497 Phil. 145

SECOND DIVISION

[G.R. NO. 148470, April 29, 2005]

LOPEZ DELA ROSA DEVELOPMENT CORPORATION AND GLORIA DELA ROSA LOPEZ, PETITIONERS, VS. HON. COURT OF APPEALS, NATIONAL LABOR RELATIONS COMMISSION, LABOR ARBITER VICENTE LAYAWEN AND ARIEL CHAVEZ, RESPONDENTS.

D E C I S I O N

CHICO-NAZARIO, J.:

Before Us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, seeking the reversal of the Decision[1] of the Court of Appeals dated 12 February 2001 and its Resolution[2] dated 31 May 2001 denying petitioners' motion for reconsideration.

A complaint[3] for illegal dismissal, wage differential, nonpayment of legal holiday pay, nonpayment of premiums for rest day pay, nonpayment of 13th month pay, nonpayment of 5-day service incentive leave pay, nonpayment of overtime pay, nonpayment of night-shift differential pay and nonpayment of salary from December 1-8, 1994 was filed by respondent Ariel Chavez against petitioners Lopez Dela Rosa Development Corporation and Gloria Dela Rosa Lopez before the Department of Labor and Employment, National Capital Region, on 09 December 1994. The case was docketed as NLRC-NCR-CASE NO. 00-12-08961-94.

The facts that gave rise to the aforesaid complaint are stated in the Decision of the Court of Appeals quoting the decision of respondent Labor Arbiter Vicente Layawen, to wit:

> The factual antecedents, as found by Labor Arbiter Layawen in his decision of June 7, 1999, are as follows:
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> As culled from the position paper, testimonial evidence of the witnesses of both parties as well as from their other pleadings, the material antecedent facts are as follows:
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> Complainant alleges that:
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> (1) On June 1, 1993, complainant was employed by respondent Ms. Gloria Lopez of Lopez de la Rosa Development Corporation as employee in charge of building maintenance. Respondent Gloria Lopez is engaged in the business of renting apartment units.
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> (2) The parties verbally agreed on the terms of employment. During the period of his employment, complainant reported to work everyday and was paid a salary of PHP120.00 per day. From the period of June 1,

1993 to December 31, 1993, complainant worked from 7:00 AM to 10:00 PM everyday (Mondays to Sundays) but was not paid overtime pay. From the period of January 1, 1994, complainant worked from 7:00 AM to 7:00 PM everyday, also without overtime pay.

(3) Likewise, complainant was not given his 13th month pay, sick leave, holiday pay, night shift differentials, days-off for 1993 and 1994. His salary remained at PHP 120.00 per day despite repeated assurances from Gloria Lopez that she should be increasing such to conform to the minimum wage.

(4) On December 6, 1994, complainant sent a request for a cash advance, through Ms. Lopez's secretary. As there was no response yet, complainant called the respondent on December 8, 1994, at around 8:00 PM. Ms. Lopez did not agree to the request for a cash advance, complainant then reminded Ms. Lopez about the adjustment in his salary so as to reach the minimum wage as required by law. Ms. Lopez simply remained silent. At around 10:00 PM Ms. Lopez called the complainant and informed him that he was fired. Without the benefit of due notice and hearing, complainant was illegally terminated on December 8, 1994 for allegedly stealing two (2) refrigerators.

(5) On December 9, 1994, Chavez lodged a complaint with the NLRC. On December 12, 1994, complainant was requested by respondent to drop the charges on the assurance that she would give in to all his demands as stated in the complaint. On December 14, 1994, respondent only offered to give complainant PHP460.00 only.

In their answer, respondents denied the charge of complainant for illegal dismissal, underpayment of wages, non-payment of eight (8) days salaries, overtime pay, premium pay for holiday, rest day, night shift differential pay, holiday, service incentive leave pay and 13th month pay.

In addition, they adopted the affidavits of Gloria de la Rosa Lopez, Mario Peralta de la Cruz and Nenita Apilado Nunez wherein they averred as follows:

(1) Gloria de la Rosa alleges that:

> That I am the President of Lopez de la Rosa Development Corporation (Corporation) whose principal place of business is located at 1114 J. Barlin Street, Sampaloc, Manila, Metro Manila, Philippines. That as President of Corporation, I have the power to direct the daily management of the business and operations of the Corporation.
>
> That as pursuant to this power, I hired Ariel Chavez, complainant, on behalf of corporation. Respondent, under a Labor Agreement dated December 1, 1993 on a day, no work, no pay basis.
>
> That on January 3, 1994, an Employment Contract was

executed between Complainant and Respondent hiring Complainant as an all-around Building Maintenance for the period of January 2, 1994 to December 31, 1994.

That based on this Employment Contract, respondent has the option to terminate the Employment Contract in the event that Complainant shall have been continuously unable to or unwillingly or have failed to perform his duties for three (3) consecutive days.

That Complainant was legally terminated/discharged on December 14, 1994 due to his willful and intentional failure to report for work from December 8, 1994 to December 14, 1994.

That based on this Employment Contract, Complainant is subject to the rules and regulations of the Corporation established for the conduct of its business and may be discharged for failure to perform his duty or obligations directed by the corporation.

