



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

UNIVAC DEVELOPMENT, G.R. No. 182072  
INC.,

Petitioner,

Present:

VELASCO, JR., *J.*, Chairperson,  
PERALTA,  
ABAD,  
MENDOZA, and  
LEONEN, *JJ.*

- versus -

Promulgated:

WILLIAM M. SORIANO,  
Respondent.

JUN 19 2013

*M. S. Soriano*

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DECISION

PERALTA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the Court of Appeals (CA) Decision<sup>1</sup> dated October 24, 2007 and Resolution<sup>2</sup> dated March 14, 2008 in CA-G.R. SP No. 96495. The assailed decision granted the petition filed by respondent William M. Soriano against petitioner Univac Development, Inc. and, consequently, nullified and set aside the April 28, 2006<sup>3</sup> and July 31, 2006<sup>4</sup> Resolutions of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 046028-05 (NLRC NCR Case No. 00-02-01664-05); while the assailed resolution denied petitioner's motion for reconsideration.

<sup>1</sup> Penned by Associate Justice Romeo F. Barza, with Associate Justices Mariano C. Del Castillo (now a member of this Court) and Arcangelita M. Romilla-Lontok, concurring; *rollo*, pp. 26-45.

<sup>2</sup> *Id.* at 47.

<sup>3</sup> Penned by Commissioner Tito F. Genilo, with Presiding Commissioner Lourdes C. Javier and Commissioner Gregorio O. Bilog III, concurring; *CA rollo*, pp. 19-23.

<sup>4</sup> *Id.* at 24-25.

The case stemmed from the Complaint<sup>5</sup> for Illegal Dismissal filed by respondent against petitioner, the company's Chairperson Sadamu Watanabe (Watanabe), and the Head of the Engineering Department Johnny Castro (Castro). Admittedly, respondent was hired on August 23, 2004 by petitioner on probationary basis as legal assistant of the company with a monthly salary of ₱15,000.00.<sup>6</sup> Respondent claimed that on February 15, 2005, or eight (8) days prior to the completion of his six months probationary period, Castro allegedly informed him that he was being terminated from employment due to the company's cost-cutting measures.<sup>7</sup> He allegedly asked for a thirty-day notice but his termination was ordered to be effective immediately.<sup>8</sup> Thus, he was left with no choice but to leave the company.<sup>9</sup>

Petitioner, on the other hand, denied the allegations of respondent and claimed instead that prior to his employment, respondent was informed of the standards required for regularization. Petitioner also supposedly informed him of his duties and obligations which included safekeeping of case folders, proper coordination with the company's lawyers, and monitoring of the status of the cases filed by or against the company.<sup>10</sup> Petitioner recalled that on January 5, 2005, a company meeting was held where respondent allegedly expressed his intention to leave the company because he wanted to review for the bar examinations. It was also in that meeting where he was informed of his unsatisfactory performance in the company. Thus, when respondent did not report for work on February 16, 2005, petitioner assumed that he pushed through with his plan to leave the company.<sup>11</sup> In other words, petitioner claimed that respondent was not illegally dismissed from employment, rather, he in fact abandoned his job by his failure to report for work.

On July 29, 2005, Labor Arbiter (LA) Geobel A. Bartolabac rendered a Decision<sup>12</sup> dismissing respondent's complaint for lack of merit. The LA held that respondent was informed of his unsatisfactory performance. As a law graduate and a master's degree holder, respondent was presumed to know that his probationary employment would soon end. Considering, however, that respondent was dismissed from employment eight days prior to the end of his probationary period, he was entitled to eight days backwages. In the end, though, the LA held that respondent's complaint for constructive dismissal did not match his narration of actual dismissal from

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<sup>5</sup> CA *rollo*, p. 26.

<sup>6</sup> *Id.*

<sup>7</sup> *Rollo*, p. 27.

<sup>8</sup> *Id.*

<sup>9</sup> CA *rollo*, p. 35.

<sup>10</sup> *Rollo*, p. 27.

<sup>11</sup> *Id.* at 27-28.

