

## THIRD DIVISION

[ G.R. No. 175988, August 24, 2007 ]

**MA. FININA E. VICENTE, PETITIONER, VS. THE HON. COURT OF APPEALS, FORMER SEVENTEENTH DIVISION AND CINDERELLA MARKETING CORPORATION, RESPONDENTS.**

### ***DECISION***

**YNARES-SANTIAGO, J.:**

This Petition for Review on Certiorari assails the Decision and Resolution of the Court of Appeals dated August 18, 2006<sup>[1]</sup> and December 13, 2006,<sup>[2]</sup> respectively, in CA-G.R. SP No. 88140 which reversed and set aside the Decision of the National Labor Relations Commission (NLRC) dated June 21, 2004<sup>[3]</sup> and its Resolution dated October 14, 2004,<sup>[4]</sup> and declared that petitioner was not constructively dismissed but voluntarily resigned from her employment.

The antecedent facts are as follows:

Petitioner Finina E. Vicente was employed by respondent Cinderella Marketing Corporation (Cinderella) as Management Coordinator in January 1990. Prior to her resignation in February 2000, she held the position of Consignment Operations Manager with a salary of P27,000.00 a month.<sup>[5]</sup> She was tasked with the oversight, supervision and management of the Consignment Department dealing directly with Cinderella's consignors.<sup>[6]</sup>

Petitioner alleged that it has been a practice among the employees of Cinderella to obtain cash advances by charging the amount from the net sales of Cinderella's suppliers/consignors. Mr. Miguel Tecson (AVP-Finance) approves the requests for cash advances, Mr. Arthur Coronel (AVP-Merchandising) issues the memos instructing the accounting department to issue the corporate checks and finally, Ms. Theresa Santos (General Manager) rediscounts them by issuing her personal checks.<sup>[7]</sup>

After some time, one of Cinderella's suppliers complained about the unauthorized deductions from the net sales due them. Accordingly, an investigation was conducted and upon initial review of respondent's business records, it appears that petitioner was among those involved in the irregular and fraudulent preparation and encashment of respondent's corporate checks amounting to at least P500,000.00.<sup>[8]</sup>

Petitioner alleged that Mr. Tecson demanded her resignation on several occasions. On February 15, 2000, Mr. Tecson allegedly told her "MAG-RESIGN KANA AGAD KASI MAIIPIT KAMI," in the presence of Lizz Villafuerte, the Accounting Manager.<sup>[9]</sup> As a result of this alleged force and intimidation, petitioner tendered her resignation letter.

On January 13, 2003, or three years after her resignation, petitioner filed a complaint against Cinderella alleging that her severance from employment was involuntary amounting to constructive dismissal.<sup>[10]</sup>

Cinderella denied the charge of constructive dismissal. It claimed that petitioner voluntarily resigned from office before the internal audit was completed and before any formal investigation was initiated. She tendered her resignation on February 7, 2000, then submitted another resignation letter on February 15, 2000 where she confirmed the first resignation letter. Respondent alleged that the complaint for constructive dismissal was a mere afterthought demonstrated by the long delay of filing the same.<sup>[11]</sup>

On October 21, 2003, the Labor Arbiter rendered a Decision<sup>[12]</sup> finding that petitioner was constructively and illegally dismissed. The Labor Arbiter ruled that Cinderella was not able to controvert petitioner's assertion that she was forced to resign; that the resignation letter relied upon by respondent to show the voluntariness of the resignation was fabricated and without evidentiary weight since it does not bear petitioner's signature; that there was no basis to terminate petitioner on the ground of loss of confidence since her involvement in the fraudulent transactions was doubtful as shown by the Confidential Memo clearing her of any liability. The dispositive portion of the Labor Arbiter's decision reads:

WHEREFORE, premises all considered, judgment is hereby rendered ordering respondent Cinderella Marketing Corporation to:

1. pay complainant separation pay in lieu of reinstatement computed at one (1) month for every year of service in the amount of P270,000.00; and
2. pay complainant full backwages from the time she filed this complaint in the amount of P270,000.00.

SO ORDERED.<sup>[13]</sup>

On appeal, the NLRC affirmed the decision of the Labor Arbiter. It held that the statement of Mr. Tecson informing petitioner, to wit: "MAG-RESIGN KANA AGAD KASI MAIPIT KAMI," was the proximate cause for petitioner's decision to resign. Thus, the resignation cannot be deemed voluntary notwithstanding the execution of the two resignation letters.

Respondent company's motion for reconsideration was denied hence, it filed a Petition for Certiorari under Rule 65 with the Court of Appeals.

On August 18, 2006, the Court of Appeals rendered its decision finding that the totality of evidence on record showed that petitioner voluntarily resigned from her employment; that the subsequent acts of petitioner belie the claim of constructive dismissal; that after the alleged forced resignation, petitioner attended the meetings concerning her involvement in the anomalous transactions and even arranged for the settlement of her consequent liabilities as may be determined during the investigation; that the belated filing of the complaint militates against petitioner because it is hardly expected from an aggrieved employee to wait three years before

instituting the case.

The dispositive portion of the Decision provides:

WHEREFORE, the foregoing considered, the petition is GRANTED and the assailed Decision REVERSED and SET ASIDE. Private respondent's complaint a quo is hereby dismissed. No costs.

SO ORDERED.<sup>[14]</sup>

Petitioner's motion for reconsideration was denied hence, the present petition for review on certiorari raising the following issues:

I.

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN REVERSING THE FACTUAL FINDINGS OF THE LABOR ARBITER AND THE NLRC.

II.

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN RULING THAT PETITIONER VOLUNTARILY RESIGNED FROM PRIVATE RESPONDENT.<sup>[15]</sup>

Petitioner asserts the following: (1) The factual findings of the Labor Arbiter and the NLRC are not correctible by certiorari and are binding on the Supreme Court in the absence of any showing that they are completely without any support in the evidence on record. (2) In termination cases, the employer has the burden of proof that the resignation is voluntary and not the product of coercion, intimidation or other factors that vitiate the free will. (3) The NLRC correctly gave credence to petitioner's allegation that Mr. Tecson demanded her resignation. (4) The delay in filing the complaint for illegal dismissal cannot be taken against her as the same was filed within the prescriptive period allowed by law to file such actions.

The petition lacks merit.

The primary issue in the case at bar is factual: whether petitioner was constructively dismissed. Petitioner claims that her separation from employment was a case of constructive dismissal. On the other hand, respondent argues that petitioner voluntarily resigned.

Petitioner faults the Court of Appeals for reversing the factual findings of the Labor Arbiter as affirmed by the NLRC that she was constructively dismissed relying on the principle of finality and conclusiveness of the decisions of the labor tribunals. However, it is well-settled that for want of substantial basis, in fact or in law, factual findings of an administrative agency, such as the NLRC, cannot be given the stamp of finality and conclusiveness normally accorded to it, as even decisions of administrative agencies which are declared "final" by law are not exempt from the judicial review when so warranted.<sup>[16]</sup>

In administrative proceedings, the quantum of proof required is substantial evidence, which is more than a mere scintilla of evidence, but such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.<sup>[17]</sup> The Court of Appeals may review the factual findings of the NLRC