

TWENTY-SECOND DIVISION

[CA-G.R. SP No. 04176-MIN, February 14, 2014]

**BELINDA L. TORRES, AND JOCELYN TUMAMING, PETITIONERS,
VS. THE NATIONAL LABOR RELATIONS COMMISSION, EIGHTH
(8TH) DIVISION (FORMERLY FIFTH DIVISION), STI COLLEGE,
DAVAO AND PETER K. FERNANDEZ, PRESIDENT, RESPONDENTS.**

D E C I S I O N

LOPEZ, J.:

This treats a Petition for *Certiorari*^[1] under Rule 65 of the Rules of Court assailing the twin Resolutions dated September 30, 2010^[2] and January 31, 2011^[3] of public respondent National Labor Relations Commission (NLRC for brevity), 5th Division, Cagayan de Oro City, in NLRC Case No. MAC-04-011330-2010.

The relevant facts:

STI Colleges of Mindanao, Inc. is a corporation organized and existing under Philippine laws with principal office address at Cagayan de Oro City.^[4] Sometime in the 1990's, STI Colleges of Mindanao, Inc. hired the services of petitioners Belinda L. Torres (Torres for brevity) and Jocelyn Tumaming (Tumaming for brevity). Petitioner Torres was then the Channel Manager while petitioner Tumaming was the Administrator for herein private respondent STI College Davao,^[5] an educational institution operated by STI Colleges of Mindanao, Inc.^[6]

On August 3, 2006, the Board of Directors of STI Colleges of Mindanao, Inc. elected a set of officers for the year until the election and qualification of their successors. As stated in the Minutes^[7] of the Organizational Meeting, among the officers elected were herein petitioner Torres as Chief Executive Officer (CEO for brevity) and petitioner Tumaming as Chief Operating Officer (COO for brevity),^[8] both for STI College of Davao.

On April 21, 2009 however, private respondent Peter K. Fernandez (Pres. Fernandez for brevity), President of both of STI Colleges of Mindanao, Inc. and STI College Davao issued two Show Cause Memos. One was addressed to petitioner Torres for charges of "Gross and Habitual Neglect of Duties and Violation of Manual of Regulations for Private Schools,"^[9] the other to petitioner Tumaming for "Falsification of Commercial Document."^[10] The Memos stated that a disciplinary committee will be convened to investigate the charges and should the same be proven, it constitutes just causes for the termination of petitioners' employment under Article 282^[11] of the Labor Code.

Also on the same day, petitioners were placed under preventive suspension for a period of not exceeding thirty days^[12] or until May 20, 2009.^[13]

On April 23, 2009 and April 25, 2009, petitioners Torres and Tumaming, respectively submitted their respective reply-letters^[14] to the Show Cause Memos, both addressed to private respondent Pres. Fernandez.

On May 20, 2009, private respondent Pres. Fernandez issued two Memos^[15] to petitioners extending the period of their preventive suspension to another thirty days from May 21, 2009 per recommendation of the disciplinary committee.

On June 23, 2009, private respondent Pres. Fernandez adopted the recommendation of the disciplinary committee to terminate the employment of petitioners. As regards petitioner Torres, the Notice of Termination^[16] found her guilty of gross and habitual neglect of duties, violation of CHED regulations and policies, violation of STI policies, fraud committed against the company and loss of trust and confidence. Petitioner Tumaming, for her part, was found guilty of fraud and dishonesty per Notice of Termination^[17] issued on the same day.

Feeling aggrieved, petitioners filed a Complaint for Illegal Dismissal, Damages and Attorney's Fees^[18] against private respondents STI College of Davao and Pres. Fernandez before the NLRC-Regional Arbitration Branch XI, Davao City. The case was docketed as NLRC Case No. RAB-XI-07-00748-09 and heard by Labor Arbiter Henry F. Te (Labor Arbiter Te for brevity).

On September 3, 2009, private respondents filed a Motion to Dismiss^[19] the Complaint on the ground of lack of jurisdiction. According to private respondents, petitioners are corporate officers, not mere employees, of STI College of Davao. As shown in the Minutes of the Organizational Meeting of the Board of Directors of STI Colleges of Mindanao, Inc., petitioners Torres and Tumaming were elected as CEO and COO, respectively. Hence, this case is an intra-corporate dispute, exclusive jurisdiction over which is lodged with the Regional Trial Court in accordance with Section 5 paragraph (c)^[20] of Presidential Decree No. 902-A^[21] in relation to Section 5.2^[22] of Republic Act (RA) No. 8799^[23] otherwise known as the Securities Regulation Code. Thus, the Complaint should be dismissed because the Regional Arbitration Branch XI has no jurisdiction over the case.

