

## FIRST DIVISION

[ G.R. No. 178621, July 26, 2010 ]

**MIGUEL RUBIA, PETITIONER, VS. NATIONAL RELATIONS COMMISSION, FOURTH DIVISION, CEBU CITY, COMMUNITY WATER AND SANITATION COOPERATIVE AND THE BOARD OF DIRECTORS, RESPONDENTS,**

### D E C I S I O N

**PEREZ, J.:**

In this petition for review on *certiorari*, petitioner Miguel Rubia seeks to reverse the Decision<sup>[1]</sup> and Resolution<sup>[2]</sup> of the Court of Appeals in CA-G.R. SP. No. 00165, which affirmed the ruling<sup>[3]</sup> of the National Labor Relations Commission (NLRC) declaring petitioner's dismissal as valid.

Petitioner served as member of the Board of Community Water and Sanitation Cooperative (COWASSCO), a cooperative primarily engaged in water and sanitation service for the municipality of Argao in Cebu, before he was appointed its General Manager in 1 October 1994.<sup>[4]</sup>

On 28 August 2000, COWASSCO, through its Chairman of the Board, issued Memorandum No. 001-2000 charging petitioner with mismanagement of operation relating to the non-monitoring and non-compliance on the application of the correct dosage of chlorine to the water system and requesting an explanation from him. The Memorandum reads:

Please be informed that during the Special Meeting of the Board of Directors, held last August 26, 2000, which was presided over by the outgoing Chairman, Engr. Jovencio S. Egos, it deliberated the issue of MISMANAGEMENT IN YOUR OPERATION - the non-monitoring/non-compliance on the application of the correct dosage of Chlorine to the system. Not only this month, August, that the *Sangguniang Bayan* called our attention to explain in writing, but we were also called last year, when there was an outbreak in dysentery wherein you made promises to them, that this will not happen again, and this time, the issue is purely mismanagement.

To this effect, you are hereby requested to submit your Letter [of] Explanation to the Board within forty-eight (48) hours after the receipt of this Memorandum. Failure to the satisfaction of the Board of Directors of your explanation and much so, if you will not submit it, the Board will take a drastic action against you and this shall be dealt with accordingly.

<sup>[5]</sup>

Petitioner submitted his letter-explanation and claimed that he complied with all the recommendations of the *Sangguniang Bayan*. He shifted the blame to the Chlorinator and the Master Plumber who were directly responsible over the chlorination. He likewise asserted that the Board of Directors was equally culpable and accountable to the lapses committed by the Chlorinator and Master Plumber.<sup>[6]</sup>

On 18 September 2000, the Board adopted Resolution No. 9 terminating the services of petitioner for loss of trust and confidence. The Resolution reads:

Resolution No. 09  
Series of 2000

A RESOLUTION TERMINATING THE SERVICES OF MR. MIGUEL S. RUBIA AS GENERAL MANAGER OF THE COMMUNITY WATER AND SANITATION SERVICE COOPERATIVE (COWASSCO)

WHEREAS, the Community Water and Sanitation Service Cooperative (COWASSCO) has started its operation as cooperative effective January 18, "1994, after it was registered as a cooperative under Registration No. CBU-1117;

WHEREAS, Mr. Miguel S. Rubia was appointed as General Manager by the Board of Directors on October 1, 1994, until present;

WHEREAS, as General Manager, he was tasked the general operation of the cooperative;

WHEREAS, on February 14, 1998, the Board of Directors passed Resolution No. 02, Series of 1998 providing for the retirement of employees of the cooperative who reached the compulsory age of sixty give (65) but was declared illegal by Hon. Judge Efipanio Llanos, Regional Trial Court, Region VII, Branch XXVI, Argao, Cebu;

WHEREAS, in October 1998, his attention was called by the *Sangguniang Bayan* of Argao for no supply of water in the Poblacion area, Lamacan and Canbanua during the eve of the town fiesta, on September 28, 1998;

WHEREAS, in 1999, he was invited by the *Sangguniang Bayan* on its Regular Session, to explain why the water of the cooperative was contaminated resulting in The typhoid fever epidemic in most *barangays* covered by COWASSCO, but he did not appear in the investigation;

WHEREAS, on July 26, 2000, the Rural Health Officer (RHO), Argao, Cebu reported the contamination of the water of COWASSCO, which might lead to another epidemic;

WHEREAS, Mr. Miguel S. Rubia was again invited by the *Sangguniang Bayan* in its regular session on August 21, 2000 to explain on the contamination of the water of the cooperative, but again he failed to attend;

WHEREAS, in that meeting, the members of the *Sangguniang Bayan* had recommended for the resignation or termination of Mr. Rubia for his mismanagement of the water system;

WHEREAS, in its Memorandum No. 01-2000, dated August 28, 2000, the Board of Directors of the Cooperative, through the Chairman, requested the General Manager to explain, why no disciplinary action be taken against him for mismanagement of the operation of the water system;

WHEREAS, finding the answer of the General Manager unsatisfactory, the Board of Directors decided to create an Investigation Committee tasked to investigate the performance of the General Manager in performing his duties;

WHEREAS, during the investigation, it was found out, that Mr. Rubia has not properly safeguarded the safety of the water consumers as gleaned by the following:

1. The water of COWASSCO was contaminated in 1999 resulting in the typhoid fever epidemic.
2. It was again contaminated as per report of the Municipal Health Officer dated July 26, 2000;
3. He failed to fully implement a Board Resolution directing him to fence and put open launders to all the spring boxes in Sua so that flood water cannot penetrate inside the boxes;
4. He failed to implement a Board Resolution to install a water gauge in Sua reservoir;
5. 5. He failed to implement the recommendation of the *Sangguniang Bayan* in 1999 to provide a logbook for recording of daily chlorine reading and other activities of the cooperative;
6. He relied on "*bula-bula*" system in the application of chlorine in Sua reservoir;
7. Submission of a fictitious daily chlorine reading report to the Board of Directors; and
8. Shows no concern to the water users when he reacted, "*Wala pa man kaha'y namatay*" after being informed of the report of Dr. Mamac, Municipal Health Officer.

WHEREAS, he has not implemented a Board Resolution providing for a Code of Ethical Standard to employees of the cooperative which include the following violations:

1. That vehicles of the cooperative are continuously used by employees and him even after office hours without memorandums and trip ticket;
2. Has not called the attention of employees who frequently loaf during office hours and comes late to work; and
3. While there were dialogues and investigations, no documentation were made.

WHEREAS, in his response to the memorandum of the BOD, Mr. Miguel S. Rubia, did not assume responsibility of the mistakes committed, instead, he passed the buck to his men and accuse the BOD as equally culpable of the lapse of his men;

WHEREAS, the Board of Directors of COWASSCO, has totally lost its trust and confidence with the General Manager, Mr. Miguel S. Rubia;

WHEREFORE, on the mass motion of all the Directors present, duly seconded by the same;

BE IT RESOLVED, AS IT HEREBY RESOLVED, that the Board of Directors in the course of their investigation of the case of Mr. Miguel S. Rubio, General Manager of the cooperative found him guilty of mismanagement of the cooperative and is hereby terminated with cause as General Manager of the cooperative effective Monday, October 16, 2000;

RESOLVED FURTHER, that Mr. Miguel S. Rubia is directed to cease and desist from reporting to duty, effective upon receipt of a Memorandum together with this Resolution;

RESOLVED FURTHER, that he is also directed turn over all records of the cooperative to the Chairman, Board of Directors;

RESOLVED FURTHERMORE, to furnish a copy of this Resolution to Mr. Miguel S. Rubia, General Manager of COWASSCO, Argao, Cebu. for his information and guidance;

RESOLVED FINALLY, to furnish copies of the Resolution to the Municipal Mayor, Argao, Cebu, the members of the *Sangguniang Bayan*, Argao, Cebu, the Cooperative Development Authority Officer, Cebu City Office, the Manager, Development Bank of the Philippines (DBF) Cebu City, the Manager, Rural Bank of Cebu South, Argao, Cebu and die Manager Cooperative Bank, Cebu City for their information.<sup>[7]</sup>

On 4 April 2002, petitioner filed a complaint for illegal dismissal and prayed for reinstatement, payment of backwages, moral and exemplary damages and attorney's fees.<sup>[8]</sup>

Failing to reach an amicable settlement, the parties were ordered to file their

position papers.

Petitioner claimed that respondents wanted to oust him from his position as early as in 1998 when he received a notice from COWASSCO advising him that he was deemed retired effective 1 April 1998. [9] Petitioner averred that his dismissal was illegal as there was no clear showing of a clear, valid and legal cause. Petitioner added that the Master Plumber and the Chlorinator, who both admitted their lapses, were not even summoned and investigated. [10]

Respondents COWASSCO and its Board justified petitioner's dismissal as valid on the ground of loss of trust and confidence after finding; him guilty of mismanagement. Respondent also claimed to have observed due process in terminating petitioner's employment. [11]

The labor arbiter' [12] found petitioner's dismissal as illegal. The dispositive portion of the labor arbiter's decision reads as follows:

WHEREFORE, premises considered, judgment is hereby rendered declaring that complainant was illegally dismissed thereby ordering respondents COMMUNITY WATER & SANITATION COOPERATIVE and the BOARD OF DIRECTORS to pay complainant the amount of THREE HUNDRED EIGHTY THOUSAND ONE HUNDRED SIXTY PESOS (P380,160.00) in the concept of separation pay, backwages and attorney's fees. [13]

The labor arbiter ruled that respondents failed to prove that there was mismanagement of operations on the part of petitioner to support the ground of loss of trust and confidence in dismissing the latter's employment. Moreover, the labor arbiter observed that petitioner was not accorded due process when only one incident of mismanagement was mentioned in the show-cause notice but petitioner was dismissed on the ground of several other incidents. [14]

Aggrieved, respondents appealed to the NLRC. In a Decision dated 25 June 2004, the NLRC reversed and set aside the labor arbiter's decision. It upheld petitioner's dismissal as valid on the ground of loss of trust and confidence. The dispositive portion provides:

WHEREFORE, premises considered, the Decision of the Labor Arbiter is hereby REVERSED, SET ASIDE and VACATED and a new-one entered DISMISSING the case of illegal dismissal. Respondent COWASSCO is however ordered to pay complainant the sum of P14,400.00 by way of financial assistance. [15]

Notably, the NLRC was mum on the issue of due process.

Petitioner moved for reconsideration but it was denied in a Resolution dated 17 November 2004. [16]