546 Phil. 140

# THIRD DIVISION

# [ G.R. NO. 169570, March 02, 2007 ]

## RICARDO PORTUGUEZ, PETITIONER, VS. GSIS FAMILY BANK (COMSAVINGS BANK) AND THE HON. COURT OF APPEALS, RESPONDENTS.

## D E C I S I O N

**CHICO-NAZARIO, J.:**

For resolution is a Petition for Review by *Certiorari* under Rule 45 of the Revised Rules of Court, of the Decision[1] dated 25 April 2005 and the Resolution[2] dated 25 August 2005 of the Court of Appeals. The assailed Decision and Resolution reversed the findings of both the National Labor Relations Commission (NLRC) and the Labor Arbiter, in their Decisions dated 30 January 2004 and 30 June 2003, respectively, that respondent GSIS Family Bank is guilty of the illegal dismissal of petitioner Ricardo Portuguez. The dispositive portion of the assailed decision of the appellate court reads:

> IN VIEW OF ALL THE FOREGOING, the instant petition is hereby **GRANTED,** the assailed NLRC Decision dated January 30, 2004, together with the Resolution dated June 22, 2004, are **RECALLED and SET ASIDE,** and a new one entered **DISMISSING** NLRC NCR CA No. 037015-03 (NLRC NCR Case. No. 07-05075-2002). No pronouncement as to costs.[3]

The factual and procedural antecedents of this instant petition are as follows:

Petitioner was employed by the respondent bank as utility clerk on 1 February 1971. Later, he rose from the ranks and was promoted as branch manager of the Gen. Trias Branch, and was subsequently assigned to other branches of respondent bank within the Province of Cavite. Eventually, he was appointed as Business Development and Public Relations (BDPR) Officer of the entire respondent bank.[4]

In addition to his regular duties as BDPR Officer, petitioner was designated as a member of the Procurement Bidding and Awards Committee (PBAC), Oversight Committee and Investigating Committee of the respondent bank.[5]

On 23 October 1997, petitioner was temporarily assigned as caretaker of respondent bank. Finally, he was designated as Acting Assistant Vice-President and at the same time Officer-In-Charge of the respondent bank on 15 June 1998.[6]

Respondent bank, on the other hand, is a banking institution duly authorized and existing as such under the Philippine laws. It was originally known as Royal Savings Bank. In 1983 and the early part of 1984, respondent bank underwent serious liquidity problems and was placed by the Central Bank of the Philippines (Central

Bank) under receivership. However, due to the continued inability to maintain a state of liquidity, the Central Bank ordered its closure on 9 July 1984. After two months, the respondent bank was reopened under the control and management of the Commercial Bank of Manila and was then renamed as Comsavings Bank.[7]

In 1987, the Government Service Insurance System (GSIS) acquired the interest of the Commercial Bank of Manila in the respondent bank and together with the Central Bank and the Philippine Deposit Insurance Corporation (PDIC), GSIS infused a substantial amount of fresh capital into respondent bank in order to ensure its effective rehabilitation. Resultantly, GSIS took over the control and management of the respondent bank that was renamed as GSIS Family Savings Bank.[8]

Accordingly, Amando Macalino (Macalino) was appointed as President of the respondent bank on 21 December 1998. In view of Macalino's appointment, the designation of petitioner as Officer-In-Charge and caretaker of respondent bank was recalled; however, his appointment as Acting Assistant Vice-President, was retained. [9]

In line with its policy to attain financial stability, respondent bank adopted measures directed to cut down administrative overhead expenses through streamlining. Thus, respondent bank came up with an early voluntary retirement program. On 15 April 2001, petitioner opted to avail himself of this retirement package, supposedly, under protest, and received the amount of P1.324 Million as retirement pay.[10]

On 11 July 2002, petitioner filed a complaint against the respondent bank and Macalino for constructive dismissal and underpayment of wages, 13th month pay and retirement benefits before the Labor Arbiter.[11] In his Position Paper,[12] petitioner alleged that due to discrimination, unfair treatment, and intense pressure he had received from the new management through Macalino, he was forced to retire at the prime of his life.

