



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

**IMMACULATE CONCEPTION
ACADEMY/DR. JOSE PAULO E.
CAMPOS,**

Petitioners,

- versus -

EVELYN E. CAMILON,
Respondent.

G.R. No. 188035

Present:

SERENO, C.J.,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, JJ.

Promulgated:

JUL 02 2014

X ----- X

DECISION

VILLARAMA, JR., J.:

Before us is a petition for review on certiorari seeking to reverse and set aside the March 30, 2009 Decision¹ and May 25, 2009 Resolution² of the Court of Appeals (CA) in CA-G.R. SP No. 105166. The CA had affirmed with modification the February 29, 2008 Decision³ of the National Labor Relations Commission (NLRC) finding respondent Evelyn Camilon to have been validly dismissed but holding petitioners liable to pay her separation pay as a measure of social justice.

The records bear out the following factual antecedents:

Petitioner Immaculate Conception Academy (ICA) is an educational corporation duly organized and existing under the laws of the Philippines with principal address at Malihan Street, Poblacion, Dasmariñas, Cavite (Zone IV, Aguinaldo Highway, Dasmariñas, Cavite). Co-petitioner Dr. Jose Paulo Campos is the president of ICA.

¹ Rollo, pp. 25-36. Penned by Associate Justice Juan Q. Enriquez, Jr. with Associate Justices Celia C. Librea-Leagogo and Sesinando E. Villon concurring.

² Id. at 39-40.

³ Id. at 160-172.

Respondent Evelyn Camilon was an employee of ICA for 12 years. She was ICA's Chief Accountant and Administrator from June 2000 until her dismissal. As Chief Accountant, respondent was responsible, among others, for pre-auditing the school cashier's report, checking the entries therein and keeping custody of the petty cash fund. She has also direct supervision over the School Cashier, Janice Loba (Loba).

In July 2004, ICA's Treasurer, Shirley Enobal, received a complaint from the father of one student who claimed that his son was denied issuance of an examination permit for nonpayment of tuition fees despite the fact that the said fees had already been paid.

In August 2004, Cristina Javier, Internal Auditor of ICA, conducted an audit upon the instruction of petitioner Campos. She made the following findings:

a) There were several payments of tuition and school fees made by a number of ICA students which were neither accounted for, turned over and/or posted by the ICA Cashier, Ms. Janice C. Loba, to the students' subsidiary ledgers, nor were the collected amounts deposited in ICA's account with the Rural Bank of Dasmariñas, Inc.;

b) The unaccounted collections received from more or less 186 ICA students amount to ONE MILLION ONE HUNDRED SIXTY SEVEN THOUSAND ONE HUNDRED EIGHTY-ONE PESOS and 45/100 (P1,167,181.45).

X X X X

c) There were missing or unsurrendered booklets of official receipts issued to and received by Ms. Janice C. Loba as cashier which were not accounted for, the amount of collection made therein is still undetermined.

X X X X

d) Ms. Janice C. Loba manipulated entries in the computerized subsidiary ledger and destroyed records so that the unaccounted amounts collected by her and the missing official receipts issued to her as cashier could not be traced or detected.⁴

In a letter⁵ dated September 1, 2004, petitioner Campos placed respondent under suspension pending investigation of the case in light of her duties and responsibilities as Chief Accountant of ICA.

In a letter-reply⁶ dated September 13, 2004, respondent denied any involvement in the irregularities committed and claimed that she had no intention of profiting at the expense of the school or of betraying the trust reposed on her by the corporation.

⁴ Affidavit of Cristina F. Javier, Annex D, records, p. 16.

⁵ Annex E, id. at 17.

⁶ Annex F, id. at 18.

On October 27, 2004, petitioners terminated the services of respondent after finding that respondent was negligent and remiss in her duties as the superior officer of Loba. The termination letter reads:

After investigation made regarding the misappropriation and manipulation of Immaculate Conception Academy collections of students' fees by Cashier Janice C. Loba, the management entertains the belief that the misappropriation could have not been committed without your cooperation or assistance apart from your being lax or negligent and [remiss] in the performance of duties as superior officer of Miss Loba.

