

FIRST DIVISION

[G.R. No. 192297, August 03, 2016]

**SUPRA MULTI-SERVICES, INC., JESUS TAMBUNTING, JR., AND
RITA CLAIRE T. DABU, PETITIONERS, VS. LANIE M. LABITIGAN,
RESPONDENT.**

D E C I S I O N

LEONARDO-DE CASTRO, J.:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court, filed by petitioners Supra Multi-Services, Inc. (SMSI), Jesus S. Tambunting, Jr. (Tambunting), and Rita Claire T. Dabu (Dabu), seeking, among other reliefs, the modification of the Decision^[1] dated February 22, 2010 of the Court of Appeals in CA-G.R. SP No. 103847 insofar as it awarded separation pay to respondent Lanie M. Labitigan based on its finding that although respondent committed a breach of petitioners' trust, the termination of respondent's employment was too harsh a punishment.

I

FACTUAL ANTECEDENTS

Petitioner SMSI is a domestic corporation engaged in furnishing its clients with manpower, such as janitors, drivers, messengers, and maintenance personnel. Petitioners Tambunting and Dabu are the President and Vice-President for Administration, respectively, of petitioner SMSI.

Respondent was hired as a rank and file employee of petitioner SMSI on March 13, 1994. When respondent's employment was terminated on December 21, 2005, she was holding the position of Accounting Supervisor with a monthly salary of PI 3,000.00.

On June 15, 2006, respondent filed before the Labor Arbiter a complaint for illegal dismissal against petitioners, seeking reinstatement and payment of backwages, overtime pay, holiday pay, premium pay for holiday and rest day, separation pay, unused leave pay, damages, and attorney's fees. Her complaint was docketed as NLRC-NCR Case No. 00-06-05066-06.

Respondent's Allegations

In support of her complaint, respondent alleged that she was a simple rank and file employee who was elevated to the position of a supervisor but still performed only clerical work and did not exercise any discretion on how to run the financial affairs of the company. Respondent admitted to being responsible for preparing the payroll of the employees of petitioner SMSI.

During the course of respondent's employment, Wage Order No. NCR-09 took effect on November 5, 2001 providing an Emergency Cost of Living Allowance (ECOLA) in the amount of P30.00 per day to private sector workers and employees in the National Capital Region (NCR) earning minimum wage. Based on Wage Order No. NCR-09, respondent granted herself ECOLA in the pro-rated amount of P14.67 per day beginning November 2002. When Wage Order No. NCR-10 took effect on July 10, 2004, granting additional ECOLA of P20.00 per day, respondent accordingly increased her ECOLA to P24.67 per day. In granting herself pro-rated ECOLA, respondent reasoned that Wage Order Nos. NCR-09 and NCR-10 granted ECOLA not only to minimum wage earners, but also to other workers and employees who would suffer from wage distortion ^because of the application of the ECOLA, such as herself. Said Wage Orders prescribed a formula precisely to resolve wage distortion, which respondent applied to her salary and to the salaries of others similarly situated.

Respondent averred that her grant to herself of pro-rated ECOLA under Wage Order Nos. NCR-09 and NCR-10 was with the knowledge and conformity of petitioners. Petitioner Tambunting himself approved and signed the payroll, and any unauthorized padding or undeserved compensation in the payroll could not have escaped him.

However, on August 22, 2005, a Notice of Personnel Action^[2] was issued to respondent noting an "[e]rror in granting proportionate ECOLA W.O. NCR 9" and cancelling respondent's daily allowance of P24.67. Respondent claimed that she immediately took exception to the Notice and sought audience with petitioner Tambunting, who promised to look into the matter. For the next four months or until December 12, 2005, "[n]o one protested against the status quo, including the fact that [respondent] continued to receive the miniscule sum of P24.67 per day as ECOLA[.]"^[3]

Respondent reproached petitioners for being cruel and malicious in suddenly issuing Memo 11-673^[4] dated December 12, 2005, which gave respondent the following directive:

This refers to the **NOTICE OF PERSONNEL ACTION** dated August 22, 2005 approved and noted by the President.

Please explain and answer in writing within 24 hours upon receipt of this memo why there shall be no administrative action taken against you for the following:

1. **INSUBORDINATION.** You continued to give yourself the proportionate ECOLA despite its cancellation per **Notice of Personnel Action** noted and approved by the President on August 22, 2005. In so doing, you manifested gross disrespect to the decision of the President and the whole HR Department.
2. **DISHONESTY.** Despite of being aware of the fact that only the minimum wage earners and those whose basic salary are distorted as a result of addition of ECOLA, you continually give yourself the questioned proportionate ECOLA. You are the [company's] existing payroll master and you are very much aware of that rule. In fact,

you are applying such rule to all other operation personnel making your case an exception to the rule.

This is for your information and compliance.

Respondent pointed out that petitioners' malice became even more evident when on the very next day, December 13, 2005, she was no longer allowed to enter the premises of petitioner SMSI. Petitioners hurriedly issued Memo 12-675^[5] also on December 13, 2005, which instructed respondent thus:

This refers to your refusal to receive the **Memo 11-673** dated December 12, 2005.

Because of the gravity of the offense, you are then being placed on preventive suspension effective December 14, 2005 while under investigation for *Insubordination and Dishonesty*.

However, you are required to come to office when you are needed by reasons of such investigation.

This is for your information and compliance.

Petitioners followed up with Memo 12-687^[6] dated December 14, 2005 to respondent which dictated that:

This refers to your Memo 12-675 dated December 13, 2005.

