

[ G.R. No. 143998, April 29, 2006 ]

**MERCURY DRUG CORPORATION, PETITIONER VS. ARACELI DOMINGO, RESPONDENT.**

**D E C I S I O N**

**CHICO-NAZARIO, J.:**

This is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision<sup>[1]</sup> of 22 March 2000 and the Resolution of 10 July 2000 of the Court of Appeals in CA-G.R. SPNo. 49227. The appellate court set aside and reversed the Decision<sup>[2]</sup> of the National Labor Relations Commission (NLRC), Third Division, dated 30 April 1998. and reinstated the Decision<sup>[3]</sup> of the Labor Arbiter dated 30 October 1996 in NLRC NCR 00-07-03639-92 with modifications. The case before the Labor Arbiter was for illegal suspension, constructive dismissal and nonpayment of wages, with the latter ruling in favor of the respondent herein.

*The Facts of the Case*

On 18 April 1977. herein respondent Araceli Domingo started working for herein petitioner Mercury Drug Corporation as a Sales Clerk Trainee at its Padilla Arcade branch in Greenhills, San Juan. On 01 January 1978. the respondent became a regular Sales Clerk until her promotion and transfer as a Pharmacy Assistant at the petitioner's Pasig-Rosario branch on 01 February 1982. Finally, on 01 July 1985, until she was preventively suspended on 10 June 1992. the respondent occupied the position of Cashier at the petitioner's Cubao-Romulo branch.

On the day of 09 June 1992. the respondent was ordered to report to the Assistant Vice-President for Chainstore Operations, Mr. Angelito Dizon, in the main office. Upon her arrival at the said office, she was confronted by three of her supervisors, namely. Monette de la Cruz. Olivia Reotutar and Artemio Tolilio, and Rico Marasigan and Eladio Sioson. both Senior Pharmacy Assistants at the Cubao-Romulo branch. The respondent, along with Mr. Eladio Sioson. her co-worker, were being accused of leaking confidential information or data to outsiders. As quoted in the Decision<sup>[4]</sup> of the Labor Arbiter, Mr. Dizon verbally accused the respondent of divulging confidential information to her husband. Gene Domingo, who was at one time a Branch Manager of the petitioner at its Paco-Paz branch, but who was at that time the current Operations Manager of Shoe Mart's drugstore business, to wit:

*Traydor Ka! Dahil sa kabalbalan n 'yo ng asawa mo, maraming taong matatanggal sa Irabaho; kaya mabuti pang mag-resign ka na lang at magsama na kayo sa Shoe Mart, Ilong kasama mong si Boy Sioson, tatanggalin ko na sa Irabaho dahil ginagamit ninyo sa kabalbalan ninyo.*

<sup>[5]</sup>

The respondent then asked what wrong she committed and Mr. Dizon angrily remarked:

*Marami! Kahit anong kaso ibibintang ko sa iyo matanggal ka sa kompanyang Ho. Kahil na abut in tayo ng sampu (10) hanggang dalawampung (20) taon sa korte, lalabanan kita.*<sup>[6]</sup>

Thereafter, the respondent was asked to sign a letter<sup>[7]</sup> putting her on preventive suspension from 10 June 1992 until further notice. Eladio Sioson was also served with same Memorandum<sup>[8]</sup> placing him on preventive suspension from 10 June 1992 until further notice.

A Special Investigating Committee was subsequently created by the petitioner to investigate the matter. The committee, composed of three rank-and-file employees and three managerial employees, was tasked to conduct a formal investigation.

Aggrieved, the respondent, as well as Sioson, filed on 06 July 1992 a complaint for illegal preventive suspension, constructive dismissal and nonpayment of wages against the petitioner company, with the NLRC National Capital Region (NCR) Arbitration Branch, docketed as NLRC NCR 00-07-03639-92.

On 10 July 1992. with the investigation still ongoing, the petitioner informed both the respondent and Sioson that they could start getting their salaries again but their suspension would still be in effect until such time that the committee comes out with its findings.<sup>[9]</sup>

The parties failed to reach an amicable settlement before the Labor Arbiter, hence, they were required to submit their respective position papers.