Consequently, the management has decided to terminate your service from the Immaculate Conception Academy as Chief Accountant effective on the date of your preventive suspension which is September 01, 2004.

Please be advised accordingly.⁷

On November 26, 2004, respondent filed a complaint⁸ for illegal dismissal and other money claims against petitioners. The case was docketed as NLRC Case No. RAB IV-11-20120-04-C. Respondent claimed that petitioners failed to cite specific negligent acts or to state the manner and means she employed in assisting or cooperating with the cashier in the misappropriation of school funds. Respondent claimed that she was suspended from work without pay despite the absence of any evidence directly or indirectly implicating her in the financial irregularity from September 1, 2004 until her termination on October 27, 2004. Also, she was not given her salary from August 16-30, 2004 and the proportionate sick leave pay and 13th month pay.

On June 5, 2007, the Labor Arbiter rendered a Decision,⁹ declaring ICA guilty of illegal dismissal. The *fallo* of the Labor Arbiter's decision reads:

WHEREFORE, premises considered, judgment is hereby rendered declaring respondent guilty of illegal dismissal and ordering respondent as follows:

1. Pay complainant her unpaid salary from August 15-30, 2004 in the amount of P12,311.96, proportionate 13th month pay of P16,415.95 and proportionate SIL pay of P3,156.91.
2. Pay complainant her full backwages from the time of her illegal dismissal until the finality of this decision, which is as of this date, is computed in the total amount of P896,846.57[.]
3. Pay complainant separation pay in lieu of reinstatement in the amount of P295,487.04.
4. Pay complainant 10% of the total monetary award as attorney's fees.
5. All other claims are dismissed for lack of merit.

⁷ Exhibit A, id. at 38.

⁸ Id. at 2-9.

⁹ *Rollo*, pp. 42-50.

SO ORDERED.¹⁰

The Labor Arbiter held that petitioners failed to present substantial evidence to prove that respondent has been negligent in her duties as Chief Accountant; hence, her dismissal was illegal. The Labor Arbiter also held that due process was not observed by petitioners in dismissing respondent. The law requires that the employer must furnish the worker sought to be dismissed with two written notices before termination of employment can be legally effected, *i.e.*, (1) notice which apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the subsequent notice after due hearing, which informs the employee of the employer's decision to dismiss him. In this case, the first notice given to the complainant is a notice of preventive suspension. A notice of preventive suspension cannot be considered adequate notice where the objective of the employee's preventive suspension, as stated in the notice, was merely to ascertain the extent of the loss and to pinpoint responsibility of the parties involved and not to apprise the employee of the causes of his desired dismissal.

Petitioners appealed the decision of the Labor Arbiter to the NLRC.

On February 29, 2008, the NLRC rendered a decision finding respondent's dismissal and preventive suspension legal and setting aside the awards for back wages, separation pay and attorney's fees. However, the awards for unpaid salary for the period from August 15-30, 2004, 13th month pay and service incentive leave pay which respondent already earned even prior to her dismissal was upheld. The NLRC likewise ordered the payment to respondent of her unpaid salaries for the number of working days she remained under preventive suspension beyond 30 days.

The dispositive portion of the NLRC decision states,

WHEREFORE, premises considered, judgment is hereby rendered upholding the legality of complainant's dismissal and preventive suspension, and setting aside the awards of backwages, separation pay and attorney's fees stated in the Decision of the Labor Arbiter dated 5 June 2007. Respondent school, however, is ordered as follows:

1. Pay complainant her unpaid salary from August 15-30, 2004 in the amount of Php 12,311.96, proportionate 13th month pay of Php 16,415.95 and proportionate SIL pay of Php 3,156.91.
2. Pay complainant her unpaid salary corresponding to the number of working days in excess of the thirty (30) working days of preventive suspension.

SO ORDERED.¹¹

¹⁰ Id. at 49.

¹¹ Id. at 171.