<sup>12</sup> CA *rollo*, pp. 94-97.

employment, thus, a clear evidence that there was indeed no illegal dismissal.<sup>13</sup>

On appeal, the NLRC affirmed the LA decision in its entirety in its Resolution<sup>14</sup> dated April 28, 2006. Citing respondent's educational background and knowledge of the laws, he was presumed to know prior to employment the reasonable standards required for regularization. The tribunal also gave credence to petitioner's claim that a company meeting was held and that respondent was apprised of his unsatisfactory performance. Hence, petitioner was found to have validly exercised management prerogative when it terminated respondent's probationary employment.<sup>15</sup> Claiming that said decision never reached him because his manifestation of change of address was belatedly integrated with the record of the case,<sup>16</sup> respondent thus filed his motion for reconsideration but was likewise denied in a Resolution<sup>17</sup> dated July 31, 2006. The resolution became final and executory on August 24, 2006 and was entered in the Book of Entries of Judgment.<sup>18</sup>

On October 13, 2006, respondent elevated the matter to the CA *via* special civil action for *certiorari* under Rule 65 of the Rules of Court. On October 24, 2007, respondent was able to obtain a favorable decision when the CA granted his petition, the dispositive portion of which reads:

**WHEREFORE**, finding petitioner to have been illegally dismissed from work, the petition is hereby **GRANTED** and the assailed resolutions of the NLRC dated April 28, 2006 and July 31, 2006 are hereby **NULLIFIED** and **SET ASIDE**. Private respondent UNIVAC Development, Inc. is hereby **ORDERED** to pay petitioner his full backwages computed from February 15, 2005 until finality of this decision. Respondent UNIVAC is also **ORDERED** to pay petitioner separation pay in lieu of reinstatement in the amount of ₱15,000.00 multiplied by his years in service counted from August 23, 2004 until finality of this decision, as well as attorney's fees of ₱10,000.00

**SO ORDERED.**<sup>19</sup>

The CA gave more credence to respondent's claim that he was illegally dismissed rather than petitioner's theory of abandonment. Contrary to the LA and NLRC conclusions, the appellate court held that petitioner failed to apprise respondent of the standards required for regularization, coupled with the fact that it failed to make an evaluation of his performance,

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<sup>13</sup> *Id.* at 95-96.

<sup>14</sup> *Id.* at 19-23.

<sup>15</sup> *Id.* at 21-23.

<sup>16</sup> *Rollo*, pp. 29-30.

<sup>17</sup> *CA rollo*, pp. 24-25.

<sup>18</sup> *Id.* at 141.

<sup>19</sup> *Rollo*, p. 44. (Emphasis in the original)

making his dismissal illegal. Petitioner's employment of another person to replace respondent on the day of the alleged abandonment was taken by the appellate court against petitioner as it negates the claim of abandonment. In sum, the CA considered respondent's dismissal from employment illegal because he was not informed of the standards required for regularization; petitioner failed to show proof that respondent's performance was poor and unsatisfactory constituting a just cause for termination; and that the evidence presented negates petitioner's claim that respondent abandoned his job. As a consequence of the illegal dismissal, the CA awarded respondent backwages, separation pay in lieu of reinstatement and attorney's fees.<sup>20</sup>

Aggrieved, petitioner comes before the Court raising both procedural and substantive errors, to wit:

UNIVAC RESPECTFULLY SUBMITS THAT THE HONORABLE COURT OF APPEALS (CA), IN RENDERING ITS ASSAILED DECISION PROMULGATED ON 24 OCTOBER 2007 AND RESOLUTION OF 14 MARCH 2008:

(A) DECIDED IN A WAY NOT IN ACCORD WITH LAW OR WITH APPLICABLE JURISPRUDENCE RENDERED BY THIS HONORABLE COURT, AND/OR HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO CALL FOR AN EXERCISE OF THE POWER OF SUPERVISION VESTED IN THIS HONORABLE COURT. THIS IS PARTICULARLY TRUE WHEN THE CA GRANTED THE PETITION OF SORIANO EVEN IF THE RULINGS OF THE NLRC ALREADY ATTAINED FINALITY AND WAS IN FACT ENTERED IN THE LATTER'S BOOK OF ENTRIES OF JUDGMENT, and WHEN THE CA WENT OVERBOARD BEYOND THE NARROW SCOPE AND INFLEXIBLE CHARACTER OF CERTIORARI UNDER RULE 65 (*Tichangco v. Enriquez*, G.R. No. 150629, 30 June 2004) BY NOT LIMITING ITSELF IN DETERMINING THE EXISTENCE OF GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION ON THE PART OF THE NLRC.

