

THIRD DIVISION

[G.R. No. 206331, June 04, 2018]

**DEPARTMENT OF AGRARIAN REFORM MULTI-PURPOSE
COOPERATIVE (DARMPAC), PETITIONER, VS. CARMENCITA DIAZ,
REPRESENTED BY MARY CATHERINE M. DIAZ; EMMA CABIGTING;
AND NINA T. SAMANIEGO^[1], RESPONDENTS.**

DECISION

LEONEN, J.:

A liberal construction of the rules of procedure, including the period within which a petition for review must be filed, requires justifiable reasons or at least a reasonable attempt at compliance with them.

This is a Petition for Review on Certiorari^[2] under Rule 45 of the Rules of Court, assailing the May 11, 2012 Decision^[3] and September 12, 2012 Resolution^[4] of the Court of Appeals in CA-G.R. SP No. 118549. The Court of Appeals reversed and set aside the April 30, 2009 Decision of the National Labor Relations Commission in NLRC NCR Case No. 00-12-1407- 2003/NLRC LAC No. 043647-05.^[5] It found that Carmencita Diaz (Diaz), Emma Cabigting (Cabigting), and Nina T. Samaniego (Samaniego) were illegally dismissed by the Department of Agrarian Reform Multi-Purpose Cooperative (the Cooperative).^[6]

Diaz, Cabigting, and Samaniego worked for the Cooperative as Accounting Clerk, Loan Officer and Verifier, and Lending Supervisor, respectively.^[7]

On October 24, 2003, the Cooperative's accountant discovered that duplicate original receipts showing the members' cash payments of share capital contributions were missing and unrecovered. Cabigting explained that she found that the entries in the members' index cards were written by Cashier Lorelie C. Matel (Matel) and Loan Officer Roslyn G. Sengson (Sengson). Matel admitted that she manipulated the index card entries to misappropriate funds. Matel and Sengson later confessed that there was nothing left from the misappropriated funds and that they had already destroyed the missing receipts.^[8]

On October 26, 2003, Diaz, Cabigting, and Samaniego learned that Matel and Sengson allegedly claimed that they were all in a conspiracy in the anomalous transactions. The next day, Diaz, Cabigting, and Samaniego were forced to admit their participation despite their denial and claims that the official receipts showed that payments were received only by Matel or Sengson.^[9]

Diaz, Cabigting, and Samaniego were placed under a 30-day preventive suspension on October 29, 2003. After the period lapsed, they tried to return to work but were

told that the Cooperative had already terminated their employment.^[10]

On December 9, 2003, Diaz, Cabigting, and Samaniego filed a complaint for illegal dismissal against the Cooperative before the Regional Arbitration Branch of the National Labor Relations Commission.^[11]

The Labor Arbiter dismissed their complaint on January 31, 2005 and found that Diaz, Cabigting, and Samaniego were mere members, and not employees of the Cooperative. Moreover, assuming that they were employees, their dismissal from service was justified due to their failure to fully account for the missing funds and explain the anomalous transactions.^[12]

On appeal, the National Labor Relations Commission reversed the Labor Arbiter's findings and found that Diaz, Cabigting, and Samaniego were employees of the Cooperative. Nonetheless, the Cooperative ruled to dismiss them based on just cause under Article 282, paragraphs (a) and (c) of the Labor Code. But since the Cooperative failed to observe the requirements of due process in terminating their employment, they were given P10,000.00 each in nominal damages.^[13] Both parties' motions for reconsideration were denied.^[14]

Diaz, Cabigting, and Samaniego then filed a Petition for Certiorari before the Court of Appeals, assailing the April 30, 2009 Decision and October 28, 2010 Resolution of the National Labor Relations Commission.^[15]

On May 11, 2012, the Court of Appeals granted the Petition for Certiorari, finding that Diaz, Cabigting, and Samaniego were illegally dismissed. The dispositive portion of this Decision read:

WHEREFORE, the instant petition is **GRANTED** and the assailed Decision dated April 30, 2009 of the public respondent NLRC in NLRC NCR Case No. 00-12-1407-2003/NLRC LAC No. 043647-05 is **REVERSED AND SET ASIDE**. Private respondent cooperative is hereby ordered to:

1. pay petitioners their backwages, including 13th month pay, unpaid vacation and sick leaves and the monetary equivalent of other benefits, computed from the time their compensation was withheld from them on December 1, 2003 up to the finality of this decision;
2. pay petitioners their separation pay equivalent to at least one month salary for every year of service, computed from the time of engagement up to the finality of this decision; and
3. pay petitioners' attorney's fees at 10% of the total monetary award to be recovered.