On September 24, 2009, petitioners countered in their Opposition^[24] to the Motion to Dismiss that they have always been regarded as employees, not officers, of STI College of Davao. In fact, private respondents were invoking the provisions of the Labor Code to terminate their employment. Petitioners also claimed that their positions as CEO and COO were mere nomenclatures as their duties and functions as employees of STI College of Davao remained the same even after their supposed election as officers. The Motion to Dismiss therefore was filed solely to deprive them of the protection and benefits accorded to employees under the Labor Code.

On December 16, 2009, Labor Arbiter Te issued an Order^[25] which granted private respondents' Motion to Dismiss.

In due time, petitioners appealed^[26] the adverse Order to public respondent National Labor Relations Commission, 8th Division, Cagayan de Oro City.

On September 30, 2010, public respondent rendered a Resolution^[27] which affirmed Labor Arbiter Te's Order dated December 16, 2009. The dispositive portion of the

Resolution reads:

"IN VIEW OF ALL THE FOREGOING, the Commission deems it unnecessary to discuss other issues the matter being an intra-corporate dispute. Thus, the present appeal is DISMISSED. The appealed decision is hereby AFFIRMED *in toto*.

SO ORDERED."^[28]

Petitioners subsequently filed a Motion for Reconsideration^[29] of the above Resolution which however was denied in public respondent's second assailed Resolution^[30] dated January 31, 2011.

Undaunted, petitioners are now before Us *via* Petition for *Certiorari* raising the following issues:

"A. The Respondent NLRC seriously erred and committed grave abuse of discretion in dismissing the Appeal of the Petitioners and their Motion for Reconsideration on the ground that the Petitioners are Corporate Officers and not employees of the Respondent Corporation;

B. The Respondent NLRC seriously erred and committed grave abuse of discretion in relying on the Minutes of the Organizational Meeting of the Board of Directors of STI Colleges of Mindanao, Inc. (attached as Annex 'X' hereof) in finding that the Petitioners are Corporate Officers of the Respondent Corporation despite the fact that the said Minutes was not reported to the Securities and Exchange Commission; (and)

C. The Respondent NLRC seriously erred and committed grave abuse of discretion in denying the Monetary Claims of the Petitioners."^[31]

The Petition is partly meritorious.

The resolution of the present Petition hinges on the crucial issue of whether or not petitioners were corporate officers of private respondent STI College of Davao. The answer will necessarily determine which tribunal has jurisdiction to hear the case—the Labor Arbiter or the Regional Trial Court.

Private respondents argue that petitioners were corporate officers. To prove this, private respondents presented the Amended By-Laws^[32] of STI Colleges of Mindanao, Inc. which states under Article IV Section 1 thereof that the Board of Directors are empowered to appoint other officers of the corporation as may be necessary and proper. Private respondents also presented the Minutes^[33] of the Organizational Meeting of the Board of Directors dated August 6, 2006 to show that indeed petitioners Torres and Tumambing were elected as CEO and COO, respectively.^[34]

The argument fails to persuade.

It bears to note that it was private respondents who alleged that petitioners were corporate officers, hence they have the burden to prove the same.^[35] We find insufficient the Amended By-Laws of STI Colleges of Mindanao, Inc. to prove that petitioners are corporate officers because the two copies presented to Us lack page nos. 5, 6, 7, 8, 10 and 11 where the supposed Article IV Section 1 was stated. Be

that as it may, Article IV Section 1 standing alone does not make petitioners corporate officers as contemplated under Section 25 of the *Batas Pambansa Bilang 68*^[36] otherwise known as the Corporation Code of the Philippines. Section 25 provides:

"Section 25. Corporate officers, quorum.--Immediately after their election, the directors of a corporation must formally organize by the election of a *president, who shall be a director, a treasurer who may or may not be a director, a secretary who shall be a resident and citizen of the Philippines, and such other officers as may be provided for in the by-laws*. Any two (2) or more positions may be held concurrently by the same person, except that no one shall act as president and secretary or as president and treasurer at the same time.

