SUPREME COURT
SECOND DIVISION

PEDRO O. PALMERIA, SR.,
***Petitioner*,**

-versus-

G.R. No. 113290-91
August 3, 1995

NATIONAL LABOR RELATIONS COMMISSION, COCA-COLA BOTTLERS PHILIPPINES, INC. and LIPERCON SERVICES, INC.,
***Respondents*.**
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D E C I S I O N

PUNO, *J.*:

The facts are hardly disputed. Petitioner Pedro O. Palmeria, Sr., was hired by private respondent Coca-Cola Bottlers Philippines, Inc. (CCBPI) in June, 1977 as laborer/bottling crew in its production department with a salary of Thirty-Six Pesos (P36.00) a day plus ECOLA of Seventeen Pesos (P17.00) a day.

On April 30, 1984, CCBPI entered into a contract of service with co-respondent Lipercon Services, Inc. The contract was extended on January 1, 1986 for another year. Under the contract, Lipercon was to provide CCBPI certain work and services which are not regular or

normal to the establishment nor directly related to the principal business of the CCBPI, Naga-Plant.

Petitioner alleged that after the contract service was executed, CCBPI made it appear that he was no longer its employee but that of Lipercon. He was able to establish, however, that he still worked with the CCBPI, performing jobs normally necessary in the business of CCBPI, using its tools and equipment and under the supervision of its supervisors.

On February 15, 1986, petitioner was dismissed from his employment. He was not allowed to enter the premises of CCBPI. He then filed a complaint principally for illegal dismissal against CCBPI and Lipercon.[1] CCBPI maintained that petitioner is not its employee. Lipercon claimed that it is an independent contractor and that petitioner is its contractual employee. It further averred that petitioner's employment depends on needs of its clients, more specifically CCBPI. Allegedly, CCBPI had informed Lipercon that it no longer needed the services of petitioner.

In a Decision, dated January 29, 1993, Executive Labor Arbiter Vito Bose found CCBPI guilty of illegally dismissing petitioner. He ordered the payment of the following to petitioner:

"I.	SEPARATION PAY	P12,960.00
II.	BACKWAGES	62,100.00
III.	OVERTIME PAY	24,321.00
IV.	SERVICE INCENTIVE LEAVE PAY	540.00
V.	PREMIUM PAY FOR HOLIDAY	1,080.00
VI.	13TH MONTH PAY	3,240.00
VII.	NIGHT SHIFT DIFFERENTIAL	3,888.00
		P109,684.00"
		=========

The backwages were computed at three (3) years.

Petitioner appealed to the respondent NLRC. He prayed for: (1) reinstatement with full backwages; (2) recomputation of the monetary awards based on the salary rate of a CCBPI regular employee at Eighty-Nine Pesos (P89.00) per day, the inclusion of one

(1) sack of rice per month and the gratuity fee of Two Thousand Pesos (P2,000.00) for every year of service; and (3) payment of Fifty Thousand Pesos (P50,000.00) as moral damages, Twenty Thousand Pesos (P20,000.00) as exemplary damages and 10% of the award as attorney's fees.

Respondent NLRC, in Resolution dated October 21, 1993, affirmed the Decision of Arbiter Bose. In refusing to reinstate petitioner, it held:

"x x x

> "In the case at bar, we have noted that between respondent CCBPI and complainants lay a long period of litigious confrontation in the course of the instant proceedings. This case had dragged on for about six (6) long years with several failed attempts at arriving at an amicable settlement of the dispute between the parties. Over the years, the respondents have been consistent and vehement in their opposition to the complainants attempts to be reinstated. Under the circumstances, it will certainly not be unreasonable to conclude that such encounter by the parties over battlegrounds had synthesized a torqued perception by one of the other. To order therefore complainants reinstatement at this time would constitute a myopic, if not reckless, treatment of a highly volatile situation which could explode, at the slightest provocation, into a bigger and bitter confrontation between the parties. The parties to a case should not be forced into a situation where a peaceful relationship is not feasible (Pearl S. Buck Foundation, Inc. vs. NLRC, 182 SCRA 446). We believe that complainants' reinstatement would serve no purpose other than to deepen the animosity felt by one against the other. To us, therefore, the award of separation pay is a better, more prudent alternative, as the same would spare both complainants and respondent CCBPI from the stress of having to work anew with one another in a tension-filled environment. Moreover, it will not be unreasonable to believe that respondent CCBPI had, in the interim, already filled up the positions rendered vacant upon complainants' dismissal more than six (6) years ago. As the Executive Labor Arbiter correctly observed complainants'

> re-entry at this time would only upset whatever manning adjustments respondent CCBPI had effected as a result thereof. Certainly the path of less resistance, under the above circumstances, singularly points to complainants' separation, for which reason we have no other alternative but to sustain the Executive Labor Arbiter's decision awarding separation pay to complainants in lieu of reinstatement."

