SUPREME COURT
SECOND DIVISION

MANILA HOTEL CORPORATION,
***Petitioner*,**

-versus-

G.R. No. L-53453
January 22, 1986

NATIONAL LABOR RELATIONS COMMISSION and RENATO L. CRUZ,
***Respondents*.**
x----------x

D E C I S I O N

CUEVAS, *J.*:

This Petition for *Certiorari* seeks the review and reversal of the Decision of respondent National Labor Relations Commission (NLRC) dated January 11, 1978, which affirmed in toto the decision of the Labor Arbiter ordering petitioner Manila Hotel Corporation to reinstate private respondent Renato L. Cruz "to his former position as gardener without loss of seniority rights and other privileges appertaining thereto if any, with backwages from the date of his dismissal on March 19, 1977 until he is actually reinstated," and "to immediately reclassify him as a regular or permanent employee."

Renato L. Cruz was employed as gardener by Manila Hotel on "probation status" effective September 22, 1976. The appointment which was signed by Cruz provided, inter alia:

> "1. . . .
>
> 2. Your compensation will be FOUR HUNDRED PESOS (P400.00) per month payable semi-monthly.
>
> 3. This employment is for a probationary period of six (6) months and subject to your submitting all necessary work permits and clearances such as medical and security clearances. Your job performance and efficiency upon the expiration of your probation shall be reviewed and appraised in accordance with the HOTEL's and other generally accepted work standards. If you have satisfactorily passed your probation, you will be reclassified to the regular roll.
>
> 4. As soon as you become a regular employee, you will be entitled to (a) number of benefits and privileges that have been instituted."[1]

On March 20, 1977, or a day before the expiration of the probationary period, Cruz's position was "abolished" by Manila Hotel allegedly due to economic reverses or business recession, and to salvage the enterprise from imminent danger of collapse.[2]

Anent said reason for his termination and/or abolition, private respondent maintains that —

> "On March 19, 1977, at the close of office hours Mr. Rodriguez called complainant Cruz and the other three (3) gardeners (Rufino Arcis, Albert Manila and Arthur Reyes) who were also under a Probationary Appointment and told them to immediately tender their respective resignation, because allegedly the Hotel was under a 'retrenchment policy'. The announcement was a blow to Mr. Cruz. In two days he would have finished his probationary period, and he hoped to be reclassified as a regular employee. Earlier, that morning, Mr.

> Rodriguez had just commended him for his job performance and had designated him "In-Charge" or Lead Gardener. Mr. Cruz requested additional time to think it over. The request was ignored. Mr. Rodriguez informed them that as of that day they were terminated.
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> The following day, Mr. Cruz reported for work nonetheless. However, his time card was no longer in the card rack. From then on Mr. Cruz embarked on a daily trip to Manila Hotel desperately hoping that his short but commendable job performance would earn him a new appointment. It was a fruitless effort for always, management's reply was that 'no position was available which suited his qualification.' It has been so to the present.
>
> Ironically, he later learned of Arcis' and Manila's promotion to Steward and Reyes' retention as sole gardener."[3]

Sometime on March 24, 1977, private respondent was upon his request, granted a personal clearance.[4]

Claiming that his dismissal was illegal and constitutes unfair labor practice, Cruz filed with the Regional Office No. IV, Department (now Ministry) of Labor on March 25, 1977 a complaint against petitioner Manila Hotel.[5] The case was certified for compulsory arbitration.

On December 29, 1977, Labor Arbiter Conrado B. Maglaya rendered a Decision[6] the dispositive portion of which reads as follows:

> "WHEREFORE, premises considered, respondent Manila Hotel is hereby ORDERED to reinstate complainant Renato L. Cruz to his former position as Gardener without loss of seniority rights and other privileges appertaining thereto if any, with backwages from the date of his dismissal on March 19, 1977 until he is actually reinstated.
>
> Respondent is likewise ORDERED upon reinstatement of complainant, to immediately reclassify him as a regular or permanent employee and issue therefor the corresponding

> appointment. Respondent is further ORDERED to submit proof of compliance with these orders immediately thereafter."

Petitioner appealed to the National Labor Relations Commission (NLRC).[7] And the latter affirmed in toto the Decision[8] of the Labor Arbiter thereby dismissing petitioner's appeal for lack of merit.

Petitioner now contends that respondent Commission (1) unwarrantedly disregarded the fact that private respondent was a mere probationary employee whose position could be abolished for cause; (2) unjustifiably refused to consider the serious business reverses and uneconomic operation as a valid and just cause for terminating services of a probationary employee or abolishing his position upon the expiration of the probationary employment; and (3) erroneously and illegally coerce petitioner into retaining private respondent and paying him backwages even long after the expiration of the probationary employment notwithstanding the validity of abolition of private respondent's position and without giving petitioner the right or opportunity to evaluate the performance of the private respondent prior to reclassification of his position to regular status.

