680 Phil. 648

SECOND DIVISION

[G.R. Nos. 174941, February 01, 2012]

ANTONIO P. SALENGA AND NATIONAL LABOR RELATIONS COMMISSION, PETITIONERS, VS. COURT OF APPEALS AND CLARK DEVELOPMENT CORPORATION, RESPONDENTS.

D E C I S I O N

SERENO, J.:

The present Petition for Certiorari under Rule 65 assails the Decision[1] of the Court of Appeals (CA) promulgated on 13 September 2005, dismissing the Complaint for illegal dismissal filed by petitioner Antonio F. Salenga against respondent Clark Development Corporation (CDC). The dispositive portion of the assailed Decision states:

> **WHEREFORE**, premises considered, the original and supplemental petitions are **GRANTED**. The assailed resolutions of the National Labor Relations Commission dated September 10, 2003 and January 21, 2004 are **ANNULLED** and **SET ASIDE**. The complaint filed by Antonio B. Salenga against Clark Development is **DISMISSED**. Consequently, Antonio B. Salenga is ordered to restitute to Clark Development Corporation the amount of P3,222,400.00, which was received by him as a consequence of the immediate execution of said resolutions, plus interest thereon at the rate of 6% per annum from date of such receipt until finality of this judgment, after which the interest shall be at the rate of 12% per annum until said amount is fully restituted.
>
> **SO ORDERED.**[2]

The undisputed facts are as follows:

On 22 September 1998, President/Chief Executive Officer (CEO) Rufo Colayco issued an Order informing petitioner that, pursuant to the decision of the board of directors of respondent CDC, the position of head executive assistant - the position held by petitioner - was declared redundant. Petitioner received a copy of the Order on the same day and immediately went to see Colayco. The latter informed him that the Order had been issued as part of the reorganization scheme approved by the board of directors. Thus, petitioner's employment was to be terminated thirty (30) days from notice of the Order.

On 17 September 1999, petitioner filed a Complaint for illegal dismissal with a claim for reinstatement and payment of back wages, benefits, and moral and exemplary damages against respondent CDC and Colayco. The Complaint was filed with the

National Labor Relations Commission-Regional Arbitration Branch (NLRC-RAB) III in San Fernando, Pampanga. In defense, respondents, represented by the Office of the Government Corporate Counsel (OGCC), alleged that the NLRC had no jurisdiction to entertain the case on the ground that petitioner was a corporate officer and, thus, his dismissal was an intra-corporate matter falling properly within the jurisdiction of the Securities and Exchange Commission (SEC).

On 29 February 2000, labor arbiter (LA) Florentino R. Darlucio issued a Decision[3] in favor of petitioner Salenga. First, the LA held that the NLRC had jurisdiction over the Complaint, considering that petitioner was not a corporate officer but a managerial employee. He held the position of head executive assistant, categorized as a Job Level 12 position, not subject to election or appointment by the board of directors.

Second, the LA pointed out that respondent CDC and Colayco failed to establish a valid cause for the termination of petitioner's employment. The evidence presented by respondent CDC failed to show that the position of petitioner was superfluous as to be classified "redundant." The LA further pointed out that respondent corporation had not disputed the argument of petitioner Salenga that his position was that of a regular employee. Moreover, the LA found that petitioner had not been accorded the right to due process. Instead, the latter was dismissed without the benefit of an explanation of the grounds for his termination, or an opportunity to be heard and to defend himself.

Finally, considering petitioner's reputation and contribution as a government employee for 40 years, the LA awarded moral damages amounting to P2,000,000 and exemplary damages of P500,000. The dispositive portion of the LA's Decision reads:

> **WHEREFORE**, premises considered, judgment is hereby rendered declaring respondent Clark Development Corporation and Rufo Colayco guilty of illegal dismissal and for which they are ordered, as follows:
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> 1. To reinstate complainant to his former or equivalent position without loss of seniority rights and privileges;
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> 2. To pay complainant his backwages reckoned from the date of his dismissal on September 22, 1998 until actual reinstatement or merely reinstatement in the payroll which as of this date is in the amount of P722,400.00;
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> 3. To pay complainant moral damages in the amount of P2,000,000.00; and,
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> 4. To pay complainant exemplary damages in the amount of P500,000.00.
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> **SO ORDERED.**[4]