The NLRC found that respondent was negligent in the performance of her duties and responsibilities as petitioner's Chief Accountant and as the immediate supervisor of Loba. Respondent's negligence was underscored by the fact that the school records were manipulated and destroyed, official receipts of the school were lost, and the amount of ₱1,167,181.45 worth of tuition fees paid for by 186 students in an eleven-month period were lost and misappropriated. The NLRC held that these anomalies would not have happened if only respondent did her job to supervise all personnel in the accounting department, to check and verify students' payments, to audit the cashier's report, and to act as custodian of official receipts. The NLRC further stated that given the substantial amount of the loss not only of money but important financial documents as well, there was no doubt that respondent's negligence was gross in character. The NLRC also found the respondent's negligence was not only gross but habitual as well.

Thus, the NLRC ruled that petitioners had just cause to terminate the services of respondent. Although respondent has been in the service for 12 years without derogatory records, such cannot erase the fact that respondent failed to monitor and oversee the finances of her employer.

As to the procedural requirement of due process, the NLRC found that respondent was served a letter dated September 1, 2004 where she was apprised of the investigation of her case regarding her duties and responsibilities as Chief Accountant.

Respondent appealed to the CA.

On March 30, 2009, the CA rendered a Decision¹² affirming the ruling of the NLRC but with the modification that petitioners are held liable to pay separation pay to respondent. The CA justified its award of separation pay to respondent in this wise:

As regards separation pay, petitioner claims that she is entitled thereto considering her 12 years of service for the private respondents as an employee in concurrent various capacities, to wit: Chief Accountant of ICA, acting Administrator of University Physician's Services Inc. (a Campos family-owned subsidiary corporation), Officer-in-Charge in canvassing and purchasing of construction materials, school and office property and equipment, Assistant Secretary of ICA, and, the Head of Human Resources Department of ICA.

We rule that petitioner is entitled to separation pay. An employee who is dismissed for just cause is generally not entitled to separation pay. In some cases, however, the Supreme Court awards separation pay to a legally dismissed employee on grounds of equity and social justice x x x.

In the case of *Philippine Long Distance Telephone Co. vs. NLRC*, 164 SCRA 671, the Supreme Court emphatically declared:

¹² Supra note 1.

“We hold that henceforth separation pay shall be allowed as a measure of social justice only in those instances **where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character.** Where the reason for the valid dismissal is, for example, habitual intoxication or an offense involving moral turpitude, like theft or illicit sexual relations with a fellow worker, the employer may not be required to give the dismissed employee separation pay, or financial assistance, or whatever other name it is called, on the ground of social justice (*Emphasis supplied*).”

X X X X

This Court holds that petitioner’s cause of dismissal does not fall under any of the two circumstances and as such, separation pay should have been awarded to her. Clearly, petitioner’s dismissal was not premised on her serious misconduct nor does it involve her moral character.

Accordingly, petitioner’s employment of 12 years supports the award of separation pay. Absent any evidence proving her serious misconduct, separation pay should be paid to the petitioner equivalent to at least one (1) month pay for every year of service.¹³

The dispositive portion of the decision states:

WHEREFORE, premises considered, the Decision dated February 29, 2008, and Resolution dated June 20, 2008 of the Second Division of the National Labor Relations Commission, Quezon City are hereby **AFFIRMED** with the **MODIFICATION** that ICA is hereby held liable for the payment of the separation pay of petitioner Evelyn E. Camilon.

SO ORDERED.¹⁴

Not agreeing with the ruling, petitioners filed the present petition claiming that the CA erred in awarding separation pay to respondent who was dismissed because of her gross and habitual negligence, a more serious offense than mere inefficiency at work. Petitioners assert that respondent is not entitled to separation pay since her negligence resulted in a substantial amount of loss and destruction of official receipts and schools records. Petitioners also claim that separation pay cannot be justified on the basis of respondent’s length of service considering the gravity of the offense committed.

In granting separation pay to respondent, the CA relied on the case of *Philippine Long Distance Telephone Co. v. NLRC*¹⁵ (PLDT ruling) where the Court held that separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral

¹³ Id. at 34-35.

¹⁴ Id. at 35.

