

FIRST DIVISION

[G.R. No. 177467, March 09, 2011]

**PFIZER, INC. AND/OR REY GERARDO BACARRO, AND/OR
FERDINAND CORTES, AND/OR ALFRED MAGALLON, AND/OR
ARISTOTLE ARCE, PETITIONERS, VS. GERALDINE VELASCO,
RESPONDENT.**

D E C I S I O N

LEONARDO-DE CASTRO, J.:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Civil Procedure to annul and set aside the Resolution^[1] dated October 23, 2006 as well as the Resolution^[2] dated April 10, 2007 both issued by the Court of Appeals in CA-G.R. SP No. 88987 entitled, "*Pfizer, Inc. and/or Rey Gerardo Bacarro, and/or Ferdinand Cortes, and/or Alfred Magallon, and/or Aristotle Arce v. National Labor Relations Commission Second Division and Geraldine Velasco.*" The October 23, 2006 Resolution modified upon respondent's motion for reconsideration the Decision^[3] dated November 23, 2005 of the Court of Appeals by requiring PFIZER, Inc. (PFIZER) to pay respondent's wages from the date of the Labor Arbiter's Decision^[4] dated December 5, 2003 until it was eventually reversed and set aside by the Court of Appeals. The April 10, 2007 Resolution, on the other hand, denied PFIZER's motion for partial reconsideration.

The facts of this case, as stated in the Court of Appeals Decision dated November 23, 2005, are as follows:

Private respondent Geraldine L. Velasco was employed with petitioner PFIZER, INC. as Professional Health Care Representative since 1 August 1992. Sometime in April 2003, Velasco had a medical work up for her high-risk pregnancy and was subsequently advised bed rest which resulted in her extending her leave of absence. Velasco filed her sick leave for the period from 26 March to 18 June 2003, her vacation leave from 19 June to 20 June 2003, and leave without pay from 23 June to 14 July 2003.

On 26 June 2003, while Velasco was still on leave, PFIZER through its Area Sales Manager, herein petitioner Ferdinand Cortez, personally served Velasco a "Show-cause Notice" dated 25 June 2003. Aside from mentioning about an investigation on her possible violations of company work rules regarding "unauthorized deals and/or discounts in money or samples and unauthorized withdrawal and/or pull-out of stocks" and instructing her to submit her explanation on the matter within 48 hours from receipt of the same, the notice also advised her that she was being placed under "preventive suspension" for 30 days or from that day to 6

August 2003 and consequently ordered to surrender the following "accountabilities;" 1) Company Car, 2) Samples and Promats, 3) CRF/ER/VEHICLE/SOA/POSAP/MPOA and other related Company Forms, 4) Cash Card, 5) Caltex Card, and 6) MPOA/TPOA Revolving Travel Fund. The following day, petitioner Cortez together with one Efren Dariano retrieved the above-mentioned "accountabilities" from Velasco's residence.

In response, Velasco sent a letter addressed to Cortez dated 28 June 2003 denying the charges. In her letter, Velasco claimed that the transaction with Mercury Drug, Magsaysay Branch covered by her check (no. 1072) in the amount of P23,980.00 was merely to accommodate two undisclosed patients of a certain Dr. Renato Manalo. In support thereto, Velasco attached the Doctor's letter and the affidavit of the latter's secretary.

On 12 July 2003, Velasco received a "Second Show-cause Notice" informing her of additional developments in their investigation. According to the notice, a certain Carlito Jomen executed an affidavit pointing to Velasco as the one who transacted with a printing shop to print PFIZER discount coupons. Jomen also presented text messages originating from Velasco's company issued cellphone referring to the printing of the said coupons. Again, Velasco was given 48 hours to submit her written explanation on the matter. On 16 July 2003, Velasco sent a letter to PFIZER via Aboitiz courier service asking for additional time to answer the second Show-cause Notice.