In a Decision[13] dated 30 June 2003, the Labor Arbiter adjudged the respondent bank guilty of illegal dismissal, the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered, finding complainant to have been illegally dismissed. Concomitantly, Respondents are jointly and solidarily liable to pay RICARDO PORTUGUEZ the following:
>
> P1,148,333.33 - representing backwages;
> 1,280,000.00 - representing separation pay;
> 443,884.32 - representing salary differentials;
> 500,000.00 - representing moral damages;
> 400,000.00 - representing exemplary damages;
>
> Ten percent of the total award as attorney's fees.
> Other claims are dismissed for lack of merit.
>
> The detailed computation of the Computation & Examination Unit, National Capital Region is made part of this Decision.[14]

Aggrieved, respondent bank appealed the adverse decision to the NLRC which adopted *in toto* the findings of the Labor Arbiter. In a Decision[15] dated 30 January 2004, the NLRC dismissed the appeal and found the decision of the Labor Arbiter to be sufficiently supported by the facts on record and law on the matter.

Respondent bank's Motion for Reconsideration was likewise denied by the NLRC in its Resolution[16] dated 22 June 2004 for failing to show that patent or palpable errors have been committed in the assailed decision.

The NLRC Resolution dated 22 June 2004, denying respondent bank's motion for reconsideration, was prematurely declared final and executory and was entered into judgment on 6 August 2004.[17]

Shortly thereafter, on 16 August 2004, respondent bank timely elevated the matter to the Court of Appeals through a Special Civil Action for *Certiorari*[18] under Rule 65 of the Revised Rules of Court. Incorporated with its petition was the Urgent Application for the Issuance of Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction.

Pending resolution of its petition and application for the issuance of TRO and/or writ of preliminary injunction before the appellate court, the Labor Arbiter, on 16 September 2004, issued a Writ of Execution[19] for the satisfaction of the NLRC decision dated 30 January 2004. On the same date, a Notice of Garnishment[20] was served on the manager/cashier of respondent bank in the Pamplona Uno, Las Piñas City Branch.

Acting on the application for TRO, the Court of Appeals enjoined the implementation of the NLRC decision dated 30 January 2004 and therefore, the satisfaction of the Writ of Execution dated 16 September 2004 issued by the Labor Arbiter was tolled for a period of 60 days.[21]

Eventually, the appellate court issued a Writ of Preliminary Injunction[22] permanently enjoining the execution of the NLRC decision dated 30 January 2004 until the final resolution of the case.

On 25 April 2005, the Court of Appeals resolved the controversy by reversing the judgment of the Labor Arbiter and the NLRC and ruling out constructive dismissal considering that petitioner's separation from service was voluntary on his part when he chose to avail himself of the respondent bank's early retirement program and received the amount of P1.324 Million as retirement pay.[23]

Similarly ill-fated was Petitioner's Motion for Reconsideration which was denied by the Court of Appeals in its Resolution[24] dated 25 August 2005.

Hence, this instant Petition for Review on *Certiorari*.[25]

For the resolution of this Court are the following issues:

I.

WHETHER OR NOT THE COURT OF APPEALS ERRED WHEN IT DECLARED THAT PETITIONER WAS NOT CONSTRUCTIVELY DISMISSED FROM EMPLOYMENT.

II.

WHETHER OR NOT THE COURT OF APPEALS ERRED WHEN IT DECLARED THAT PETITIONER IS NOT ENTITLED TO SALARY DIFFERENTIAL.

Before we delve into the merits of the case, it is best to underscore that the factual findings of the NLRC affirming those of the Labor Arbiter, who are deemed to have acquired expertise on the matters within their jurisdiction, when sufficiently supported by evidence on record, are accorded respect if not finality, and are considered binding on this Court.[26] It is equally true, however, that when the findings of the Labor Arbiter and the NLRC are inconsistent with that of the Court of Appeals, there is a need to review the records to determine which of them should be preferred as more conformable to evidentiary facts.[27]

As borne by the records, it appears that there is a divergence between the findings of the Labor Arbiter as affirmed by the NLRC, and those of the Court of Appeals. For the purpose of clarity and intelligibility, therefore, this Court will make an infinitesimal scrunity of the records and recalibrate and reevaluate the evidence presented by the parties all over again.