That prior to complainant's discharge, Complainant was given a warning by Respondent for his failure to abide to (sic) the rules and regulations of corporation and for his incompetence in his work performance to which a written promise to abide was given by complainant to Respondent.

That based on this Employment Contract, complainant is entitled to free housing with light, water, cooking gas and a daily one kilo rice ration valued at market price for a total monthly benefit of Five Thousand Six Hundred Eighty Pesos (PHP5,680.00).

That based on this Employment Contract which covers a no work, no pay contract, Complainant is not entitled to Premium pay for Holiday, Rest Day and Night Shift; and 5-day Service Incentive leave pay unless complainant actually worked on the aforesaid days as his salary is calculated daily on a non work, no pay basis as provided for by the Employment Contract.

That Complainant is not entitled to overtime pay and a night shift pay since:

"A. Respondent has no information and no knowledge that Complainant has ever worked overtime and or at night; and

"B. Complainant has not at anytime prior to the filing of this Complaint ever (1) requested for overtime or night shift work; (2) filed a verbal and or written report for overtime work or night shift work performed; (3) filed a verbal and or written request for payment for any overtime or night time work performed.

The complainant is not entitled to his 8 day salary from December 1, 1994 to December 8, 1994 and to his thirteenth (13th) month salary for the year 1994 unless and until Respondent is given an accounting and credit for the following:

(1) Cash advances and other benefits advanced to Complainant by Respondent;

(2) Return and or payment by Complainant of a five (5) cubic feet white refrigerator valued at Two Thousand Five Hundred Pesos (PHP2,500.00) taken by Complainant and his wife, Dolor Chavez, from Respondent's office without the consent and knowledge of Respondent.

That complainant had in the past taken and sold properties of Respondent without Respondent's consent and or knowledge for which respondent had to buy back from Mr. Allan Constantino.

That Complainant has no basis under the January 3, 1994 Employment Contract to seek entitlement to a Separation Pay benefit as no contract for same exist between complainant and respondent and that no written modification of the aforesaid contract has been executed to give complainant a Separation Pay benefit.

That complainant has no legal basis to claim that he has paid for the five (5) cubic feet white refrigerator in the amount of One Thousand Five Hundred Pesos (PHP1,500.00) since the payment he made was for a fourteen (14) cubic feet and said payment was made on behalf of his brother-in-law, Arnold Montanez, to which he owed money in the amount of One Thousand Five Hundred Pesos (PHP1,500.00).

That based on the foregoing Respondent legally terminated complainant and is entitled to an accounting/credit from complainant.

The affidavits of the other witnesses merely corroborated the Affidavit of Gloria de la Rosa Lopez except on some minor matters.[4]

In his decision dated 07 June 1999, respondent Labor Arbiter Layawen disposed of the case as follows:

WHEREFORE, in view of all the foregoing, we find sufficient evidence to establish that complainant was illegally dismissed.

Consequently, respondents are hereby directed to reinstate complainant to his former position without loss of seniority rights and benefits and to

> pay him his backwages from December 8, 1994 until his actual reinstatement which backwages up to the rendition of this decision, have amounted to:
>
> (PLEASE SEE ATTACHED COMPUTATION)[5]
>
> Likewise, respondents are ordered to pay complainant his salary from December 1 to 8, 1994 and his 13th month pay for that year plus attorney's fees equivalent to 10% of the total monetary awards.
>
> All other claims are dismissed for lack of merit.[6]

Petitioners appealed the decision of respondent Labor Arbiter to respondent National Labor Relations Commission (NLRC) filing an Appeal with Memorandum of Appeal with Prayer to Reduce Bond on 12 July 1999. Petitioners posted a surety bond in the amount of P100,000.00 on 16 August 1999.

On 29 November 1999, respondent NLRC issued a resolution[7] dismissing the appeal for failure to perfect the appeal within the statutory period, the dispositive portion of which reads:

> WHEREFORE, premises considered, respondents' appeal is hereby DISMISSED for failure to perfect appeal within the statutory period. The Motion to Reduce Bond is likewise DISMISSED for lack of merit.

On 25 January 2000, the Deputy Executive Clerk of the Third Division of the NLRC issued an entry of judgment and forwarded the records of the case to the arbitration branch of origin for the execution of judgment.[8]

At the execution conference at the arbitration branch, petitioners filed a Manifestation and Motion asking that the execution conference be held in abeyance in view of the pending Motion for Reconsideration which has not been acted upon by the NLRC. Thus, the Labor Arbiter issued an order elevating the records to the NLRC for appropriate action.

Respondent NLRC, in its resolution dated June 30, 2000, explained:

> Before the Commission now is respondents (sic) Opposition and Manifestation to Resolve their Motion for Reconsideration. A scrutiny of the records indicate (sic) that respondents received a copy of our Resolution on December 20, 1999. (*Rollo*, p. 452). Respondents alleges (sic) that it (sic) had filed a Motion for Reconsideration on January 3, 2000. However, records indicate otherwise. A check with the records show (sic) that no motion for reconsideration has been filed with the Docket and Records Section of the Commission. Furthermore, in the motion for reconsideration allegedly filed with this office and submitted by respondents as Annex "A", the official stamp of the Docket section of the Commission is absent. Hence, we cannot give due course to the Motion for Reconsideration.[9]
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> Thus, it disposed of the case as follows: