SUPREME COURT
SECOND DIVISION

SAMUEL PEPITO,
***Petitioner*,**

-versus-

G.R. No. L-49418
February 29, 1980

HONORABLE SECRETARY OF LABOR and EASTERN TEXTILE MILLS, INC.,
***Respondents*.**
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D E C I S I O N

FERNANDO, *C.J.*:

It must have been the realization that the constitutional guarantee of security of tenure[1] could be applied to dismissals without cause even if ordered prior to the effectivity of the New Labor Code on November 1, 1974,[2] that led the Solicitor General as counsel for public respondent, then Acting Secretary of Labor Inciong, to accede to the plea for reinstatement of petitioner Samuel Pepito in this *certiorari* proceeding.[3] As set forth in the Comment, considered as the answer, Solicitor General Estelito P. Mendoza, Assistant Solicitor General Reynato S. Puno and Solicitor Jesus V. Diaz "are of the opinion that petitioner's reinstatement is in order."[4] Their view follows from pronouncements of this Tribunal "handed down in consonance with the social justice and protection to labor provisions of the

Constitution."[5] Two decisions were cited: Philippine Air Lines, Inc. vs. Philippine Air Lines Employees Association[6] and San Miguel Corporation vs. Secretary of Labor.[7] Accordingly, this petition for *certiorari* must be granted.

Petitioner Pepito was employed by private respondent Eastern Textile Mills, Inc. as electrician with a daily wage of P10.20 as of December 22, 1971. He was hired as far back as December 6, 1966. Sometime in December of 1971, one Rufino Ramos, an employee, was surprised in the act of taking out pieces of copper wires. He was investigated; he implicated petitioner as the author of the pilferage. As a result, along with Ramos, petitioner had to face a complaint for theft in the Municipal Court of Meycauayan, Bulacan. After the preliminary investigation, he was absolved, only Rufino Ramos being proceeded against in the Court of First Instance. Having been suspended in the meanwhile and the case having dragged until April 30, 1974, petitioner, on July 12, 1974, through counsel, wrote management a letter seeking reinstatement. Private respondent refused. The matter was taken to the National Labor Relations Commission. The labor arbiter, in a decision dated April 14, 1976, ordered respondent company to reinstate complainant to his former position and pay him three years backwages in the total amount of P9,577.80. On appeal to the National Labor Relations Commission, the Arbiter's decision was in effect reversed. Petitioner was denied reinstatement. Private respondent was merely ordered to pay him separation pay of one-half month for every year of service at the rate of P10.20 counted from December 6, 1966 to December 22, 1971. Respondent Inciong, then Acting Secretary of Labor, affirmed, solely on the basis that as the dismissal was prior to the effectivity of the New Labor Code, the applicable Law should be the Termination Pay Law.[8] His Motion for Reconsideration having been denied, petitioner filed the instant proceeding.

As noted at the outset, this petition is impressed with merit.

1. The submission of the Solicitor General as to why reinstatement is in order possesses a persuasive quality. Thus: "The applicable law on the matter of dismissals before the effectivity of the New Labor Code was the Termination Pay Law. Under said law, an employee may be dismissed

with or without just cause. If there is just cause, the employer is not required to serve any notice nor pay termination pay to the employees concerned. If the dismissal is without just cause, the employer must serve timely notice to the employee, otherwise the employer is obliged to pay termination pay, except where other applicable statutes provide a different remedy, such as unfair labor practice. A distinction, however, should be made between a dismissal without cause and a dismissal for a false or non-existent cause. In the former, it is the intention of the employer to dismiss his employee for no cause whatsoever, in which case the Termination Pay Law would apply. In the latter case, the employer does not intend to dismiss the employee but for a specific cause which turns out to be false or non-existent. Hence, absent the reason which gave rise to his separation from employment, there is no intention on the part of the employer to dismiss the employee concerned. Consequently, reinstatement is in order. And this is the situation here. Petitioner was separated because of his alleged involvement in the pilferage in question. However, he was absolved from any responsibility therefor by the court. The cause for his dismissal having been proved non-existent or false, his reinstatement is warranted. It would be unjust and unreasonable for the Company to dismiss petitioner after the latter had proven himself innocent of the cause for which he was dismissed."[9]

2. Thereafter, to justify his submission, the Solicitor General invoked, as noted earlier, the social justice and protection to labor provisions of the Constitution. That point is well-taken. In the latest case in point, Meracap vs. International Ceramics Mfg. Co., Inc.,[10] this Court left no doubt that it is committed to the principle of vitalizing "the constitutional mandate of security of tenure as an aspect of the protection accorded labor."[11] There should be no reason why there should be a deviation in this litigation especially so when again, as noted in the Comment, respect for such a mandate has been accorded in previous opinions. When it is noted further that no objection has been interposed to the conformity of the Solicitor General to the plea for

reinstatement by public respondent, no other conclusion would seem to be warranted.