That same day, Velasco filed a complaint for illegal suspension with money claims before the Regional Arbitration Branch. The following day, 17 July 2003, PFIZER sent her a letter inviting her to a disciplinary hearing to be held on 22 July 2003. Velasco received it under protest and informed PFIZER via the receiving copy of the said letter that she had lodged a complaint against the latter and that the issues that may be raised in the July 22 hearing "can be tackled during the hearing of her case" or at the preliminary conference set for 5 and 8 of August 2003. She likewise opted to withhold answering the Second Show-cause Notice. On 25 July 2003, Velasco received a "Third Show-cause Notice," together with copies of the affidavits of two Branch Managers of Mercury Drug, asking her for her comment within 48 hours. Finally, on 29 July 2003, PFIZER informed Velasco of its "Management Decision" terminating her employment.

On 5 December 2003, the Labor Arbiter rendered its decision declaring the dismissal of Velasco illegal, ordering her reinstatement with backwages and further awarding moral and exemplary damages with attorney's fees. On appeal, the NLRC affirmed the same but deleted the award of moral and exemplary damages.^[5]

The dispositive portion of the Labor Arbiter's Decision dated December 5, 2003 is as follows:

WHEREFORE, judgment is hereby rendered declaring that complainant was illegally dismissed. Respondents are ordered to reinstate the complainant to her former position without loss of seniority rights and with full backwages and to pay the complainant the following:

1. Full backwages (basic salary, company benefits, all allowances as of December 5, 2003 in the amount of P572,780.00);
2. 13th Month Pay, Midyear, Christmas and performance bonuses in the amount of P105,300.00;
3. Moral damages of P50,000.00;
4. Exemplary damages in the amount of P30,000.00;
5. Attorney's Fees of 10% of the award excluding damages in the amount of P67,808.00.

The total award is in the amount of P758,080.00.^[6]

PFIZER appealed to the National Labor Relations Commission (NLRC) but its appeal was denied *via* the NLRC Decision^[7] dated October 20, 2004, which affirmed the Labor Arbiter's ruling but deleted the award for damages, the dispositive portion of which is as follows:

WHEREFORE, premises considered, the instant appeal and the motion praying for the deposit in escrow of complainant's payroll reinstatement are hereby denied and the Decision of the Labor Arbiter is affirmed with the modification that the award of moral and exemplary damages is deleted and attorney's fees shall be based on the award of 13th month pay pursuant to Article III of the Labor Code.^[8]

PFIZER moved for reconsideration but its motion was denied for lack of merit in a NLRC Resolution^[9] dated December 14, 2004.

Undaunted, PFIZER filed with the Court of Appeals a special civil action for the issuance of a writ of *certiorari* under Rule 65 of the Rules of Court to annul and set aside the aforementioned NLRC issuances. In a Decision dated November 23, 2005, the Court of Appeals upheld the validity of respondent's dismissal from employment, the dispositive portion of which reads as follows:

WHEREFORE, the instant petition is GRANTED. The assailed Decision of the NLRC dated 20 October 2004 as well as its Resolution of 14 December 2004 is hereby ANNULLED and SET ASIDE. Having found the termination of Geraldine L. Velasco's employment in accordance with the

two notice rule pursuant to the due process requirement and with just cause, her complaint for illegal dismissal is hereby DISMISSED.^[10]

Respondent filed a Motion for Reconsideration which the Court of Appeals resolved in the assailed Resolution dated October 23, 2006 wherein it affirmed the validity of respondent's dismissal from employment but modified its earlier ruling by directing PFIZER to pay respondent her wages from the date of the Labor Arbiter's Decision dated December 5, 2003 up to the Court of Appeals Decision dated November 23, 2005, to wit:

IN VIEW WHEREOF, the dismissal of private respondent Geraldine Velasco is AFFIRMED, but petitioner PFIZER, INC. is hereby ordered to pay her the wages to which she is entitled to from the time the reinstatement order was issued until November 23, 2005, the date of promulgation of Our Decision.^[11]

Respondent filed with the Court a petition for review under Rule 45 of the Rules of Civil Procedure, which assailed the Court of Appeals Decision dated November 23, 2005 and was docketed as G.R. No. 175122. Respondent's petition, questioning the Court of Appeals' dismissal of her complaint, was denied by this Court's Second Division in a minute Resolution^[12] dated December 5, 2007, the pertinent portion of which states:

Considering the allegations, issues and arguments adduced in the petition for review on certiorari, the Court resolves to DENY the petition for failure to sufficiently show any reversible error in the assailed judgment to warrant the exercise of this Court's discretionary appellate jurisdiction, and for raising substantially factual issues.