In a Resolution promulgated on April 11, 1980, We resolved to require respondents to comment on the petition without however giving due course thereto. We likewise issued a restraining order enjoining NLRC from executing the decision complained of until after the instant petition shall have been finally resolved.

There is no dispute that as a probationary employee, private respondent Cruz had but a limited tenure. Although on probationary basis, however, Cruz still enjoys the constitutional protection on security of tenure. During his tenure of employment therefore or before his contract expires, respondent Cruz cannot be removed except for cause as provided for by law. This is categorically provided for by Art. 282 of the Labor Code, which states:

> "Art. 282. Probationary Employment — Probationary employment shall not exceed six (6) months from the date the employee started working, unless it is covered by apprenticeship agreement stipulating a longer period. The

> services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards, made known by the employer to the employee at the time of his engagement. An employee who is allowed to work after a probationary period shall be considered a regular employee." (Emphasis supplied)

This security of tenure of a probationary employee finds added support in the Biboso vs. Victorias Milling case for even as this Court ruled in that case that the respondent public official did not commit grave abuse of discretion in dismissing the teachers' claim for reinstatement following the expiration of their contracts, it nevertheless held that —

> "2. This is by no means to assert that the security of tenure protection of the Constitution does not apply to probationary employees. The Labor Code has wisely provided for such a case thus: 'the termination of employment of probational employees and those employed with a fixed period shall be subject to such regulations as the Secretary of Labor may prescribe to prevent the circumvention of the right of the employees to be secured in their employment as provided herein'. There is no question here as noted in the assailed order of Presidential Executive Assistant Clave, that petitioners did not enjoy a permanent status. During such period they could remain in their position and any circumvention of their rights, in accordance with the statutory scheme, subject to inquiry and thereafter correction by the Department of Labor. Thus there was the safeguard as to their duration of employment being respected. To that extent, their tenure was secure."[9]

This brings us to the issue of whether or not, respondent Cruz's termination and/or abolition of his position made on a justifiable cause. Petitioner justifies such termination on ground of retrenchment. Respondent NLRC found this defense untenable. We agree, since an examination of the records failed to indicate any factual or legal basis for such a plea. No financial statement of any kind for the year 1976 or immediately prior thereto was submitted by

the petitioner to prove its economic difficulties. Its claim of business reverses and imminent danger of collapse are nothing but glittering generalities.

It cannot be denied that a host of cases has affirmed the right of an employer to layoff or dismiss employees due to losses in the operation of business, lack of work, and considerable reduction in the volume of the employer's business. In the case at bar, however, petitioner failed to go into the specifics of its claimed business reverses. It prefers to hide behind the blanket observation of the then Assistant Secretary of Labor that "the hotel industry is virtually in crisis as a result of plummeting business". That the hotel industry is in crisis does not, however, necessarily mean that petitioner is itself suffering from business reverses. Being one of the better known hotels in the country, it could be an exception. But petitioner's asserted excuses being in the nature of an affirmative defense, the burden lies on its shoulder to substantiate such an allegation with clear and satisfactory evidence, which it miserably failed to do.

Petitioner likewise argues that it was imperatively necessary to reduce its personnel due to losses in the operation of its business; that it is an employer's prerogative to determine who among its employees should be retained; and that in the exercise thereof, it may not be interfered with. The only exception is when it can be shown that the employer, under cover of this right, is proceeding against an employee in an unjust or capricious manner. Specifically, the power of an employer to terminate a probationary employment contract is subject to various limitations. First, it must be exercised in accordance with the specific requirements of the contract. If a particular time is prescribed, the termination must be done within such time. Should the contract require a written notice, then such form should be used. Secondly, the dissatisfaction of the employer must be real and in good faith, not feigned so as to circumvent the contract or the law; and thirdly, there must be no unlawful discrimination in the dismissal.[10]

The records show that petitioner had four (4) gardeners under probationary employment. Respondent Cruz was one of them. Within the period of his probationary employment, Cruz was made a lead gardener, clearly a recognition of his good performance and competent service. When petitioner, pursuant to its alleged policy of

retrenchment, abolished Cruz's position as gardener, the three other gardeners in its employ under similar probationary contract were retained. Two of them, Rufino Arcis and Albert Manila, were even promoted and appointed as stewards. The third one, Arturo Reyes, was retained as sole gardener. Petitioner justifies Cruz not being made a steward he having reached only third year high school. But if a third year high school may not be promoted to be a steward from that of being a gardener, how then can Arcis who was merely a sixth grader, qualify for promotion from gardener to steward? Our examination of the records failed to reveal any standard or criteria adopted by the petitioner in making the promotion and selection in question thus leading us to the conclusion that Cruz was arbitrarily terminated and/or dismissed.