3. Nor should there be any question as to petitioner being entitled to three years backpay. As was noted by the late Chief Justice Castro in Insular Life Assurance Co., Ltd. Employees Association vs. Insular Life Assurance Co., Ltd.,[12] it is now the policy of this Court to fix the amount of backwages "to a just and reasonable level without qualification or deduction."[13] His opinion went on to state: "Blazing the trail is Mercury Drug Co. vs. CIR, L-23357, April 30, 1974, which enunciated the policy. The doctrine is not without justification, for, in the same case, it was stated that the evident aim is 'to avoid protracted delay in the execution of the award of backwages due to extended hearings and unavoidable delays and difficulties encountered in determining the earnings of the laid-off employees ordered to be reinstated with backwages during the pendency of the case for purposes of deducting the same from the gross backwages awarded.' Feati University Club vs. Feati University, L-35103, August 25, 1974, adopted a consensus policy of pegging the amount of backwages to their total equivalent for three years (depending on the circumstances) without deduction or qualification. The rationale for the policy was stated in the following words: 'As has been noted, this formula of awarding reasonable net backwages without deduction or qualification relieves the employees from proving or disproving their earnings during their lay-off and the employers from submitting counter-proofs, and obviates the twin evils of idleness on the part of the employee who would "with folder arms, remain inactive in the expectation that a windfall would come to him" (Itogon Suyoc Mines, Inc. vs. Sangilo-Itogon Workers Union, 24 SCRA 873 (1968), cited in Diwa Ng Pagkakaisa vs. Filtex International Corp., 43 SCRA 217 (1972) and attrition and protracted delay in satisfying such award on the part of unscrupulous employers who have seized upon the further proceedings to determine the actual earnings of the wrongfully dismissed or laid-off employees to hold unduly extended hearings for each and every employee awarded backwages and thereby render

practically nugatory such award and compel the employees to agree to unconscionable settlements of their backwages award in order to satisfy their dire need.'"[14] After the Feati University Club decision, three other cases were cited before the Insular Life Assurance Co.: Luzon Stevedoring Corp. vs. B.H. Tenefrancia;[15] Liberty Cotton Mills Workers Union vs. Liberty Cotton Mills, Inc.;[16] and People's Bank and Trust Co. vs. People's Bank and Trust Co. Employees Union.[17] Thereafter, such a doctrine has been followed in six other cases, the latest of which is Liberty Cotton Mills Workers Union vs. Liberty Cotton Mills, Inc.[18]

WHEREFORE, the Petition for *Certiorari* is **GRANTED**. Petitioner Samuel Pepito is ordered reinstated with three years backpay from December 22, 1971 to December 21, 1974.

Barredo, Antonio, Aquino, Concepcion, Jr. and De Castro, *JJ*., concur.
Abad Santos, *J*., is on leave.

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[1] According to the second sentence of Article II, Section 9 of the Constitution: "The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work.
[2] Presidential Decree No. 442.
[3] The private respondent is Eastern Textile Mills, Inc.
[4] Comment, 5.
[5] Ibid.
[6] L-24626, June 28, 1974, 57 SCRA 489.
[7] L-39195, May 16, 1975, 64 SCRA 56.
[8] Republic Act No. 1052 (1954).
[9] Comment, 3-4.
[10] L-48235-36, July 30, 1979.
[11] Ibid. It cited the following cases: Philippine Air Lines, Inc. vs. Philippine Airlines Employees Association, L-24626, June 28, 1974, 57 SCRA 489; Almira vs. B.F. Goodrich Philippines, L-34974, July 25, 1974, 58 SCRA 120; Central Textile Mills vs. National Labor Relations Commission, L-50150, May 3, 1979, 90 SCRA 9; Genconsu Free Workers Union vs. Inciong, L-48687, July 2, 1979.
[12] Insular Life Assurance Co., Ltd. Employees Association vs. Insular Life Assurance Co., Ltd.
[13] Ibid, 62.

[14] The Mercury Drug decision is reported in 56 SCRA 694. Feati University Club vs. Feati University is reported in 58 SCRA 395.
[15] L-34300, November 22, 1974, 61 SCRA 154.
[16] L-33987, September 4, 1975, 66 SCRA 512.
[17] L-39598, January 13, 1976, 69 SCRA 10.
[18] L-33987, May 31, 1979, 90 SCRA 391. These are the five other cases: Davao Development Corporation vs. National Labor Relations Commission, L-40706, Feb. 16, 1978, 81 SCRA 487; L.R. Aguinaldo and Co., Inc. vs. Court of Industrial Relations, L-31909, April 5, 1978, 82 SCRA 309; Air-Manila Inc. vs. Court of Industrial Relations, L-39742, June 9, 1978, 83 SCRA 579; Bachrach Motor Co. Inc. vs. Court of Industrial Relations, L-26136, Oct. 30, 1978, 86 SCRA 27 and Dy Koh Beng vs. International Labor and Marine Union, L-32245, May 25, 1979, 90 SCRA 161.