

SECOND DIVISION

[G.R. No. 223262, September 11, 2017]

**DENNIS M. CONCEJERO, PETITIONER, VS. COURT OF APPEALS
AND PHILIPPINE NATIONAL BANK, RESPONDENTS.**

DECISION

PERALTA, J.:

This is a petition for *certiorari* under Rule 65 of the Rules of Court, seeking to annul and set aside the Resolutions dated November 3, 2014, June 18, 2015, and March 4, 2016 of the Court of Appeals^[1] on the ground that the assailed Resolutions were rendered with grave abuse of discretion amounting to lack or excess of jurisdiction.

The facts are as follows:

Petitioner Dennis M. Concejero was the Assistant Vice-President and Head of the Branch Operations Review Department (*BORD*) of respondent Philippine National Bank (*PNB*). As head of the BORD, petitioner was responsible for the overall review of compliance of domestic branches with internal control policies, established procedures and guidelines of the bank, among others. His primary mandate was to eradicate fraud and prosecute fraudsters. He supervised 26 Branch Operations Review Officers in their operations review of all branches, gave authority to convene the Regional Fact-Finding Committees, reviewed the reports and indorsed fraud to legal and audit.^[2]

In a Memorandum dated January 24, 2013, respondent PNB, through its Administrative Board, charged petitioner with several acts constituting abuse of authority, concealment of knowledge of commission of fraud, deceit or other forms of irregularity, willful breach of trust resulting in loss of confidence and gross misconduct.^[3]

Petitioner submitted his Answer to the charge on February 4, 2013.^[4]

On February 5, 2013, petitioner was placed under preventive suspension for 30 days, beginning February 8, 2013 until March 9, 2013. Also, on February 5, 2013, PNB's Administrative Board conducted an administrative hearing where both petitioner and his counsel appeared.^[5]

On February 13, 2013, respondent PNB, through its Chief Employee Relations Officer, issued an implementing Order on the administrative charge for abuse of authority, concealment, willful breach of trust and confidence against petitioner. In the said Order, the Administrative Board's Decision dated February 8, 2013 was quoted in its entirety and petitioner was further informed that the Board found him guilty of willful breach of trust resulting in loss of confidence and he was meted the

penalty of dismissal.^[6]

On April 4, 2013, petitioner filed a Complaint for illegal suspension and dismissal and prayed for separation pay in lieu of reinstatement and payment of his full backwages, holiday pay, 13th month pay, allowances, bonuses, moral and exemplary damages, and attorney's fees.^[7]

On February 18, 2014, the Labor Arbiter ruled that petitioner's dismissal was for a just and valid cause and that he was afforded due process. The Labor Arbiter dismissed the complaint for lack of merit.^[8]

Petitioner appealed the decision of the Labor Arbiter to the National Labor Relations Commission (NLRC).

In a Decision^[9] dated July 31, 2014, the NLRC denied the appeal and affirmed the decision of the Labor Arbiter. It held:

x x x x

All told, the respondents have shown sufficient and substantial documentary and testimonial evidence to conclude that despite complainant's knowledge of the irregular lending activities at the Pioneer Branch, he willfully concealed its existence and that he prevented a formal investigation from being conducted on the matter. Since the complainant occupied a position imbued with trust and confidence, the commission of such misfeasance and nonfeasance resulted to the loss of the trust and confidence reposed in him by the respondent PNB. In *Sagales vs. Rustan's Commercial Corporation*, the Supreme Court held that in loss of trust and confidence, as a just cause for dismissal, it is sufficient that there must only be some basis for the loss of trust and confidence or that there is reasonable ground to believe, if not to entertain the moral conviction, that the employee concerned is responsible in the misconduct and that his participation in the misconduct rendered him absolutely unworthy of trust and confidence.

x x x x

There being no illegal dismissal, the complainant's claim for full backwages, separation pay, holiday pay, 13th month pay, allowances, bonuses, moral and exemplary damages, and attorney's fees must likewise fail.

WHEREFORE, premises considered, the appeal is denied. The decision of the Labor Arbiter Cheryl M. Ampil dated February 18, 2014 is AFFIRMED.
^[10]

Petitioner's motion for reconsideration was denied by the NLRC in its Resolution^[11] dated September 17, 2014. Petitioner received a copy of the Resolution on September 23, 2014.

On October 8, 2014, or 21 days after receipt of the NLRC Resolution denying his

motion for reconsideration, petitioner filed with the Court of Appeals a Motion for Extension of Time to File Petition for *Certiorari*.^[12] He stated therein that he received the NLRC Resolution denying his motion for reconsideration on September 23, 2014 and that he had until October 8, 2014 (or 15 days) to appeal the Resolution to the Court of Appeals through a petition for *certiorari*. He prayed that he be granted 15 days extension or until October 23, 2014 within which to file his petition for *certiorari* with the appellate court.