1. Your preventive suspension is within 30 days.
2. You are required to report to office on December 19, 2005 (Monday) at 3 pm for a preliminary Administrative Hearing.
3. You are instructed to bring anybody with you on your side. It could be your husband and/or your son. Should you prefer to bring a legal counsel please inform us a day before the abovementioned schedule.

This is for your information and compliance.

We trust that you will give the matter your most favorable cooperation and attention.

Respondent attended the administrative hearing on December 19, 2005, accompanied by her son. During the hearing, petitioner Dabu repeatedly berated and insulted respondent.

On December 20, 2005, petitioners issued Memo 12-692,^[7] a Notice of Termination, which informed respondent that:

After due consideration of all the circumstances, grounds have been established to justify your termination.

1. You willfully disobey the lawful orders of your employer.

2. Willfull breach of the trust reposed in you by the management.

In view of the above and by your admission of your disobedience and dishonesty during the administrative hearing, you had violated the Company Implementing Rules and Regulations on **Article V - Section 25** which states that: *Act of dishonesty to the company shall be penalized with termination for the first offense.*

Your services with the corporation are then being terminated effective at the close of the business hours on December 21, 2005.

This is for your information.

Respondent received a copy of Memo 12-692 dated December 20, 2005 on December 21, 2005. That same day, respondent went to the office of petitioner SMSI to retrieve her personal belongings, which included an amount of less than PI 00.00 tucked in her drawer, but she was refused entry. It was only the next day, on December 22, 2005, that respondent was allowed to take her personal belongings.

It was apparent to respondent that petitioners Tambunting and Dabu had resolved to dismiss her because she was supposedly "highly paid" and petitioner SMSI would not have to give separation pay for her considerable tenure of 12 years. Respondent's unceremonious dismissal was already a foregone conclusion, so respondent was never really accorded a chance to defend herself.

Respondent lastly professed that she could not afford to return three years of ECOLA. Being the breadwinner for a family with five children, which included a special child with Down Syndrome, respondent was living hand-to-mouth.

Petitioners' Allegations

Petitioners conceded that respondent was initially hired as a rank and file employee, who eventually became the Accounting Supervisor of petitioner SMSI. Given the absence of an Accounting Manager, respondent agreed, in a memorandum^[8] dated February 12, 2001 addressed to petitioner Tambunting, to accept the responsibilities of said position provided that petitioner SMSI would hire an accounting assistant to assume some of respondent's current responsibilities; respondent would receive a monthly allowance of PI,000.00 beginning February 2001; and respondent would undergo training for three months under a Ms. Vilma Roda. For taking over the responsibilities of Accounting Manager, respondent's monthly salary was increased from P8,193.42 to P12,000.00 beginning June 2001.^[9] By 2005, respondent was receiving a monthly salary of P13,000.00 as Accounting Supervisor.

According to petitioners, respondent's position as Accounting Supervisor was reposed with trust and confidence, and among her duties and responsibilities were as follows:

1. Manages accounting functions and preparation of reports and statistics detailing financial results;
2. Checks, verifies, and approves payroll entries;

3. In charge of preparation of admin payroll;
4. Checks and verifies daily check disbursements;
5. Contacts delinquent account holders by telephone or in writing and requests payments to bring the account current;
6. Assists the messenger/collector in personally collecting client's check payments [;]
7. Oversees financial and accounting system controls and standards and ensures timely financial and statistical reports for management and/or Board of Directors' use;
8. Performs routine banking transaction;
9. Handles cash and cash accounts; and,
10. Performs all accounting and finance functions and other related tasks as required.^[10]

Petitioners contended that they discovered only in August 2005 that respondent was receiving ECOLA, even when she was not entitled to the same under Wage Order Nos. NCR-09 and NCR-10. Respondent willfully and deliberately ignored and disobeyed the Notice of Personnel Action dated August 22, 2005 cancelling the payment of her daily ECOLA of P24.67 beginning the payroll for August 16, 2005. Respondent continued to grant/give herself ECOLA in the payroll from August 16, 2005 to December 15, 2005.

Consequently, petitioner SMSI, through its HR Department, issued Memo 11-673 dated December 12, 2005 requiring respondent to explain in writing within 24 hours why no administrative action should be taken against her for insubordination and dishonesty. Respondent, though, refused to receive her copy of said Memo when served on December 13, 2005, as witnessed by Melanie M. Bollosa (Bollosa), Accounting Assistant of petitioner SMSI.^[11] Petitioner SMSI next issued Memo 12-675 dated December 13, 2005 (placing respondent under preventive suspension starting December 14, 2005) and Memo 12-687 dated December 14, 2005 (fixing respondent's preventive suspension at 30 days and advising respondent to attend the administrative hearing on December 19, 2005), copies of which were received by respondent on December 14, 2005 and December 15, 2005, respectively.

During the administrative hearing on December 19, 2005, attended by respondent with her son, respondent was unable to justify her grant/payment of ECOLA to herself and refusal to obey the order of petitioner SMSI to stop the same. It was likewise discovered that (1) respondent availed herself of cash advances from petitioner SMSI, which she was supposed to pay by periodically deducting certain amounts from her salary, but since she was not making such deductions, the accumulated cash advances already amounted to P64,173.83; and (2) her employment record with petitioner SMSI, spanning several years, was riddled with previous acts of insubordination and dishonesty.

As a result, petitioner SMSI issued Memo 12-692 dated December 20, 2005