SECOND DIVISION

[G.R. No. 204782, September 18, 2019]

GENUINO AGRO-INDUSTRIAL DEVELOPMENT CORPORATION, PETITIONER, VS. ARMANDO G. ROMANO, JAY A. CABRERA AND MOISES V. SARMIENTO, RESPONDENTS.

DECISION

REYES, J. JR., J.:

The Facts and The Case

Before this Court is a Petition for Review on *Certiorari*[1] filed by petitioner Genuino Agro-Industrial Development Corporation, seeking to annul and set aside the May 31, 2012 Decision[2] and December 12, 2012 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 103337 which found no grave abuse of discretion on the part of the National Labor Relations Commission (NLRC) in affirming the ruling of the Labor Arbiter finding the respondents to be the regular employees of the petitioner whom it had illegally dismissed; and ordering the petitioner to reinstate them and Respondents Armando G. Romano (Romano), Jay A. Cabrera (Cabrera) and Moises V. Sarmiento (Sarmiento) claimed that they work as brine men at Genuino Ice Company Inc.'s (Genuino Ice) ice plant in Turbina, Calamba, Laguna branch. Romano was hired through the man power agency, Vicar General Contractor and Management Services (Vicar), while Sarmiento and Cabrera were hired through L.C. Moreno General Contractor and Management Services (L.C. Moreno). Vicar was the last agency that supplied all the employees to Genuino Ice.[4]

Respondents averred that sometime in September 2004, the workers were given a work schedule where one worker was not made to report for work for 15 consecutive days while the six other workers report for work on their regular schedules. In other words, each worker does not work for 15 days for a period of 90 days. When Romano reported back to work on June 25, 2005 after his 15 days forced leave, he was told then and there that his employment was already terminated. Sarmiento and Cabrera also suffered the same fate. They were dismissed from work on July 10, 2005.[5] Thus, on August 3, 2005, respondents filed a complaint for illegal dismissal with prayer for separation pay against Genuino Ice and Vicar before the Department of Labor and Employment (DOLE).[6]

Genuino Ice, for its part, claimed that respondents charged the wrong party as they were never its employees but of petitioner, its affiliate company. They were contractual employees of Vicar and L.C. Moreno which deployed them to work at petitioner's ice plant at Turbina, Calamba City. Due to the continuous and tremendous decline in the demand for ice products being produced by the petitioner, it shut down its block ice production plant facilities. Its six workers were reduced to two. Among those affected were the respondents who were relieved from their posts

by Vicar and L.C Moreno.[7]

By reason of Genuino Ice's contention that respondents charged the wrong party, they amended their complaint by impleading the petitioner, including the relief of reinstatement, and asking for attorney's fees.[8]

In his Decision[9] dated December 29, 2006, the Labor Arbiter held that respondents were regular employees of the petitioner since they were performing functions that were necessary and desirable to the operations of the ice plant. The continuous work of the respondents as brine men in the plant for several years (since 1988 in the case of Romano and Sarmiento, and since 1992 in Cabrera's case) rendered dubious the proposition that their respective employments were fixed for a specific period or that they were seasonal employees. The contention that petitioner did not exercise any form of control over the work performance of the respondents was found by the Labor Arbiter hard to believe considering that they were suffered to work at the ice plant. The Labor Arbiter also found Vicar to be without substantial capital and equipment to qualify as an independent contractor, and thus treated it as a labor-only contractor, and held accountable as such.

While the Labor Arbiter recognized that the company has the prerogative to close its department, the Labor Arbiter still found respondents' dismissal from employment as illegal inasmuch as the petitioner failed to adduce any evidence showing that the closure of its block ice production facility had some basis and that their dismissal was for an authorized cause. The Labor Arbiter disposed the case in this wise:

> **WHEREFORE,** judgment is hereby rendered:
>
> 1. Declaring that [respondents] were regular employees of [petitioner];
>
> 2. Declaring that [respondents] were illegally dismissed by [petitioner]; and as such should be immediately reinstated to their former positions without loss of seniority rights. [Petitioner] should report compliance with this directive within ten (10) days from receipt hereof;
>
> 3. Adjudging [petitioner] and [Vicar] jointly and severally liable to pay [respondents] the amount of [P] 133,395.51 each as backwages, as of the date of this decision for a total amount of [P]400,186.53. This is only partial payment, full satisfaction of which shall be reckoned to the date of the actual reinstatement of [respondents].
>
> **SO ORDERED.**[10]

