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FIRST DIVISION

[G.R. NO. 165727, April 19, 2006]

TOWER INDUSTRIAL SALES AND JOHN KENNETH OCAMPO, PETITIONERS, VS. HON. COURT OF APPEALS (FIFTEENTH DIVISION), NATIONAL LABOR RELATIONS COMMISSION (NLRC, THIRD DIVISION) AND RUFO PAMALO, JR., RESPONDENTS.

D E C I S I O N

CHICO-NAZARIO, J.:

The right to file a special civil action of *certiorari* is neither a natural right nor an essential element of due process; a writ of *certiorari* is a prerogative writ, never demandable as a matter of right, and never issued except in the exercise of judicial discretion. Hence, he who seeks a writ of *certiorari* must apply for it *only in the manner and strictly in accordance with the provisions of the law and the Rules.* [1]

This Petition for *Certiorari* under Rule 65 of the Rules of Court impugns the Resolution[2] dated 31 March 2004 of the Court of Appeals in CA-G.R. SP No. 82933 dismissing the Petition for Annulment of the decision of the National Labor Relations Commission (NLRC), which found private respondent Rufo Pamalo, Jr. to have been illegally dismissed. Said Resolution of the Court of Appeals succinctly stated:

This petition for annulment of the NLRC decision suffers from the following fatal deficiencies:

> (1) Per reading of the petition, this petition is treated as a petition for certiorari under Rule 65, not being a petition for annulment of NLRC decision;
>
> (2) Only Photostat copies were attached of the assailed NLRC decision dated November 29, 2002;
>
> (3) No certified true copies of pleadings and other supporting documents filed before the Labor Arbiter and NLRC were attached to the petition;
>
> (4) The Verification does not comply with Sec. 4, Rule 7 of the Revised Rules of Court, as amended, which failed to manifest that the allegations were based on authentic records.
>
> WHEREFORE, premises considered, the instant petition is hereby DISMISSED. [3]

Likewise impugned in this Petition for Certiorari is the Resolution[4] of the Court of Appeals dated 31 August 2004, denying the Motion for Reconsideration.

The following facts are undisputed:

Tower Industrial Sales, a company engaged in selling various brands of home appliances and managed by petitioner John Kenneth Ocampo, employed private respondent as a company driver in 1987. He worked everyday from 7:00 a.m. to 7:00 p.m. and his last salary was pegged at P285.00 a day. [5]

On 12 February 2002, private respondent filed a Complaint with the Labor Arbiter for unfair labor practice and claimed overtime pay, premium for holiday pay and service incentive leave pay against Alon Development Corp. and/or Tower Industrial Sales, and Fernando Ocampo,[6] owner of both Alon Development Corp. and Tower Industrial Sales, and father of petitioner John Kenneth Ocampo.[7]

On 19 February 2002, a week after private respondent commenced the complaint with the Labor Arbiter, Fernando Ocampo issued a memorandum to the private respondent requiring him to explain his absence without official leave on said date. [8]

On 4 March 2002, another memorandum was issued to the private respondent requiring him to explain his absence from work on said date without permission from management and calling his attention to the fact that he had not submitted any explanation relative to the memorandum issued to him on 19 February 2002. [9]

On 6 March 2002, private respondent submitted his handwritten explanation regarding his absences, saying that with respect to his absence on 19 February 2002, at around 9:00 a.m., his wife left word to a certain Carol of petitioners' office that he cannot come to work as he was attending a wedding of a relative wherein he was a sponsor. He also explained that he failed to report for work on 4 March 2002 because he attended the hearing of the case he filed against the petitioners before the Labor Arbiter. [10]

Prior to the above incidents, private respondent was also given a memorandum on 1 August 2001 as a warning for his absences in the month of July 2001. Moreover, he was given another memorandum on 13 August 2001 for damage to company property when he bumped a tree while driving the company's Toyota Camry car. He was required to pay half of the expenses for the repair of the damaged car. [11]

On 9 March 2002, Fernando Ocampo issued a memorandum putting private respondent on preventive suspension pending investigation of his case for gross misconduct, habitual tardiness and destruction of company property, and further requiring him to attend the hearing on 4 April 2002 at 3:00 p.m. at the conference room of petitioners' office. Petitioners' security guard, a certain Mr. Cornelio Rivera, allegedly handed a copy of the memorandum to private respondent, but the latter purportedly refused to acknowledge receipt thereof.