All other claims are denied for lack of merit.

Let the records of this case be remanded to the Arbiter Branch of origin for the proper computation of the backwages, 13th month pay, unpaid vacation and sick leaves and the monetary equivalent of other benefits,

and separation pay, in lieu of reinstatement.

SO ORDERED.^[16]

First, it upheld the National Labor Relations Commission's finding that Diaz, Cabigting, and Samaniego were employees of the Cooperative.^[17]

Second, it found that the Cooperative failed to prove that it had lawful cause to dismiss Diaz, Cabigting, and Samaniego. It found that the Cooperative based their dismissal on their admission that they were privy to Matel and Sengson's acts, and that they were given a "small token for merienda and that this was the amount they said was divided among [themselves]."^[18] According to the Cooperative, this had the effect of an admission of their participation in the anomalous transactions.^[19]

However, the Court of Appeals found that Diaz, Cabigting, and Samaniego only divided among themselves "money for merienda" given by the Cooperative members whose loans had been released earlier than their scheduled date of release. Diaz, Cabigting, and Samaniego received the small token from the members through Matel and Sengson, who were the ones who received cash payments from the members. The Court of Appeals found that Diaz, Cabigting, and Samaniego's act of receiving this token could not prove that they conspired with Matel and Sengson to malverse the Cooperative's funds.^[20] It held that "[m]ere knowledge, acquiescence to or approval of the act without cooperation or agreement to cooperate [was] not enough to constitute one a party to the conspiracy absent the intentional participation in the act with a view to the furtherance of the common design and purpose."^[21] It further noted that Matel and Sengson retracted under oath their claims that Diaz, Cabigting, and Samaniego were involved in the anomalous transactions. Thus, when the Cooperative dismissed them, it did so based on unsubstantiated claims and suspicions, and did not discharge its burden of proving the validity of their dismissal.^[22]

Third, the Cooperative failed to comply with the requirements of due process when it dismissed Diaz, Cabigting, and Samaniego. The Court of Appeals held that the Cooperative failed to comply with the twin-notice and hearing requirement prescribed by law for termination of employment. It found that after the lapse of the 30-day preventive suspension, Diaz, Cabigting, and Samaniego were merely advised that they were already terminated from work by virtue of Board Resolution No. 62 dated December 1, 2003, which they received under protest.^[23]

Since they were illegally dismissed by the Cooperative, Diaz, Cabigting, and Samaniego were entitled to the protections granted under Article 279 of the Labor Code, such as reinstatement and full backwages. However, due to the circumstances showing the Cooperative's loss of trust and confidence in them, the Court of Appeals granted separation pay in lieu of reinstatement.^[24]

Finally, the Court of Appeals denied Diaz, Cabigting, and Samaniego's claims for unpaid salaries during their preventive suspension and moral damages, but awarded 10% attorney's fees as it was just and equitable, pursuant to Article 2208 of the Civil Code.^[25]

The Cooperative's motion for reconsideration^[26] was denied in the Court of Appeals September 12, 2012 Resolution.^[27]

On April 5, 2013, the Cooperative filed before this Court an Urgent Motion to Admit Attached Petition,^[28] with an attached Petition for Review on Certiorari with Prayer for Issuance of Temporary Restraining Order/Writ of Preliminary Injunction against Diaz, Cabigting, and Samaniego.^[29]

In the motion, Atty. Ferdinand O. Tamaca (Atty. Tamaca), counsel for the Cooperative, alleges that a copy of the Court of Appeals September 12, 2012 Resolution was "misplaced at his office during the holiday season last December when it was served at his office."^[30] Further, he claims that he was staying in his province during that period and was busy preparing for elections in Carigara, Leyte.^[31] He likewise admits that due to his secretary's resignation, he failed to know that the Court of Appeals May 11, 2012 Decision had become final and that the period to appeal had already lapsed.^[32]

