

THIRD DIVISION

[G.R. No. 218282, September 09, 2020]

REVENTOR Y. AGUSTIN, PETITIONER, VS. ALPHALAND CORPORATION, ET AL., RESPONDENTS.

DECISION

CARANDANG, J.:

This is a Petition for Review on *Certiorari*^[1] under Rule 45 of the Rules of Court seeking the modification of the Decision^[2] dated September 26, 2014 and the Resolution^[3] dated April 20, 2015 of the Court of Appeals in CA-G.R. SP No. 130198. The assailed issuances affirmed the Decision^[4] dated January 14, 2013 and the Resolution^[5] dated March 15, 2013 of the National Labor Relations Commission (NLRC) in NLRC NCR Case No. 11-16616-11 (NLRC LAC No. 09-002627-12), which likewise affirmed the Decision^[6] dated August 2, 2012 of the Labor Arbiter (LA).

Facts of the Case

Via a letter^[7] dated July 6, 2011, respondent Alphaland Corporation (Alphaland) offered to employ petitioner Redentor Y. Agustin (Agustin) as Executive Chef, with a gross monthly salary of P122,500.00. The offer came with a six-month probation period.^[8]

Agustin signed the letter to signify his acceptance of the job offer. As the Executive Chef, Agustin took over the Balesin Island Club's Kitchen. He organized the kitchen, prepared the job descriptions and responsibilities of each kitchen staff, conceptualized the menu, kitchen design, and managed the equipment acquisition.^[9]

On November 4, 2011, barely four months from commencement of his employment, Agustin received a Notice of Termination.^[10] He was informed that regular employment status cannot be granted to him because he failed to meet the standards set forth by the company for his position. Also stated is the immediate effectivity of Agustin's termination.^[11]

Agustin filed a complaint for illegal dismissal against Alphaland and prayed for reinstatement and payment of backwages. He alleged that the standards set forth by Alphaland in order to qualify as regular employee were not made known to him at the time of his engagement. The letter-offer,^[12] which likewise serves as the employment contract between Alphaland and Agustin, merely states:

As an employee of **ALPHALAND CORPORATION** you are expected to render the highest quality of professional service and to always pursue the interest of the company. Any behavior or action contrary will become

the basis for appropriate disciplinary action on the part of the Company including suspension and termination.^[13] (Emphasis in the original)

Agustin also claimed for 13th month pay, damages, and attorney's fees.

In its Position Paper^[14] submitted before the LA, Alphaland alleged that the executives of the company and the business associates assessed the variety of dishes offered by Agustin, its palatability, and the quality of his cooking. Unfortunately, Agustin's performance fell short of their expectations. The executives and business associates also voted that Agustin's performance was not apt for a high-end luxury resort. Similarly, the diners were not satisfied with the food prepared by Agustin.^[15] Alphaland claimed that Agustin failed to meet the following standards in order to qualify as regular employee: (1) that he was expected to render high quality of professional service; and (2) to always pursue the interest of the company.^[16] Further, Alphaland argued that Agustin's employment was validly terminated within the probationary period and in accordance with procedural due process. According to Alphaland, the two-notice rule was not applicable to probationary employees and that procedural due process in the termination of a probationary employee merely requires a termination notice.^[17]

Ruling of the Labor Arbiter

The LA issued on August 2, 2012 a Decision finding Agustin to have been illegally dismissed. The LA found that the standard provided in the appointment letter was too general and did not specify with clarity what is expected or needed for an Executive Chef. The record is also bereft of anything to show that the executives and guests did not desire much of Agustin's cooking skills.^[18] Hence, Agustin was entitled to his salary for November 5, 2011 up to January 6, 2012, the unexpired portion of his probation period. As regards the 13th month pay, the LA awarded the same proportionately for the period of July 6, 2011 to January 6, 2012.^[19] The claim for damages was denied for lack of factual basis.^[20] The dispositive portion of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered finding complainant to have been illegally dismissed. Respondent Alphaland Corporation is ordered to pay complainant the following:

1. unexpired portion of his probationary employment in the amount of TWO HUNDRED FORTY FIVE THOUSAND PESOS (P 245,000.00);
2. proportionate 13th month pay in the amount of SIXTY ONE THOUSAND TWO HUNDRED FIFTY PESOS (P51,250.00);
3. attorney's fees in the amount of THIRTY THOUSAND SIX HUNDRED TWENTY FIVE PESOS (30,625.00).

SO ORDERED.^[21]

Alphaland appealed to the NLRC.

To support its claim that Agustin's performance had been subject of an assessment, Alphaland presented for the first time the affidavits of Mario A. Oreta and Conrad

Nicholson M. Celdran, the President of Alphaland and Agustin's immediate supervisor, respectively. "Both attested to the fact that they were the recipients of feedbacks from guests of the Balesin Island Club about the food served being ordinary, below average, mediocre, and did not seem appropriate for a resort touted as one of the country's most exclusive and luxurious."^[22]

Ruling of the National Labor Relations Commission

The NLRC denied the appeal.

In its Decision dated January 14, 2013, the NLRC agreed with the LA in finding that Alphaland failed to establish that Agustin was properly apprised beforehand of the reasonable standards set forth by the company for Agustin's position, the conditions for his employment, and the basis for his advancement. The record was bereft of any persuasive showing that the dissatisfaction on the part of the executives and the guests was real and in good faith. The NLRC also took note that the affidavits of the persons who conducted the alleged assessment were only submitted as evidence on appeal, and never before the LA. The NLRC explained that in the normal course of events, Alphaland would have at least called the attention of Agustin on the alleged assessment.^[23] Aside from failure to apprise Agustin of the reasonable standards against which his performance shall be assessed, Alphaland also failed to serve upon Agustin the notice of termination within a reasonable time from the effective date of termination as required under Section 2, Rule 1, Book VI of the Omnibus Rules Implementing the Labor Code.^[24] The Motion for Reconsideration^[25] filed by Alphaland was denied by the NLRC in its Resolution dated March 15, 2013.

