

SIXTH DIVISION

[CA-G.R. SP. NO. 127248, June 30, 2014]

**ROWEL S. PADERNAL, PETITIONER, VS. NATIONAL LABOR
RELATIONS COMMISSION, STI COLLEGE FAIRVIEW AND MARIA
ROWENA BASILIO, RESPONDENTS.**

D E C I S I O N

CRUZ, R.A., J.:

This is a Petition for Certiorari under Rule 65 of the Rules of Court assailing the Resolution dated June 28, 2012^[1] of the National Labor Relations Commission ("NLRC") Second Division in NLRC NCR 12-18267-11 affirming the decision of the labor arbiter which ruled that petitioner was not illegally dismissed but voluntarily resigned and the Resolution dated August 24, 2012^[2] denying reconsideration thereof.

THE ANTECEDENTS

Petitioner Rowel Padernal was hired by STI Education Services Group, Inc. "(STI)" as a faculty member on a "part-timeC. full-load" status^[3] on June 1, 2008. As of the time of his separation from employment, he was earning a basic monthly salary in the amount of P13,225.00, Philippine Currency.^[4] Aside from being a faculty member, he also acts as trainer conducting training programs for STI Faculty Members on a service contract basis.

Petitioner alleges that the last training program he conducted entitled "Teaching Skills Training for STI Faculty Members" at Sta. Maria, Bulacan covered a period from June 7-10, 2011. On July 1, 2011, he submitted his liquidation report for the said training. The liquidation report showed an expense for hotel accommodation in the amount of P7,500.00 with an attached official receipt^[5] issued by the hotel.

On November 21, 2011 he received a Show Cause Memo dated November 18, 2011^[6] for violation of the STI School Operations Group Code of Conduct. He was directed to answer the accusations against him for misappropriation of company funds, falsification, tampering and alteration of vouchers and receipts to defraud the company.

It appears that petitioner's hotel accommodation amounted to P7,500.00, Philippine Currency. It was paid in full by STI College, Sta Maria, Bulacan branch (Requesting Branch). Petitioner, in turn, was given an official receipt for P4,000.00 by STI College, Sta Maria, Bulacan which corresponds to the share (50%) of the STI Headquarters. However, in the liquidation report submitted by the petitioner, he attached the official receipt for the accommodation issued by the hotel instead of the P4,000.00 official receipt issued by STI College, Sta Maria, Bulacan, resulting in an additional/unaccounted charge of P3,500.00.

On November 23, 2011, petitioner submitted a letter explaining that the discrepancy in the liquidation report was due to "unintentional and honest mistake and thus committed without any malicious intention" and admitted that the incident was due to his negligence.^[7]

On November 28, 2011, a committee was convened where petitioner was made to answer queries from its members. In the scheduled meeting of the committee on December 5, 2011, petitioner, the officials of the respondent school and Atty. Jay Joseph Jamandre (lawyer for STI Headquarters) appeared. Petitioner alleged that Atty. Jamandre informed him that the committee found him guilty for the offenses hurled against him and advised him to resign. Thereafter, an altercation took place between the two where the latter allegedly instructed the dean and department head to terminate him, to which he replied, "then terminate me."

On the same date, he submitted an irrevocable resignation^[8] letter. Three days later, petitioner filed a complaint before the NLRC for illegal dismissal (constructive dismissal) with prayer for separation pay, unpaid wages, moral and exemplary damages.^[9]

In a Decision dated March 12, 2012^[10], the labor arbiter dismissed the complaint for lack of merit. The labor arbiter ruled that petitioner was not constructively dismissed but opted to terminate his employment by tendering his resignation pending investigation by the committee of his infractions of the STI School Operations Group Code of Conduct. The labor arbiter's findings reveal that petitioner decided to end his employment in order to pre-empt any adverse action that may be taken by the management. After all, there is no showing that he was forced to resign. Consequently, the claims for moral and exemplary damages were denied because there was no evidence to establish that the respondents acted in bad faith or in a fraudulent or oppressive manner.

On April 10, 2012, petitioner filed *via* registered mail a Memorandum of Appeal^[11] before the National Labor Relations Commission ("NLRC"). In a Resolution dated June 28, 2012^[12], the NLRC dismissed the appeal for lack of merit and affirmed the decision of the labor arbiter. The NLRC ruled that petitioner was not constructively dismissed. He voluntarily resigned as shown by the resignation letter dated December 5, 2011. Except for his bare allegations, petitioner failed to prove that he was forced to resign. Since the resignation letter is not contrary to law, morals or public policy, there is no reason not to respect the same. The NLRC stated that the employment of professors and instructors are principally governed by the Manual of Regulations for Private Schools, the Labor Code, being applicable, suppletorily.

Petitioner filed a Motion for Reconsideration^[13] which was subsequently denied in a Resolution dated August 24, 2012.^[14]

Aggrieved, the petitioner filed this petition before us, alleging the sole issue, that:

THE ISSUE BEFORE US

I.