(B) COMMITTED SERIOUS ERRORS OF LAW IN THE FINDING OF FACTS OR CONCLUSIONS OF LAW WHICH, IF NOT CORRECTED, WOULD CAUSE GRAVE AND IRREPARABLE DAMAGE OR INJURY TO UNIVAC AS SHOWN IN THE FOLLOWING:

- 1) THE CA IN EFFECT RULED OF THE PRESENCE OF ACTUAL DISMISSAL (SIC) WHEN WHAT WAS FILED IS CONSTRUCTIVE ILLEGAL DISMISSAL.

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*Id.* at 33-44.

- 2) THE CA REVERSED THE FINDINGS OF THE NLRC IN SPITE OF SUBSTANTIAL EVIDENCE TO SUPPORT ITS (NLRC) RULINGS (*PT & T v. NLRC*, 183 SCRA 451 [1990]; *Mateo v. Moreno*, 28 SCRA 796 [1969]).
- 3) THE CA FAILED TO CONSIDER THE FACT THAT UNIVAC IS NOW UNDER REHABILITATION WHERE ANY AND ALL CLAIMS AGAINST IT SHOULD BE SUSPENDED PURSUANT TO THE RULING IN *PAL vs. ZAMORA*, G.R. NO. 166996, 06 FEBRUARY 2007.<sup>21</sup>

The petition is without merit.

Under Article 223 of the Labor Code, the decision of the NLRC becomes final and executory after the lapse of ten calendar days from receipt thereof by the parties. However, the adverse party is not precluded from assailing the decision *via* petition for *certiorari* under Rule 65 of the Rules of Court before the CA and then to this Court *via* a petition for review under Rule 45.<sup>22</sup> Thus, contrary to the contention of petitioner, there is no violation of the doctrine of immutability of judgment when respondent elevated the matter to the CA which the latter consequently granted.

The power of the CA to review NLRC decisions has already been thoroughly explained and clarified by the Court in several cases,<sup>23</sup> to wit:

The power of the Court of Appeals to review NLRC decisions *via* Rule 65 or Petition for *Certiorari* has been settled as early as in our decision in *St. Martin Funeral Home v. National Labor Relations Commission*. This Court held that the proper vehicle for such review was a Special Civil Action for *Certiorari* under Rule 65 of the Rules of Court, and that this action should be filed in the Court of Appeals in strict observance of the doctrine of the hierarchy of courts. Moreover, it is already settled that under Section 9 of *Batas Pambansa Blg. 129*, as amended by Republic Act No. 7902[10] (An Act Expanding the Jurisdiction of the Court of Appeals, amending for the purpose of Section Nine of *Batas Pambansa Blg. 129* as amended, known as the *Judiciary Reorganization Act of 1980*), the Court of Appeals — pursuant to the exercise of its original jurisdiction over Petitions for *Certiorari* — is specifically given the power to pass upon the evidence, if and when necessary, to resolve factual issues.<sup>24</sup>

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<sup>21</sup> *Id.* at 11-12.

<sup>22</sup> *Panuncillo v. CAP Philippines, Inc.*, 544 Phil. 256, 278 (2007).

<sup>23</sup> *Lirio v. Genovia*, G.R. No. 169757, November 23, 2011, 661 SCRA 126; *Triumph International (Phils.), Inc. v. Apostol*, G.R. No. 164423, June 16, 2009, 589 SCRA 185; *Marival Trading, Inc. v. National Labor Relations Commission*, G.R. No. 169600, June 26, 2007, 525 SCRA 708.

<sup>24</sup> *PHILASIA Shipping Agency Corporation v. Tomacruz*, G.R. No. 181180, August 15, 2012, 678 SCRA 503, 513, citing *PICOP Resources, Incorporated (PRI) v. Tañeca*, G.R. No. 160828, August 9, 2010, 627 SCRA 56, 65-66.

