

## SECOND DIVISION

[ G.R. No. 203328, November 08, 2017 ]

**JOSELITO A. ALVA, PETITIONER, V. HIGH CAPACITY SECURITY FORCE, INC. AND ARMANDO M. VILLANUEVA, RESPONDENTS.**

### DECISION

**REYES, JR., J:**

The laborer's availment of the free legal services offered by the Public Attorney's Office (PAO) does not prevent the award of attorney's fees upon the successful conclusion of the litigation.

This treats of the Petition for Review on *Certiorari*<sup>[1]</sup> under Rule 45 of the Rules of Court seeking the reversal of the Decision<sup>[2]</sup> dated February 24, 2012 and Resolution<sup>[3]</sup> dated August 30, 2012, rendered by the Court of Appeals (CA) in CA-G.R. SP No. 114442 and CA-G.R. SP No. 114520, which deleted the award of attorney's fees in favor of petitioner Joselito A. Alva (Alva).

#### The Antecedents

On November 1, 2003, Alva was hired as a security guard by respondent High Capacity Security Force, Inc., (High Capacity), a duly organized security agency. Alva was initially detailed as a security guard at the Basa Land Power Plant in Rosario, Cavite, earning a daily wage of Three Hundred Thirty Pesos (Php 330.00).

On April 16, 2004, Alva was promoted as Assistant Security Officer. After sometime, he was again promoted as Security Officer, with a daily salary of Four Hundred Thirty Pesos (Php 430.00).

Meanwhile, on June 5, 2007, Alva was assigned as an Assistant Officer-in-Charge of HRD-PTE, Ltd. Inc. (HRD PTE). While assigned thereat, one of the security guards under his supervision allowed the entry of a garbage collection truck without securing the prior permission and approval of the company's Administrative and Personnel Manager. Bearing the crudgels of such mishap, Alva was suspended for one month beginning October 21, 2007.

During Alva's suspension, HRD-PTE requested for Alva's relief from post. HRD-PTE complained that Alva was found sleeping while on duty and exercised favoritism in the assignment of shifts of security guards.

Thereafter, Alva was placed on floating status. On November 23, 2007, while Alva was still on floating status, High Capacity informed him of the lack of available posts where he could be assigned as Security Officer or Assistant Security Officer. Instead, Alva was given an option to temporarily render duty as an ordinary guard while waiting for an available officer's post.<sup>[4]</sup> However, Alva was no longer given any post. Alva begged for an assignment, but his pleas were all unheeded.<sup>[5]</sup>

This prompted Alva to file a Complaint for Illegal Dismissal, Underpayment of Wages, Non-Payment of 13<sup>th</sup> Month Pay, Service Incentive Leave, Holiday Premium, ECOLA, Payment for Rest Day, Night Shift Differential Pay, Separation Pay, moral and exemplary damages and attorney's fees against High Capacity and its General Manager, Armando Villanueva.<sup>[6]</sup> Alva was assisted by the PAO in the proceedings before the Labor Arbiter (LA).<sup>[7]</sup>

### **Ruling of the LA**

On October 28, 2008, the LA rendered a Decision<sup>[8]</sup> finding High Capacity guilty of illegal dismissal. The LA observed that Alva was placed on floating status from October 21, 2007 to April 22, 2008, and was not given any assignment or duty after the lapse of six months. The failure of High Capacity to reinstate Alva after the lapse of his off-detail status on April 22, 2008, rendered it liable for illegal dismissal.<sup>[9]</sup>

Accordingly, the LA ordered Alva's reinstatement with the payment of backwages, computed six months after he was first placed on floating status up to the promulgation of its decision. Likewise, the LA awarded separation pay in lieu of reinstatement, equivalent to one month salary for every year of service. In addition, the LA awarded attorney's fees equivalent to ten percent (10%) of the total monetary award, finding that Alva was constrained to hire the services of counsel to protect his rights and interests.