What makes Cruz's dismissal highly suspicious is that it took place at a time when he needs only but a day to be eligible as a regular employee. That he is competent finds support in his being promoted to a lead gardener in so short span of less than six (6) months. There is that strong presumption in his favor that his performance had been satisfactory. By terminating his employment and/or abolishing his position with but only one day remaining in his probationary appointment, petitioner deprived Cruz of qualifying as a regular employee with its concomitant rights and privileges. Cruz was also deprived of his only means of livelihood upon a vague and empty assertion of "retrenchment."

Very recently, we had occasion to rule that the prerogative of management to dismiss or lay-off an employee must be done without abuse of discretion, for what is at stake is not only petitioner's position but also his means of livelihood.[11] The right of an employer to freely select or discharge his employees is subject to regulation by the State, basically in the exercise of its paramount police power.[12] This is so because the preservation of the lives of the citizens is a basic duty of the State, more vital than the preservation of corporate profits.[13]

In the final analysis, what is in issue is the correctness of the findings of facts made by the National Labor Relations Commission. Such findings of the Commission are entitled to great respect if supported by substantial evidence[14] as in the present case. Moreover, alleged

error in the National Labor Relations Commission's factual finding is not correctible by certiorari but by ordinary appeal.[15]

Since there was no valid termination, private respondent is entitled under Article 280 of the Labor Code to reinstatement without loss of seniority rights and with backwages from the time his compensation was withheld up to the time of his reinstatement. However, in a number of illegal dismissal cases,[16] this Court in the interest of justice and expediency, has adopted the policy of granting backwages for a maximum period of three (3) years without qualification and deduction.

Considering that this case has been pending since March 25, 1977 or a period of almost nine (9) years now, an award of backwages for three (3) years is just and reasonable.

WHEREFORE, the appealed Decision is hereby **MODIFIED** insofar as the payment of backwages is concerned in that the petitioner is ordered to pay private respondent Cruz three (3) years backwages computed on the basis of his pay as of March 19, 1977, without qualification and deduction.

Except as thus modified, the appealed Decision is **AFFIRMED** in all other respects. The restraining order earlier issued is hereby ordered lifted and/or set aside.

Costs against petitioner.

SO ORDERED.

Concepcion., Jr., Abad Santos, Escolin and Alampay, *JJ.*, concur.

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[1] Annex "A."
[2] Petition, page 2.
[3] Annex "F," page 2.
[4] Annex "C."
[5] Annex "D."
[6] Annex "G."

[7] The State shall afford protection to labor, promote full employment and equality in employment, ensure equal work opportunities regardless of sex, race, or creed, and regulate the relations between workers and employers. The state shall assure the rights of workers to self organization, collective bargaining, security of tenure, and just and humane conditions of work. The state may provide for compulsory arbitration. (Emphasis supplied).
[8] 96 SCRA 250.
[9] Biboso vs. Victorias Milling Co., Inc., Ibid.
[10] P.V. Fernandez, Labor Relations Law, 1980 Ed., pages 87-88.
[11] Remerco Garments Manufacturing vs. Minister of Labor, 135 SCRA 167.
[12] PAL, Inc. vs. PALEA, 57 SCRA 489.
[13] Phil. Apparel Workers Union vs. NLRC, 106 SCRA 444.
[14] Haverton Shipping Limited vs. National Labor Relations Commission. 135 SCRA 685.
[15] De la Cruz vs. Intermediate Appellate Court, 134 SCRA 417.
[16] Mercury Drug Co., Inc. vs. Court of Industrial Relations, 56 SCRA 694; People's Bank & Trust Co. vs. PBTC Employees Union, 69 SCRA 10; Insular Life Insurance Co., Ltd. Employees Assn. NATU vs. Insular Life Assurance Co., Ltd., 76 SCRA 50; Monteverde vs. Court of Industrial Relations, 79 SCRA 259; Davao Development Corp. vs. National Labor Relations Commission, 81 SCRA 489; L.R. Aguinaldo, Inc. vs. Court of Industrial Relations, 82 SCRA 309: Liberty Cotton Mills Workers Union vs. Liberty Cotton Mills, Inc., 90 SCRA 391; Litex Employees Assn. vs. Court of Industrial Relations, 116 SCRA 459; Associated Anglo-American Tobacco Corp. vs. Lazaro, 125 SCRA 463; PAL, Inc. vs. NLRC, 126 SCRA 223; Union of Supervisors (RB) NATU vs. Secretary of Labor, 128 SCRA 442; Lepanto Consolidated Mining Company vs. Encarnacion, 136 SCRA 256; Panay Railways, Incorporated vs. National Labor Relations Commission, 137 SCRA 480.