, and bind the Court when supported by substantial evidence.<sup>[23]</sup> Substantial evidence is more than a mere scintilla of evidence or relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opined otherwise.<sup>[24]</sup> This Court is convinced that the decision of the NLRC is supported by substantial evidence.

Even assuming for the sake of argument that the present petition is not procedurally infirmed, Petitioners' case still falls even on the merits. Petitioners insist that Private Respondent was not illegally dismissed but voluntarily dissociated himself from his employment. They added that Private Respondent was served with a Show Cause Notice but the latter refused to receive it. Moreover, they alleged that an employee of Petitioner EPA Agri-Ventures tried to convince Private Respondent to return to work but the latter allegedly declined.

These circumstances presented by Petitioners are akin to abandonment of work, a just cause for terminating an employment. As defined under established jurisprudence, abandonment is the deliberate and unjustified refusal of an employee to resume his employment.<sup>[25]</sup> It constitutes neglect of duty and is a just cause for