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THIRD DIVISION

[G.R. No. 166703, April 14, 2008]

AMA COMPUTER COLLEGE, INC., PETITIONER, VS. ELY GARCIA AND MA. TERESA BALLA, RESPONDENTS.

D E C I S I O N

CHICO-NAZARIO, J.:

This Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeks to reverse the Decision[1] dated 30 August 2004 of the Court of Appeals in CA-G.R. SP No. 81808 affirming the Decision dated 29 May 2003 of the National Labor Relations Commission (NLRC) in NLRC NCR 00-03-01898-00. The NLRC, in its Decision, affirmed the Labor Arbiter's Decision dated 25 March 2002, finding that the dismissal by petitioner AMA Computer College, Inc. (ACC) of respondents Ely Garcia (Garcia) and Ma. Teresa Balla (Balla) was illegal and granting of backwages and separation pay; but modified the same by deleting the grant of 13th month pay, service incentive leave pay and cost of living allowance. The Court of Appeals, in its Resolution dated 1 December 2004, denied ACC's motion for reconsideration of its earlier Decision.

The factual antecedents of the case are as follows:

Garcia was hired as a janitress by ACC on 6 January 1988. On 15 May 1989, her employment status was changed to probationary Library Aide. She became a regular employee on 15 February 1990.

Balla was hired as a Social Worker by ACC on 1 August 1996. She later became a Guidance Assistant in the Guidance Department of ACC, and on 2 June 1997, became a regular employee.

On 21 March 2000, Anthony R. Vince Cruz, ACC Human Resource Director, informed Garcia and Balla and 52 other employees of the termination of their employment, thus:

> This is to formally inform you that due to the prevailing economic condition of our economy and as part of the austerity program of the company, the top management has decided to come up with a manpower review of the AMA Group of Companies in order to streamline its operation and the growth of the Organization.
>
> In view of this, your position as Library Aide [for Ely; Guidance Assistant, for Teresa] has (sic) been found no longer necessary for the reason that your function can be handled by the other existing staff.

> Thus, we regret to inform you effective April 21, 2000, your employment with AMA Group of Companies is hereby terminated. x x x.[2]

Thereafter, Garcia and Balla filed a complaint with the Labor Arbiter for illegal dismissal and prayed for the payment of separation pay, 13th month pay, and attorney's fees, alleging that ACC's streamlining program was tainted with bad faith as there was no fair and reasonable criteria used therein, such as the less preferred status, efficiency rating and authority. They asserted that certain acts of ACC belied its claim of being adversely affected by the prevailing economic conditions, and that the statistics and pattern of dismissal by the college indicate a nefarious intent to circumvent the law on the security of tenure.

ACC, in its position paper, countered that Garcia and Balla's dismissal was due to the legitimate streamlining by the company.

On 25 March 2002, the Labor Arbiter ruled that Garcia and Balla were illegally dismissed and ordered the payment of their backwages and additional separation pay. The dispositive portion of the Labor Arbiter's Decision[3] reads:

> Wherefore, premises all considered, judgment is hereby rendered finding the dismissal illegal and ordering respondent [petitioner ACC] to pay complainants [Garcia and Balla] backwages and additional separation pay.
>
> The Research and Computation Unit, (sic) this Commission is hereby directed to effect the necessary computation which shall form part of this decision.

Aggrieved by the Labor Arbiter's afore-quoted Decision, ACC appealed to the NLRC.

On 20 May 2003, the NLRC[4] affirmed the assailed Decision of the Labor Arbiter with the modification of deleting the award of 13th month pay, service incentive leave pay and cost of living allowance. The NLRC thus ordered:

> While We are in accord with the finding that complainants were illegally dismissed from employment, We find the inclusion of the relief of 13th month pay, Service Incentive Leave Pay and Cost of Living Allowance as inappropriate.
>
> Quite notable from the pro-forma complaint that no prayer for payment of cost of living allowance or service incentive leave pay was indicated therein by the complainants (Records, p. 2). And, while they may have indicated non-payment of the 13th month benefit as a cause of action, nowhere in the Labor Arbiter's decision can it be gleaned that the said relief was adjudged in favor of the complainants. Deletion of the aforesaid monetary award is, therefore, decreed.
>
> WHEREFORE, premises considered, the decision under review is hereby MODIFIED by DELETING the relief of 13th month pay, service incentive leave pay and cost of living allowance therefrom.

> In other respects, the decision, insofar as it orders the payment to the complainants [Garcia and Balla] their backwages and additional separation pay, shall stand AFFIRMED.

ACC filed a Motion for Reconsideration of the foregoing but the same was denied[5] by the NLRC in a Resolution dated 30 October 2003.

ACC then appealed[6] by way of Petition for *Certiorari* under Rule 65 of the Rules of Court to the Court of Appeals alleging that the NLRC gravely abused its discretion amounting to lack or in excess of jurisdiction in only partially modifying the Decision of the Labor Arbiter and affirming the rest thereof.

On 30 August 2004, the Court of Appeals rendered a Decision[7] affirming the Decision of the NLRC. In its Decision, the Court of Appeals ruled that inquiry in a Petition for *Certiorari* under Rule 65 of the Rules of Court is limited exclusively to the issue of whether or not respondent acted with grave abuse of discretion, amounting to lack or in excess of jurisdiction, and does not go as far as to evaluate the sufficiency of evidence upon which the NLRC and the Labor Arbiter based their determination.