Xxx xxx xxx." (*Emphasis Supplied*)

To be considered a "corporate office" therefore, the position must be expressly mentioned as such either by the Corporation Code or the By-Laws of the corporation. The case of *Matling Industrial and Commercial Corporation v. Coros*^[37] is explicit:

"Conformably with Section 25, a position must be expressly mentioned in the By-Laws in order to be considered as a corporate office. Thus, the creation of an office pursuant to or under a By-Law enabling provision is not enough to make a position a corporate office. *Guerrea v. Lezama*, the first ruling on the matter, held that the *only officers of a corporation were those given that character either by the Corporation Code or by the By-Laws; the rest of the corporate officers could be considered only as employees or subordinate officials*. Thus, it was held in *Easycall Communications Phils., Inc. v. King*:

'An "office" is created by the charter of the corporation and the officer is elected by the directors or stockholders. On the other hand, an employee occupies no office and generally is employed not by the action of the directors or stockholders but by the managing officer of the corporation who also determines the compensation to be paid to such employee.

In this case, respondent was appointed vice president for nationwide expansion by Malonzo, petitioner's general manager, not by the board of directors of petitioner. It was also Malonzo who determined the compensation package of respondent. Thus, respondent was an employee, not a "corporate officer." The CA was therefore correct in ruling that jurisdiction over the case was properly with the NLRC, not the SEC (now the RTC).'

Xxx xxx xxx

A different interpretation can easily leave the way open for the Board of Directors to circumvent the constitutionally guaranteed security of tenure of the employee by the expedient inclusion in the By-Laws of an enabling clause on the creation of just any corporate officer position.

It is relevant to state in this connection that the SEC, the primary agency administering the Corporation Code, adopted a similar interpretation of Section 25 of the Corporation Code in its Opinion dated November 25, 1993, to wit:

Thus, pursuant to the above provision (Section 25 of the Corporation Code), *whoever are the corporate officers enumerated in the by-laws are the exclusive Officers of the corporation and the Board has no power to create other Offices without amending first the corporate By-laws. However, the Board may create appointive positions other than the positions of corporate Officers, but the persons occupying such positions are not considered as corporate officers* within the meaning of Section 25 of the Corporation Code and are not empowered to exercise the functions of the corporate Officers, except those functions lawfully delegated to them. Their functions and duties are to be determined by the Board of Directors/Trustees.” *(Emphasis Supplied)*

Here, petitioners’ positions were not among those enumerated in the Corporation Code. Neither was there any allegation nor proof that petitioners’ positions were enumerated in the Amended By-Laws. Hence, it follows that petitioners are not corporate officers. Petitioners’ positions may be considered as corporate offices by the Board of Directors but they are not considered as such under the law. The same conclusion was arrived in the case of *Marc II Marketing, Inc. v. Joson*^[38] where the Supreme Court emphasized:

“Paragraph 2, Section 1, Article IV of petitioner corporation’s by-laws, empowered its Board of Directors to appoint such other officers as it may determine necessary or proper. It is by virtue of this enabling provision that petitioner corporation’s Board of Directors allegedly approved a resolution to make the position of General Manager a corporate office, and, thereafter, appointed respondent thereto making him one of its corporate officers. All of these acts were done without first amending its by-laws so as to include the General Manager in its roster of corporate officers.

With the given circumstances and in conformity with *Matling Industrial and Commercial Corporation v. Coros*, *this Court rules that respondent was not a corporate officer of petitioner-corporation because his position as General Manager was not specifically mentioned in the roster of corporate officers in its corporate by-laws. The enabling clause in petitioner corporation’s by-laws empowering its Board of Directors to create additional officers, i.e., General Manager, and the alleged subsequent passage of a board resolution to that effect cannot make such position a corporate office. Matling clearly enunciated that the board of directors has no power to create other corporate offices without first amending the corporate by-laws so as to include therein the newly created corporate office.* Though the board of directors may create appointive positions other than the positions of corporate officers, the persons occupying such positions cannot be viewed as corporate officers under Section 25 of the Corporation Code. In view thereof, this Court holds that unless and until petitioner corporation’s by-laws is amended