At the time the above Decision was rendered, respondent CDC was already under the leadership of Sergio T. Naguiat. When he received the Decision on 10 March 2000, he subsequently instructed Atty. Monina C. Pineda, manager of the Corporate and Legal Services Department and concurrent corporate board secretary, not to appeal the Decision and to so inform the OGCC.[5]

Despite these instructions, two separate appeals were filed before LA Darlucio on 20 March 2000. One appeal[6] was from the OGCC on behalf of respondent CDC and Rufo Colayco. The OGCC reiterated its allegation that petitioner was a corporate officer, and that the termination of his employment was an intra-corporate matter. The Memorandum of Appeal was verified and certified by Hilana Timbol-Roman, the executive vice president of respondent CDC. The Memorandum was accompanied by a UCPB General Insurance Co., Inc. *supersedeas* bond covering the amount due to petitioner as adjudged by LA Darlucio. Timbol-Roman and OGCC lawyer Roy Christian Mallari also executed on 17 March 2000 a Joint Affidavit of Declaration wherein they swore that they were the "respective authorized representative and counsel" of respondent corporation. However, **the Memorandum of Appeal and the Joint Affidavit of Declaration were not accompanied by a board resolution from respondent's board of directors authorizing either Timbol-Roman or Atty. Mallari, or both, to pursue the case or to file the appeal on behalf of respondent**.

It is noteworthy that Naguiat, who was president/CEO of respondent CDC from 3 February 2000 to 5 July 2000, executed an Affidavit on 20 March 2002,[7] wherein he stated that without his knowledge, consent or approval, Timbol-Roman and Atty. Mallari filed the above-mentioned appeal. He further alleged that their statements were false.

The second appeal, meanwhile, was filed by former CDC President/CEO Rufo Colayco. Colayco alleged that petitioner was dismissed not on 22 September 1998, but twice on 9 March 1999 and 23 March 1999. The dismissal was allegedly approved by respondent's CDC board of directors pursuant to a new organizational structure. Colayco likewise stated that he had posted a *supersedeas* bond - the same bond taken out by Timbol-Roman - issued by the UCPB General Insurance Co. dated 17 March 2000 in order to secure the monetary award, exclusive of moral and exemplary damages.

Petitioner thereafter opposed the two appeals on the grounds that both appellants, respondent CDC - as allegedly represented by Timbol-Roman and Atty. Mallari - and Rufo Colayco had failed to observe Rule VI, Sections 4 to 6 of the NLRC Rules of Procedure; and that appellants had not been authorized by respondent's board of directors to represent the corporation and, thus, they were not the "employer" whom the Rules referred to. Petitioner also alleged that appellants failed to refute the findings of LA Darlucio in the previous Decision.

In the meantime, while the appeal was pending, on 19 October 2000, respondent's board chairperson and concurrent President/CEO Rogelio L. Singson ordered the reinstatement of petitioner to the latter's former position as head executive assistant, effective 24 October 2000.[8]

On 28 May 2001, respondent CDC's new President/CEO Emmanuel Y. Angeles issued a Memorandum, which offered all managers of respondent corporation an early separation/redundancy program. Those who wished to avail themselves of the program were to be given the equivalent of their 1.25-month basic salary for every year of service and leave credits computed on the basis of the same 1.25-month equivalent of their basic salary.[9]

In August 2001, respondent CDC offered another retirement plan granting higher benefits to the managerial employees. Thus, on 12 September 2001, petitioner filed an application for the early retirement program, which Angeles approved on 3 December 2001.