In its Petition for Review, the Cooperative argues that the Court of Appeals erred in finding that there was no just cause for respondents' dismissal. It points out that the Labor Arbiter and the National Labor Relations Commission both found that respondents committed serious misconduct and fraud or willful breach of trust due to their participation in Matel and Sengson's scheme. It argues that the factual findings of the Labor Arbiter, when affirmed by the National Labor Relations Commission, are accorded respect, if not finality.^[33]

Moreover, the Cooperative claims that it did not violate respondents' right to due process since they failed to request a formal hearing and representation by counsel during the investigations that the Cooperative conducted. Further, even if there had been non-compliance with the due process requirements, this does not invalidate the finding of just cause for termination.^[34]

Finally, the Cooperative prays for the issuance of a temporary restraining order or writ of preliminary injunction as the May 11, 2012 Decision has already become final and executory. It claims that there is a need to restrain the execution of that Decision because the judgment would cause the bankruptcy of the Cooperative.^[35]

On April 17, 2013, this Court issued a Resolution^[36] requiring respondents to comment on the Petition for Review.

On July 10, 2013, respondents filed their Comment to the Petition.^[37] There, they claim that they were not served a copy of the Petition,^[38] that the Petition failed to state the material dates as required under Rule 45, Section 4(b) of the Rules of Court,^[39] and that it was filed beyond the reglementary period.^[40] They argue that the negligence of the counsel binds the Cooperative, especially as the Cooperative was accorded full opportunity to present its evidence before the National Labor Relations Commission and the Court of Appeals.^[41]

Further, respondents argue that the Petition raises factual issues not cognizable in a Rule 45 petition. They claim that the issue of illegal dismissal seeks a review of the

factual bases relied upon by the Court of Appeals in rendering its decision.^[42]

On July 18, 2013, respondents filed a Manifestation in Support to the Comment to the Petition with Motion for the Outright Dismissal of the Petition.^[43] In their Manifestation, respondents allege, in support of their claim in their Comment, that the actual receipt by the Cooperative of a copy of the Court of Appeals September 12, 2012 Resolution was on September 20, 2012,^[44] as shown by the Registry Return Receipt^[45] in the records of the Court of Appeals. Thus, when the Cooperative filed its Petition for Review before this Court, more than six (6) months from the end of the 15-day reglementary period had already elapsed.^[46]

The Cooperative filed its Counter Manifestation on July 30, 2013,^[47] where Atty. Tamaca states that he inadvertently lost track of the date of actual receipt of the Resolution, especially as he was working on the elections in Carigara, Leyte.^[48] Moreover, in the Petition, Atty. Tamaca claims that he received the Resolution during the "Christmas holidays" and this includes the months from September to December.^[49] Finally, the Petition raises a question of law, namely, which between the National Labor Relations Commission and the Court of Appeals is correct.^[50]

This Court noted the Comment and ordered the Cooperative to file its reply to it in its September 11, 2013 Resolution. It likewise noted without action respondents' manifestation and the Cooperative's counter manifestation.^[51]

On November 11, 2013, the Cooperative filed its Reply^[52] to the Comment, which this Court noted in its January 29, 2014 Resolution.^[53] In its Reply, the Cooperative prayed that its Counter Manifestation be adopted as its reply to respondents' comment.^[54]

The sole issue to be resolved by this Court is whether or not this Petition for Review should be denied for being filed out of time.

Rule 45, Section 2 of the Rules of Court clearly provides for the period within which a petition for review must be filed:

Section 2. Time for filing; extension. - The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. On motion duly filed and served, with full payment of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Supreme Court may for justifiable reasons grant an extension of thirty (30) days only within which to file the petition. (Emphasis supplied)

Failure to file a petition for review on certiorari, or a motion for extension to file it, within the period prescribed under Rule 45, Section 2 results in a party's loss of right to appeal. It is settled that appeal, being a mere statutory right, must "be exercised in the manner and according to procedures laid down by law."^[55] Failure to file one's appeal within the reglementary period is fatal to a party's cause,