WHETHER OR NOT THE PETITIONER WAS ILLEGALLY DISMISSED BY THE RESPONDENTS;

Petitioner claims that he was illegally dismissed by the respondents as shows by the Affidavit of one of the members of the investigating committee which handled his case. Petitioner argues that he may terminate his employment with or without cause. Failure to reinstate him resulted in constructive dismissal. Petitioner avers that he was forced to resign.

Respondents filed their Comment^[15] on February 26, 013. respondents asseverate that petitioner was not constructively dismissed. Bare allegations of constructive dismissal when uncorroborated by evidence on record cannot be given credence. The affidavit submitted by the petitioner is self-serving and inadequate to prove the accusations of forced resignation. Petitioner relinquished the position when he submitted his voluntary resignation. He was not forced to resign. Respondents contend that procedural due process was complied with as shown by the following : (1) Show-Cause Memo; (2) Petitioner was required to attend the hearings of the investigation committee and to present all defenses in his favor. Respondents claim that they were not able to send the second notice because petitioner already filed an illegal dismissal case against them. There being no illegal dismissal, the claim for attorney's fees must be denied.

OUR RULING

The petition is without merit.

At the outset, we noticed that the pleading denominated as a "petition" which was later on amended to reflect the title "Petition for Certiorari", suffers procedural infirmities namely: (1) improper mode of appeal; (2) failure to allege material dates; (3) filed out of time.

First, neither the first "petition" nor the second "petition for certiorari" is a proper mode of appeal.

Judicial review of the decision of the NLRC should be through a Petition for ertiorari under Rule 65 of the Rules of Court filed before Us in accordance with the decision in *St. Martin Funeral Home vs. NLRC*^[16], which held:

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"Therefore, all references in the amended Section 9 of B.P. No. 129 to supposed appeals from the NLRC to the Supreme Court are interpreted and hereby declared to **mean and refer to petitions for certiorari under Rule 65**. Consequently, **all such petitions should henceforth be initially filed in the Court of Appeals** in strict observance of the doctrine on the hierarchy of courts as the appropriate forum for the relief desired." (Emphasis supplied)

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Neither the first "petition" nor the second "petition for certiorari" is a Petition for Certiorari as contemplated under Rule 65 of the Rules of Court because: (1) The first "petition" is captioned "Petition for Review"; (2) The first "petition" and the second "petition for certiorari" state under paragraph 13 that the petitioner is elevating the case before Us by way of Petition for Review; (3) The first "petition" and the second "petition for certiorari" fail to allege any issue/act which establishes 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. Petitioner failed make any imputation of grave abuse of discretion on the part of the NLRC. No argument was advanced to show that the NLRC exercised its judgment capriciously, whimsically, arbitrarily or despotically by reason of passion and hostility. Petitioner did not even discuss how or why the conclusions of the NLRC were made with grave abuse of discretion. Instead, petitioner limited its discussion on its version of the case, which had been already rejected both by the Labor Arbiter and the NLRC. Thus, petitioner failed in his 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.

By availing of a wrong or inappropriate mode of appeal, the petition merits an outright dismissal pursuant to Circular No. 2-90 dated March 9, 1990, which provides that, "an appeal taken to either Supreme Court or the Court of Appeals by the wrong or inappropriate mode shall be dismissed." [17]

Second, neither the first "petition" nor the second "petition for certiorari" alleges the material dates. As held in *Dr. Rey Tambong vs. R. Jorge Development Corporation* [18],

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"There are three essential dates that must be stated in a petition for certiorari brought under Rule 65 of the Rules of Court. First, the **date when notice of the judgment or final order or resolution** was received; second, when a **motion for new trial or reconsideration was filed**; and third, when **notice of the denial thereof** was received. **Failure of petitioner to comply with this requirement shall be sufficient ground for the dismissal** of the petition. Substantial compliance will not suffice in a matter involving strict observance with the Rules." (Emphasis supplied)

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The requirement of setting forth the three (3) dates in a petition for certiorari under Rule 65 of the Rules of Court is for the purpose of determining its timeliness.

Third, neither the first "petition" nor the second "petition for certiorari" was filed within the reglementary period for filing a petition for certiorari.

Hanjin Heavy Industries and Construction Company, Ltd. vs. Court of Appeals [19], had the occasion to state that, "perfection of an appeal within the statutory or reglementary period is not only mandatory but also jurisdictional and failure to do so renders the questioned decision final and executory, thus depriving the appellate court jurisdiction to alter the final judgment, much less to entertain the appeal."

Here, the first "petition" was filed on November 7, 2012 while the second "petition for certiorari" was filed on November 29, 2012. The second petition denominated as "petition for certiorari" states that the resolution dated August 4, 2012 denying his motion for reconsideration was received last September 5, 2012. Following Rule 65 of the Rules of Court, petitioner had until November 4, 2012 within which to file a petition for certiorari before Us. But since November 4, 2012 falls on a Sunday, the petition for certiorari should have been filed on November 5, 2012. Hence, the first "petition" and the second "petition for certiorari" were filed out of time.