We have already repeatedly held that this Court is not a trier of facts. Rule 45 of the Revised Rules of Court limits the office of a Petition for Review to questions of law and leaves the factual issues as found by the quasi-judicial bodies, as long as they are supported by evidence.[28] We never fail to stress as well that when the rulings of the labor tribunal and the appellate court are in conflict, we are constrained to analyze and weigh the evidence again.[29]

Substantively, petitioner alleges that respondent bank, through Macalino, subjected him to all forms of unbearable harassment that can be mustered in order to force him to resign. Petitioner specifically claims that he was deprived of his salary and other benefits and privileges appurtenant to his position as the Acting Assistant Vice-President, including his office. Respondent bank allegedly granted much higher salary to the newly hired bank officers compared to what he was receiving during his tenure.

In contrast, respondent bank maintains that petitioner was not coerced to resign but voluntarily opted to avail himself of the early retirement program and was duly paid his retirement benefits. It posits that petitioner was merely holding the position of Assistant Vice-President in acting capacity subject to the ratification of the respondent bank's Board of Directors and since his appointment has never been ratified by the Board, respondent bank cannot therefore grant him the salary and benefits accorded to such position.

In finding that petitioner was not constructively dismissed from employment, the Court of Appeals stressed that there was no showing that petitioner's separation from employment was due to involuntary resignation or forced severance. Neither

was it shown that there was a decrease in salary and privileges or downgrading of petitioner's rank. What can be clearly deduced from the evidence was that until his voluntary retirement in 2001, petitioner was holding the position of Acting Assistant Vice-President and was receiving the salary and benefits accorded thereto.

After scrupulously examining the contrasting positions of the parties, and the conflicting decisions of the Labor Arbiter and the NLRC, on one hand, and the appellate court, on the other, we find the records of the case bereft of evidence to substantiate the conclusions reached by both the Labor Arbiter and the NLRC that petitioner was constructively dismissed from employment.

Constructive dismissal or constructive discharge has been defined as quitting because continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank and a diminution in pay. [30] In the case at bar, a demotion in rank or diminution in pay was never raised as an issue. Settled then is the fact that petitioner suffered no demotion in rank or diminution in pay that could give rise to a cause of action against respondent bank for constructive dismissal under this definition.

Worthy to stress, however, is that constructive dismissal does not always take the form of demotion in rank or diminution in pay. In several cases, we have ruled that the act of a clear discrimination, insensibility or disdain by an employer may become so unbearable on the part of the employee so as to foreclose any choice on his part except to resign from such employment.[31]

It is upon the aforementioned legal tenet that petitioner anchored his case. Petitioner strenuously argues that while the newly hired bank officers were given higher salaries and fat allowances, he was merely paid the amount of P15,000 basic pay and P4,000 allowance for the position of Acting Assistant Vice-President which, according to him, was way below what the newly hired bank officers were enjoying. Stated differently, petitioner avers that he was discriminated against by the respondent bank in terms of payment of salary and grant of benefits and allowances.

We do not agree.

Upon careful perusal of the position papers, memoranda and other pleadings submitted by petitioner from the Labor Arbiter up to this Court, including the evidence appended thereon, we find that no evidence, substantial or otherwise, was ever submitted by petitioner to buttress the very premise of his position that there was discrimination.

Discrimination has been defined as the failure to treat all persons equally when no reasonable distinction can be found between those favored and those not favored. [32] Thus, before a claim for discrimination can prosper, it must be established that, first, there is no reasonable distinction or classification that can be obtained between persons belonging to the same class, and second, persons belonging to the same class have not been treated alike.[33]

*Apropos* thereto, petitioner failed to establish that he possessed the same skills, competencies and expertise as those of the newly hired bank officers so as to