We agree with petitioner that in a special civil action for *certiorari*, the issues are confined to errors of jurisdiction or grave abuse of discretion. In exercising the expanded judicial review over labor cases, the Court of Appeals can grant the petition if it finds that the NLRC committed grave abuse of discretion by capriciously, whimsically, or arbitrarily disregarding evidence which is material or decisive of the controversy which necessarily includes looking into the evidence presented by the parties.<sup>25</sup> In other words, the CA is empowered to evaluate the materiality and significance of the evidence which is alleged to have been capriciously, whimsically, or arbitrarily disregarded by the NLRC in relation to all other evidence on record.<sup>26</sup> The CA can grant a petition when the factual findings complained of are not supported by the evidence on record; when it is necessary to prevent a substantial wrong or to do substantial justice; when the findings of the NLRC contradict those of the LA; and when necessary to arrive at a just decision of the case.<sup>27</sup> Thus, contrary to the contention of petitioner, the CA can review the finding of facts of the NLRC and the evidence of the parties to determine whether the NLRC gravely abused its discretion in finding that there was no illegal dismissal against respondent.<sup>28</sup>

Now on the main issue of whether respondent was illegally dismissed from employment by petitioner.

Article 281 of the Labor Code and its Implementing Rules describe probationary employment and set the guidelines to be followed by the employer and employee, to wit:<sup>29</sup>

Art. 281. *Probationary Employment.* — Probationary employment shall not exceed six (6) months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. An employee who is allowed to work after a probationary period shall be considered a regular employee.

LABOR CODE, Implementing Rules of Book VI, Rule I, Section 6

Sec. 6. *Probationary employment.* — There is probationary employment where the employee, upon his engagement, is made to undergo a trial period during which the employer determines his fitness to

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<sup>25</sup> *Marival Trading, Inc. v. National Labor Relations Commission*, *supra* note 23, at 722.

<sup>26</sup> *Id.*; *Lirio v. Genovia*, *supra* note 23, at 137.

<sup>27</sup> *Marival Trading, Inc. v. National Labor Relations Commission*, *supra* note 23, at 723.

<sup>28</sup> *Lirio v. Genovia*, *supra* note 23, at 137.

<sup>29</sup> *Hacienda Primera Development Corporation v. Villegas*, G.R. No. 186243, April 11, 2011, 647 SCRA 536, 541-542.

qualify for regular employment, based on reasonable standards made known to him at the time of engagement.

Probationary employment shall be governed by the following rules:

x x x x

(c) The services of an employee who has been engaged on probationary basis may be terminated only for a just or authorized cause, when he fails to qualify as a regular employee in accordance with the reasonable standards prescribed by the employer.

(d) In all cases of probationary employment, the employer shall make known to the employee the standards under which he will qualify as a regular employee at the time of his engagement. Where no standards are made known to the employee at that time, he shall be deemed a regular employee.

It is undisputed that respondent was hired as a probationary employee. As such, he did not enjoy a permanent status. Nevertheless, he is accorded the constitutional protection of security of tenure which means that he can only be dismissed from employment for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known to him by the employer at the time of his engagement.<sup>30</sup>

It is primordial that at the start of the probationary period, the standards for regularization be made known to the probationary employee.<sup>31</sup> In this case, as held by the CA, petitioner failed to present adequate evidence to substantiate its claim that respondent was apprised of said standards. It is evident from the LA and NLRC decisions that they merely relied on surmises and presumptions in concluding that respondent should have known the standards considering his educational background as a law graduate. Equally important is the requirement that in order to invoke “failure to meet the probationary standards” as a justification for dismissal, the employer must show how these standards have been applied to the subject employee. In this case, aside from its bare allegation, it was not shown that a performance evaluation was conducted to prove that his performance was indeed unsatisfactory.

Indeed, the power of the employer to terminate a probationary employee is subject to three limitations, namely: (1) it must be exercised in accordance with the specific requirements of the contract; (2) the dissatisfaction on the part of the employer must be real and in good faith, not feigned so as to circumvent the contract or the law; and (3) there must be no

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<sup>30</sup> *Tamson's Enterprises, Inc. v. Court of Appeals*, G.R. No. 192881, November 16, 2011, 660 SCRA 374, 384-385.

<sup>31</sup> *Id.* at 385.

unlawful discrimination in the dismissal.<sup>32</sup> In this case, not only did petitioner fail to show that respondent was apprised of the standards for regularization but it was likewise not shown how these standards had been applied in his case.

