

THIRD DIVISION

[G.R. No. 183735, July 06, 2015]

SEGIFREDO T. VILCHEZ, PETITIONER, VS. FREE PORT SERVICE CORPORATION AND ATTY. ROEL JOHN T. KABIGTING, PRESIDENT, RESPONDENTS.

D E C I S I O N

PERALTA, J.:

Assailed in this petition for review on *certiorari* are the Decision^[1] dated June 15, 2007 of the Court of Appeals in CA-G.R. SP No. 94627 and the Resolution^[2] dated July 7, 2008 denying reconsideration thereof.

Private respondent Free Port Service Corporation (FSC) is a wholly-owned subsidiary of the Subic Bay Metropolitan Authority (SBMA) engaged in the business of providing general services such as security and safety services for the protection of properties and property custodianship exclusively within the Subic Bay Freeport Zone. Respondent Atty. Roel John T. Kabieting was the former FSC President. Petitioner Segifredo T. Vilchez was respondent FSC's Physical Security Department Manager appointed on January 22, 1999.^[3] As Manager, petitioner was in-charge of overseeing the successful operation/management of the Physical Security Department as well as maintaining effective measures in providing better security services.

In March 1999, petitioner advised the respondent FSC management of the need to secure PNP SOSIA licenses for its 159 physical security officers and volunteered to take full responsibility for procuring the said licenses and other requirements. He required the amount of P127,200.00 for the payment of licenses, NBI clearances, psychiatric tests and drug tests for the 159 security officers. Thus, upon petitioner's advice and recommendation, respondent FSC prepared Disbursement Voucher No. 04308^[4] dated March 25, 1999 in the amount of P127,200.00 payable to a certain Col. Angelito Gerangco which petitioner certified that the expenses were necessary and incurred under his direct supervision. To cover the amount advanced by respondent FSC, all the security personnel concerned were deducted, on the same month, the sum amounting to P800.00 each.

On August 20, 1999, the Commission on Audit (COA) issued a Notice of Suspension of the P127,200.00 transaction after finding that Gerangco was not a designated disbursing officer and, therefore, should not be given a cash advance.^[5] The COA further directed the petitioner to promptly settle the suspension notice as items not settled within 90 days after receipt shall become disallowed, pursuant to Section 82 of Presidential Decree (PD) No. 1445. Despite the lapse of one (1) year, however, no settlement was made.

In a Memorandum dated April 16, 2001 addressed to petitioner, then FSC President, respondent Kabigting, wrote that an administrative action was being initiated against him for the offense of serious misconduct resulting to loss of trust and confidence, which offense constituted a ground for termination of employment under the Rules on Administration of Discipline of Freeport Service Corporation, as well as Article 282 of the Labor Code. Pertinent portions of the Memorandum read:

x x x x

Specifically, you caused the preparation of and received from the FSC on March 25, 1999 the amount of One hundred Twenty-Seven Thousand Two Hundred Pesos (P127,200.00) under Disbursement Voucher #04308 for the payment of Security Guard licenses, NBI clearance, Psychiatric Test, and Drug Test for FSC Physical Security personnel's compliance with the requirements of PNP SOSIA. To date, after two (2) years, you have not produced the clearance nor the licenses, nor have you shown any proof that the funds that you received were applied to the payment of the corresponding and appropriate fees therefore.^[6]

Petitioner asked for an extension of thirty (30) days' time to file his reply. In a Memorandum dated April 23, 2001, respondents granted petitioner a ten (10)-day extension and placed petitioner under preventive suspension for thirty (30) days to have an impartial and objective investigation. Petitioner, however, failed to file his Answer.

On May 10, 2001, respondents issued a Notice of Dismissal^[7] of petitioner effective as of that date.

On January 21, 2002, petitioner filed with the Labor Arbiter (LA) of San Fernando Pampanga, a Complaint for illegal dismissal, non-payment of salaries, allowances and 13th month pay with claims for damages and attorney's fees against respondents. In his position paper, petitioner explained that the amount of P127,200.00 intended for the payment of the licenses of security guards under Disbursement Voucher No. 04308 was not given to him but a check was made payable to Col. Angelito L. Gerangco, who collected and encashed the same; that he had sent a letter dated April 17, 2001 to Col. Gerangco asking him to liquidate the remaining unsecured license. Petitioner insisted that Col. Gerangco's non-compliance was his own misfeasance, which he could not be held liable for.

On May 30, 2003, the LA found petitioner to have been illegally dismissed, the dispositive portion of the Decision^[8] reads:

WHEREFORE, judgment is hereby rendered declaring complainant Segifredo Vilchez to have been ILLEGALLY DISMISSED. Accordingly, respondents are hereby ordered to reinstate the complainant to his former position without loss of seniority rights or at the option of the respondents to merely reinstate the complainant in the payroll and to pay complainant full backwages from the time he was illegally dismissed up to his actual reinstatement which now amounts to Five Hundred Sixty-Two Thousand Five Hundred Pesos (P562,500.00).

