CHANROBLES PUBLISHING COMPANY

SUPREME COURT
FIRST DIVISION

BONIFACIO DE LEON,
***Petitioner*,**

-versus-

G.R. No. L-52056
October 30, 1980

NATIONAL LABOR RELATIONS COMMISSION, SUGAR PRODUCERS COOPERATIVE MARKETING ASSOCIATION, INC., ALFREDO U. BENEDICTO and GWENDOLYN H. GUSTILO,
***Respondents*.**

x--x

D E C I S I O N

DE CASTRO, *J*.:

Petition for *Certiorari* with Prayer to Annul the Decision of the National Labor Relations Commission reversing the Decision of the Labor Arbiter which ordered respondents to reinstate petitioner to his former position as Assistant Vice-President-Manager of Sugar Producers Cooperative Marketing Association, Inc. without loss of seniority rights and with full backwages to be computed from the date of his dismissal.

This case arose from a complaint for illegal dismissal instituted by herein petitioner against private respondents.

Petitioner started working with said corporation as a messenger wayback in 1949. He held various positions therein, such as bookkeeper, accountant, general office supervisor and Assistant-Manager. He rose to the position as Assistant Vice-President-Manager (Makati Office) in 1973 and held it continuously up to 1977. Prior to his dismissal, he was in the service for more than 28 years.

In October 1976, petitioner was sent to Korea on an official business for respondent corporation. Before that, respondent Alfredo Benedicto, president and general manager of the corporation, verbally intimated to petitioner that the latter would soon be appointed as Assistant Vice-President for Finance, preparatory to his assuming the position of Vice-President for Finance upon the resignation of the then incumbent.

In early November 1976, petitioner was instructed to attend the staff meeting at Bacolod every second and fourth Tuesdays of every month starting January 1977. Arrangements were made to enable petitioner to go to Bacolod on January 7, 1977.

On January 6, 1977, respondent Benedicto called petitioner and asked him to take a vacation leave of one (1) month to start on January 10, 1977. On January 31, 1977, said respondent wrote petitioner a letter stating "that because of necessity, complainant is to extend his vacation leave for another month." Then on February 28, 1977, petitioner again received a letter from respondent Benedicto advising the former that he is to resume his leave effective March 1, 1977 to April 30, 1977 and that his application for retirement has been accepted effective April 30, 1977.

On April 25, 1977, respondent Corporation tendered to petitioner a check for P36,492.63 "representing (his) retirement gratuity pay and office consideration for P10,000." Petitioner returned the P10,000 and accepted only P26,492.63 explaining in his letter that "he was shocked, tortured and desperate because of his unceremonious dismissal without cause and being the only breadwinner which includes eight (8) children, he naturally grabbed any money offered

by the company, and that his decision was without the benefit of a legal counsel."

Petitioner in his complaint alleged that he had not at any time or in any manner applied for retirement; that the requirement of due process was not observed, hence his dismissal is illegal and unjustified; that he was not confronted by respondents to explain to him any cause or reason for his dismissal; that no specific charges were made against him and no formal investigation was made to afford him opportunity to acquit himself of any charges; and finally, the money offered by the corporation does not constitute estoppel or waiver on his part, considering that his acceptance was without prejudice to all his rights resulting from his illegal dismissal.

The Labor Arbiter ruled in favor of petitioner and ordered respondents to reinstate the latter to his former position without loss of seniority rights and with full backwages. He stated in his Decision[1] that there was no showing that petitioner has applied for retirement, which was admitted by respondent Benedicto himself during one of the hearings when he testified, and that there is no disclosure in the record that petitioner had even the slightest intention to retire or to avail of any retrenchment program. In support of his stand, the labor arbiter quoted an opinion rendered by leading US Arbitrators, to wit:

> "If intent to resign or to retire is not adequately evidenced or if a statement of intent to resign or to retire is involuntary or coerced, an alleged resignation or retirement will be treated as discharge for purposes of arbitral review." (Healy in 61LA557; Kates in 51LA 1090)

The Labor Arbiter, further found, in substance as follows:

1) The alleged retirement of petitioner is now treated as discharge for purposes of arbitral review and since discharge is recognized to be the extreme industrial penalty, the burden is held to be on the employer to prove guilt of wrongdoing and probably more so where the agreement requires "just cause" for discharge.

2) From the testimony of respondent Benedicto that the auditing of the Company's books was done in the absence of petitioner and that there was no need to confront petitioner with the actual reports, it is safe to conclude that respondents have violated the basic notions of fairness and due process.