¹⁵ 247 Phil. 641, 649 (1988).

character. The CA then ruled that since respondent was dismissed for gross and habitual negligence, a cause other than serious misconduct or those reflecting on her moral character, respondent is entitled to the payment of separation pay on the basis of equity and her length of service. According to petitioners, the appellate court's reliance on the case of *PLDT v. NLRC* in granting separation pay to respondent was misplaced. Petitioners maintain that social justice cannot shield wrongdoers from the legal consequences of their acts and to award separation pay to respondent would have the effect of rewarding rather than punishing respondent for her gross and habitual negligence. Moreover, petitioners aver that even if respondent has been an employee for 12 years, this does not justify the award of separation pay. To do so would be contradictory to the earlier finding of the appellate court that her years in service do not erase the fact that she failed to observe the diligence necessary in the performance of her primary duties.

Petitioners further point out that the *PLDT* ruling had already been modified if not superseded by this Court's ruling in *Toyota Motor Philippines Corporation Workers Association (TMPCWA) v. NLRC*¹⁶ where it was ruled that the grant of separation pay should be barred in all cases of just causes under Article 282 of the Labor Code, not only in cases of serious misconduct and those reflecting on the moral character of the employee.

Respondent, meanwhile, maintains that the award of separation pay was proper. According to respondent, separation pay may be given though an employee is validly dismissed when the Court finds justification in applying the principle of social justice. Respondent stresses that she had worked for petitioners with zeal, competence and dedication with no known previous record and therefore, she is entitled to be given full separation pay.¹⁷

We find merit in the petition.

Prefatorily, we note that respondent Evelyn Camilon did not appeal or file a petition for certiorari to assail the decision of the CA which affirmed the ruling of the NLRC finding her grossly and habitually negligent in her duties for failing to regularly pre-audit the school cashier's report, check the entries therein and keep the custody of the petty cash fund which negligence resulted in the school cashier's (Loba) misappropriation of school funds and students' tuition fees. It is axiomatic that a party who does not appeal or file a petition for certiorari is not entitled to any affirmative relief.¹⁸ An appellee who is not an appellant may assign errors in his brief where his purpose is to maintain the judgment but he cannot seek modification or reversal of the judgment or claim affirmative relief unless he has also appealed.¹⁹ Thus, for

¹⁶ 562 Phil. 759 (2007).

¹⁷ Comment on the Motion for Reconsideration, *rollo*, pp. 260-266.

¹⁸ *Unilever Philippines, Inc. v. Rivera*, G.R. No. 201701, June 3, 2013, 697 SCRA 136, 150, citing *Corinthian Gardens Association Inc. v. Sps. Tanjangco, et al.*, 578 Phil. 712, 723 (2008).

¹⁹ *Id.*

failure of respondent to assail the validity of her dismissal, such ruling is no longer in issue.

Now to the main issue of whether the CA correctly granted an award of separation pay to respondent as a measure of social justice.

The issue of whether a validly dismissed employee is entitled to separation pay has been settled in the 2007 case of *Toyota Motor Philippines Corporation Workers Association (TMPCWA) v. NLRC*,²⁰ where it was further clarified that “in addition to serious misconduct, in dismissals based on other grounds under Art. 282 like willful disobedience, **gross and habitual neglect of duty**, fraud or willful breach of trust, and commission of a crime against the employer or his family, **separation pay should not be conceded to the dismissed employee.**”

This ruling was reiterated in the case of *Central Philippines Bandag Retreaders, Inc. v. Diasnes*,²¹ where the Court set aside the award of separation pay to Diasnes in view of the latter’s gross and habitual negligence. To quote:

To reiterate our ruling in *Toyota*, labor adjudicatory officials and the CA must demur the award of separation pay based on social justice when an employee’s dismissal is based on serious misconduct or willful disobedience; gross and habitual neglect of duty; fraud or willful breach of trust; or commission of a crime against the person of the employer or his immediate family – grounds under Art. 282 of the Labor Code that sanction dismissals of employees. They must be most judicious and circumspect in awarding separation pay or financial assistance as the constitutional policy to provide full protection to labor is not meant to be an instrument to oppress the employers. The commitment of the Court to the cause of labor should not embarrass us from sustaining the employers when they are right, as here. In fine, we should be more cautious in awarding financial assistance to the undeserving and those who are unworthy of the liberality of the law.