On November 3, 2014, the Court of Appeals promulgated a Resolution dismissing the case docketed as CA-G.R. SP No. 137479. The Resolution reads:

Given the absence, at this juncture, of the appropriate Petition for Certiorari, in keeping with counsel for petitioner's Motion for Extension therefor until October 23, 2014, SP No. 137479 is hereby DISMISSED.

^[13]

Meanwhile, on October 23, 2014, petitioner's counsel filed a Manifestation and Motion^[14] stating that in filing the Motion for Extension of Time to File Petition for *Certiorari* on October 8, 2014, he overlooked Section 4, Rule 65 of the Rules of Court, which provides a period of 60 days to file a petition for *certiorari*. Hence, his last day to file the petition is on November 22, 2014. He prayed that he be allowed to file his petition on or before November 22, 2014.

On November 24, 2014, petitioner filed his Petition for *Certiorari*^[15] with the Court of Appeals.

On January 27, 2015, the Court of Appeals promulgated a Resolution, which reads:

After the Resolution of November 3, 2014, the Rollo later disclosed the Manifestation and Motion dated October 22, 2014 as received by the Court on November 4, 2014, inclusive of the Petition for Certiorari (Rule 65) dated November 24, 2014, which Manifestation and Motion is REFERRED to the private respondent for Comment thereon in ten (10) days from notice thereof.^[16]

On February 20, 2015, respondent filed a Comment/Opposition to Manifestation and Motion,^[17] praying that petitioner's Manifestation and Motion be denied for lack or merit.

On March 10, 2015, the Court of Appeals promulgated its Resolution,^[18] which reads:

Petitioner's "Manifestation and Motion" and private respondent's Comment/Opposition thereto are now submitted for appropriate action.

On June 18, 2015, the Court of Appeals promulgated a Resolution, which reads:

Without any Motion for Reconsideration from counsel for petitioner after the dismissal of the current case per the Resolution of November 3, 2014, a copy of which was received by counsel for petitioner on November 10, 2014 per return card now on file, We hereby simply NOTE counsel for petitioner's Manifestation and Motion, subject-matter of the Resolutions of January 27, 2015 and March 10, 2015, and irrespective of

counsel for respondent PNB's averments on the Comment/Opposition to Manifestation and Motion.

Accordingly, and by reason of the foregoing details, let the corresponding Entry of the Resolution of November 3, 2014 be effected by the Division Clerk of Court.^[19]

On June 18, 2015, the Resolution dated November 3, 2015 became final and executory and was recorded in the Book of Entries of Judgment.^[20]

Petitioner filed a motion for reconsideration of the Resolution dated June 18, 2015, which motion was denied by the Court of Appeals in a Resolution dated March 4, 2016, to wit:

Inasmuch as what ought to be resolved, at this juncture, was merely the prospect of recall of the Resolution of June 18, 2015, per counsel for petitioner's Motion for Reconsideration of the Resolution dated June 18, 2015, and like what We expressed on the assailed Resolution on the absence of any Motion for Reconsideration following the dismissal of SP No. 137479, through the initial Resolution of November 3, 2014, there was, therefore, no cogent legal basis for the recall of the Resolution of June 18, 2015.

Accordingly, We hereby DENY counsel for petitioner's Motion for Reconsideration of the Resolution dated June 18, 2015, especially so when the Resolution of November 3, 2014 attained the character of finality when it was not formally challenged by counsel for petitioner in the manner expected by the Rules of Court.^[21]

Hence, this petition for *certiorari* under Rule 65 of the Rules of Court, alleging thus:

I

PUBLIC RESPONDENT COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DISMISSED CA-G.R. SP No. 137479 BEFORE THE LAPSE OF THE SIXTY (60) DAY REGLEMENTARY PERIOD TO FILE A PETITION UNDER RULE 65.

II

PUBLIC RESPONDENT COURT OF APPEALS COMMITTED PATENT GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN, BEING AWARE OF THE PERIOD SET BY THE RULES, IT SIMPLY NOTED PETITIONER'S MANIFESTATION AND MOTION DATED OCTOBER 22, 2014, AND THEN ORDERED THE CORRESPONDING ENTRY OF THE RESOLUTION OF NOVEMBER 3, 2014 BY THE DIVISION CLERK OF COURT.

III

PUBLIC RESPONDENT COURT OF APPEALS COMMITTED PATENT GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF