571 Phil. 494

THIRD DIVISION

[G.R. No. 172363, March 07, 2008]

JUVY M. MANATAD, Petitioner, vs. PHILIPPINE TELEGRAPH AND TELEPHONE CORPORATION, Respondent.

D E C I S I O N

CHICO-NAZARIO, J.:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Revised Rules of Court filed by petitioner Juvy M. Manatad seeking the reversal and the setting aside of the Decision[2] dated 12 July 2005 and the Resolution[3] dated 22 March 2006 of the Court of Appeals in CA-G.R. SP No. 79440. The appellate court, in its assailed Decision and Resolution, reversed the Decisions[4] of the National Labor Relations Commission (NLRC) and the Labor Arbiter declaring the dismissal of Manatad from employment illegal. The dispositive portion of the Court of Appeals Decision reads:

> WHEREFORE, the petition is GRANTED. The Decision dated 18 September 2001 and Resolution dated 22 July 2003 of [NLRC] as well as the Decision dated 14 July 1999 of the Labor Arbiter are REVERSED and SET ASIDE. However, [herein respondent] is hereby ordered to pay [herein petitioner] Php43,5000.00 as separation pay. No costs.[5]

The present controversy stems from the following antecedent factual and procedural facts:

In September 1988, petitioner was employed by respondent Philippine Telegraph and Telephone Corporation (PT&T) as junior clerk with a monthly salary of P3,839.74. She was later promoted as Account Executive, the position she held until she was temporarily laid off from employment on 1 September 1998.

Petitioner's temporary separation from employment was pursuant to the Temporary Staff Reduction Program adopted by respondent due to serious business reverses. On 16 November 1998, petitioner received a letter from respondent inviting her to avail herself of its Staff Reduction Program Package equivalent to one-month salary for every year of service, one and one-half month salary, pro-rated 13th month pay, conversion to cash of unused vacation and sick leave credits, and Health Maintenance Organization and group life insurance coverage until full payment of the separation package. Petitioner, however, did not opt to avail herself of the said package. On 26 February 1999, petitioner received a Notice of Retrenchment from respondent permanently dismissing her from employment effective 16 February 1999.

Consequently, petitioner filed a Complaint for illegal dismissal against respondent, its Regional Director for Visayas Reynaldo Macrohon, and its President and Chief

Executive Officer Marilyn Eleonor Santiago before the Labor Arbiter claiming the award of separation pay, damages and attorney's fees. In her Position Paper, petitioner mainly alleged that the retrenchment program adopted by respondent was illegal for it was gaining profits for the period of July 1997 to June 1998. In support of her allegation that respondent was obtaining profits, petitioner presented the central Visayas Operating Margin Reports[6] showing the respondent's gross revenue and net profits in the region for the period in question:

Month	Gross Revenue	Net Profit
July 1997	P2,496,981.31	P775,742.82
August 1997	2,314,527.75	662,812.13
September 1997	2,308,364.14	604,924.51
October 1997	2,403,083.30	649,583.33
November 1997	1,965,446.44	367,956.48
December 1997	2,391,721.94	657,023.23
January 1998	2,649,857.35	825,581.17
February 1998	2,611,029.13	702,132.23
March 1998	2,340,166.83	488,549.78
April 1998	2,199,814.78	230,380.21
May 1998	2,186,735.40	403,416.66
June 1998	2,240,238.94	500,656.64

Petitioner further belied respondent's contention that it was suffering from serious financial reverses by presenting respondent's Special Order No. 98-21[7] granting an increase in the salaries of its employees under Job Grade 8 and 9 in the amount of P2,300.00 a month effective January 1998. Petitioner's evidence supposedly showed that it was still economically viable for respondent to continue its business operations without downsizing its workforce. Petitioner thus prayed for the award of separation pay in the amount of P107,000.00, unpaid salary, prorated 13th month pay, unpaid vacation leave benefits and attorney's fees.

On the other hand, respondent asserted that petitioner was separated from service pursuant to a valid retrenchment implemented by the company. Retrenchment is an authorized cause for the employer to terminate the services of an employee. Due to huge business losses suffered by respondent in the sum of P684,096,285.00 from 1995-1998, it was constrained to arrest escalating operating costs by downsizing its workforce.

Respondent claimed that it was suffering from serious financial reverses from 1995 up to 1999, as shown below:

YEAR	PROFIT	LOSSES
1995		P29,868,406.00
1996		P52,112,986.00
1997	P1,491,532.00	
1998		P557,892,627.00

1999		P770,552,970.00[8]

To support its claim, respondent submitted its financial statements for the fiscal period of 30 June 1996 to 30 June 1998 audited by independent auditors. Independent public accountants, Sycip Gorres Velayo (SGV) & Co., reported that respondent incurred a substantial loss of about P558 Million which resulted in a deficit of about P574 Million as of 30 June 1998. Respondent has been negotiating with its creditors for the suspension of payments until the completion of an acceptable restructuring plan.[9]