Private respondent did not appear at the investigation on 4 April 2002.[12] Instead, on 18 April 2002, he filed an Amended Complaint for Illegal Dismissal on 9 March 2002 and claimed for overtime pay, premium for holiday pay and separation pay. In his position paper, he prayed for 13th month pay, service incentive leave pay, overtime pay and legal holiday pay in addition to the charge of illegal dismissal. [13]

On 16 April 2002, Fernando Ocampo issued a notice of termination to the private respondent effective 9 March 2002 for gross misconduct and for committing acts prejudicial to the interest of the company. [14]

On 29 November 2002, the Labor Arbiter rendered a decision in favor of petitioners, finding that private respondent was validly dismissed.

Rising to the occasion, private respondent filed a timely appeal to the NLRC.

On 28 November 2003, the NLRC reversed the Decision of the Labor Arbiter, disposing as follows:

> WHEREFORE, the appeal is GRANTED. Respondent Tower Industries Sales is ordered to **reinstate** the complainant and **to pay him full backwages** computed from his date of dismissal on March 14, 2002 up to his reinstatement, which is partially computed in the amount of one hundred seventy five thousand three hundred eighty eight pesos and 77/100 (P175,388.77), plus legal holiday pay of P8,500.00.[15](Emphasis added)

Aggrieved by the NLRC decision, petitioners filed a Petition for Annulment of the same before the Court of Appeals.

The Court of Appeals denied said Petition for Annulment on the grounds which, for emphasis, are herein reiterated:

> (1) Per reading of the petition, this petition is treated as a petition for certiorari under Rule 65, not being a petition for annulment of NLRC decision;
>
> (2) Only Photostat copies were attached of the assailed NLRC decision dated November 29, 2002;
>
> (3) No certified true copies of pleadings and other supporting documents filed before the Labor Arbiter and NLRC were attached to the petition;
>
> (4) The Verification does not comply with Sec. 4, Rule 7 of the Revised Rules of Court, as amended, which failed to manifest that the allegations were based on authentic records.[16]

On 15 July 2004, petitioners filed a Motion for Reconsideration, which the Court of Appeals denied for having been filed 71 days late and for lack of merit.

In a last ditch effort at vindication, petitioners filed the present petition for *certiorari* raising the following issues:

> I. WHETHER THE NLRC HAD GRAVELY ABUSED ITS DISCRETION WHEN IT REVERSED THE ARBITER'S DECISION UPHOLDING THE DISMISSAL FROM EMPLOYMENT OF PRIVATE RESPONDENT;
>
> II. WHETHER THE PETITIONERS ARE LIABLE TO PAY PRIVATE RESPONDENT HIS BACKWAGES;

III. WHETHER THE PETITIONERS ARE OBLIGATED TO REINSTATE THE PRIVATE RESPONDENT AS DRIVER DESPITE STRAINED RELATIONSHIP WITH THE PETITIONERS; AND

IV. WHETHER THE HONORABLE COURT OF APPEALS HAD GRAVELY ABUSED ITS DISCRETION WHEN IT DENIED THE PETITION OF THE PETITIONERS AND THEN LIKEWISE DENIED THEIR MOTION FOR RECONSIDERATION.[17]

The fundamental issues needing resolution are: (1) whether or not the dismissal of private respondent was valid, and (2) whether or not the Court of Appeals committed grave abuse of discretion in dismissing CA-G.R. SP No. 82933 on purely technical grounds.