Again in the recent case of *Moya v. First Solid Rubber Industries, Inc.*,²² the Court disallowed the payment of separation pay to an employee dismissed from work based on one of the grounds under Article 282 of the Labor Code or willful breach by the employee of the trust reposed in him by his employer. Therein, the Court held that Moya’s act of concealing the truth from the company is outside of the protective mantle of the principle of social justice.

Pursuant to the aforementioned rulings, respondent is clearly not entitled to separation pay. Respondent was holding a position which involves a high degree of responsibility requiring trust and confidence as it involves the financial interests of the school. However, respondent proved

²⁰ Supra note 16, at 812.

²¹ 580 Phil. 177, 189 (2008).

²² G.R. No. 184011, September 18, 2013, pp. 7, 10.

to be unfit for the position when she failed to exercise the necessary diligence in the performance of her duties and responsibilities as Chief Accountant, thus justifying her dismissal from service. Respondent was guilty of gross and habitual negligence when she failed to regularly pre-audit the report of the school cashier, check the entries therein and keep custody of the petty cash fund. Had respondent been assiduously doing her job, the unaccounted school funds would have been discovered right away. Respondent's dereliction in her duties spanned a period of 11 months thus enabling the school cashier to misappropriate tuition fee payments, manipulate the school records and destroy official receipts, in the total amount of ₱1,167,181.45 to the prejudice of petitioners. Hence, she should not be granted separation pay. To rule otherwise would be to reward respondent for her negligent acts instead of punishing her for her offense. As we held in *Reno Foods, Inc. v. Nagkakaisang Lakas ng Manggagawa (NLM)-Katipunan*,²³ "[s]eparation pay is only warranted when the cause for termination is not attributable to the employee's fault, such as those provided in Articles 283 and 284 of the Labor Code, as well as in cases of illegal dismissal in which reinstatement is no longer feasible. It is *not* allowed when an employee is dismissed for just cause."

As to whether respondent's length of service with petitioners justifies the award of separation pay, we rule in the negative. Respondent's 12 years of service and clean employment record cannot simply erase her gross and habitual negligence in her duties. Length of service is not a bargaining chip that can simply be stacked against the employer.²⁴ As we held in *Central Pangasinan Electric Cooperative, Inc. v. NLRC*,²⁵

Although long years of service might generally be considered for the award of separation benefits or some form of financial assistance to mitigate the effects of termination, this case is not the appropriate instance for generosity x x x. The fact that private respondent served petitioner for more than twenty years with no negative record prior to his dismissal, in our view of this case, does not call for such award of benefits, since his violation reflects a regrettable lack of loyalty and worse, betrayal of the company. If an employee's length of service is to be regarded as a justification for moderating the penalty of dismissal, such gesture will actually become a prize for disloyalty, distorting the meaning of social justice and undermining the efforts of labor to cleanse its ranks of undesirables.

WHEREFORE, the petition is **GRANTED**. The March 30, 2009 Decision and May 25, 2009 Resolution of the Court of Appeals in CA-G.R. SP No. 105166 are **AFFIRMED** with the modification that the award of separation pay in favor of respondent Evelyn Camilon is **DELETED**.

No pronouncement as to costs.

²³ G.R. No. 164016, March 15, 2010, 615 SCRA 240, 249.


²⁴ Id. at 252.

²⁵ 555 Phil. 134, 139-140 (2007).

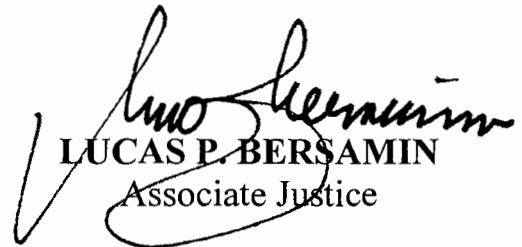
SO ORDERED.



MARTIN S. VILLARAMA, JR.
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

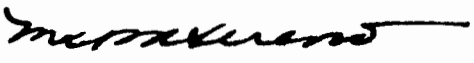

TERESITA J. LEONARDO-DE CASTRO
Associate Justice


LUCAS P. BERSAMIN
Associate Justice


BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the 1987 Constitution, 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