Aggrieved, High Capacity filed an appeal before the National Labor Relations Commission (NLRC).<sup>[10]</sup>

### **Ruling of the NLRC**

On December 8, 2009, the NLRC modified the earlier ruling of the Labor Arbiter.<sup>[11]</sup> The NLRC found that Alva was dismissed for just cause, as he was caught sleeping while on duty. However, the NLRC noted that High Capacity failed to observe procedural due process in effecting Alva's dismissal from employment. Accordingly, the NLRC deleted the award of backwages and separation pay, and instead ordered the payment of nominal damages in addition to Alva's monetary claims. The NLRC maintained the award of attorney's fees. The dispositive portion of the NLRC decision reads:

WHEREFORE, premises considered, the Decision is MODIFIED. Respondents are ordered: (1) to pay Complainant the amount of P30,000.00 by way of nominal damages; (2) to pay the Complainant the aggregate amount of P52,890.00 representing his holiday pay, service incentive leave pay and 13<sup>th</sup> month pay; (3) to pay Complainant an amount equivalent to ten (10%) percent of the judgment award, as and for attorney's fees.

SO ORDERED.<sup>[12]</sup>

Dissatisfied with the ruling of the NLRC, both parties filed their respective Motions for Reconsideration.

In his Motion for Reconsideration,<sup>[13]</sup> Alva claimed that the NLRC gravely abused its discretion in modifying the decision of the LA by deleting the awards of backwages

and separation pay. Alva maintained that he was entitled to backwages as a recompense for the earnings he lost due to his illegal dismissal.

On the other hand, High Capacity averred that the NLRC's award of nominal damages amounting to Thirty Thousand Pesos (Php 30,000.00), effectively forbid the imposition of any other damages. In this regard, High Capacity argued that the award of Fifty Two Thousand Eight Hundred Ninety Pesos (Php 52,890.00), which represented Alva's holiday pay, service incentive leave pay and 13<sup>th</sup> month pay, partook the nature of actual damages that may no longer be imposed. In addition, High Capacity prayed for the deletion of attorney's fees, there being no justification for its award. High Capacity stressed that the award of attorney's fees is an exception, rather than the general rule.<sup>[14]</sup>

On March 30, 2010, the NLRC issued a Resolution<sup>[15]</sup> partially granting High Capacity's Motion for Reconsideration by deleting the award of attorney's fees in favor of Alva. The NLRC found no basis to award attorney's fees considering that Alva's dismissal from employment was justified. As such, the NLRC opined that no bad faith may be imputed against High Capacity.<sup>[16]</sup>

Dissatisfied with the ruling, both parties filed separate Petitions for *Certiorari* before the CA.<sup>[17]</sup> The two petitions were consolidated. One of the issues raised before the CA was the propriety of the deletion of the award of attorney's fees.<sup>[18]</sup>

### **Ruling of the CA**

On February 24, 2012, the CA rendered the assailed Decision.<sup>[19]</sup> The CA held that Alva was constructively dismissed, when he was placed on floating status for more than six months. The unreasonable length of time that Alva was not given a new assignment inevitably resulted in his constructive dismissal.<sup>[20]</sup> Additionally, the CA observed that High Capacity failed to comply with procedural due process requirements in effecting Alva's dismissal.<sup>[21]</sup>

Accordingly, the CA ordered the payment of backwages, computed from the time Alva's compensation was withheld up to the finality of the Court's decision. Acceding to Alva's request not to be reinstated, the CA awarded separation pay in lieu of reinstatement.<sup>[22]</sup> Likewise, the CA granted Alva's claims for holiday pay, service incentive leave pay and 13<sup>th</sup> month pay. However, the CA deleted the award of attorney's fees noting that Alva was represented by the PAO.<sup>[23]</sup>

The dispositive portion of the assailed decision reads:

WHEREFORE, premises considered, the assailed Decision dated December 8, 2009 rendered by the [NLRC] in NLRC LAC No. 12-004020-08 and its Resolution dated March 30, 2010 issued in the same case are hereby VACATED and SET ASIDE and another judgment entered as follows:

1. Declaring the dismissal of Joselito A. Alva to be illegal and consequently, HCSFI and Armando Villanueva are directed to pay Mr. Alva his separation pay, backwages and monetary claims constituting holiday pay, service incentive leave pay and 13<sup>th</sup> month pay;

2. Dismissing the claim of Joselito A. Alva for attorney's fees; and
3. The [LA] of origin is DIRECTED to compute the following with dispatch:
  1. Joselito A. Alva's backwages from the time his salary was withheld on April 22, 2008, up to the date of finality of this Decision;
  2. Joselito A. Alva's separation pay from the date he was employed on November 1, 2003 up to the date of finality of this Decision; and
  3. Joselito A. Alva's monetary claims comprising of holiday pay, service incentive leave pay and 13<sup>th</sup> month pay with due consideration to the corresponding changes in the daily salary rate received by him within the period of three years, that is, from 2005 until the year he filed the case for illegal dismissal on April 22, 2008.

