SUPREME COURT
THIRD DIVISION

PEPSI COLA BOTTLING COMPANY OF THE PHILIPPINES,
***Petitioner*,**

-versus-

G.R. No. 81162
April 19, 1989

JOB GUANZON AND NATIONAL LABOR RELATIONS COMMISSION (Third Division),
***Respondents*.**
x----------x

D E C I S I O N

CORTES, *J.*:

Petitioner Pepsi Cola Bottling Company of the Philippines (hereinafter referred to as PEPSI) seeks the reversal of the decision of the National Labor Relations Commission (NLRC) in NLRC-RAB CASE No. 0474-84 entitled "Job Guanzon vs. Pepsi Cola Bottling Co. of the Philippines, Inc." promulgated on August 12, 1987, wherein the NLRC held that private respondent Job Guanzon was illegally dismissed by petitioner and accordingly, ordered the payment of his backwages and separation pay.

As shown in the records, the facts are as follows:

> On September 12, 1965 petitioner PEPSI hired private respondent Job Guanzon as a "route salesman". Sometime in June 1979 he was "grounded" or suspended for his alleged violation of company rules and regulations. During an administrative investigation conducted by PEPSI, Guanzon was found guilty of misappropriating money collected from customers and of falsifying invoices and reports [Decision of Labor Arbiter, p. 5; Rollo, p. 30.] On July 6, 1979 private respondent was served by petitioner with a letter informing him of the termination of his employment effective July 17, 1979 ["Annex A" to the Petition; Rollo, p. 17.]
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> A criminal complaint for Estafa Through Falsification of Commercial Documents was also filed by PEPSI against Guanzon with the Office of the City Fiscal of Bacolod City. However, the case was dismissed on May 25, 1984 based on the finding that a charge invoice is not a commercial document. The investigating fiscal also found that the financial liability of Guanzon to PEPSI was already paid by him [Decision of Labor Arbiter, p. 6; Rollo p. 31.]
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> On November 14, 1984 private respondent filed with the office of the Labor Arbiter in Bacolod City a complaint for reinstatement and payment of backwages and damages. In his complaint, private respondent claimed that he was grounded as a route salesman due to "fabricated and malicious dishonesty charge by the local agents of petitioner" [Paragraph 3, Complaint, p. 1; Rollo, p. 18.]

The Labor Arbiter dismissed the complaint on the ground that the claims of private respondent had prescribed pursuant to Article 292 (now Article 291) of the Labor Code which provides for a three-year prescriptive period for all money claims arising from an employer-employee relationship. The dispositive portion of the decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered DISMISSING all the claims of the complainant against respondent company for having been barred by prescription.

SO ORDERED.
[NLRC Decision, p. 9; Rollo, p. 34]

On appeal, respondent NLRC reversed the decision of the Labor Arbiter and held that Article 292 of the Labor Code i5 not applicable since Guanzon's complaint is not strictly one for recovery of money claims but is principally an action for illegal dismissal and reinstatement. The applicable law, according to the NLRC, is Article 1146 of the Civil Code which provides for a four-year prescriptive period in cases of violation of or injury to the rights of the plaintiff. The NLRC considered May 25, 1984, the date of the dismissal of the criminal case against private respondent, as the reckoning date for computing the prescriptive period, and accordingly held that when Guanzon filed the complaint for illegal dismissal on November 14, 1984 the four-year prescriptive period has not lapsed. The NLRC also found that the dismissal of Guanzon was without just cause and that the investigation conducted by PEPSI suffered from "patent procedural infirmities," and therefore, violative of the requirements of due process [Decision of NLRC, pp. 4-5; Rollo, pp. 39-40.] Considering that reinstatement was no longer feasible or practical in view of the length of time that had elapsed since private respondent's dismissal, the NLRC ordered petitioner to pay private respondent three (3) years backwages and separation pay, in lieu of reinstatement [Decision of NLRC, p. 6; Rollo, p. 41].

Hence, the instant petition.

The main issue to be resolved in this petition is whether or not private respondent's action for illegal dismissal with claims for reinstatement and backwages had prescribed.

The Court sustains the petitioner's contention that private respondent's action for illegal dismissal is already barred by prescription.