We shall discuss these issues jointly.

In brief, petitioners decry the decision of the NLRC for its failure to give weight to the evidence adduced by petitioners that private respondent's role as driver is vital to the viability of the business of petitioners, which demands that goods be delivered on time. Thus, petitioners lament that private respondent's proclivity to go on absences without leave, his habitual tardiness, and destruction of company property are detrimental to their business, which tendency smacks of gross misconduct - a just cause for the termination of employees under the Labor Code. [18]

We deviate from petitioners' standpoint.

Article 277 of the Labor Code, which guarantees the right of an employee to security of tenure, provides that -

> (b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal **except for a just and authorized cause** and without prejudice to the requirement of notice under Article 283 of this code the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations x x x. (Emphasis supplied).

It is clear therefrom that the dismissal of private respondent may be sustained only if shown to have been made for a just and authorized cause and with due process.

In conjunction with the above-mentioned policy of the law, it is well-encrypted in our jurisprudence that the employer has the burden of proving that the dismissal is for just cause, and failure to do so would necessarily mean that the dismissal was unjustified and, therefore, illegal. It is the employer who must prove its validity, and not the employee who must prove its invalidity. To allow an employer to dismiss an employee based on mere allegations and generalities would place the employee in a dangerous situation. He would be at the mercy of his employer and the right to security of tenure, which this Court is bound to protect, would be unduly

emasculated.[19]

Patently, the Labor Arbiter clearly lost sight of the foregoing doctrine when he held that the claim of private respondent that he was illegally dismissed suffers from lack of substantial proof to warrant an affirmative finding that he was illegally dismissed without just cause. [20]

In contrast, respondent NLRC, mindful that it is the employer which has the *onus probandi* to show that private respondent's dismissal was based on a valid ground, evaluated the evidence presented before the Labor Arbiter and concluded that the charges hurled by petitioners against private respondent to justify his termination were baseless.

Doctrinally, the findings of fact of the NLRC are conclusive on this Court, absent a showing that they were reached arbitrarily.[21] Here, the Court finds no cogent reason to deflect from the findings of the NLRC. We are, thus, bound by the findings of the NLRC that the alleged infractions of private respondent do not constitute gross misconduct to warrant his dismissal from service. Indeed, petitioners cannot rely merely on the weakness of the defense of private respondent or on his failure to present evidence to disprove the charge of gross misconduct. In the absence of substantial evidence, the contentions of petitioners are self-serving and incapable of showing that the dismissal of private respondent was justified.[22]

Rightly so, we give the stamp of approval to the following factual findings of the NLRC that the acts committed by private respondent that were characterized by the petitioners as gross misconduct, i.e., his absences from work on 19 February 2002 and 4 March 2002 without prior permission from the petitioners, as well as his past absences in the month of July 2001 and damage to the company car when he bumped it against a tree on 11 August 2002, are past infractions that the latter had already been duly penalized for the commissions thereof. Past infractions cannot be collectively taken as a justification for his dismissal from the service.[23]

We hasten to add that anent the damage to petitioners' Toyota Camry car, private respondent had been paying half of the damage of which P250.00 was being deducted to his pay, as the records show.[24] Thus, this issue is now water under the bridge and must not be revived anew to rationalize private respondent's dismissal from his work - his bread and butter for the past 15 years prior to his termination.

As regards the absences without official leave incurred on 19 February 2002 and 4 March 2002, we are equally bound by the findings of the NLRC that while they are clear violations of company rules, they cannot be considered as grave enough to amount to gross misconduct. We add that in private respondent's 15 years of service with petitioners, a day or two's absences without prior leave is trivial; hardly of habitual character.

On another note, we cannot ignore the fact that private respondent's dismissal was spurred by his filing of a labor case against petitioners for overtime pay, service incentive leave, and holiday pay. Private respondent must not be punished for asserting his rights and for tapping all legal avenues to address clear violations of such rights. All things being equal, private respondent's termination soon after he