

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**PHILIPPINE JAPAN ACTIVE CARBON
CORPORATION AND TOKUICHI
SATOFUKA,**

Petitioners,

-versus-

**G.R. No. 83239
March 8, 1989**

**NATIONAL LABOR RELATIONS
COMMISSION and OLGA S.
QUIÑANOLA,**

Respondents.

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DECISION

GRÑO-AQUINO, J.:

This is a Petition for Review of the Decision dated November 27, 1987 in NLRC Case No. 1966-LR-XI-86, entitled "Olga S. Quiñanola, Complainant-Appellee vs. Philippine Japan Active Carbon Corporation and/or Tokuichi Satofuka, Respondents-Appellants," affirming the decision dated June 5, 1987 of the Labor Arbiter finding that the private respondent Olga S. Quiñanola was illegally dismissed and ordering the appellants to reinstate her with backwages and damages.

The private respondent, who had been employed in petitioner corporation since January 19, 1982, as Assistant Secretary/Export Coordinator, was promoted on May 20, 1983 to the position of Executive Secretary to the Executive Vice President and General Manager. On May 31, 1986, for no apparent reason at all and without prior notice to her, she was transferred to the Production Department as Production Secretary, swapping positions with Ester Tamayo. Although the transfer did not amount to a demotion because her salary and workload remained the same, she believed otherwise so she rejected the assignment and filed a complaint for illegal dismissal. The Labor Arbiter found, on the basis of the evidence of both parties, that the transfer would amount to constructive dismissal, hence, her refusal to obey the transfer order was justified (pp. 76-77, Rollo). The Labor Arbiter further observed that:

“There was something perverse in the way she was dismissed from her work. She was dismissed for causes that are unjustified, if not entirely non-existent, and foisted on her by respondents’ illegal act the motivation of which reeks with bad faith. Accordingly, they should be assessed and required to pay complainant the sum of P25,000 as damages and P5,000 as attorney’s fee.” (p. 77, Rollo.)

The dispositive portion of his decision reads as follows:

“WHEREFORE, judgment is hereby rendered declaring complainant Olga Quiñanola’s dismissal illegal and for respondents to reinstate her to her former position with backwages equivalent to one year in the amount of P33,684 (P2,807 x 12 months) only, without loss of seniority rights and other benefits also equivalent to one year or until the finality of this Decision, whichever is higher.

“Likewise, respondents are hereby assessed and ordered to pay complainant the sum of P25,000.00 as damages plus P5,000 as attorney’s fee.

“Total Awards: P63,684 only, exclusive of other benefits herein granted but not yet computed.” (pp. 77-78, Rollo.)

Upon appeal to the NLRC, the Commission approved the Labor Arbiter's decision but reduced to P10,000 the award of moral damages and the attorney's fees to 10% of the judgment (pp. 207-208, Rollo).

The employer filed a petition for review of that decision in this Court alleging that:

1. The decisions of the Labor Arbiter and of the NLRC are tainted with grave abuse of discretion in finding that the private respondent was constructively and illegally dismissed as a result of her transfer or assignment to the Office of the Production Manager even if she would have received the same salary, rank, rights and privileges;
2. In ordering her reinstatement with full backwages and without loss of seniority rights and other benefits;
3. In awarding to the private respondent moral damages of P10,000 and attorney's fees equivalent to 10% of the judgment; and
4. In not declaring that private respondent forfeited all her benefits for having abandoned her job on June 2 to 3, 1986 and for insubordination.

In her comment to the petition, the private respondent argued that she was dismissed without due process because she was not given the opportunity to be heard concerning the causes of her transfer.

Upon a careful consideration of the petition and the documents annexed thereto as well as private respondent's comment, We find the petition to be meritorious.

A constructive discharge is defined as: "A quitting because continued employment is rendered impossible, unreasonable or unlikely; as, an offer involving a demotion in rank and a diminution in pay." (Moreno's Philippine Law Dictionary, 2nd Ed., p. 129, citing the case of *Alia vs. Salani Una Transportation Co.*, 39527-R, January 29, 1971.)

In this case, the private respondent's assignment as Production Secretary of the Production Department was not unreasonable as it did not involve a demotion in rank (her rank was still that of a department secretary) nor a change in her place of work (the office is in the same building), nor a diminution in pay, benefits, and privileges. It did not constitute a constructive dismissal.

It is the employer's prerogative, based on its assessment and perception of its employees' qualifications, aptitudes, and competence, to move them around in the various areas of its business operations in order to ascertain where they will function with maximum benefit to the company. An employee's right to security of tenure does not give him such a vested right in his position as would deprive the company of its prerogative to change his assignment or transfer him where he will be most useful. When his transfer is not unreasonable, nor inconvenient, nor prejudicial to him, and it does not involve a demotion in rank or a diminution of his salaries, benefits, and other privileges, the employee may not complain that it amounts to a constructive dismissal.

On the other hand, we reject the petitioner's contention that the private respondent's absence from work on June 2 to June 3, 1986 constituted an abandonment of her job in the company resulting in the forfeiture of the benefits due her. While she was guilty of insubordination for having refused to move out of her position as Executive Secretary to the Executive Vice-President and General Manager of the company, dismissal from the service would be a draconian punishment for it, as her complaint for illegal dismissal was filed in good faith.

WHEREFORE, the Decision of the NLRC insofar as it orders the petitioner to reinstate the private respondent is affirmed, but she shall be reinstated to her position as Production Secretary of the Production Department of petitioner's corporation without loss of seniority rights and other privileges. The awards of backwages, moral damages and attorney's fees to the private respondent are hereby set aside. No pronouncement as to costs.

SO ORDERED.

Narvasa, Cruz, Gancayco and Medialdea, *JJ.*, concur.

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