On appeal before the NLRC, petitioner stressed that respondents never questioned its prerogative to retrench them due to partial closure of its plant and reduction of its personnel, but only questioned the propriety of their termination for non-compliance with the notice requirement laid down in Article 283 (now Article 298) of the Labor Code. Considering that respondents were laid-off for an authorized cause (the partial shut-down of its ice plant), only that they were not properly notified

thereof, petitioner contended that respondents are not entitled to reinstatement, backwages and separation pay, but only to nominal damages.[11]

Meanwhile, in compliance with the reinstatement aspect of the Labor Arbiter's Decision, the petitioner served upon the respondents a Notice of Compliance informing them that they could no longer be reinstated to their former posts at its ice plant in Turbina, Calamba City, due to the closure of its block ice production facilities. Thus, they were directed to report at petitioner's main office within five days from receipt of the said notice of compliance for their reinstatement/placement at petitioner's other branches or affiliate companies, particularly at its ice plant in Navotas.[12] By virtue of the said directive, respondents reported at petitioner's main office on March 6, 2007. However, they were simply made to wait the whole day and were not given any job assignments. When respondents inquired on their work assignments on March 8 and 12, 2007, they were told that there were still no available work assignments for them, prompting them to file a motion for the issuance of a writ of partial execution ordering their reinstatement in the payroll effective March 6, 2007.[13]

Petitioner opposed the motion for partial execution. It argued that it could not be forced to reinstate the respondents whether in their previous positions or in the payroll because the department where they used to work had already closed and there were no other equivalent positions available in petitioner's only branch in Navotas.[14]

In an Order dated July 5, 2007, the Labor Arbiter granted the motion and issued a writ of partial execution. Since the writ of partial execution was returned unsatisfied, [15] petitioner moved for the issuance of an alias writ of partial execution reiterating their prayer to be reinstated in the payroll.[16] After the petitioner filed its opposition to the motion, the Labor Arbiter issued an Order on September 28, 2007 granting the issuance of an alias writ of partial execution. Petitioner appealed the said September 28, 2007 Order and prayed that the same be lifted and set aside pending resolution of the main case on appeal.[17]

On November 29, 2007, the NLRC rendered its Decision[18] finding that the Labor Arbiter did not err in holding the petitioner and Vicar guilty of illegal dismissal, and ordering respondents' reinstatement with full backwages. The NLRC held that they could not justify respondents' dismissal on the ground of retrenchment considering that petitioner and Vicar totally disregarded the requirements laid down in Article 298 of the Labor Code and failed to adduce documentary proof, like an audited financial statement, to substantiate their claim.

Not accepting defeat, petitioner moved for the reconsideration of the NLRC Decision. Petitioner stressed that as it had explained in its Notice of Compliance, respondents could no longer be reinstated to their former positions due to the closure of its block ice production facilities. There were also no equivalent positions available at its other branch where the respondents may be placed. As such, petitioner reiterated that in view of the situation, it could not be forced to reinstate the respondents to their former positions or even in the payroll. The closure of its ice plants one after the other must be treated as a supervening event that warrants the modification of the order of reinstatement with payment of full backwages, to the payment of

separation pay.[19]

Finding the motion for reconsideration filed by the petitioner to have raised no new matters of substance, the NLRC denied the same in a Resolution[20] dated February 26, 2008.

Undaunted, the petitioner sought recourse before the CA *via* a Petition for *Certiorari* alleging grave abuse of discretion on the part of the NLRC in: (1) not finding that respondents were retrenched from employment and that they are not entitled to reinstatement and backwages, but only to nominal damages; (2) not modifying the Labor Arbiter's Decision which ordered respondents' reinstatement and payment of full backwages to the payment of separation pay.[21]

In the interim, or on September 26, 2011, the Labor Arbiter issued a Writ of Execution commanding the sheriff to proceed to the premises of the petitioner and Vicar, and collect from them the amount of P1,392,579.93 representing respondents' backwages, inclusive of 13th month pay and service incentive leave pay, for the period of July 10, 2005 to April 30, 2010, among others.[22]

In a Decision[23] dated May 31, 2012, the CA found no grave abuse of discretion on the part of the NLRC in deciding the case as it did and denied the petition. It held that while retrenchment is one of the recognized authorized causes for the dismissal of an employee, petitioner failed to discharge its burden of proving that respondents' retrenchment was valid for the reason that petitioner not only failed to notify them and the DOLE of the retrenchment, it also failed to prove that it was losing financially. Thus, respondents' dismissal was clearly illegal. Petitioner cannot also claim that it is liable only for nominal damages considering that retrenchment was shown not to be justified. The CA also found no reason to modify the award of reinstatement and full backwages for failure of the petitioner to sufficiently prove that the department where respondents' used to work had indeed closed, or that there were no other similar unfilled posts available at its other branch.