On the other hand, PFIZER filed the instant petition assailing the aforementioned Court of Appeals Resolutions and offering for our resolution a single legal issue, to wit:

Whether or not the Court of Appeals committed a serious but reversible error when it ordered Pfizer to pay Velasco wages from the date of the Labor Arbiter's decision ordering her reinstatement until November 23, 2005, when the Court of Appeals rendered its decision declaring Velasco's dismissal valid.^[13]

The petition is without merit.

PFIZER argues that, contrary to the Court of Appeals' pronouncement in its assailed Decision dated November 23, 2005, the ruling in *Roquero v. Philippine Airlines, Inc.*^[14] is not applicable in the case at bar, particularly with regard to the nature and consequences of an order of reinstatement, to wit:

The order of reinstatement is immediately executory. **The unjustified refusal of the employer to reinstate a dismissed employee entitles him to payment of his salaries effective from the time the employer failed to reinstate him** despite the issuance of a writ of execution. Unless there is a restraining order issued, it is ministerial upon the Labor Arbiter to implement the order of reinstatement. In the case at bar, no restraining order was granted. **Thus, it was mandatory on PAL to actually reinstate Roquero or reinstate him in the payroll. Having failed to do so, PAL must pay Roquero the salary he is entitled to, as if he was reinstated, from the time of the decision of the NLRC until the finality of the decision of the Court.**^[15] (Emphases supplied.)

It is PFIZER's contention in its Memorandum^[16] that "there was no unjustified refusal on [its part] to reinstate [respondent] Velasco during the pendency of the appeal,"^[17] thus, the pronouncement in *Roquero* cannot be made to govern this case. During the pendency of the case with the Court of Appeals and prior to its November 23, 2005 Decision, PFIZER claimed that it had already required respondent to report for work on July 1, 2005. However, according to PFIZER, it was respondent who refused to return to work when she wrote PFIZER, through counsel, that she was opting to receive her separation pay and to avail of PFIZER's early retirement program.

In PFIZER's view, it should no longer be required to pay wages considering that (1) it had already previously paid an enormous sum to respondent under the writ of execution issued by the Labor Arbiter; (2) it was allegedly ready to reinstate respondent as of July 1, 2005 but it was respondent who unjustifiably refused to report for work; (3) it would purportedly be tantamount to allowing respondent to choose "payroll reinstatement" when by law it was the employer which had the right to choose between actual and payroll reinstatement; (4) respondent should be deemed to have "resigned" and therefore not entitled to additional backwages or separation pay; and (5) this Court should not mechanically apply *Roquero* but rather should follow the doctrine in *Genuino v. National Labor Relations Commission*^[18] which was supposedly "more in accord with the dictates of fairness and justice."^[19]

We do not agree.

At the outset, we note that PFIZER's previous payment to respondent of the amount of P1,963,855.00 (representing her wages from December 5, 2003, or the date of the Labor Arbiter decision, until May 5, 2005) that was successfully garnished under the Labor Arbiter's Writ of Execution dated May 26, 2005 cannot be considered in its favor. Not only was this sum legally due to respondent under prevailing jurisprudence but also this circumstance highlighted PFIZER's unreasonable delay in complying with the reinstatement order of the Labor Arbiter. A perusal of the records, including PFIZER's own submissions, confirmed that it only required respondent to report for work on July 1, 2005, as shown by its Letter^[20] dated June 27, 2005, which is almost two years from the time the order of reinstatement was handed down in the Labor Arbiter's Decision dated December 5, 2003.

As far back as 1997 in the seminal case of *Pioneer Texturizing Corporation v.*