SUPREME COURT
SECOND DIVISION

THE SAN MIGUEL CORPORATION and FRANCISCO ANDRES,
***Petitioner*,**

-versus-

G.R. No. L-39195
May 16, 1975

THE HONORABLE SECRETARY OF LABOR, NATIONAL LABOR RELATION COMMISSION and GREGORIO YANGLAY, JR.,
***Respondents*.**
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D E C I S I O N

AQUINO, *J.*:

The San Miguel Corporation in this special civil action of certiorari seeks to annul the decision of the old National Labor Relations Commission (NLRC) dated February 27, 1973, ordering the reinstatement (with back wages) of Gregorio Yanglay, Jr. to his position of operator in the crown cork department of its Metal Closure and Lithography Plant located at Cristobal Street, Paco, Manila. On July 9, 1974 the Secretary of Labor affirmed that decision which also absolved the company from the charge of unfair labor practice.

Yanglay worked in the said plant with a daily wage of fourteen pesos from June 9, 1963 to July 19, 1972, when he was dismissed by Francisco Andres, the plant manager. The cause of his dismissal was illegal trafficking in company medicines. (According to the company Yanglay was suspended sixteen times for continuous absences during the period from November 16, 1964 to December 16, 1971).

The record of NLRC Case No. MC-130, "Gregorio Yanglay, Jr. versus The San Miguel Corporation and Francisco Andres", reveals that Yanglay, a thirty-year old married man residing at Cavite City, after leaving the plant at three o'clock in the afternoon of April 22, 1972, was apprehended by Patrolman E. Reyes of the Manila Police Department outside the company compound. Yanglay was carrying a bagful of drugs, such as prothiona tablets, arlidin, dexopan, rovicon, etc., worth P267, which were turned over to Salvacion Mercurio, the nurse in charge of the company's clinic.

Yanglay, in his written statement taken by Sergeant Francisco Enriquez of the company's security force at around three-forty of that same afternoon, admitted that he was caught in possession of the said drugs which he had bought from his coworkers and which had been given to them free of charge so as to keep them in the "pink of health". Yanglay further admitted:

> "Opo, hindi ko na po uulitin ang mga bagay na ito, dala po lamang ng pangangailangan kaya ko binibili ito, hindi na po mauulit."

Yanglay was investigated on May 15 and June 23 and 27, 1972 by Beda Gonzalez of the management in the presence of the union counsel, a union vice-president, the shop steward and the plant superintendent.

At the investigation on June 27 Yanglay denied that he was trafficking illegally in drugs of the company. He said that he bought the drugs from his coworkers in the same way that some workers bought the rice rations of their coworkers. He contended that he had not violated any rule of the company. He clarified that some of the medicines were given to him by his coworkers.

On the basis of that investigation, Yanglay was dismissed on July 19, 1972. At the meeting of the union and management panels on September 22, 1972 to thresh out Yanglay's grievance, the union representative contended that there was no company rule against trafficking in drugs, which were no longer owned by the company after having been issued to its workers, and that the sale of the drugs was like the sale of rice rations which sale was allegedly tolerated by the company officials. The union conceded that suspension should be the proper disciplinary action but not dismissal. Yanglay had been in the service of the company for nine years.

The management panel countered that it is evident that Yanglay's dismissal was not due to union activities; that the sale of the drugs was a subversion of the company's efforts to give medical benefits to its workers and that trafficking in rice rations cannot be cited as a justification because the value of the rice is reflected in the workers' income tax returns.

On December 4, 1972 Yanglay filed a complaint with the NLRC alleging that there was no evidence to justify his dismissal, that the truth was that he owned the medicines in question and that he was dismissed because of his union activities as a "militant shop steward of the Ilaw at Buklod ng Manggagawa", the union representing the workers of the corporation (NLRC Case No. MC-180).

An NLRC commissioner sent telegrams dated December 5, 1972, notifying the parties that the case was set for hearing on December 18. On that date Enrique C. Cruz, as mediator-factfinder, conducted a preliminary hearing. He found that an amicable settlement was not possible because the San Miguel Corporation insisted on the dismissal of Yanglay.

The case was scheduled for mediation on January 10, 1973. The record does not show what transpired on that date. On January 12, 1973 the corporation filed a memorandum wherein it contended (1) that Yanglay's case was outside the NLRC's jurisdiction which extends only to disputes and grievances occurring after September 21, 1972; (2) that Yanglay's dismissal was justified and (3) that, if the dismissal

was not justified, his remedy was to ask for separation pay under the Termination Pay Law.

Yanglay did not submit any memorandum. On February 21, 1973 the mediator submitted a report wherein he concluded that Yanglay "was dismissed on a shaky ground" because the employer had not shown any violation of any company rule or regulation and that the persons to be penalized should be those who sold or delivered the drugs to Yanglay.

Cruz admitted that the San Miguel Corporation "had not committed unfair labor practice". He recommended Yanglay's reinstatement with back wages from July 19, 1972 (when he was dismissed) up to the date of his reinstatement.

The NLRC composed of Amado G. Inciong, Diego P. Atienza and Ricardo C. Castro, in its aforementioned decision adopted the report of Cruz in its entirety.

The San Miguel Corporation moved for the reconsideration of the decision on the ground that it was premature because section 14 of the NLRC's Rules and Regulations requires that the mediator's factfinding report be passed upon by an arbitrator. The motion was treated as an appeal by the Secretary of Labor. As already stated, he denied it in his resolution dated July 9, 1974. Thereafter, the company instituted this certiorari proceeding.

