

## **FIRST DIVISION**

**[ G.R. No. 201396, September 11, 2019 ]**

**YUSHI KONDO, PETITIONER, VS. TOYOTA BOSHOKU (PHILS.) CORPORATION, MAMORU MATSUNAGA, KAZUKI MIURA, AND JOSELITO LEDESMA, RESPONDENTS.**

### **D E C I S I O N**

**JARDELEZA, J.:**

In this case, We reiterate that the employee bears the burden to prove by substantial evidence the fact of his dismissal from employment. Absent any showing of an overt or positive act proving that the employer had dismissed the employee, the latter's claim of illegal dismissal cannot be sustained as it would be self-serving, conjectural, and of no probative value.<sup>[1]</sup>

Yushi Kondo (petitioner), a Japanese citizen, applied with and was hired by respondent Toyota Boshoku Philippines Corporation (Toyota) on September 26, 2007 as Assistant General Manager for Marketing, Procurement and Accounting. His net monthly salary was P90,000.00, to be increased to P100,000.00 after six months.<sup>[2]</sup> He was assured of other benefits such as 13th month bonus, financial assistance to be given before Christmas, and 15 days each of sick leave and vacation leave per year. Petitioner was also provided a service car and a local driver by Toyota's President at the time, Fuhimiko Ito (Ito).<sup>[3]</sup> Toyota caused the issuance of petitioner's Alien Employment Permit (AEP).<sup>[4]</sup>

As Assistant General Manager, petitioner implemented policy and procedural changes in his department, which have been approved by Ito.<sup>[5]</sup> After working for three months, petitioner was subjected to a performance evaluation, the result of which was "perfect." Two months later, he was again subjected to another performance evaluation. This time, his performance rating was only slightly above average. Petitioner protested the result of this evaluation, reasoning that it was impossible to get that rating after only two months from the initial evaluation.<sup>[6]</sup> The evaluation supposedly coincided with the discovery by Toyota's Japan headquarters of the anomalies committed by Ito.<sup>[7]</sup>

Petitioner was thereafter allegedly assigned the oldest company car and prevented from using other company cars for business travels. He was also prevented from further using his Caltex card for gasoline expenses, and instructed to pay for gas expenses with his own money, subject to reimbursement. He was restrained by Toyota's security personnel from going out of the office even if it were for the purpose of performing his official duty, and prevented from attending the meeting for the evaluation of employees.<sup>[8]</sup>

When respondent Mamoru Matsunaga (Matsunaga) took over as President of Toyota,

petitioner was transferred to the Production Control, Technical Development and Special Project department as Assistant Manager.<sup>[9]</sup> Respondent Kazuki Miura (Miura) took over his former post. Petitioner allegedly objected to the transfer on the ground that it is in violation of the terms of his AEP, and admitted having no knowledge, skills, and experience in production control and technical development. Nonetheless, petitioner assumed his new post on July 1, 2008.<sup>[10]</sup>

On September 1, 2008, petitioner was notified that his service car and driver will be withdrawn.<sup>[11]</sup> He pleaded with Matsunaga for the benefits to be retained since he would be helpless without them. Nonetheless, Matsunaga allegedly brushed aside his plea and told him that he must shoulder his own transportation expenses.<sup>[12]</sup>

On October 13, 2008, Toyota terminated the services of petitioner's driver. Since petitioner could not report for work, he considered himself constructively dismissed.<sup>[13]</sup> On the same day, he filed a complaint with the NLRC for constructive dismissal, illegal diminution of benefits, illegal transfer of department, harassment, and discrimination against Toyota, Matsunaga, Miura, and Joseph Ledesma (Ledesma), corporate officers of Toyota (collectively, respondents).<sup>[14]</sup>

Respondents denied petitioner's allegations, arguing that petitioner was entitled to the service car and driver only for a period of one year, after which he was expected to drive himself to and from work. The driver assigned to petitioner was discharged due to the termination of his employment contract.<sup>[15]</sup> Moreover, the free gasoline that may be availed with the Caltex card is a benefit exclusively given to Japanese expatriates, which petitioner was not, being a local hire. The reason why petitioner was able to use the card is that the service car he used was previously assigned to an expatriate and it had an accompanying Caltex card.<sup>[16]</sup> Petitioner also purportedly abused the Caltex card by using it for personal trips.<sup>[17]</sup> Respondents denied that petitioner was given the oldest company car, as in fact he was given a year 2000 Toyota Corolla model.<sup>[18]</sup> They denied excluding petitioner from any meeting, stating that the only meeting he was excluded from was the one exclusively for top corporate officers. Finally, petitioner's transfer to another department was an exercise of management prerogative. Petitioner had skills in planning, development, and special projects, and was thus competent for his new position. Toyota allegedly had no intention of dismissing petitioner, as it actually later sent him two notices to return to work.<sup>[19]</sup>

On November 25, 2009, Labor Arbiter Michaela A. Lontoc (LA) issued a Decision<sup>[20]</sup> holding that petitioner was constructively dismissed. Consequently, she directed the latter's reinstatement to his old department without loss of seniority rights, and ordered respondents to pay him backwages, moral and exemplary damages for their "dishonorable, unrighteous and despicably oppressive" acts toward petitioner,<sup>[21]</sup> and attorney's fees. However, the LA denied petitioner's claim for *pro rata* 13<sup>th</sup> month pay and other benefits for not having been raised in the complaint, as well as his claim for actual damages for being unsubstantiated.