3) The evidence on record disclosed that petitioner was not afforded even a single opportunity to defend himself against the adverse partial findings of the auditors and as reflected in the testimony of respondent Benedicto, the reports made by the auditors were verbal reports only and not reduced to writing.

4) Respondents failed to present such quantum of proof where the alleged offense involves an element of moral turpitude or criminal intent. Reasonable doubts raised by proofs should be resolved in favor of the accused.

5) Respondent's contention that petitioner being a Managerial employee, could be terminated for lack of confidence cannot be sustained since the alleged loss of confidence must necessarily have resulted from grounds which prompted petitioner's dismissal and in as much as said grounds are unsubstantiated, there can be no valid reason for loss of confidence.

6) The ground of retrenchment as the basis of petitioner's dismissal became a mere pretext and discriminatory considering that when petitioner was forced to go on vacation leave, respondent Benedicto appointed immediately respondent Gustilo to perform the functions of petitioner.

7) Respondents' allegation that petitioner is estopped from questioning the legality of his dismissal considering that he has accepted the retirement gratuity, runs counter to the ruling of the Supreme Court in the Mercury Drug Case (56 SCRA 694-713)

> wherein Justice Sanchez has said: "Those benefits would not amount to estoppel, employer and employee obviously do not stand on the same footing. The employer drove the employee to the wall. The latter must have in get hold of his money. Because, out of job, he had to face the harsh necessities of life. He thus found himself in no position to resist the money proferred him. He is then, a case of adherence, not of choice. One thing sure, however, is that petitioners did not relent on their claim. They pressed it. They are deemed not to have waived any right."

Private respondents appealed to the Commission which rendered a decision on July 12, 1979 reversing the Labor Arbiter's decision and dismissing the complaint. It was pointed out by the Commission that although no retirement application was filed, petitioner was agreeable to retirement since he accepted the retirement benefits; that petitioner should have insisted on an investigation upon learning of his involvement in the irregularities in the Company books, and under the circumstance, his position required a high degree of trust and confidence and he could no longer measure up to respondent Corporation's expectation.[2] Hence, the petition before Us raising the following assignment of errors:

1. Whether or not the NLRC can make findings or conclusions which are not supported by evidence presented.

2. Whether or not an employee is entitled to a formal investigation of whatever specific charges against him or whether or not his dismissal based on lack of confidence should be set aside.

3. Whether or not a retirement effected upon employer's initiative and insistence can be considered a free and voluntary act of an employee.

4. Whether or not acceptance by employee of benefits proferred by employer amounts to estoppel.

5. Whether or not dismissal for loss of confidence, to be warranted, should have some basis therefor.

Petitioner alleged that the “irregularities” charged were not explained or amplified in the text of the commission’s decision; neither is there a reference to the nature of the evidence collated by the team of auditors; that there is no demonstration or explanation as to how such evidence established his personal involvement in said irregularities; that it is employer’s duty to conduct an investigation into the anomalies imputed to an employee even if the latter does not expressly ask for it; and an employee is entitled to an investigation as a matter of right.

Commenting on the petition, private respondents averred that they gave petitioner one month vacation leave to give the auditors a free hand in the audit of the books in the Makati Office; that petitioner authorized his brother to withdraw from the Company’s bonded warehouse empty plastic bags which are normally sold for added income to the company but such withdrawal was not supported by sales invoices nor delivery orders contrary to the company’s standard accounting principles; that petitioner caused the issuance to another check in addition to his loyalty bonus which was beyond board approval; that Mr. Benedicto informed petitioner in private that the initial findings of the auditor’s team were adverse to him, and it was agreed that petitioner would just retire under the company’s retrenchment program to save him from embarrassment attendant to a full-dress investigation; petitioner accepted the retirement gratuity and with that, he is estopped from claiming that he did not apply for retirement, and the involvement, of petitioner in the anomalies reported by the auditors is more than sufficient cause for his severance from the company on the ground of lack of confidence.

We find merit in the petition.

There is in this case a clear denial of due process, a constitutional right which must be safeguarded at all times specially when what is at stake is petitioner’s position as his only means of livelihood. He has, in addition, a family to consider, and it is the right of every working man to assure himself and his family a life worthy of human dignity. It is therefore incumbent upon the employer to conduct a formal

investigation and conform the employee of the specific charges against him. Respondents should be reminded that under our system of government, even the most hardened criminals are given their day in court.