Yanglay raised a jurisdictional question which was not brought up by respondent public officials. He contends that this Court has no jurisdiction to review the decisions of the NLRC and the Secretary of Labor "under the principle of separation of powers" and that judicial review is not provided for in Presidential Decree No. 21.

That contention is a flagrant error. "It is generally understood that as to administrative agencies exercising quasi-judicial or legislative power there is an underlying power in the courts to scrutinize the acts of such agencies on questions of law and jurisdiction even though no right of review is given by statute" (73 C.J.S. 506, note 56).

> "The purpose of judicial review is to keep the administrative agency within its jurisdiction and protect substantial rights of parties affected by its decisions" (73 C. J. S. 507, Sec. 165). It is part of the system of checks and balances which restricts the separation of powers and forestalls arbitrary and unjust adjudications.

Judicial review is proper in case of lack of jurisdiction, grave abuse of discretion, error of law, fraud or collusion (Timbancaya vs. Vicente, 62 O.G. 9424; Macatangay vs. Secretary of Public Works and Communications, 63 O. G. 11236; Ortua vs. Singson Encarnacion, 59 Phil. 440).

> "The courts may declare an action or resolution of an administrative authority to be illegal (1) because it violates or fails to comply with some mandatory provision of the law or (2) because it is corrupt, arbitrary or capricious" (Borromeo vs. City of Manila and Rodriguez Lanuza, 62 Phil. 512, 516; Villegas vs. Auditor General, L-21352, November 29, 1966, 18 SCRA 877, 891).

The San Miguel Corporation contends that the NLRC gravely abused its discretion and denied the employer due process of law when it decided the case without giving the employer a chance to submit the case for arbitration, as provided in section 4 of Presidential Decree No. 21 and in section 14 of its Rules and Regulations.

The Solicitor General counters that there was no denial of due process because the NLRC and the mediator decided the case on the basis of the investigation which was conducted by a lawyer of the company pursuant to the grievance procedure indicated in the collective bargaining agreement.

The Solicitor General made the following cogent and judicious observations to support his contention that the San Miguel Corporation was not denied due process:

> "1. in said grievance procedure, a lengthy recorded investigation was conducted wherein the parties were duly represented by their respective counsel and wherein the

petitioner herein was granted every opportunity to present its evidence and cross-examine witnesses in support of its then contemplated and consequent action in the premises; that after the filing of the complaint by the private respondent, a preliminary factfinding was had with both parties present and/or duly represented wherein a preliminary factfinding report was rendered stating that the respondents (petitioners herein) were adamant in their stand regarding complainant's dismissal and that the possibility of settlement between the parties was ruled out.; that thereafter, mediation and further factfinding were held at which hearings petitioners, instead of presenting their evidence, opted to merely file a memorandum while complainant (private respondent herein) elected to submit the records of the proceedings in the grievance stage; that thereafter, a mediation Factfinding Report was rendered on February 21, 1973, on the basis of which a decision was rendered by the respondent NLRC on February 27, 1973.

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"3. It is evident from the report of the mediator factfinder that he had considered all the facts and evidence presented by both parties. Likewise indubitably clear is the fact that the parties no longer intended to present further evidence on the matter. Faced therefore with the foregoing circumstances, the NLRC was left without recourse but to exercise its power of arbitration as per section 4 of Presidential Decree No. 21 and after assessing the evidence before it rendered its decision thereunder. So should it be in cases of this nature, since it would have been futile to further prolong the proceedings by again setting the case for hearing when the parties themselves no longer intended to present further evidence. In short, while the action of the NLRC may have been summary, it cannot and does not constitute a denial of due process."

The ultimate issue in this case is not whether the San Miguel Corporation was denied due process because the NLRC did not adhere strictly to the procedure for arbitration. It is undeniable that

the company was given a chance to be heard. To refer now this case to an arbitrator would only unduly delay its final disposition.

The real issue is whether, considering the undisputed facts that Yanglay bought from his coworkers drugs worth P267 which were given to them gratis, which they were not supposed to sell and which, after seizure from Yanglay, were returned to the company, his dismissal from employment was justified.

That was the first time he was caught trafficking in company-supplied drugs. He confessed that necessity forced him to buy the drugs. He promised not to do it again. His impression was that, like the rice rations whose sale was tolerated by the company officials, he could engage in the buy-and-sell of the drugs. He argued that his coworkers, who gave or sold to him the drugs, were equally culpable in sabotaging the company's practice of rendering free medical assistance to its employees.

The misconduct of employees or workers in misrepresenting to the company that they needed medicines when in fact their purpose was to sell the same should not be tolerated. For such misrepresentations or deceptions, appropriate disciplinary action should be taken against them. On the other hand, in view of the high cost of living and the difficulties of supporting a family, it is not surprising that members of the wage-earning class would do anything possible to augment their small income. (Compare with People vs. Macbul, 74 Phil. 436).

Taking into account the circumstances of the case, particularly Yanglay's initial attitude of confessing that his error was dictated by necessity and his promise not to repeat the same mistake, we are of the opinion that his dismissal was a drastic punishment. He should be reinstated but without back wages because the company acted in good faith in dismissing him (Findlay Millar Timber Company vs. Philippine Land-Air-Sea Labor Union, L-18217 and L-18222, September 29, 1962, 6 SCRA 226). He has been sufficiently penalized by the loss of his wages from July 19, 1972 up to this time.

WHEREFORE, the Resolution of the Secretary of Labor and the decision of the defunct National Labor Relations Commission are

modified in the sense that Gregorio Yanglay, Jr. should be reinstated without back wages. Costs against the petitioners.

SO ORDERED.

Fernando, *J.*, *(Chairman)*, Barredo, Antonio and Concepcion, Jr., *JJ.*, concur.