

## THIRD DIVISION

[ G.R. No. 193421, June 04, 2014 ]

**MCMER CORPORATION, INC., MACARIO D. ROQUE, JR. AND  
CECILIA R. ALVESTIR, PETITIONERS, VS. NATIONAL LABOR  
RELATIONS COMMISSION AND FELICIANO C. LIBUNAO, JR.,  
RESPONDENT.**

### D E C I S I O N

**PERALTA, J.:**

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the Decision<sup>[1]</sup> dated May 19, 2010 and the Resolution<sup>[2]</sup> dated August 17, 2010, respectively, of the Court of Appeals (CA) in CA-G.R. SP No. 112237.

The facts, as shown in the records, are the following:

Private respondent was employed by petitioner McMer Corporation, Inc. (*McMer*) on August 5, 1999 as Legal Assistant and was eventually promoted as Head of Legal Department, and concurrently, as Officer-in-Charge of petitioner McMer's Legal and Administrative Department, effective on January 3, 2000,<sup>[3]</sup> with a monthly salary of P10,500.00 as basic pay plus P3,500.00 as living and representation allowance, plus the sum of P5,000.00 which is not reflected on the payroll.<sup>[4]</sup>

According to private respondent, for quite some time, he and petitioners, specifically Macario D. Roque, Jr. (*Roque*) and Cecilia R. Alvestir (*Alvestir*), McMer's General Manager and President, respectively, have been on a cold war brought often by the disagreement in the design and implementation of company policies and procedures.<sup>[5]</sup> However, the subsisting rift between him and petitioners heightened on July 10, 2007 when petitioner McMer started verbally and maliciously imputing against Ms. Ginalita C. Guiao, Department Head III, Logistics Department, and another officer of the Logistics Department, Ms. Marissa A. Rebulado, Department Head I, certain unfounded score of inefficient performance of duty.<sup>[6]</sup>

At around noon on July 20, 2007, petitioner Roque gave an immediate summon upon private respondent to proceed to his office to discuss administrative matters, including but not limited to the alleged absence and tardiness of private respondent.<sup>[7]</sup>

Private respondent, sensing some unusual development in the attitude of petitioner Roque, instead of responding to the summon, went to petitioner Alvestir's office, and informed her of petitioner Roque's disposition and his fear of a perceived danger to his person. He then requested for petitioner Alvestir to go to petitioner Roque's office instead, of which petitioner Alvestir conceded. Moments later, petitioner

Roque, at the height of anger, confronted private respondent and commanded him to proceed to his office. At this juncture, private respondent was too scared to confront Roque as the latter may inflict physical harm on him.

As a consequence of the foregoing, private respondent elected to discontinue work that afternoon and immediately proceeded to the Valenzuela Police Headquarters to report on the incident in the police blotter. Private respondent did not report for work from July 21, 2007 up to July 30, 2007. Because of this, petitioner McMer, through petitioner Alvestir, issued a Memorandum<sup>[8]</sup> dated July 30, 2007 directing private respondent to explain within five (5) days why no disciplinary action should be imposed upon him for being in absence without official leave (AWOL). In response, private respondent sent a letter<sup>[9]</sup> dated August 6, 2007 explaining the reason why he refused to report for work during the aforesaid period.

On August 6, 2007, private respondent Feliciano C. Libunao, Jr. filed a complaint for unfair labor practices, constructive illegal dismissal, non-payment of 13th month pay and separation pay, moral and exemplary damages, as well as attorney's fees, against petitioners McMer Corporation, Inc., Roque, and Alvestir.

In response, petitioners sent a letter<sup>[10]</sup> dated August 9, 2007 acknowledging private respondent's letter dated August 6, 2007 and informing the latter that his letter is being judiciously considered by management.

On August 18, 2007, a conciliary meeting was held inside petitioners' premises to discuss the possibility of an amicable settlement. In the end, however, private respondent was informed verbally by petitioner Alvestir that on account of strained relationship brought about by the institution of a labor case against petitioners, the latter is inclined to dismiss him from office. Private respondent was, likewise, offered a separation pay in the sum of P55,000.00.

In its Decision<sup>[11]</sup> dated March 12, 2008, Labor Arbiter Eduardo G. Magno ruled that there was no constructive dismissal in the instant case since:

x x x. It is very apparent that complainant voluntarily stopped reporting for work on perceived danger from harm by Mr. Roque. However, it is more of a figment of his imagination and not supported by any concrete evidence or established facts.<sup>[12]</sup>

Nevertheless, private respondent was granted a proportionate 13th month pay of P10,834.00 based on his actual monthly income of P19,500.00, the pertinent portion of the Decision reads:

**WHEREFORE**, Respondent corporation McMer Corporation, Inc. is hereby ordered to pay complainant the amount of P84,000.00 as his separation pay and P10,834.00 as his proportionate 13th month pay.

**SO ORDERED.**<sup>[13]</sup>

Private respondent filed his Appeal dated April 1, 2008, while petitioners filed their Memorandum of Appeal dated April 10, 2008. After the parties submitted their respective replies to the aforementioned appeals, public respondent NLRC, in its assailed Decision<sup>[14]</sup> dated August 14, 2009, reversed the findings of the Labor Arbiter and modified the relief granted to private respondent, to wit:

**WHEREFORE**, premises considered, the assailed Decision dated March 12, 2008, is modified as Respondents/Appellants are hereby ordered:

To pay Complainant-Appellee Feliciano C. Libunao, Jr. full backwages based on his basic monthly pay of P10,500.00, plus 13th month pay, living & representation allowance, and particular amount computed from the time his wages were withheld from him in August 2007 up to the date We issued this Decision in the total amount of P359,141.25.

To pay Complainant's separation pay of one month's salary for every year of service in lieu of reinstatement in the amount of P105,000.00.