It also held that the Arbiter correctly used Thirty-Six Pesos (P36.00) a day as basis for computing the monetary awards due to petitioner for that was his salary rate at the time of his illegal dismissal. It likewise rejected the claim of petitioner for damages as bereft of basis.

In this petition for certiorari, petitioner submits the following issues for resolution.

> "I
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> WHETHER OR NOT THE PETITIONER IS ENTITLED TO BE REINSTATED.
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> "II
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> WHETHER OR NOT THE PRESENT SALARY RATE OF REGULAR EMPLOYEES OF CCBPI IS THE CORRECT BASIS FOR RECOMPUTING THE AWARD OF MONETARY CLAIM OF THE PETITIONER.
>
> "III
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> WHETHER OR NOT THE PETITIONER IS ENTITLED TO THE PAYMENT OF MORAL AND EXEMPLARY DAMAGES."

We hold that public respondent gravely abused its discretion when it refused to reinstate petitioner, a victim of illegal dismissal. Section 3, Article XIII of the Constitution guarantees to our workers security of tenure. Article 279 of the Labor Code, as amended, implements this constitutional guarantee by providing:

> "Any employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement." (Emphasis ours)

The importance of the remedy of reinstatement to an unjustly dismissed employee cannot be overstated. It is the remedy that most effectively restores the right of an employee to his employment and all its benefits before its violation by his employer. Yet despite all its virtues, reinstatement does not and cannot fully vindicate all of an employee's injuries for reinstatement no more than compensates for his financial damages. It cannot make up for his other sufferings, intangible yet valuable, like the psychological devastation which inevitably visits him after a sudden displacement from work. The first right of an unjustly dismissed employee is therefor reinstatement to his work and it is our duty to direct it except if his reinstatement will most probably do him less good and more harm. In determining whether or not we should order an employee's reinstatement, our eyes should focus on the need to protect the over-all interest of the dismissed employee and not on the necessity of preserving the interest of the employer who caused the unjust dismissal. To give more sensitivity to the interest of the employer who violated the law is to make a travesty of the constitutional right of an employee to security of tenure. We do not treat our workers as merchandise and their right to security of tenure cannot be valued in precise peso-and-centavo terms. It is a right which cannot be allowed to be devalued by the purchasing power of employers who are only too willing to bankroll the separation pay of their illegally dismissed employees to get rid of them.

Prescinding from these baseline principles, we hold that the public respondent gravely abused its discretion when it did not reinstate petitioner. We reject the reasons relied upon by public respondent in refusing to reinstate petitioner: first, the six (6) years of failed attempts by the parties at amicable settlement; and second, the belief that CCBPI had in the interim filled up the position of petitioner. The failed attempts to settle their dispute do not prove that the relationship between petitioner and CCBPI is already too strained as

to be beyond redemption. To our mind, they merely show that both parties were steadfast in the assertion of their rights which they could aggressively do without necessarily entertaining animosity to each other. The alleged "tension-filled environment" between petitioner and CCBPI is completely unsupported by the records of the case. The relationship of the parties herein has not been marred by any violence, not even verbal. We fear that the ruling of public respondent, if not reversed, will breed a lot of mischief and inequity against illegally dismissed employees. Pursued to its logical extreme, all that a guilty employer has to do to frustrate the reinstatement of an illegally dismissed employee is to deadlock attempts to settle their disputes for several years. In the case at bench, these several years of stand-off resulted in greater damage to the rights of petitioner and there is no better way to repair this damage than to order his reinstatement. In the same vein, the mere belief that petitioner's position has already been filled up is too flimsy a reason not to reinstate petitioner. This stance betrays the unwarranted bent to be concerned more with the interest of the guilty employer rather than the security of tenure of an innocent worker. This inclination disregards the constitutional call to pull up the powerless without pulling down the powerful. It is not difficult for employers to abolish positions in the guise of a cost-cutting measure and we should not be easily swayed by such schemes which all too often reduce to near nothing what is left of the rubble of rights of our exploited workers. In the case at bench, petitioner is a lowly laborer/bottling crew in the production department of CCBPI. He cannot by any stretch of the imagination substantially damage the latter's interest. Given the nature of jobs performed at CCBPI, it is also inconceivable that it cannot accommodate the needed services of petitioner.