Therefrom, Alphaland filed a Petition for *Certiorari*^[26] before the CA, which rendered the assailed Decision.

Ruling of the Court of Appeals

In denying the petition, the CA held that the LA and NLRC did not err in finding that Alphaland failed to specify the necessary standards for Agustin's work as an Executive Chef.^[27] The standards set forth in the employment contract indeed were too general for Agustin to be informed of what constitutes "the highest quality of professional service."^[28] The NLRC correctly disregarded the Affidavits executed by the members of the Balesin Club. Such Affidavits were presented for the first time only on appeal and Alphaland did not offer any explanation for such belated submission.^[29] Agustin's claims for reinstatement, additional backwages and damages cannot be granted due to Agustin's failure to appeal these awards.^[30] The awards granted by the LA and affirmed by the NLRC were already final and binding.^[31] The CA also denied the Motion for Reconsideration filed by Alphaland.

In his Petition, Agustin prays for reinstatement and payment of additional backwages from the date of his illegal dismissal.^[32] This relief is based on the premise that he shall be deemed a regular employee because no standards were made known to him at the time of his employment.^[33] Further, Agustin argues that following the ruling in the case of *St. Michael's Institute v. Santos*,^[34] he may still be awarded backwages and reinstatement even if he did not appeal the Decisions of the LA and NLRC.^[35]

This Court required the parties to file subsequent pleadings, such as Comment, Reply, and their respective Memoranda.^[36] In its Memorandum, Alphaland mainly points out that Agustin did not appeal the Decision of the LA and merely included in his Opposition and Answer a prayer for relief which was not among the issues raised in the Appeal. Alphaland argues that Agustin was in effect belatedly appealing the Decision of the LA in the guise of his Opposition and Answer.^[37] Agustin did not file a Petition for *Certiorari* before the CA and merely opposed Alphaland's Petition for *Certiorari* filed before the CA.^[38] In his Comment opposing the said Petition, Agustin "cunningly interjected the issue of his reinstatement, and his entitlement to backwages and 13th month pay until his actual reinstatement, which issues were not covered by respondent Alphaland's Petition."^[39] Moreover, Agustin's full satisfaction with the Decision of the LA is unmistakable because he has not only moved for the execution and implementation thereof, but had already received the benefits arising from the said Decision.^[40]

Ruling of the Court

The petition is meritorious.

In the case of *St. Michael's Institute v. Santos*,^[41] a group of teachers with regular employment status were dismissed for joining a public rally and disrupting classes.^[42] The LA found and declared that there was just cause for the dismissal since they were guilty of dereliction of duty and insubordination.^[43] On appeal, the NLRC reversed the ruling of the LA and held that the teachers had been illegally dismissed. However, the NLRC in its Decision did not award backwages. The employer in *St. Michael's Institute* filed a Petition for *Certiorari*. The CA sustained the decision of the NLRC and in addition, awarded backwages to the teachers who were illegally dismissed.^[44] Undaunted, the employer filed a Petition for Review on *Certiorari* before this Court. In the said petition, the employer averred that when the CA awarded backwages in favor of the employees, it "unwittingly reversed a time-honored doctrine that a party who has not appealed cannot obtain from the appellate court any affirmative relief other than the ones granted in the appealed decision."^[45] To this issue, this Court ruled that the award of backwages is merely a legal consequence of the finding that the employees were illegally dismissed by the employer. In unequivocal terms, this Court explained in the said case that: "the [Court] is imbued with sufficient authority and discretion to review matters, not otherwise assigned as errors on appeal, if it finds that their consideration is necessary in arriving at a complete and just resolution of the case or to serve the interests or to avoid dispensing piecemeal justice."^[46]

The case of Alphaland and Agustin presents Us with a similar factual milieu. In the same vein as *St. Michael's Institute*, the case at bar involves a regular employee who was declared illegally dismissed yet was not properly awarded backwages from the time of illegal dismissal until reinstatement.

Based on two grounds, this Court holds that Agustin was a regular employee of Alphaland.

First, The LA, NLRC, and later on the CA uniformly found that Agustin was hired from the management's standpoint as a probationary employee but was not informed of the reasonable standards by which his probationary employment was to

be assessed. The standards set are too general and failed to specify with clarity what is expected of Agustin as an Executive Chef.^[47] Consequently, the lower courts found that Agustin's dismissal was illegal. This finding warrants the application of the following self-explanatory provisions:

Article 296 of the Labor Code

Article 296. [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.

Section 6 (d) of the Implementing Rules of Book VI, Rule I of the Labor Code

Section 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 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

(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.** (Emphasis supplied).

Considering the foregoing, the probationary period set in the contract of employment dated July 6, 2011 is therefore purposeless. In no case was Agustin hired on a probationary status by Alphaland. As of July 6, 2011, Agustin became part of Alphaland Corporation as a regular employee of the company without a fixed term of employment.

Second, Agustin served as a consultant prior to being hired as an Executive Chef allegedly on a probationary status. The Consultancy Engagement Offer^[48] provides that Agustin served as a consultant from June 6, 2011 until July 5, 2011, with a salary of P50,000.00. Narrated in the Memorandum^[49] submitted by Alphaland, Agustin as a consultant, was responsible for setting up the kitchen, choosing the equipment, laying out the job description for each kitchen staff, and the preparation of menus for all cuisines that the Club will offer. Following the completion of