*First*, the LA held that Toyota failed to prove that petitioner was entitled to the service car and driver for a limited period of one year. None of the respondents had personal knowledge of the extent and limitation of the benefits granted to petitioner,

who was hired by Toyota's former President, Ito. Respondents did not even attempt to obtain Ito's statement to support their allegation.<sup>[22]</sup> They merely assumed that the benefits have a duration based on the limited employment contract of petitioner's driver. Hence, the withdrawal of the benefit was without justification, and thus unwarranted.<sup>[23]</sup>

*Second*, there was no valid justification for the withdrawal of petitioner's Caltex card. According to respondents, petitioner was not entitled to the benefit in the first place, and that he abused his use of the card.<sup>[24]</sup> However, the LA concluded that the gasoline allowance policy showed by respondents does not apply to petitioner as it applies only to employees occupying the rank of assistant manager and up, who use their own vehicle in reporting to work. Petitioner was not using his own vehicle but the service car provided by Toyota. Respondents also failed to submit the complete copy of Toyota's manual of operations, which supposedly contains the policy that only expatriates are entitled to a Caltex card. On the contrary, there is a statement in the policy which indicates that the benefit is not exclusive to expatriates.<sup>[25]</sup> The LA further ruled that respondents' assessment of abuse of the Caltex card was only presumed and not based on any mathematical computation.<sup>[26]</sup>

*Third*, the LA held that petitioner's transfer from the Marketing, Procurement and Accounting Department to the Production Control, Technical Development and Special Project Department of Toyota lacked justification. Petitioner did not have the technical knowledge, skills and experience for his new post, as his background pertains to trading, brokering and business consultancy.<sup>[27]</sup> His transfer was not an exercise of management prerogative as he was not appropriately trained for his new functions. Rather, it was a scheme for him to commit mistakes and create a valid reason for his subsequent termination and deportation.<sup>[28]</sup> Moreover, petitioner's transfer should have been approved by the Secretary of Labor and Employment pursuant to Article 41<sup>[29]</sup> of the Labor Code.

The LA concluded that the foregoing circumstances amount to constructive dismissal as they made petitioner's work conditions unbearable.<sup>[30]</sup> Further, the removal of his service car, driver and Caltex card amounted to a violation of the public policy of non-diminution of employee benefits.<sup>[31]</sup> Consequently, the LA adjudged respondents to be jointly liable to pay the abovementioned monetary awards to petitioner.<sup>[32]</sup>

Respondents appealed to the NLRC which, on May 24, 2010 rendered a Decision<sup>[33]</sup> reversing and setting aside the LA Decision and dismissing petitioner's complaint. It held that the award for damages and attorney's fees should be deleted pursuant to the NLRC Rules of Procedure since these were not asked for in the complaint.<sup>[34]</sup> Moreover, there was no constructive dismissal to speak of since petitioner claimed to have been "forced to resign" as a result of respondents' acts.<sup>[35]</sup> Hence, he had no more intention of going back to work. In fact, despite receipt of notices to report for work, petitioner failed to do so. He is considered to have abandoned his job or voluntarily terminated his employment relations with Toyota.<sup>[36]</sup> Moreover, the primary and immediate cause of petitioner's claim of constructive dismissal is the withdrawal of the car and driver assigned to him, which he considered essential

requisites for his continued employment.<sup>[37]</sup> To make it appear that he was constructively dismissed, petitioner made various allegations, but he failed to support them with substantial evidence.<sup>[38]</sup> Further, his transfer to another department was an exercise of Toyota's management prerogative. His position remained the same and there was no diminution of his benefits. He also agreed to the transfer and assumed his new post.<sup>[39]</sup> As regards the alleged diminution of benefits, the NLRC gave credence to Toyota's claim that the service car and driver benefits were limited to one year. Also, considering that the benefit was not embodied in an employment contract and the driver's contract of employment had expired, the privilege may be withdrawn anytime without amounting to a diminution of benefits.<sup>[40]</sup> Finally, the NLRC believed Toyota's explanation that petitioner was not entitled to the Caltex card because the benefit is extended to Japanese expatriates only and not to local hires.<sup>[41]</sup>

Petitioner filed a motion for reconsideration, but NLRC denied it. Hence, he filed a petition for *certiorari*<sup>[42]</sup> with the Court of Appeals (CA).