Meanwhile, in the proceedings of the NLRC, petitioner received on 12 September 2001 its 30 July 2001 Decision[10] on the appeal filed by Timbol-Roman and Colayco. It is worthy to note that the said Decision referred to the reports of reviewer arbiters Cristeta D. Tamayo and Thelma M. Concepcion, who in turn found that petitioner Salenga was a corporate officer of CDC. Nevertheless, the First Division of the NLRC upheld LA Darlucio's ruling that petitioner Salenga was indeed a regular employee. It also found that redundancy, as an authorized cause for dismissal, has not been sufficiently proven, rendering the dismissal illegal. However, the NLRC held that the award of exemplary and moral damages were unsubstantiated. Moreover, it also dropped Colayco as a respondent to the case, since LA Darlucio had failed to provide any ground on which to anchor the former's solidary liability.

Petitioner Salenga thereafter moved for a partial reconsideration of the above-mentioned Decision. He sought the reinstatement of the award of exemplary and moral damages. He likewise insisted that the NLRC should not have entertained the appeal on the following grounds: (1) respondent CDC did not file an appeal and did not post the required cash or surety bond; (2) both Timbol-Roman and Colayco were admittedly not real parties-in-interest; (3) they were not the employer or the employer's authorized representative and, thus, had no right to appeal; and (4) both appeals had not been perfected for failure to post the required cash or surety bond. In other words, petitioner's theory revolved on the fact that neither Timbol-Roman nor Colayco was authorized to represent the corporation, so the corporation itself did not appeal LA Darlucio's Decision. As a result, that Decision should be considered as final and executory.

For its part, the OGCC also filed a Motion for Reconsideration[11] of the NLRC's 30 July 2001 Decision insofar as the finding of illegal dismissal was concerned. **It no longer questioned the commission's finding that petitioner was a regular employee**, but instead insisted that he had been dismissed as a consequence of his redundant position. The motion, however, was not verified by the duly authorized representative of respondent CDC.

On 5 December 2002, the NLRC denied petitioner Salenga's Motion for Partial Reconsideration and dismissed the Complaint. The dispositive portion of the Resolution[12] reads as follows:

> **WHEREFORE**, complainant's partial motion for reconsideration is denied. As recommended by Reviewer Arbiters Cristeta D. Tamayo in her August 2, 2000 report and Thelma M. Concepcion in her November 25, 2002 report, the decision of Labor Arbiter Florentino R. Darlucio dated 29 February 2000 is set aside.
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> The complaint below is dismissed for being without merit.
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> **SO ORDERED**.[13]

Meanwhile, pending the Motions for Reconsideration of the NLRC's 30 July 2001 Decision, another issue arose with regard to the computation of the retirement benefits of petitioner. Respondent CDC did not immediately give his requested retirement benefits, pending clarification of the computation of these benefits. He claimed that the computation of his retirement benefits should also include the forty (40) years he had been in government service in accordance with Republic Act No. (R.A.) 8291, or the GSIS Act, and should not be limited to the length of his employment with respondent corporation only, as the latter insisted.

In a letter dated 14 March 2003, petitioner Salenga's counsel wrote to the board of directors of respondent to follow up the payment of the retirement benefits allegedly due to petitioner.[14]

Pursuant to the NLRC's dismissal of the Complaint of petitioner Salenga, Angeles subsequently denied the former's request for his retirement benefits, to wit:[15]

> Please be informed that we cannot favorably grant your client's claim for retirement benefits considering that Clark Development Corporation's dismissal of Mr. Antonio B. Salenga had been upheld by the National Labor Relations Commission through a Resolution dated December 5, 2002...
>
> xxx xxx xxx
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> As it is, the said Resolution dismissed the Complaint filed by Mr. Salenga for being without merit. Consequently, he is not entitled to receive any retirement pay from the corporation.

Meanwhile, petitioner Salenga filed a second Motion for Reconsideration of the 5 December 2002 Resolution of the NLRC, reiterating his claim that it should not have entertained the imperfect appeal, absent a proper verification and certification against forum-shopping from the duly authorized representative of respondent CDC. Without that authority, neither could the OGCC act on behalf of the corporation.

The OGCC, meanwhile, resurrected its old defense that the NLRC had no jurisdiction over the case, because petitioner Salenga was a corporate officer.

The parties underwent several hearings before the NLRC First Division. During these times, petitioner Salenga demanded from the OGCC to present a board resolution