

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**OLIVIA SEVILLA,
*Petitioner,***

-versus-

**G.R. No. 108878
September 20, 1994**

**NATIONAL LABOR RELATIONS
COMMISSION (NLRC), THIRD
DIVISION AND BALAGTAS CREDIT
COOPERATIVE AND COMMUNITY
DEVELOPMENT INC.,
*Respondents.***

X-----X

DECISION

QUIASON, J.:

This is a Petition for *Certiorari* under Rule 65 of the Revised Rules of Court to nullify the Resolution dated October 30, 1992 of the National Labor Relations Commission (NLRC) in NLRC Case No. L-000658, which affirmed the Order of the Labor Arbiter in NLRC Case No. RAB-III-12-0721-88 denying petitioner's motion for her reinstatement and the payment of her back wages.

Petitioner was employed as general manager/accountant of private respondent, a nonstock, nonprofit cooperative. When she was separated from work, she filed a complaint for illegal dismissal with the NLRC, Regional Arbitration Branch III at San Fernando, Pampanga (Case No. RAB-III-12-0721-88). A decision was rendered by Labor Arbiter Oswald Lorenzo ruling that the dismissal of petitioner was illegal and ordering her reinstatement with full back salaries and other benefits.

Private respondent appealed the decision of the Labor Arbiter to the NLRC (NLRC Case No. L-000658). During the pendency of the appeal, two events having bearing on the Labor Arbiter's decision, occurred. The first event was the issuance by the Labor Arbiter of an order for the immediate reinstatement of petitioner, which was implemented on September 18, 1989. The second event was the holding by the members of private respondent of their annual general meeting on January 31, 1990, and the reorganizational meeting of the Board of Directors of private respondent on February 5, 1990. At that reorganizational meeting, the Board of Directors resolved to declare the term of office of petitioner as general manager/accountant terminated and to select her successor.

On March 13, 1990, the NLRC (Third Division), oblivious of the second dismissal of petitioner, affirmed the decision of Labor Arbiter Lorenzo, except for the award of exemplary damages which was deleted. Its motion for reconsideration having been denied, private respondent filed a petition for certiorari before us to set aside the NLRC resolution (G.R. No. 96341). When asked to comment, petitioner informed us of her second dismissal. In our Resolution dated July 8, 1991, we dismissed the petition for private respondent.

On July 3, 1991, petitioner filed her first motion for the issuance of a writ of execution to implement the decision of Labor Arbiter Lorenzo. On February 16, 1992, petitioner filed a second motion for the issuance of the same writ. As no action was taken on the two motions, petitioner filed a third motion for issuance of the writ of execution.

On July 18, 1992, Labor Arbiter Ariel C. Santos issued an order, dismissing petitioner's third motion for reinstatement "for lack of merit."

From the Labor Arbiter, petitioner went directly to us by filing a petition for certiorari (G.R. No. 109516). On July 22, 1992, we resolved "to DENY the petition for certiorari for being premature. The petition should have been filed in the National Labor Relations Commission." We also denied petitioner's motion for reconsideration.

Meanwhile, on July 3, 1992, petitioner filed an appeal with the NLRC, seeking the reversal of the order dated June 18, 1992 of Labor Arbiter Santos in NLRC Case No. RAB-III-12-0721-88. The appeal was docketed as CA L-000658.

On October 30, 1992, the NLRC rendered a decision sustaining the order appealed from, holding:

"Complainant's second dismissal may be treated in a separate action. While it would appear that her dismissal after reinstatement was questionable and which may be the subject of contempt, this should have been raised by complainant when respondent's Motion for Reconsideration of the Labor Arbiter's Decision was pending before the Commission. Complainant was terminated for the second time on February 5, 1990. Yet, during the pendency of respondent's Motion for Reconsideration and which was resolved in November 1990, complainant failed to raise this fact and remained silent on the matter. Hence, we cannot presume that the second dismissal is a continuation of the first or is an attempt to circumvent the Resolution of the Commission or RA 6715" (Rollo, pp. 63-64).

Failing to secure a reconsideration of the decision of the NLRC, petitioner filed the instant petition.

II

We dismiss the petition.

In her petition for certiorari, petitioner asserts that the NLRC: (1) violated Section 12 of R.A. No. 6715; (2) violated the Resolution of the Supreme Court, which dismissed the petition for certiorari filed by the private respondent; (3) failed to resolve the issue of her claim for back salaries from petitioner's second dismissal; and (4) dismissed petitioner's appeal on mere technicality.

Petitioner's contentions are without merit.

It is undisputed that petitioner was actually reinstated to her former position in compliance with the Labor Arbiter's order. It is therefore clear that her second dismissal was separate and distinct from the first.

The NLRC cannot be said to have disregarded, much less violated, our Resolution in G.R. No. 96341 when it denied petitioner's motions for the issuance of a writ of execution. The said Resolution referred to the decision of the NLRC on the first dismissal.

Labor Arbiter Santos was correct in denying the third motion for reinstatement filed by petitioner because what she should have filed was a new complaint based on the second dismissal. The second dismissal gave rise to a new cause of action. Inasmuch as no new complaint was filed, the Labor Arbiter could not have ruled on the legality of the second dismissal.

WHEREFORE, the petition for certiorari is **DISMISSED** for failure to show grave abuse of discretion of the part of public respondent.

SO ORDERED.

Cruz, Davide, Jr., Bellosillo and Kapunan, JJ., concur.