Its motion for reconsideration having been denied,[24] petitioner is now before this Court *via* the present petition. Respondents filed their Comment with Motion[25] thereto, praying that Genuino Ice be declared solidarity liable with the petitioner to pay respondents the monetary awards granted to them by the Labor Arbiter, to which the petitioner has filed its Opposition.[26] In a Resolution[27] dated January 14, 2015, the Court required the parties to submit their respective memoranda.[28]

The Issues Presented

Petitioner raised the following issues for this Court's consideration:

1. THE HONORABLE COURT OF APPEALS ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION IN AFFIRMING THE NLRC'S DECISION IN NOT RULING FOR THE RETRENCHMENT OF THE RESPONDENTS WITHOUT PROPER NOTICE AND DUE PROCESS, THAT THEY ARE NOT ENTITLED TO REINSTATEMENT AND PAYMENT OF BACKAWAGES, BUT TO NOMINAL DAMAGES PURSUANT TO

RULING HELD IN ***"JAKA FOOD PROCESSING CORP. VERSUS PACOT," GR. No. 151378, March 28, 2005.***"

2. THE HONORABLE COURT OF APPEALS ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION IN NOT MODIFYING THE NLRC'S DECISION AFFIRMING THE LABOR ARBITER'S DECISION ORDERING REINSTATEMENT AND PAYMENT OF FULL BACKWAGES TO THE RESPONDENTS, TO PAYMENT OF SEPARATION PAY RECKONED FROM DATE OF THEIR INITIAL EMPLOYMENT, UP TO DECEMBER 29, 2006, THE DATE OF THE LABOR ARBITER'S DECISION.

3. [RESPONDENTS'] MOTION PRAYING THAT GENUINO ICE COMPANY, INC. BE HELD SOLIDARILY LIABLE WITH PETITIONER GENUINO AGRO DEVELOPMENT CORPORATION FOR THE PAYMENT OF MONETARY AWARDS OF THE LABOR ARBITER IS OUT OF CONTEXT, AND HAS NO FACTUAL AND LEGAL BASIS.[29]

The Arguments of the Parties

Echoing substantially the same arguments put forward before the Labor Arbiter, the NLRC and the CA, petitioner avers that the respondents do not question its right to lay off its workers on account of serious business losses, but only questions the propriety of their termination for non-compliance with the notice requirement and non-payment of separation pay under Article 298 of the Labor Code. Respondents also bewail that their termination was discriminatory since they were not informed why their services were terminated instead of the other workers. Since respondents admitted that the closure of petitioner's business was brought about by serious business losses, respondents are considered to have been terminated for cause, but without according them due process, entitling them to the payment of nominal damages.[30]

Petitioner reiterates that the closure of its ice plants was a supervening event which rendered it impossible for it to reinstate the respondents to their former positions or even in the payroll, since their former positions are no longer existing and no equivalent positions are also available in its other branch. Thus, instead of directing it to reinstate the respondents and pay them their full backwages, petitioner must instead be ordered to pay respondents their separation pay.[31]

Anent the motion of the respondents to declare Genuino Ice solidarity liable with it, petitioner avers that the same has no factual and legal basis because Genuino Ice is not a party in this case. Moreover, the Decision of the Labor Arbiter which held only the petitioner liable to the respondents, had already become final and immutable as to the respondents, they having not appealed the same. Thus, they cannot at this stage of the proceedings seek to alter the Decision to make Genuino Ice solidarity liable.[32]

Respondents counter that the petitioner is raising the very same grounds it raised before the CA, and this Court in *Genuino Ice Company, Inc. v. Lava*[33] has resolved exactly the same issues and exactly the same facts involving co-employees of the respondents against Genuino Ice, where the latter was found guilty of illegal