On October 24, 2011, the CA rendered the assailed Decision<sup>[43]</sup> denying the petition. It held that it is not the function of *certiorari* proceedings to review the factual findings of the NLRC, which findings are binding on the court if supported by substantial evidence.<sup>[44]</sup> Moreover, even if petitioner claimed that the NLRC gravely abused its discretion in reversing the Decision of the LA, he nonetheless failed to allege that it was done capriciously or whimsically. He merely claimed that the NLRC was "not correct" in deciding the issues. Thus, he conceded that the NLRC merely committed errors in judgment and not errors in jurisdiction, which is the exclusive concern of a Rule 65 petition. The petition was dismissible on this premise alone.

Even if the petition were to be treated as an appeal, the CA held that it is still dismissible. Petitioner insisted that he claimed damages and attorney's fees in his complaint, but he failed to attach a certified true copy of the complaint which would have proved his point.<sup>[45]</sup> On the issues of constructive dismissal, abandonment and not reporting for work when required, the CA merely adopted the findings of the NLRC on the rationale that it is not the function of *certiorari* proceedings to review findings of fact of the NLRC.<sup>[46]</sup>

Petitioner filed a motion for reconsideration, but the CA denied it in its Resolution<sup>[47]</sup> dated April 3, 2012. He thus filed the present petition on the following grounds:

1. Whether or not the Honorable Court of Appeals gravely abused its discretion amounting to lack of or in excess of jurisdiction in ruling that petitioner failed to allege capriciousness or whimsicality in the issuance of the Honorable NLRC's assailed decision; and
2. Whether or not the Honorable Court of Appeals gravely abused its discretion amounting to lack of or in excess of jurisdiction when it concluded that what petitioner brought as issues in the petition for *certiorari* were mere errors in judgment and not errors of jurisdiction.<sup>[48]</sup>

Petitioner insists that he alleged as ground for the allowance of his CA petition that the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in reversing the Decision of the LA and dismissing his complaint. The fact that he did not specifically use the words "capricious" or "whimsical" does not remove his petition from the ambit of *certiorari* under Rule 65 of the Rules of Court.

[49] Moreover, the phrase "grave abuse of discretion amounting to lack of or in excess of jurisdiction" means a capricious and whimsical exercise of judgment, such that to state that the NLRC acted capriciously and whimsically would have been repetitive. [50] On the second ground, petitioner alleges that he raised only one issue in his CA petition, *i.e.*, that the NLRC committed grave abuse of discretion amounting to lack or in excess of jurisdiction. The "issues" he subsequently enumerated supported the charge of "grave abuse of discretion." [51]

The petition lacks merit.

At the outset, the Court notes that the petition was correctly filed under Rule 45 of the Rules of Court. However, it alleges grave abuse of discretion on the part of the CA, which is the proper subject of a petition for *certiorari* under Rule 65. In the CA petition, on the other hand, counsel made a general allegation of grave abuse of discretion committed by the NLRC, but formulated the issues as if the NLRC committed errors of judgment. The difference between petitions filed under Rule 45 and Rule 65 of the Rules of Court is so fundamental that it is extremely lamentable that counsel still confounds one for the other and misapprehends their purpose.

To emphasize, decisions, final orders or resolutions of the CA in any case, *i.e.*, regardless of the nature of the action or proceedings involved, may be appealed to the Court by filing a petition for review under Rule 45 of the Rules of Court. [52] Through this remedy, the Court reviews *errors of judgment* allegedly committed by the CA. On the other hand, a petition for *certiorari* under Rule 65 is not an appeal but a special civil action restricted to resolving *errors of jurisdiction* and grave abuse of discretion, not errors of judgment. [53]

Jurisprudence instructs that where a Rule 65 petition alleges grave abuse of discretion, the petitioner should establish that the respondent court or tribunal acted in a capricious, whimsical, arbitrary or despotic manner in the exercise of its jurisdiction as to be equivalent to lack of jurisdiction. [54] An error of judgment that the court may commit in the exercise of its jurisdiction is not correctable through the original civil action of *certiorari*. The supervisory jurisdiction of a court over the issuance of a writ of *certiorari* cannot be exercised for the purpose of reviewing the intrinsic correctness of a judgment of the lower court—on the basis either of the law or the facts of the case, or of the wisdom or legal soundness of the decision. Even if the findings of the court are incorrect, as long as it has jurisdiction over the case, such correction is normally beyond the province of *certiorari*. [55] Errors of judgment and errors of jurisdiction as grounds in availing the appropriate remedy are mutually exclusive. [56] Hence, it is inexcusable for petitioner to state that "x x x grave abuse of discretion, in *certiorari* proceedings, contemplates errors in judgment committed in excess of or with lack of jurisdiction" [57] to justify his deplorable lapses in making the proper allegations in the Rule 65 petition it filed with the CA.