All other claims are hereby dismissed for lack of merit.

SO ORDERED.^[9]

Respondents appealed to the NLRC. In the meantime, respondents reinstated petitioner.

On September 27, 2005, the NLRC issued a Decision^[10] granting respondents' appeal, the decretal portion of which reads:

WHEREFORE, premises considered, the Decision dated 30 May 2003 is hereby reversed and set aside and a new one is entered dismissing the complaint for lack of merit.

SO ORDERED.^[11]

Petitioner filed a motion for reconsideration, which the NLRC denied in its Resolution^[12] dated March 9, 2006.

Petitioner filed a petition for *certiorari* with the CA to which respondents filed their Comment.

On June 15, 2007, the CA denied the petition and affirmed the NLRC, the dispositive portion of the decision reads:

WHEREFORE, the instant Petition is hereby **DENIED**. The Decision dated 27 September 2005 and the Resolution dated 09 March 2006 of the public respondent in NLRC RAB 111-01-3768-02 is hereby **AFFIRMED in toto**. No pronouncement as to costs.

SO ORDERED.^[13]

Petitioner's motion for reconsideration was denied by the CA in a Resolution dated July 7, 2008.

Undaunted, petitioner filed the instant petition for review on *certiorari* invoking the following assignment of errors committed by the CA, to wit:

PETITIONER WAS ILLEGALLY DISMISSED BECAUSE HIS DISMISSAL WAS BASED ON THE ACT OR OMISSION OF ANOTHER PERSON.

THE SUPERVENING EVENT OF PETITIONER'S RETIREMENT FROM SERVICE AS EMPLOYEE OF PRIVATE RESPONDENTS BEFORE THE NATIONAL LABOR RELATIONS COMMISSION MODIFIED THE DECISION OF LABOR ARBITER RENDERS MOOT AND ACADEMIC THE PETITIONER'S DISMISSAL FROM SERVICE BECAUSE, IN EFFECT, PETITIONER WAS ABSOLVED OF ANY INFRACTIONS WHICH THE PETITIONER ALLEGEDLY COMMITTED DURING HIS EMPLOYMENT.^[14]

Petitioner contends that he was dismissed on the ground of serious misconduct resulting to loss of trust and confidence, but unfortunately the basis of which was the act or omission of another person. He claims that the amount of P127,200.00 intended for the payment of the security guards' licenses under Disbursement Voucher No. 04308 was not given to him but the check was made payable to Col.

Gerangco who received and encashed the same; and that he had sent a letter dated April 17, 2001 to Gerangco asking him to liquidate the remaining security licenses; and, that he should not be held accountable for the non-compliance of Gerangco to complete the licenses.

We are not convinced.

Loss of trust and confidence will validate an employee's dismissal only upon compliance with certain requirements, namely: (1) the employee concerned must be holding a position of trust and confidence; and (2) there must be an act that would justify the loss of trust and confidence.^[15] And in order to constitute a just cause for dismissal, the act complained of must be work-related such as would show employee concerned to be unfit to continue working for the employer.^[16]

The first requisite for dismissal on the ground of loss of trust and confidence is that the employee concerned must be holding a position of trust and confidence. In this case, there is no doubt that petitioner held a position of trust and confidence as respondents' Physical Security Department Manager responsible for the department's operation and administration and with about 800 people under his charge.

The second requisite is that there must be an act that would justify the loss of trust and confidence. Here, petitioner was in-charge of respondents' Physical Security Department, operationally and administratively, and he was the one who advised respondents of the necessity of securing the licenses of the 159 physical security personnel. As such, he assumed to take full responsibility for procuring the said licenses and other requirements. Hence, Disbursement Voucher No. 04308 in the amount of P127,200.00 was prepared in the name of a certain Col. Angelito Gerangco and a check was issued under the same name. However, two years had already elapsed from the issuance of the check but not all the licenses of the 159 security personnel which petitioner volunteered to take responsibility for were released.

Petitioner's failure to produce the licenses of the 100 security personnel for two years and to account for the money received, is definitely an important aspect of his work as respondents' Department Manager. He failed to perform what he had represented or what was expected of him, thus, respondents had a valid reason in losing confidence in him which justified his termination.

We also find worthy to mention the CA's finding that further established petitioner's willful breach of the trust reposed on him by respondents, to wit:

It must be borne in mind that as early as 20 August 1999, petitioner already knew of the COA's notice of suspension regarding the deficiency in the issuance of the P127,200.00 check to Col. Angelito Gerangco who was not a designated disbursing officer and in that notice of suspension, petitioner was found to be the payee or person responsible. Moreover, a Memorandum dated 29 November 2000 was issued by private respondent Kabigting's predecessor, then FSC President Manuel Aurelio Jr., for all concerned administrative personnel including herein petitioner, to settle not later than 05 December 2000 the COA notice of suspension. In fact, he failed to account and produce the licenses of the FSC Security