It is undisputed in the instant case that private respondent's complaint for illegal dismissal was filed only on November 14, 1984 or more than five years from the time private respondent's cause of action arising from his alleged illegal dismissal accrued on July 17,

1979, the effective date of the termination of his employment with petitioner. The complaint was, therefore, filed beyond the prescriptive period provided for in both the Labor Code and Article 1146 of the Civil Code [Cf. Articles 290-291, Labor Code; Callanta vs. Carnation Philippines, Inc., G.R. No. 70615, October 28, 1986, 145 SCRA 268; Pan-Fil Co. Inc. vs. Agujar, G.R. No. 81948, November 9, 1988.]

In maintaining that private respondent's cause of action against petitioner had not yet prescribed, respondent NLRC claims that private respondent was never terminated by petitioner but was only "grounded" or preventively suspended until the final resolution of the criminal case against him [Comment of NLRC, p. 4; Rollo, p. 84.]

This is untenable.

In the first place, there was nothing in the termination letter which implies that petitioner PEPSI was merely suspending respondent Guanzon. The intent to terminate private respondent is evident in the tenor of the letter which states that:

> In view of these series of flagrant violations of company rules and regulations, we are, therefore, constrained to terminate you effective July 17, 1979. [Annex "A" to the Petition; Rollo, p. 17]

Moreover, private respondent himself claimed that he was "unlawfully dismissed" by petitioner. Paragraph 6 of private respondent's complaint reads:

x x x

> (6) That from June 20, 1979 up to the present, he [respondent Guanzon] has been grounded and this fact amounts to unlawful dismissal because he has been denied any salary, allowances, 15 days sick leave with pay, 15 days vacation leave with pay, Christmas bonus and his route allowances per month. [Complaint, p. 2; Rollo, p. 19; Italics supplied.]

Equally untenable is private respondent's claim that he never received a notice of termination [Memorandum of Respondent p. 1; Rollo, p. 117]. The records clearly show that private respondent received the

termination letter on July 6, 1979 as shown by his signature at the lower right hand portion thereof [Annex "A" to the Petition; Rollo, p. 17.] Private respondent never claimed that his signature was forged or made without his authority. He merely insists that he never received a notice of termination. It was error on the part of the NLRC to give weight to the unsupported denial of private respondent in the light of the clear documentary evidence to the contrary.

On the question of when private respondent's cause of action accrued, the Court does not agree with the NLRC's position that "the date of dismissal of the criminal case against private respondent on May 25, 1984 is the reckoning date when the prescriptive period of the action for illegal dismissal should commence."

In an illegal dismissal case, the cause of action accrues from the time the employee was unjustly terminated [See Ramos vs. Our Lady of Peace School, G.R. No. 55950, December 26, 1984, 133 SCRA 741.] In this case private respondent's cause of action arising from his alleged illegal dismissal accrued on July 17, 1979, the effective date of the termination of his employment.

The Court cannot sustain NLRC's argument that it was only when PEPSI refused to reinstate private respondent to his former position, after the dismissal of the criminal case on May 25, 1984, that the latter's cause of action accrued. Guanzon was dismissed by PEPSI way back in 1979. He could have immediately challenged his dismissal without waiting for the outcome of the criminal case. His right to file an action for illegal dismissal is now barred by prescription precisely because he chose to wait for the dismissal of the criminal case before filing his complaint.

Nor is there any merit to private respondent's claim that had he "filed a [complaint for illegal dismissal] while the criminal case was pending, it would have been without any basis" as it "would be premature" [Memorandum for Respondent, p. 3; Rollo, p. 119.] Private respondent's right to file an action for illegal dismissal was not dependent upon the outcome of the criminal case against him. The fact that the alleged violations of the company rules and regulations were the same cause for the filing of the criminal case against him is of no moment. Private respondent's guilt or innocence

in the criminal case is not determinative of the existence of a just or authorized cause for his dismissal [National Organization of Laborers and Employees vs. Roldan, 95 Phil. 727 (1954); Phil. Education Co., Inc. vs. Union of Phil. Education Employees and CIR, 107 Phil. 1003 (1960); Gatmaitan vs. MRR Co., 128 Phil. 208 (1967); Philippine Geothermal, Inc. vs. National Labor Relations Commission, G.R. Nos. 55249-50, October 19, 1982, 117 SCRA 692; Dole Philippines Inc. vs. National Labor Relations Commission, G.R. No. 55413, July 25, 1983, 123 SCRA 673; Philippine Long Distance Telephone Co. vs. National Labor Relations Commission, G.R. No. 63191, April 30, 1984, 129 SCRA 163.] The filing of the criminal case against private respondent did not have the effect of suspending or interrupting the prescriptive period for the filing of the action for illegal dismissal. An action for illegal dismissal is an administrative case which is entirely separate and distinct from a criminal action for estafa. Each may proceed independently of the other [Manikad vs. Tanodbayan, G.R. No. 65097, February 20, 1984, 127 SCRA 729.]