Pursuant to well-settled doctrine, petitioner's failure to specify the reasonable standards by which respondent's alleged poor performance was evaluated as well as to prove that such standards were made known to him at the start of his employment, makes respondent a regular employee. In other words, because of this omission on the part of petitioner, respondent is deemed to have been hired from day one as a regular employee.<sup>33</sup>

To justify the dismissal of an employee, the employer must, as a rule, prove that the dismissal was for a just cause and that the employee was afforded due process prior to dismissal.<sup>34</sup> We find no reason to depart from the CA conclusion that respondent's termination from employment is without just and valid ground. Neither was due process observed, making his termination illegal. He is, therefore, entitled to the twin relief of reinstatement and backwages granted under the Labor Code.<sup>35</sup> However, as aptly held by the CA, considering the strained relations between petitioner and respondent, separation pay should be awarded in lieu of reinstatement. This Court has consistently ruled that if reinstatement is no longer feasible, backwages shall be computed from the time of illegal dismissal until the date the decision becomes final.<sup>36</sup> Separation pay, on the other hand, is equivalent to at least one month pay, or one month pay for every year of service, whichever is higher (with a fraction of at least six months being considered as one whole year),<sup>37</sup> computed from the time of employment or engagement up to the finality of the decision.<sup>38</sup>

Having been forced to litigate in order to seek redress of his grievances, respondent is entitled to the payment of attorney's fees equivalent to 10% of his monetary award.<sup>39</sup> Pursuant to prevailing jurisprudence, legal interest shall be imposed on the monetary awards herein granted at the rate of 6% *per annum* from date of termination until full payment.<sup>40</sup>

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<sup>32</sup> *Id.* at 387, citing *Dusit Hotel Nikko v. Gatbonton*, G.R. No. 161654, May 5, 2006, 489 SCRA 671.

<sup>33</sup> *Tamson's Enterprises, Inc. v. Court of Appeals*, *supra* note 30, at 388; *Hacienda Primera Development Corporation v. Villegas*, *supra* note 29, at 543.

<sup>34</sup> *Aliling v. Feliciano*, G.R. No. 185829, April 25, 2012, 671 SCRA 186, 205.

<sup>35</sup> *Tamson's Enterprises, Inc. v. Court of Appeals*, *supra* note 30, at 389.

<sup>36</sup> *Aliling v. Feliciano*, *supra* note 34, at 213; *Uy v. Centro Ceramica Corporation*, G.R. No. 174631, October 19, 2011, 659 SCRA 604, 618.

<sup>37</sup> *Aliten v. U-Need Lumber & Hardware*, G.R. No. 168931, September 12, 2006, 501 SCRA 577, 590.

<sup>38</sup> *Aliling v. Feliciano*, *supra* note 34, at 215; *Uy v. Centro Ceramica Corporation*, *supra* note 36, at 618.

<sup>39</sup> *Aliling v. Feliciano*, *supra* note 34, at 220.

<sup>40</sup> *Id.* at 221.

One final point. Petitioner claims that the instant case is covered by the stay order issued by the rehabilitation court in a rehabilitation case it earlier filed. The Court, however, takes judicial notice that in *Asiatrust Development Bank v. First Aikka Development, Inc.*,<sup>41</sup> docketed as G.R. No. 179558, this Court rendered a decision on June 1, 2011 dismissing the petition for rehabilitation filed by petitioner before the RTC of Baguio City, Branch 59, for lack of jurisdiction. Petitioner cannot, therefore, rely on the orders issued by said court relative to its alleged rehabilitation.

**WHEREFORE**, premises considered, the petition is **DENIED**. The Court of Appeals Decision dated October 24, 2007 and Resolution dated March 14, 2008 in CA-G.R. SP No. 96495, are **AFFIRMED** with **MODIFICATION**. Petitioner Univac Development, Inc. is liable to pay respondent William M. Soriano the following: (1) backwages, inclusive of allowances and other benefits, or their monetary equivalent, computed from the date of his dismissal up to the finality of this decision; (2) separation pay in lieu of reinstatement equivalent to at least one month pay, or one month pay for every year of service, whichever is higher (with a fraction of at least six months being considered as one whole year), computed from the time of his employment or engagement up to the finality of the decision; (3) attorney's fees equivalent to 10% of the monetary awards; and (4) interest at 6% *per annum* from date of termination until full payment.

**SO ORDERED.**



**DIOSDADO M. PERALTA**  
Associate Justice

**WE CONCUR:**



**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson



**ROBERTO A. ABAD**  
Associate Justice



**JOSE CASTRAL MENDOZA**  
Associate Justice

<sup>41</sup> 650 SCRA 172.

  
**MARVIC MARIO VICTOR F. LEONEN**  
Associate Justice

**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson, Third Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice