

SECOND DIVISION

[G.R. No. 186169, August 01, 2012]

**MYLENE CARVAJAL, PETITIONER, VS. LUZON DEVELOPMENT
BANK AND/OR OSCAR Z. RAMIREZ, RESPONDENTS.**

D E C I S I O N

PEREZ, J.:

In this Petition for Review on *Certiorari*, petitioner Mylene Carvajal assails the Decision^[1] of the Court of Appeals, Second Division, dated 20 August 2008 which dismissed her complaint for illegal dismissal. The Court of Appeals reversed and set aside the Resolution^[2] of the National Labor Relations Commission (NLRC) affirming with modification the Labor

Arbiter's Decision^[3] finding petitioner's dismissal as illegal and ordering reinstatement or payment of backwages and attorney's fees.

The facts are as follows:

Petitioner Mylene Carvajal was employed as a trainee-teller by respondent Luzon Development Bank (Bank) on 28 October 2003 under a six-month probationary employment contract, with a monthly salary of P5,175.00. Respondent Oscar Ramirez is the President and Chief Executive Officer of the Bank.

On 10 December 2003, the Bank sent petitioner a Memorandum^[4] directing her to explain in writing why she should not be subjected to disciplinary action for "chronic tardiness" on November 3, 5, 6, 14, 18, 20, 21 and 28 2003 or for a total of eight (8) times. Petitioner apologized in writing and explained that she was in the process of making adjustments regarding her work and house chores.^[5] She was thus reprimanded in writing and reminded of her status as a probationary employee.^[6] Still, on 6 January 2004, a second Memorandum was sent to petitioner directing her to explain why she should not be suspended for "chronic tardiness" on 13 occasions or on December 2, 3, 4, 5, 8, 10, 11, 12, 15, 16, 18, 22, and 23 2003. On 7 January 2004, petitioner submitted her written explanation and manifested her acceptance of the consequences of her actions.^[7] On 12 January 2004, petitioner was informed, through a Memorandum,^[8] of her suspension for three (3) working days without pay effective 21 January 2004. Finally, in a Memorandum dated 22 January 2004, petitioner's suspension was lifted but in the same breath, her employment was terminated effective 23 January 2004.^[9]

Hence, petitioner's filing of the Complaint for illegal dismissal before the Labor Arbiter. Petitioner alleged, in her position paper, that the following were the reasons for her termination: 1) she is not an effective frontliner; 2) she has mistakenly

cleared a check; 3) tardiness; 4) absenteeism; and 5) shortage.^[10]

In their position paper, respondents averred that petitioner was terminated as a probationary employee on three grounds, namely: 1) chronic tardiness; 2) unauthorized absence; and 3) failure to perform satisfactorily as a probationary employee. Respondents explained that petitioner was a chronic violator of the bank's rules and regulations on tardiness and absenteeism. Aside from her numerous tardiness, petitioner was absent without leave for 2 days. She also cleared a check which later turned out to be a bounced check. Finally, petitioner garnered only a rating of 2.17, with 4 being the highest and 1 the lowest, in her performance evaluation.

On 9 June 2005, the Labor Arbiter ruled that petitioner was illegally dismissed. Respondents were held solidarily liable for payment of money claims. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, judgment is rendered declaring that complainant as probationary employee was illegally dismissed. Respondents are ordered to immediately reinstate complainant to her former position, without loss of any seniority rights and other monetary benefits. However, if reinstatement is no longer feasible due to strained relationship between the parties, respondents are further ordered to pay complainant, jointly and severally the amount of P20,070.38, representing full backwages of complainant from the time of her illegal dismissal up to the end of her probationary contract of employment with respondent bank. Plus, 10% of the monetary award as attorney's fee.^[11]

The Labor Arbiter found that petitioner was dismissed without due process because "she was not afforded the notice in writing informing her of what respondent (the Bank) would like to bring out to her for the latter to answer in writing." The Labor Arbiter also did not consider "unsatisfactory performance" as a valid ground to shorten the six-month contract of petitioner with the Bank.^[12]

The decision of the Labor Arbiter was partially appealed to the NLRC by petitioner. Petitioner contended that she should be considered a regular employee and that the computation by the Labor Arbiter of backwages up to the end of her probationary contract is without basis. In its Comment, respondent argued against the illegality of petitioner's dismissal and their joint and solidary liability to pay complainant's monetary claims. On 31 May 2006, the NLRC affirmed with modification the Labor Arbiter's Decision and ordered for petitioner's reinstatement, to wit:

WHEREFORE, premises considered, the assailed decision is hereby affirmed with MODIFICATION ordering the respondents to reinstate the complainant to her former position, without loss of any seniority rights and other monetary benefits and to pay her full backwages from the date of her dismissal to the date of her reinstatement, actual or in payroll.

All other aspect[s] of the assailed decision stands.^[13]

Respondents filed a motion for reconsideration but the NLRC denied the same in a Resolution^[14] dated 20 July 2006.

In a petition for *certiorari* filed by respondents, the Court of Appeals rendered the 20 August 2008 Decision reversing the NLRC ruling, thus:

IN VIEW OF ALL THE FOREGOING, the instant petition is GRANTED. The assailed NLRC Resolution in NLRC CA No. 046866-05 dated May 31, 2006 which affirmed with modification the Decision of the Labor Arbiter in NLRC Case No. RAB IV-2-18910-04-L dated June 9, 2005 is hereby REVERSED and SET ASIDE. All monetary liabilities decreed in the Labor Arbiter's Decision against petitioners are hereby SET ASIDE. The Complaint for illegal dismissal, money claims and damages is ORDERED DISMISSED.^[15]

The Court of Appeals found that petitioner is not entitled to backwages because she was rightfully dismissed for failure to meet the employment standards.

The motion for reconsideration filed by petitioner was likewise dismissed.

Petitioner elevated the case to this Court *via* petition for review on *certiorari*, raising the following errors allegedly committed by the Court of Appeals:

THE HON. COURT OF APPEALS COMMITTED ERRORS IN LAW IN DECIDING THE ISSUE ON PETITIONER'S VALIDITY OF DISMISSAL DESPITE SUCH ISSUE HAD LONG BEC[O]ME FINAL AND EXECUTORY FOR FAILURE OF PRIVATE RESPONDENT LUZON DEVELOPMENT BANK TO APPEAL THE DECISION OF THE LABOR ARBITER FINDING PETITIONER'S DISMISSAL ILLEGAL.

THE HON. COURT OF APPEALS COMMITTED ERROR IN LAW IN DECIDING ISSUES WHICH WERE NOT RAISED BEFORE THE NLRC ON APPEAL.^[16]

Petitioner harps on the finality of the Labor Arbiter's ruling on illegal dismissal and questions the judgment of the Court of Appeals in discussing and upholding the validity of her dismissal.

Indeed, respondents did not assail the ruling of the Labor Arbiter. It was in fact petitioner who partially appealed the Labor Arbiter's computation of backwages. Provided with the opportunity, respondents assailed the Labor Arbiter's Decision in their Comment to the Partial Appeal. Upon affirmance of the Labor Arbiter's Decision by the NLRC, respondent filed a petition for *certiorari* with the Court of Appeals insisting on the validity of the dismissal.

Petitioner seeks to limit the issues to her employment status and backwages, her basis being that the illegality of her dismissal has already been finally determined by the Labor Arbiter.

We disagree. As We noted, the facts show that the illegality of petitioner's dismissal was an issue that was squarely before the NLRC. When the NLRC decision was reversed by the Court of Appeals, from which the issue was elevated to us, we had a situation where "the findings of facts are conflicting." Thus, we find applicable the rule that while generally, only questions of law can be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court, the rule admits of certain exceptions, namely: (1) when the findings are grounded entirely on speculations, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is a grave abuse of discretion; (4) when the judgment is based on misappreciation of facts; (5) when the findings of fact are conflicting; (6) when in making its findings, the same are contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.^[17]

The petition comes within the purview of exception (5) and by analogy, exception (7). Hence, the Court resolves to scour the records of this case.

Truly, it is axiomatic that an appeal, once accepted by this Court, throws the entire case open to review, and that this Court has the authority to review matters not specifically raised or assigned as error by the parties, if their consideration is necessary in arriving at a just resolution of the case.^[18]

Petitioner premised her appeal on Article 279 of the Labor Code which provides:

Art. 279. Security of Tenure — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or other monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

Petitioner maintained that she became a regular employee by virtue of Book VI, Rule 1, Section 6(d) of the Implementing Rules of the Labor Code which states:

(d) In all cases of probationary employment, the employer shall make known to the employee the standards under which he will qualify as a regular employee at the time of his engagement. Where no standards are made known to the employee at that time, he shall be deemed a regular employee.

It is beyond dispute that petitioner was hired as a probationary employee. Whether her employment status ripened into a regular one is the point of contention.

Under the very provision cited by petitioner, we cannot, by any hermeneutics, see petitioner's employment status as regular. At the time of her engagement and as mandated by law, petitioner was informed in writing of the standards necessary to qualify her as a regular employee. Her appointment letter^[19] reads:

Dear Ms. Carvajal:

We are pleased to confirm your appointment as follows:

Position : Trainee- Teller
Assignment : Main Branch
Status : Probationary (6 months)
Effectivity : October 28, 2003
Remuneration : P5,175.00 (262)

Possible extension of this contract will depend on the job requirements of the Bank and your overall performance. Performance review will be conducted before possible renewal can take effect.

The Bank reserves the right to immediately terminate this contract in the event of a below satisfactory performance, serious disregard of company rules and policies and other reasons critical to its interests.

Kindly sign below if the above conditions are acceptable. We look forward to a performance commensurate to your presented capabilities.

Very truly yours,

[sgd]
Oscar
S.
Ramirez
Vice
President

CONFORME:

[sgd]
Mylene T.
Carvajal
[Emphasis
Supplied]

Petitioner knew, at the time of her engagement, that she must comply with the standards set forth by respondent and perform satisfactorily in order to attain regular status. She was apprised of her functions and duties as a trainee-teller. Respondent released to petitioner its evaluation^[20] of her performance. Petitioner