Finally, private respondent contends that, granting arguendo that his cause of action had prescribed, petitioner is estopped from setting up the defense of prescription since it failed to file its motion to dismiss on time. He claims that when petitioner PEPSI was served with summons, it did not file an answer nor any pleading to challenge the complaint [Memorandum for Respondent, p. 5; Rollo, p. 121.] It was only when the case was set for hearing on February 27, 1985 that counsel for petitioner requested for time to submit responsive pleading and subsequently filed the motion to dismiss [Comment of NLRC, p. 5, Rollo, p.85.]

Petitioner, on the other hand, argues that there was no waiver of the defense of prescription since it was only after February 4, 1985 that a copy of the complaint and notice of hearing were served upon its counsel as shown by the postmark appearing on the cover letter thereof [Petitioner's Reply, pp. 12; Rollo, pp. 88-89.]

In its Comment to the instant petition, the respondent NLRC sustains the contention of private respondent that the motion to dismiss was filed out of time. It is the position of respondent Commission that the motion to dismiss should have been filed by the petitioner "at least

(10) days from the time the copy of the complaint was served upon it" [NLRC's Comment, p. 5; Rollo, p. 85.]

The Court, after considering the foregoing arguments end the applicable laws on the matter, finds that there was no waiver of the defense of prescription. As correctly pointed out by the petitioner, the Labor Code and the NLRC Rules do not provide for a specific period within which to file a motion to dismiss [Petitioner's Reply, 3; Rollo, p. 90]. Section 14, Rule VII of the Revised Rules of the NLRC, provides only that:

> Section 14. Motion to dismiss. — Any motion to dismiss a complaint or petition on the ground that the cause of action is barred by prescription, shall be immediately acted upon by the Labor Arbiter if the acts strongly indicate dismissal. Any motion to dismiss with no such indication shall be disposed of only in the final determination of the case and shall not be allowed to interrupt or delay the proceedings.

Nowhere is it provided that the motion to dismiss should be filed with the Labor Arbiter within ten (10) days from receipt of the complaint.

And even if we apply the technical rules of procedure obtaining in ordinary civil actions, the dismissal of the private respondent's complaint was still proper since it is apparent from its face that the action has prescribed. Private respondent himself alleged in the complaint that he was unlawfully dismissed in 1979 [Complaint, p. 2; Rollo, p. 19] while the complaint was filed only on November 14, 1984. This Court has held in a number of cases that the rule on waiver of defenses by failure to plead in the answer or motion to dismiss does not apply when the plaintiff's own allegations in the complaint shows clearly that the action has prescribed [Philippine National Bank vs. Perez, G.R. No. L-20412, February 28, 1966, 16 SCRA 270; Philippine National Bank vs. Pacific Commercial House, G.R. No. L-22675, March 28, 1969, 27 SCRA 766; Ferrer vs. Ericta, G.R. No. L-41767, August 23, 1978, 84 SCRA 705; Garcia vs. Mathis, G.R. No. L-48577, September 30, 1980, 100 SCRA 250.] In such a case the court may motu proprio dismiss the case on the ground of prescription [PNB vs. Perez, supra.] Thus, even assuming that petitioner's motion to dismiss was filed out of time, there was nothing to prevent the

Labor Arbiter from dismissing the complaint on the ground of prescription.

WHEREFORE, premises considered, the Petition is hereby **GRANTED**. The Decision of the National Labor Relations Commission is **SET ASIDE** and the Decision of the Labor Arbiter is **REINSTATED**.

SO ORDERED.

Fernan, *C.J.*, Gutierrez, Jr., Feliciano and Bidin, *JJ.*, concur.