We do not agree with petitioner, however, that his monetary awards should be computed at Eighty-Nine Pesos (P89.00) per day instead of Thirty-Six (P36.00) per day plus Seventeen Pesos (P17.00) of daily ECOLA. In this regard, the Solicitor General correctly comments:

> "Petitioner was dismissed on February 15, 1986. At that time, he was receiving the daily wage rate of P36.00 and daily ECOLA of P17.00 as contractual laborer in its Production Department. Consequently, the computation of his backwages should be based on this salary that he was receiving at the time of his

dismissal. This is consistent with the ruling of the Honorable Court in Durabuilt Recapping Plant & Company vs. NLRC, 152 SCRA 328 (1987), viz.:

> 'In Insular Life Assurance Employees' Associated-NATU vs. Insular Life Assurance Co. Ltd. (76 SCRA 50) we held that to fix the amount of backwages without qualification or deduction simply means that the workers are to be paid their dismissal or strike pay without deduction for their earnings elsewhere — during their lay-off and without qualification of their backwages as thus fixed; i.e. unqualified by any wage increases or other benefits that may have been received by their co-workers who were not dismissed or did not go on strike. The principle is justified as a realistic, reasonable and mutually beneficial solution for it relieves the employees from proving earnings during their lay-offs and the employer from submitting counterproofs. It was meant to obviate the twin evils of idleness on the part of the employees and attrition and undue delay in satisfying the award on the part of the employer (New Manila Candy Workers Union NACONWAPAFLU vs. CIR supra). The same was not to establish an inflexible rule of computation of any backwages due an employee.' (Emphasis supplied)

"The computation of petitioner's backwages is correct.

"Article 279 of the Labor Code provides:

> 'ARTICLE 279. Security of tenure. — In case of regular employment, the employer shall not terminate the services of an employee except for a services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and to his full backwages computed from the time his compensation was withheld from him up the time of his reinstatement.' (Emphasis supplied)

Parenthetically, Article 279 was amended by Section 34 of R.A. No. 6715 which took effect on March 21, 1989, as follows:

> 'ARTICLE 279. Security for tenure. — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.' (Emphasis supplied)

Article 279 of the Labor Code, as amended, however, cannot apply to the present case because petitioner was illegally dismissed on February 15, 1986. In other words, his case is still governed by the old provision of Article 279 of the Labor Code. Thus, the case of Mercury Drug Co., Inc. vs. Court of Industrial Relations, 56 SCRA 694 (1974) which limited the award of backwages to three (3) years 'without deduction or qualification' to obviate the need for further proceedings, is still applicable to the case at bar. The amendatory provision of Article 279 of the Labor Code which took effect on March 21, 1989 cannot be applied in the instant case and neither can the case of Alex Ferrer, et al., vs. NLRC, et al., G.R. No. 100898, July 5, 1993 as the petitioners therein were illegally dismissed on September 11, 1989."

The claim of petitioner to moral and exemplary damages is less tenuous. We have searched the records and found no evidence that CCBPI dismissed petitioner in bad faith. A dismissal may be contrary to law but by itself, it does not establish bad faith. In Primero vs. IAC,[2] we ruled:

> "The legislative intent appears clear to allow recovery in proceedings before Labor Arbiters of moral and other forms of damages, in all cases or matters arising from employer-employee relations. This would no doubt include, particularly,

instances where an employee has been unlawfully dismissed. In such a case the Labor Arbiter had jurisdiction to award to the dismissed employee not only the reliefs specifically provided by labor laws, but also moral and the forms of damages governed by the Civil Code. Moral damages would be recoverable, for example, where the dismissal of the employee was not only effected without authorized cause and/or due process — for which relief is granted by the Labor Code — but was attended by bad faith or fraud, or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs or public policy — for which the obtainable relief is determined by the Civil Code (not the Labor Code). Stated otherwise, if the evidence adduced by the employee before the Labor Arbiter should establish that the employer did indeed terminate the employee's services without just cause or without judgment it shall be for the employer to reinstate the employee and pay him his backwages, or exceptionally, for the employee simply to receive separation pay. These are reliefs explicitly prescribed by the Labor Code. But any award of moral damages by the Labor Arbiter obviously cannot be based on the Labor Code but should be grounded on the Civil Code. Such an award cannot be justified solely upon the premise (otherwise sufficient for redress under the Labor Code) the employer fired his employee without just cause or due process. Additional facts must be pleaded under the Civil Code, these being, to repeat, that the act of dismissal was attended by bad faith or fraud, or was oppressive to labor, or done in a manner contrary to morals, good customs, or public policy; and, of course, that social humiliation, wounded feelings, grave anxiety, etc., resulted therefrom." (Emphasis supplied)

IN VIEW WHEREOF, the Resolution of public respondent, dated October 21, 1993 is modified. Private respondent CCBPI is ordered to reinstate petitioner instead of paying his separation pay in accord with Article 279 of the Labor Code, as amended. In all other respects, the appealed Resolution is affirmed. No costs.

SO ORDERED.

Narvasa, *C.J.*, Regalado, Mendoza, and Francisco, *JJ.*, concur.

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[1] Aside, from petitioner, there were eleven (11) other complainants all of whom later settled their claims with CCBPI. Their cases were docketed as RAB-V Case Nos. 0092-86 to 0107-86.

[2] 156 SCRA 435 [1987]; See Sanrio vs. Bank of PI, 176 SCRA 695 [1989].
