

THIRD DIVISION

[G.R. No. 173908, February 26, 2008]

**ELEANOR C. MAGALANG, Petitioner, vs. COURT OF APPEALS
(Former Fourth Division), NATIONAL LABOR RELATIONS
COMMISSION (3rd Division) and SUYEN CORPORATION,
Respondents.**

DECISION

NACHURA, J.:

Before the Court is a petition for review on *certiorari* under Rule 45 assailing the March 31, 2004 Decision^[1] of the Court of Appeals (CA) in CA-G.R. SP No. 79408 and the August 1, 2006 Resolution^[2] denying the motion for reconsideration thereof.

The facts are undisputed. On September 16, 1998, petitioner, an Account Executive of Suyen Corporation, received an Infraction Report^[3] from the management of the company asking her to explain why she should not be disciplinarily dealt with after declaring a false point of origin, the Pasay Head Office, when actually she came directly from her residence to the designated place of sales operation.^[4] In response, petitioner wrote the personnel manager: (1) that she regularly went through the said route because it entailed cheaper transportation cost for the company; (2) that she had been doing this since her employment in March 1997 with the consent of her manager; and (3) that she was never questioned before.^[5]

On October 17, 1998, petitioner was dismissed from employment on account of acts constituting gross dishonesty thru falsification of the company request form for the reimbursement of transportation allowance.^[6] Protesting her termination, petitioner filed a Complaint for unfair labor practice and illegal dismissal with the National Labor Relations Commission (NLRC). The case was docketed as NLRC-NCR Case No. 00-11-09065-98.^[7] In her pleadings, she argued, among others, that she was dismissed not because of the alleged infraction but due to her active participation, as the acting president of the union, in the negotiation of the Collective Bargaining Agreement.^[8]

On January 11, 2001, the Labor Arbiter (LA) dismissed the complaint for lack of merit.^[9] On appeal, the NLRC, in its September 5, 2002 Decision^[10] in NLRC NCR CA No. 028962-01, ruled in petitioner's favor and declared that she was illegally dismissed. Finding, however, that she was not entirely faultless (as she in fact proceeded to the place of assignment from her residence), the labor tribunal refused to award backwages.^[11]

Both parties filed their respective Motions for Reconsideration.^[12] On October 28,

2002, the NLRC denied petitioner's motion,^[13] prompting her to file a petition for *certiorari* with the CA. This was docketed as CA-G.R. SP No. **75185**.^[14] On July 28, 2003, the NLRC also denied respondent's motion.^[15] Respondent then filed a petition for *certiorari* with the CA docketed as CA-G.R. SP No. **79408** [the subject of this case].

On February 27, 2004, the Ninth Division of the appellate court, in CA-G.R. SP No. 75185, affirmed the September 5, 2002 Decision^[16] of the NLRC with the modification that respondent was to pay petitioner full backwages from the time of illegal dismissal up to her actual reinstatement.^[17] This decision attained finality when the parties did not interpose any appeal. An Entry of Judgment was then issued on April 2, 2004.^[18]

In the meantime, on March 15, 2004, the Fourth Division of the CA, in CA-G.R. SP No. 79408, issued a Resolution denying the motion for the consolidation of the two *certiorari* petitions in view of the aforesaid promulgation of the decision in CA-G.R. SP No. 75185.^[19]

The appellate court (4th Division), in CA-G.R. SP No. 79408, consequently, rendered the assailed March 31, 2004 Decision^[20] affirming *in toto* the September 5, 2002 Decision^[21] of the NLRC. In the likewise challenged August 1, 2006 Resolution,^[22] the CA denied the motions for reconsideration of both parties.

Meanwhile, on January 12, 2005, the NLRC issued a Writ of Execution^[23] of petitioner's monetary award, including the backwages granted by the CA in the aforesaid February 27, 2004 Decision in CA-G.R. SP No. 75185. On motion to quash by the respondent, the NLRC, on January 25, 2005, held in abeyance the implementation of the writ.^[24]

Petitioner subsequently filed the instant petition for review on *certiorari* questioning the CA's issuances in CA-G.R. SP No. 79408 on the following grounds:

I.

PUBLIC RESPONDENT COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF DISCRETION (SIC) IN REFUSING TO APPLY THE SERRANO DOCTRINE (RUBEN SERRANO vs. NLRC, 323 SCRA 45) AND BUSTAMANTE DOCTRINE (BUSTAMANTE vs. NLRC, 265 SCRA 6 [1996]) RESPECTIVELY, IN THE INSTANT CASE, AS DECREED BY THE NINTH DIVISION OF THE COURT OF APPEALS IN CA-G.R. SP NO. 75187 FILED BY PETITIONER.

II.

PUBLIC RESPONDENT COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN AWARING ONLY SEPARATION PAY TO PETITIONER AS ALTERNATIVE TO REINSTATEMENT AND WITHOUT BACKWAGES.^[25]