

THIRD DIVISION

[G.R. No. 157376, October 02, 2007]

**CORAZON C. SIM, PETITIONER, VS. NATIONAL LABOR
RELATIONS COMMISSION AND EQUITABLE PCI-BANK,
RESPONDENTS.[*]**

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Corazon Sim (petitioner) filed a case for illegal dismissal with the Labor Arbiter, alleging that she was initially employed by Equitable PCI-Bank (respondent) in 1990 as Italian Remittance Marketing Consultant to the Frankfurt Representative Office. Eventually, she was promoted to Manager position, until September 1999, when she received a letter from Remegio David -- the Senior Officer, European Head of PCIBank, and Managing Director of PCIB- Europe -- informing her that she was being dismissed due to loss of trust and confidence based on alleged mismanagement and misappropriation of funds.

Respondent denied any employer-employee relationship between them, and sought the dismissal of the complaint.

On September 3, 2001, the Labor Arbiter rendered its Decision dismissing the case for want of jurisdiction and/or lack of merit.^[1] According to the Labor Arbiter:

It should be stressed at this juncture that the labor relations system in the Philippines has no extra-territorial jurisdiction. It is limited to the relationship between labor and capital within the Philippines. Since complainant was hired and assigned in a foreign land, although by a Philippine Corporation, it follows that the law that govern their relationship is the law of the place where the employment was executed and her place of work or assignment. On this premise, the Italian law allegedly provides severance pay which was applied and extended to herein complainant (Annex "P", respondent's position paper).

As can be gleaned from the foregoing, a further elucidation on the matter would be an exercise in futility. Hence, this case should be dismissed for want of jurisdiction.

Assuming for the sake of argument that this Office has jurisdiction over this case, still, this Office is inclined to rule in favor of the respondent.

Complainant, as General Manager is an employee whom the respondent company reposed its trust and confidence. In other words, she held a position of trust. It is well-settled doctrine that the basic premise for dismissal on the ground of loss of confidence is that the employee

concerned holds a position of trust and confidence. (National Sugar Refineries Corporation vs. NLRC, 286 SCRA 478.)

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In this case, the respondent company had strong reason to believe that the complainant was guilty of the offense charged against her.^[2]

On appeal, the National Labor Relations Commission (NLRC) affirmed the Labor Arbiter's Decision and dismissed petitioner's appeal for lack of merit.^[3]

Without filing a motion for reconsideration with the NLRC, petitioner went to the Court of Appeals (CA) *via* a petition for *certiorari* under Rule 65 of the Rules of Court.

In a Resolution dated October 29, 2002, the CA^[4] dismissed the petition due to petitioner's non-filing of a motion for reconsideration with the NLRC.^[5]

Petitioner filed a motion for reconsideration but it was nonetheless denied by the CA per Resolution dated February 26, 2003.

Hence, the present recourse under Rule 45 of the Rules of Court.

Petitioner alleges that:

- I. The Court of Appeals departed from the accepted and usual concepts of remedial law when it ruled that the petitioner should have first filed a Motion for Reconsideration with the National Labor Relations Commission.
- II. The National Labor Relations Commission decided a question of jurisdiction heretofore not yet determined by the Court and decided the same in a manner not in accord with law when it ruled that it had no jurisdiction over a labor dispute between a Philippine corporation and its employee which it assigned to work for a foreign land.^[6]

The pivotal question that needs to be resolved is whether or not a prior motion for reconsideration is indispensable for the filing of a petition for *certiorari* under Rule 65 of the Rules of Court with the CA.

Under Rule 65, the remedy of filing a special civil action for *certiorari* is available only when there is no appeal; or any plain, speedy, and adequate remedy in the ordinary course of law.^[7] A "plain" and "adequate remedy" is a motion for reconsideration of the assailed order or resolution, the filing of which is an indispensable condition to the filing of a special civil action for *certiorari*.^[8] This is to give the lower court the opportunity to correct itself.^[9]

There are, of course, exceptions to the foregoing rule, to wit:

- (a) where the order is a patent nullity, as where the court *a quo* has no jurisdiction;
- (b) where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;
- (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable;
- (d) where, under the circumstances, a motion for reconsideration would be useless;
- (e) where petitioner was deprived of due process and there is extreme urgency for relief;
- (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;
- (g) where the proceedings in the lower court are a nullity for lack of due process;
- (h) where the proceeding was *ex parte* or in which the petitioner had no opportunity to object; and
- (i) where the issue raised is one purely of law or public interest is involved.^[10]

Petitioner, however, failed to qualify her case as among the few exceptions. In fact, the Court notes that the petition filed before the CA failed to allege any reason why a motion for reconsideration was dispensed with by petitioner. It was only in her motion for reconsideration of the CA's resolution of dismissal and in the petition filed in this case that petitioner justified her non-filing of a motion for reconsideration.

Petitioner argues that filing a motion for reconsideration with the NLRC would be merely an exercise in futility and useless. But it is not for petitioner to determine whether it is so. As stressed in *Cervantes v. Court of Appeals*:

It must be emphasized that a writ of *certiorari* is a prerogative writ, never demandable as a matter of right, never issued except in the exercise of judicial discretion. Hence, he who seeks a writ of *certiorari* must apply for it only in the manner and strictly in accordance with the provisions of the law and the Rules. **Petitioner may not arrogate to himself the determination of whether a motion for reconsideration is necessary or not. To dispense with the requirement of filing a motion for reconsideration, petitioner must show a concrete, compelling, and valid reason for doing so, which petitioner failed to do.** Thus, the Court of Appeals correctly dismissed the petition.^[11] (Emphasis supplied)