On 14 January 1999, the Labor Arbiter rendered a Decision in favor of petitioner ruling that the retrenchment program implemented by respondent was invalid. According to the Labor Arbiter, respondent failed to prove that it was suffering from serious financial reverses warranting the implementation of a retrenchment program. Mere comparative statements of income submitted by respondent was not a conclusive proof of serious business losses, more so when their authenticity was suspected for lack of signature of the one who prepared it. Consequently, petitioner's separation from employment effected pursuant to an unjustified retrenchment program, was illegal. The dispositive portion of the Labor Arbiter's Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered ordering the respondent Philippine Telephone and Telegraph Corp. (PT&T) to pay the complainant Juvy Manatad the following:
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> | | | |
> |---|---|---|
> | 1. Separation pay | -- | P107,000.00 |
> | 2. Backwages | -- | P 42,800.00 |
> | 3. Unpaid wages | -- | P 50,850.00 |
> | 4. Vacation and sick leave pay | -- | P 13,563.00 |
> | 5. Proportionate 13th month pay – | | P 1,335.00 |
> | 6. Attornet's fee | -- | P 21,554.00 |
> | | | ---------- |
> | TOTAL | -- | P 237,102.00 |
> | Less Advances | -- | P 13,050.00 |
> | | | ---------- |
> | | | P 224,050.00 |

> The other claims and the case against respondents Reynaldo Machoron and Marilyn Santiago are dismissed for lack of merit.[10]

Dissatisfied, petitioner appealed to the NLRC arguing that the Labor Arbiter gravely abused its discretion in sustaining the illegality of petitioner's dismissal. In ruling that respondent's retrenchment program was unjustified, the Labor Arbiter disregarded the financial statements submitted by the respondent which were audited by independent auditors showing that it was in dire financial distress.

On 18 September 2001, the NLRC rendered a Decision[11] affirming with modification the Labor Arbiter Decision. The NLRC sustained the Labor Arbiter's findings with respect to respondent's failure to substantiate its claim of financial reverses. It further noted that the Department of Labor and Employment (DOLE) was not notified by the respondent of its retrenchment program as required by law. The NLRC Decision thus decreed:

> WHEREFORE, the Decision of the Labor Arbiter dated July 14, 1999 is *affirmed* with the modification that respondents Reynaldo Macrohon and Marilyn Santiago are also ordered jointly and severally liable with PT&T, for the payment of the judgment award.[12]

The Motion for Reconsideration filed by respondent was denied by the NLRC in its Resolution dated 22 June 2002.

On *Certiorari*, the Court of Appeals reversed the NLRC and the Labor Arbiter Decisions and upheld the validity of respondent's retrenchment program.[13] The appellate court was fully persuaded that the respondent was besieged by a continuing downtrend in its business operations and severe financial losses which justified its immediate drastic reduction of personnel. [14] The financial standing of respondent cannot be determined by the performance of a single branch or unit alone but by the performance of all its branches integrated as a whole. In addition, the comparative statements of income prepared by independent auditors constitute a normal method of proving the profit and loss performance of a business company. Finally, the Court of Appeals also observed that respondent duly complied with the requirement of service of notice to the employee one month before the intended date of retrenchment.

Similarly ill-fated was petitioner's Motion for Reconsideration which was denied by the Court of Appeals in a Resolution[15] dated 22 March 2006.

Petitioner is now before this Court *via* the Petition at bar raising the following issues:

I.

> [WHETHER OR NOT THE COURT OF APPEALS ERRED] IN DECLARING THAT PETITIONER WAS NOT ILLEGALLY DISMISSED;

II.

> [WHETHER OR NOT THE COURT OF APPEALS ERRED] IN FINDING THAT THE RETRENCHMENT MADE BY PRIVATE RESPONDENT WAS VALID AND

LEGAL WHEN PETITIONER DID NOT GIVE CONSENT;

III.

[WHETHER OR NOT THE COURT OF APPEALS ERRED] IN NOT DECLARING THAT THE ALLEGED LOSSES OF PRIVATE RESPONDENT WAS ALTERED TO CONFORM WITH THE EVIDENCE OF PETITIONER SHOWING PROFITS IN THE CENTRAL VISAYAS OPERATIONS GROUP;

IV.

[WHETHER OR NOT THE COURT OF APPEALS ERRED] IN FINDING THAT PETITIONER IS BOUND BY THE COLLECTIVE BARGAINING AGREEMENT [CBA] WHEN SHE IS NOT A UNION MEMBER;

V.

[WHETHER OR NOT THE COURT OF APPEALS ERRED] IN DELETING THE AWARD OF SEPARATION PAY, BACKWAGES, UNPAID WAGES, VACATION AND SICK LEAVE PAY, PROPORTIONATE 13th MONTH PAY, AND ATTORNEY'S FEES.[16]

The present controversy hinges on the sole issue of whether or not the retrenchment program implemented by respondent was valid.

The pertinent provision of the Labor Code reads:

> Art. 283. Closure of establishment and reduction of personnel. - The employer may also terminate the employment of any employee due to the installation of labor saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the worker and the [Department] of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered as one (1) whole year.

Retrenchment is the termination of employment initiated by the employer through no fault of the employees and without prejudice to the latter, resorted to by management during periods of business recession; industrial depression; or seasonal fluctuations, during lulls occasioned by lack of orders, shortage of materials, conversion of the plant for a new production program, or the introduction of new methods or more efficient machinery or automation. Retrenchment is a valid