Petitioner Mercury Drug Corporation, through its District Manager. Mrs. Elena Martin, denied that the respondent was treated badly during the said confrontation. She alleged that the confrontation was done in a civil, interrogative manner and not accusatory "with bombardment of wild accusations and uncharitable remarks: . . . that there were strong evidence to support a suspicion that complainant Domingo was supplying-confidential information, thus, abetting business competitors."

In the meantime, both the respondent and Sioson were informed in writing that the Special Investigating Committee found them innocent of the charges filed against them. Accordingly, all charges filed against them have been dropped and the preventive suspension lifted.

Both employees were then notified to return to work. However, the petitioner company "perceived that animosity had arisen between respondent and Mr. Sioson, and the employees in the Cubao-Romulo Branch who testified against them,"<sup>[10]</sup> thus, Sioson was directed to report to his new assignment at the Murphy branch of the petitioner whilst the respondent was told to report for work at the Divisoria or Baclaran branch, at her option. The petitioner company likewise filed a Manifestation<sup>[11]</sup> with the Labor Arbiter stating that the respondent can no longer be reinstated to her former position as Cashier in its Cubao-Romulo branch because it already filled up said position during the preventive suspension of the respondent and the only vacant position at that time was in its Divisoria and Baclaran branches.

Sioson accepted the new assignment and thereafter desisted from further prosecuting the complaints earlier filed. The respondent, however, objected to being "thrown away" to another branch "to deliberately inconvenience and harass her for filing and prosecuting her complaint" against the petitioner,<sup>[12]</sup> thus, she refused to

report for work. One year later, or in August 1994, the respondent was again ordered to report to the petitioner's San Juan branch within ten days, otherwise, she would be considered to have abandoned her job.

The Labor Arbiter, in his disputed Decision<sup>[13]</sup> of 30 October 1996. adjudged:

WHEREFORE, the foregoing premises considered, judgment is hereby rendered declaring the suspension of complainant Araceli C. Domingo starting June 10. 1992 up to the present as illegal; that suspension in *perpetua* constituted as an illegal (constructive) dismissal of the said complainant; and hereby order respondent Mercury Drug Corporation to:

- a) reinstate immediately complainant Araceli C. Domingo to her former position as a cashier in Mercury Cubao-Romulo Branch, Quezon City, with full backwages until her actual reinstatement, less than total basic salaries paid to her during the period of her payroll reinstatement, without loss of seniority right and other benefits, including average merit increase which up to this writing is in the amount of PI 1 1,960.30:
- b) pay complainant Domingo the accumulated amount for rice subsidy since 1992 computed at the rate of P700.00 every other month or in the total amount of P18,200.00:
- c) pay complainant Domingo the appropriate unpaid anniversary bonuses since 1992;
- d) pay complainant Domingo moral and exemplary damages in the total amount of P250,000.00: and
- e) pay complainant Domingo the amount equivalent to 10% of the total awards as attorney's fees or in the total amount of P69,755.11.

Aggrieved by the said decision, herein petitioner company filed an appeal with the NLRC. On 30 April 1 998. the NLRC, Third Division, promulgated its judgment<sup>[14]</sup> modifying the decision of the Labor Arbiter. The NLRC held that:

We are not in full accord with the conclusions of the Labor Arbiter.

We agree that complainant was placed under preventive suspension illegally. Complainant's alleged actuation of taking home empty medicine boxes already thrown to garbage did not pose a serious and imminent threat to the life and property of the respondent company nor to her co-employees. That complainant took the empty medicine boxes for her husband's use in a seminar at respondent's competitor company had not been duly established; Complainant positively stated that she took the boxes for her children.

We disagree, however, that complainant was constructively dismissed when she was given another assignment after she was cleared of the charges. For such transfer was justified. Complainant had actually exceeded the five year assignment policy adopted by respondent and that her return to old assignment would create animosity therein as her co-employees testified against her. We then uphold respondent's prerogative to transfer complainant to another assignment at her

option... [W]e cannot also fault complainant for insisting on her reinstatement to same position in the belief that she was constructively dismissed. Hence, complainant need not refund the salaries received for it was voluntarily given by respondent. She is not however, entitled to other benefits decreed in the Decision.