That petitioner was deprived of his right to be heard and acquit himself of the charges, finds support in the testimony of Mr. Benedicto.[3] The latter declared that there was no need to confront Mr. de Leon with the actual reports, but he was told that partial audit reports were adverse to him. It must be stressed that the due process requirement is not a mere formality that may be dispensed with at will. Its disregard is a matter of serious concern since it is a constitutional safeguard of the highest order; and a response to man's innate sense of justice.[4] No interrogations or inquiries took place to due petitioner an opportunity to defend himself, as testified by Mr. Benedicto thus:

> "Atty. de Castillo:
>
> Was there a time when these auditors requested the presence of Mr. de Leon so he could explain some items he was auditing?
>
> "Mr. Benedicto:
>
> No."[5]

The act of respondents in dismissing petitioner without first conducting a formal investigation is arbitrary and unwarranted. The right of an employer to dismiss an employee differs from and should not be confused with the manner in which such right is exercised.[6] It must not be oppressive and abusive since it affects one's person and property.

The Commission in its decision states that petitioner did not file any retirement application, a fact likewise admitted by Mr. Benedicto when he was interrogated by the Labor Arbiter.[7] We agree with the observation of the Labor Arbiter that if the intent to retire is not clearly established or if the retirement is involuntary, it is to be treated as a discharge. There is no showing that petitioner had the slightest intention to retire or avail of the retrenchment program as

alleged by private respondents. The retirement of petitioner was, therefore, forced upon him by his employer and was not done voluntarily.[8]

While a Managerial employee may be dismissed merely on the ground of loss of confidence, the matter of determining whether the cause for dismissing an employee is justified on ground of loss of confidence, cannot be left entirely to the employer. Impartial tribunals do not rely only on the statement made by employer that there is "loss of confidence" unless duly proved or sufficiently substantiated. We find no reason to disturb the findings of the Labor Arbiter that the charges against petitioner were not fully substantiated, and "there can be no valid reason for said loss of confidence. Anent the charges of unauthorized withdrawal of the plastic bags by petitioner's brother, and unauthorized additional bonus, the arbiter found no anomaly considering that the evidence presented during the proceedings discloses that the withdrawal and the granting of bonus were all approved and ratified by the board. Thus, the Commission erred in dismissing the complaint and acted with patent abuse of discretion. Its assailed decision fails to establish by substantial evidence the involvement of petitioner in the alleged anomalies imputed to him. Without such supporting evidence, the conclusions made by the Commission are not binding with this Court; they must be set aside.

After having served the company for more than 20 years, dismissal would be too severe a penalty for petitioner who was not even afforded an opportunity to be heard. He was just a victim of the whims and malicious maneuver of private respondents.

The contention of respondents that petitioner is barred from contesting the illegality of his dismissal since he has already received his separation pay cannot be sustained. Since he was forced to retire, he suddenly found himself jobless with a family of eight (8) children to support. He had no alternative but to accept what was offered to him. He needed money to support his family. He had to grab whatever was offered as he accepted less than what was offered to show his non-acquiescene to what amounted to dismissal. Employees who received their separation pay are not barred from contesting the legality of their dismissal. The acceptance of those benefits would not

amount to estoppel as held in the leading case of Mercury Drug Co. vs. CIR[9] as aptly cited in the decision of the Labor Arbiter.

Having been illegally dismissed, petitioner is entitled to reinstatement with backwages corresponding to a period of three (3) years without qualification minus the amount of P26,492.63 he was forced to receive as retirement gratuity pay.

WHEREFORE, the assailed Decision dated July 12, 1979 of the National Labor Relations Commission is hereby **SET ASIDE**, and the Labor Arbiter's Decision dated January 2, 1979 is **REINSTATED** with modification by ordering private respondents to immediately reinstate petitioner to his former position as Assistant Vice-President Manager (Makati Office) of respondent corporation without loss of seniority rights and other benefits and increases recognized by law or granted by private respondents during the period of his illegal dismissal corresponding to his position to which he is now ordered reinstated, with backwages equivalent to three years without qualification minus the amount of P26,492.63 he received as retirement gratuity pay. No costs.

SO ORDERED.

Teehankee, *Acting C.J.*, Makasiar, Fernandez, Guerrero and Melencio-Herrera, *JJ.*, concur.

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[1] Decision, pp. 45-57, Rollo.
[2] Decision, pp. 58-62, Rollo.
[3] See p. 51, Rollo.
[4] Natividad vs. WCC, 85 SCRA 119, citing Luzon Surety Co. Inc. vs. Beson, 31 SCRA 313.
[5] Rollo, p. 51.
[6] Macabingkil vs. Yatco, 21 SCRA 150.
[7] p. 48, Rollo.
[8] pp. 32-33, Rollo.
[9] 56 SCRA 694; See also L. R. Aguinaldo & Co. vs. CIR, 8 SCRA 309, 316.

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