ACC filed a motion for reconsideration but was denied by the Court of Appeals in a Resolution[8] dated 1 December 2004.

Hence, the present Petition for Review under Rule 45 of the Rules of Court filed by ACC raising the following errors[9] of the Court of Appeals:

> THE COURT OF APPEALS GRAVELY ERRED IN DEPARTING FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL REVIEW[.]
>
> THE COURT OF APPEALS GRAVELY ERRED WHEN IT SUSTAINED THE FINDING OF ILLEGAL DISMISSAL NOTWITHSTANDING THE SUBSTANTIAL EVIDENCE ADDUCED BY PETITIONER TO THE CONTRARY[.]
>
> THE COURT OF APPEALS GRAVELY ERRED WHEN IT REFUSED TO RECOGNIZE REDUNDANCY AS A BASIS IN TERMINATING THE SERVICES OF RESPONDENT[S].

On 18 April 2005, We required[10] Garcia and Balla to file their Comment within ten days from notice, but they failed to comply therewith despite notice.

As a consequence, we required[11] Garcia and Balla to show cause why they should not be held in contempt of court for failure to file their desired comment. Again, they failed to comply with our show cause order, thus, we imposed[12] upon them a fine of P500.00 each payable within ten days from receipt of notice.

Still failing to receive any response from Garcia and Balla, we required[13] ACC, on 2 October 2006, to inform the Court of their current addresses.

In a Manifestation[14] dated 18 January 2007, ACC stated that, as for Garcia, it has the same address as the one being considered by the Court; and as to Balla, all pleadings and orders in the course of the proceedings before the NLRC and the

Court of Appeals were served to her through Garcia's address.

In a Resolution dated 28 February 2007, we noted ACC's Manifestation but considered its compliance unsatisfactory. We required ACC to exert more effort in locating Garcia's present address and to inform the Court thereof within ten days from notice.[15]

ACC through counsel failed to comply with our 28 February 2007 Resolution, thus, we required[16] its counsel to show cause why it should not be held in contempt for failure to submit the addresses of Garcia and Balla despite notice.

In a Compliance[17] dated 5 December 2007, ACC through counsel apologized for its inadvertence and asked for an extension within which to comply with the 28 February 2007 Resolution, which was granted.[18]

ACC's counsel would later inform us that various ways were employed to search for Garcia's address, such as searches through the telephone directories, internet and personal inquiries, but to no avail. Hence, ACC requested for another extension,[19] which was again granted.

In a Manifestation, dated 5 January 2007, ACC through counsel stated that it already made a personal inquiry at Garcia's previous address, but still without success.

Thus, we resolved to dispense with Garcia and Balla's comment and submitted the case for decision based on the pleadings filed.

Even without Garcia and Balla's comment, this Court denies ACC's Petition.

The issues for resolution are factual and Rule 45 of the Rules of Court provides that only questions of law may be raised in a petition for review on *certiorari*. The *raison d'etre* is that the Court is not a trier of facts. It is not to reexamine and reevaluate the evidence on record. Moreover, the factual findings of the NLRC, as affirmed by the Court of Appeals, are accorded high respect and finality unless the factual findings and conclusions of the Labor Arbiter clash with those of the NLRC and the Court of Appeals in which case, the Court will have to review the records and the arguments of the parties to resolve the factual issues and render substantial justice to the parties.[20]

In termination cases, the burden of proving just and valid cause for dismissing an employee from his employment rests upon the employer, and the latter's failure to discharge that burden would result in a finding that the dismissal is unjustified.[21]

It must be stressed at the outset that ACC raised different grounds to justify its dismissal of Garcia and Balla: before the Labor Arbiter, it cited retrenchment; before the NLRC, it claimed redundancy; and before the Court of Appeals, it averred both retrenchment and redundancy.

It is apparent that ACC itself is confused as to the real reason why it terminated Garcia and Balla's employment.

Both retrenchment and redundancy are authorized causes for the termination of employment. According to Article 283 of the Labor Code:

> ART. 283. *Closure of establishment and reduction of personnel.* - The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the worker and the Department of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

Although governed by the same provision of the Labor Code, retrenchment and redundancy are two distinct grounds for termination arising from different circumstances, thus, they are in no way interchangeable.

Redundancy exists when the service capability of the workforce is in excess of what is reasonably needed to meet the demands of the business enterprise. A reasonably redundant position is one rendered superfluous by any number of factors, such as overhiring of workers, decreased volume of business, dropping of a particular product line previously manufactured by the company or phasing out of service activity priorly undertaken by the business. Among the requisites of a valid redundancy program are: (1) the good faith of the employer in abolishing the redundant position; and (2) fair and reasonable criteria in ascertaining what positions are to be declared redundant and accordingly abolished.[22]

The determination that the employee's services are no longer necessary or sustainable and, therefore, properly terminable for being redundant is an exercise of business judgment of the employer. The wisdom or soundness of this judgment is not subject to discretionary review of the Labor Arbiter and the NLRC, provided there is no violation of law and no showing that it was prompted by an arbitrary or malicious act. In other words, it is not enough for a company to merely declare that it has become overmanned. It must produce adequate proof of such redundancy to justify the dismissal of the affected employees.[23]

In *Panlilio v. National Labor Relations Commission,*[24] it was held that the following evidence may be proffered to substantiate redundancy: the new staffing pattern, feasibility studies/proposal on the viability of the newly created positions, job description and the approval by the management of the restructuring.

In the case at bar, ACC attempted to establish its streamlining program by