The total monetary award shall earn legal interest from the date of the finality of this Decision until fully paid.<sup>[24]</sup>

Both parties filed their respective Motions for Reconsideration,<sup>[25]</sup> which were denied by the CA in its Resolution<sup>[26]</sup> dated August 30, 2012.

### **The Issue**

Undeterred, Alva filed the instant Petition, praying for the modification of the assailed decision, on the following lone ground, to wit:

THE CA GRAVELY ERRED IN DELETING THE AWARD OF ATTORNEY'S FEES.<sup>[27]</sup>

Alva asserts that High Capacity should be ordered to pay attorney's fees pursuant to Article 2208 paragraphs (2) and (7) of the Civil Code.<sup>[28]</sup> Alva asserts that he is entitled to attorney's fees as he was compelled to litigate to protect his interest by reason of the unjustified and unlawful termination of his employment.<sup>[29]</sup> The fact that he is represented by the PAO does not militate against his right to receive attorney's fees. Alva points out that Section 6 of Republic Act (R.A.) No. 9406<sup>[30]</sup> actually sanctions the award of attorney's fees in favor of the PAO in successfully litigated cases.<sup>[31]</sup>

On the other hand, High Capacity counters that the CA was correct in deleting the award of attorney's fees. High Capacity avers that the award of attorney's fees is warranted only in cases where the plaintiff was compelled to litigate or incur expenses to protect his interest due to the act or omission of the defendant. Alva, who was represented by the PAO, did not incur any expenses to protect his interest, as the former merely availed of the latter's free legal services. High Capacity relies on the Court's pronouncement in *Lambo v. NLRC*,<sup>[32]</sup> which disallowed the award of attorney's fees to litigants who were represented by the PAO.<sup>[33]</sup> Similarly, High Capacity points out that the award of attorney's fees in favor of Alva was bereft of any factual, legal and equitable justification.<sup>[34]</sup> Finally, High Capacity asserts that the award of attorney's fees under Article 2208 of the Civil Code is discretionary on the courts. This being so, the CA's refusal to award attorney's fees must thus be respected.

## Ruling of the Court

### ***The petition is impressed with merit.***

It must be noted at the outset that the only issue submitted for the Court's resolution is the propriety of the deletion of the award of attorney's fees. There remains no issue regarding the finding of illegal dismissal, thereby rendering all pronouncements on the matter of illegal dismissal final.

### ***The Concept of Attorney's Fees in Labor Cases***

Essentially, there are two commonly accepted concepts of attorney's fees - the ordinary and extraordinary. On the one hand, in its ordinary concept, an attorney's fee is the reasonable compensation paid by the client to his lawyer in exchange for the legal services rendered by the latter. The compensation is paid for the cost and/or results of the legal services, as agreed upon by the parties or as may be assessed by the courts. On the other hand, as an extraordinary concept, an attorney's fee is deemed an indemnity for damages ordered by the court to be paid by the losing party to the winning party. In labor cases, attorney's fees partake of the nature of an extraordinary award granted to the victorious party as an indemnity for damages. As a general rule, it is payable to the client, not to his counsel, unless the former agreed to give the amount to the latter as an addition to, or part of the counsel's compensation.<sup>[35]</sup>

Notably, Article 111 of the Labor Code sanctions the award of attorney's fees in cases of the unlawful withholding of wages, wherein the culpable party may be assessed attorney's fees equivalent to ten percent (10%) of the amount of wages recovered.<sup>[36]</sup> The amount of attorney's fees shall not exceed ten percent (10%) of the total monetary award, and the fees may be deducted from the amount due the winning party.<sup>[37]</sup>

In addition, Article 2208 of the Civil Code allows the award of attorney's fees in the following instances, to wit:

ART. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

- (1) When exemplary damages are awarded;
- (2) **When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;**
- (3) In criminal cases of malicious prosecution against the plaintiff;
- (4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
- (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiffs plainly valid, just and demandable claim;
- (6) In actions for legal support;
- (7) **In actions for the recovery of wages of household helpers, laborers and skilled workers;**
- (8) **In actions for indemnity under workmen's compensation and employer's liability laws;**