To pay Complainant Feliciano C. Libunao, Jr. moral, exemplary and nominal damages in the total amount of P90,000.00.

**SO ORDERED.**<sup>[15]</sup>

Respondents filed their Motion for Reconsideration dated September 2, 2009. The same was, however, denied by the NLRC in its assailed Resolution<sup>[16]</sup> dated November 5, 2009.

Aggrieved by the foregoing, petitioners filed a Petition for Certiorari with prayer for injunctive relief with the CA, assailing the Decision and Resolution of the NLRC. The CA did not, however, find basis to reverse the aforementioned judgments of the NLRC, the dispositive portion of its Decision<sup>[17]</sup> dated May 19, 2010 reads:

**WHEREFORE**, premises considered, the Petition is **DENIED** for lack of merit. Costs against petitioners.

**SO ORDERED.**<sup>[18]</sup>

Despite petitioners' Motion for Reconsideration dated May 19, 2010, the CA found no compelling reason to modify or reverse its earlier Decision, the dispositive portion of its Resolution<sup>[19]</sup> dated August 17, 2010 states:

**WHEREFORE**, premises considered, the Motion for Reconsideration is **DENIED** for lack of merit.

**SO ORDERED.**<sup>[20]</sup>

Hence, this petition for review on *certiorari* under Rule 45 of the Rules of Civil Procedure, with the following assigned errors:

1. THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN DECIDING THAT THE HONORABLE COMMISSION DID NOT COMMIT GRAVE ABUSE OF DISCRETION IN FINDING THAT THERE WAS CONSTRUCTIVE DISMISSAL; [AND]
2. THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN DECIDING THAT THE HONORABLE COMMISSION DID NOT COMMIT GRAVE ABUSE OF DISCRETION IN ITS MONETARY AWARD IN FAVOR OF PRIVATE RESPONDENT.<sup>[21]</sup>

The sole issue raised before the Court is whether or not the CA seriously erred in sustaining the NRLC's finding that private respondent was constructively dismissed, and entitled to full backwages, separation pay in lieu of reinstatement, and moral, exemplary and nominal damages.

We find no basis to reverse the ruling of the CA.

At the onset, we concur with petitioners' view that while a petition filed under Rule 45 of the Revised Rules of Court deals only with matters involving questions of law, the same is not absolute, as in the instant case wherein a conflict of factual findings exists among the Labor Arbiter, the NLRC, and the CA. Particularly, the Labor Arbiter found facts supporting the conclusion that there is no constructive dismissal, while the NLRC and the CA found none. Under this situation and consistent with prevailing jurisprudence, the conflicting factual findings below are not binding on us, and we retain the authority to pass on the evidence presented and draw conclusions therefrom.

As plainly held in *Uniwide Sales Warehouse Club v. NLRC*,<sup>[22]</sup> the Court may scrutinize and assess the evidence once again should there be a conflict of factual perceptions between the Labor Arbiter and the CA, to wit:

It is a well-settled rule that the jurisdiction of the Supreme Court in petitions for review on *certiorari* under Rule 45 of the Rules of Court is limited to reviewing errors of law, not of fact. The Court is not a trier of facts. In the exercise of its power of review, the findings of fact of the CA are conclusive and binding and consequently, it is not the Court's function to analyze or weigh evidence all over again.

The foregoing rule, however, is not absolute. The Court, in *Dusit Hotel Nikko v. National Union of Workers in Hotel, Restaurant and Allied Industries (NUWHRAIN)*, held that the factual findings of the NLRC as affirmed by the CA, are accorded high respect and finality unless the

factual findings and conclusions of the LA clash with those of the NLRC and the CA in which case the Court will have to review the records and the arguments of the parties to resolve the factual issues and render substantial justice to the parties.

***The present case is clouded by conflict of factual perceptions. Consequently, the Court is constrained to review the factual findings of the CA which contravene the findings of facts of the LA.***<sup>[23]</sup>

Now to the main issue of the instant case.

Petitioners aver that there is no clear, positive and convincing evidence to prove that private respondent was constructively dismissed from office<sup>[24]</sup> given that the only evidence presented were merely the Valenzuela police blotter<sup>[25]</sup> dated July 20, 2006 as well as the Affidavit<sup>[26]</sup> executed by Ginalita Guiao, dated September 5, 2007.

In a plethora of cases, we have defined constructive dismissal as a cessation of work because continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank or diminution in pay or both; or when a clear discrimination, insensibility, or disdain by an employer becomes unbearable to the employee.<sup>[27]</sup>

The test of constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to give up his position under the circumstances.<sup>[28]</sup> It is an act amounting to dismissal but made to appear as if it were not.<sup>[29]</sup> Constructive dismissal is, therefore, a dismissal in disguise.<sup>[30]</sup> As such, the law recognizes and resolves this situation in favor of employees in order to protect their rights and interests from the coercive acts of the employer.<sup>[31]</sup> In fact, the employee who is constructively dismissed may be allowed to keep on coming to work.<sup>[32]</sup>

After a careful consideration of the evidence and records at hand, we uphold the factual and legal findings of the CA that there was constructive dismissal because of the following acts committed by petitioners against private respondent, to wit:

1. About noon of July 20, 2007, petitioner Roque went to private respondent's office at the height of his anger with threat to inflict physical harm, shouted a command for private respondent to proceed to petitioner's office;
2. Private respondent was approached sarcastically with commanding voice by petitioner Roque even in front of some officers and rank-and-file employees and newly-hired employees; and
3. Private respondent's professional ethic or moral belief was compromised due to certain business practices<sup>[33]</sup> of petitioner McMer that were never exposed due to the employee's fear of reprisal, as shown in private respondent's Position Paper.<sup>[34]</sup>