

TENTH DIVISION

[CA-G.R. SP NO. 132944, March 31, 2015]

VIGOR SECURITY & ALLIED SERVICES, INC. AND ALEXANDER GO, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (FOURTH DIVISION) AND JOSEPH M. MAGRAMO, RESPONDENTS.

DECISION

DIMAAMPAO, J.:

This *Petition for Certiorari*^[1] filed under Rule 65 of the Revised Rules of Civil Procedure ascribes grave abuse of discretion on the part of the National Labor Relations Commission (NLRC) in rendering the *Decision*^[2] dated 28 August 2013 and *Resolution*^[3] dated 11 November 2013, which affirmed the Labor Arbiter's judgment^[4] that private respondent was constructively dismissed and ordered petitioners to pay his separation pay, backwages and service incentive leave pay (SILP), and which denied petitioners' *Motion for Reconsideration*^[5] thereof, respectively, in NLRC LAC Case No. 06-001740-13.

The salient facts of the case are uncomplicated.

Petitioner Alexander Go (Go) is the President of petitioner Vigor Security and Allied Services, Inc. (Vigor), a corporation engaged in the business of providing security and allied services. We refer to them collectively as petitioners. To carry out its business, Vigor employed security guards, one of whom was private respondent Joseph Magramo (Magramo).

Magramo was hired on 2 May 2009 and was posted in Vassar Industries, Inc. (Vassar) located in Taguig City. In a *Memorandum*^[6] dated 4 January 2012, Vigor, through its Operations Department, informed Magramo that he was being relieved from his assignment in Vassar effective 6 January 2012.

Availing that he was illegally dismissed, Magramo filed a *Complaint for Illegal Dismissal*^[7] with monetary claims. He asseverated that he was relieved from his post without any valid reason. Thereafter, he was not anymore given any work assignment. He claimed that the salary he received was below the amount he was supposed to get, and he was deducted, more or less, P1,200.00 per payday from his salaries purportedly for Cash Bond and other expenses. Likewise, he was not paid his 13th month pay and SILP.^[8]

As expected, petitioners proffered a different version of the facts,^[9] maintaining that Magramo was not dismissed. Rather, it was Vassar which decided to reduce its number of guards by two, and Magramo was among those relieved from his post. Thus, a *Memorandum* was issued to him ordering his relief effective 6 January 2012

and directing him to report to the office for further instruction. Later, on 16 January 2012, an Assignment Order No. 12-0295^[10] was issued by Vigor ordaining him to report to Lily^[11] Foods Processing Corporation. However, he refused to accept the assignment saying "*magpahinga muna ako.*"^[12]

Subsequently, before Magramo left, he borrowed his 201 file containing original copies of clearances and other employment documents to photocopy the same. Vigor's Operation Officer, George Agoot (Agoot), required him to leave the original copy of his Security License. Thence, when Magramo did not return back his 201 files, Agoot made an annotation to that effect on the photocopy of the said license.^[13]

Anent his monetary claims, petitioners controverted the assertion. Like the other security guards, Magramo was not deducted P1,000.00 for other expenses and P200.00 for cash bond. Only mandatory deductions like the Social Security System were made. Moreover, he received the correct amount of wages as well as the 13th month pay and SILP.

Ploughing through the respective postures of the parties, the Labor Arbiter rendered a Decision dated 23 April 2013, the fallo of which reads:

"WHEREFORE, premises considered, judgment is here-by rendered ordering **VIGOR SECURITY AND ALLIED SERVICES, INC.** to pay complainant the following:

1. Separation Pay in the amount of P76,440.00;
2. Backwages in the amount of P197,098.42;
3. SILP (2011) in the amount of P3,185.00;

All other claims are DISMISSED for lack of merit.

SO ORDERED."^[14]

Dissatisfied, petitioners filed a partial *Appeal*^[15] before the NLRC anchored on the following grounds:

"1. With due respect, the Labor Arbiter committed grave and serious error in ruling that complainant-appellee was constructively dismissed despite evidence that the latter was offered an assignment but declined it.

2. With due respect, the Labor Arbiter committed grave and serious error in awarding complainant-appellee back-wages and separation pay despite (the fact that) he was not constructively dismissed."^[16]

Nonetheless, the NLRC denied petitioners' *Appeal* and affirmed the Labor Arbiter's *Decision* in the challenged *Decision*. When petitioners' moved for the reconsideration, their plea fell on deaf ears as the labor tribunal denied the same in the assailed *Resolution*.

Through the present recourse, petitioners raise the following grounds:

I

THE HONORABLE COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN AFFIRMING THE DECISION OF THE LABOR ARBITER THAT COMPLAINANT-APPELLEE WAS CONSTRUCTIVELY DISMISSED DESPITE (THE FACT THAT) HE WAS OFFERED A POST AT LIIP FOODS PROCESSING CORPORATION.

II

THE HONORABLE COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN BLAMING PETITIONERS FOR NOT EXERTING EFFORT IN SERVING THE ASSIGNMENT ORDER TO THE PRIVATE RESPONDENT AND EQUATING SUCH FAILURE TO OVERT ACTS OF CONSTRUCTIVE DISMISSAL.

III

GRANTING WITHOUT ADMITTING THAT CONSTRUCTIVE DISMISSAL TOOK PLACE, THE HONORABLE COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN SUSTAINING THE LABOR ARBITER AWARD OF BACKWAGES IN THE AMOUNT OF P197,098.42 AS CONSTRUCTIVELY DISMISSED SECURITY GUARD IS ENTITLED ONLY TO SEPARATION PAY.

The Petition is devoid of merit.

First off, it bears emphasis that the special civil action for *certiorari* is a limited form of review. We do not assess and weigh the sufficiency of evidence upon which the Labor Arbiter and the NLRC based their conclusion.^[17] The query in this proceeding is limited to the determination of whether or not the respondent court or tribunal acted in capricious, whimsical, arbitrary or despotic manner in the exercise of its jurisdiction as to be equivalent to lack of jurisdiction. Grave abuse of discretion, which needs to support petitions for *certiorari*, then has a specific meaning, *viz*—

"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. ."^[18]