XXX

XXX

XXX

PREMISES CONSIDERED, the Decision of October 30, 1996 is hereby MODIFIED by deleting the award of balance of backwages, other benefits, moral/exemplary damages and attorney's fees as decreed in the Decision. The other findings stand affirmed. Respondent is directed to assign complainant as Cashier in a different branch at her option without loss of seniority rights and benefits.

Both parties moved to have the above-quoted decision reconsidered.

On 22 June 1998, the NLRC promulgated a Resolution<sup>[15]</sup> denying the Motion for Reconsideration filed by herein petitioner company for lack of merit. Subsequently, on 17 July 1998, the commission resolved<sup>[16]</sup> to dismiss the motion filed by herein respondent Domingo as there was "no cogent reason or sufficient justification to disturb the same which is substantially supported by evidence on record as well as applicable law and jurisprudence."

Herein respondent Domingo filed a Petition for *Certiorari* with the Court of Appeals assailing the decision and resolution of the Commission.

On 22 March 2000, the Court of Appeals rendered its questioned decision, the dispositive portion of which states that:

IN LIGHT OF ALL THE FOREGOING, the Decision of the Public Respondent, *Annex "S" of the Petition*, and its Resolution, *Annex "V" of the Petition*, are hereby SET ASIDE and REVERSED. Another Decision is hereby rendered affirming the Decision of the Labor Arbiter, with *MODIFICATIONS*, ordering the Private Respondent to:

- a) Reinstatement immediately complainant Araceli C. Domingo to her former position as a cashier in Mercury Cubao-Romulo Branch, Quezon City, with full backwages until her actual reinstatement, less the total basic salaries paid to her during the period of her payroll reinstatement, without loss of seniority right and other benefits, including average merit increase:
- b) Pay Petitioner the accumulated amount for rice subsidy since 1992 computed at the rate of P700.00 every other month;
- c) Pay Petitioner the appropriate unpaid anniversary bonuses since 1992;
- b) Pay Petitioner moral damages P50,000.00 and exemplary damages P50,000.00; [and]
- e) Pay Petitioner the amount equivalent to total award for backwages as attorney's fees.<sup>[17]</sup>

Its motion for reconsideration having been denied, petitioner company filed this instant petition.

*The Issue*

In its Memorandum before us, the petitioner imputes the following errors to the appellate court:

A

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT RULED THAT PETITIONER CANNOT LAWFULLY EMPLOY ANOTHER BY WAY OF REPLACEMENT OF THE RESPONDENT BEFORE THE TERMINATION OF ADMINISTRATIVE INVESTIGATION AGAINST THE LATTER.

B

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT RULED THAT RESPONDENT JUSTIFIABLY REJECTED HER NEW ASSIGNMENT.

C

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT APPLIED THE RULING IN THE CASE OF *REMEDIOS ASIS VS. NLRC* (252 SCRA 379).

D

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT REFUSED TO UPHOLD PETITIONER'S PREROGATIVE TO TRANSFER RESPONDENT FROM CUBAO-ROMULO BRANCH. SUCH TRANSFER BEING (*sic*).

E

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN NOT RULING THAT RESPONDENT HAS NO VESTED RIGHT IN HER PREVIOUS PLACE OF ASSIGNMENT AND THAT HER WISHES CANNOT PREVAIL OVER PETITIONER'S PREROGATIVE.

F

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT DID NOT RULE THAT RESPONDENT WAS NOT DISMISSED. ACTUALLY OR CONSTRUCTIVELY.

G

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN APPLYING THE RULING OF THIS HONORABLE COURT IN *GLOBE-MACKAY CABLE IS. NLRC*. (206 SCRA 701).

H

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN TOTALLY REINSTATING THE LABOR ARBITER'S DECISION.

I

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT DID NOT DECLARE RESPONDENT TO HAVE LOST HER EMPLOYMENT STATUS.

J

ON THE ASSUMPTION THAT RESPONDENT CANNOT BE DECLARED TO HAVE LOST HER EMPLOYMENT STATUS. THE HONORABLE COURT OF APPEALS COMMITTED