

## SECOND DIVISION

[ G.R. NO. 161158, May 09, 2005 ]

**PHESCHEM INDUSTRIAL CORPORATION, REPRESENTED BY ITS  
MANAGER, WILFREDO M. SARMIENTO, PETITIONER, VS.  
PABLITO V. MOLDEZ, RESPONDENT.**

### DECISION

**PUNO, J.:**

In this petition for review on *certiorari*, petitioner seeks to set aside the Decision and Resolution of the Court of Appeals, dated March 21, 2003 and December 12, 2003, respectively, in CA-G.R. SP No. 61564, which affirmed the ruling of the labor arbiter and the National Labor Relations Commission (NLRC) ordering the reinstatement of respondent who was illegally dismissed from service.

The facts show that on June 13, 1983, petitioner PHESCHEM INDUSTRIAL CORPORATION employed respondent PABLITO V. MOLDEZ as operator of its payloader and bulldozer at its quarrying site in Palompon, Leyte.

Respondent alleged that on November 13, 1997, he was notified by Engr. Isidro Viacrusis, petitioner's personnel officer, that he was suspended from work without pay for a period of seven (7) days, without being informed of its reason. After seven (7) days or on November 19, 1997, he reported back to work only to be told that the President of the corporation, Tomas Y. Tan, was ill and his suspension had been extended for another 7 days without pay. Again, no reason was offered for said decision. After the lapse of the extension, respondent was not allowed to return to work. When he inquired about the status of his employment, Viacrusis assured him that he will be rehired in due time. Eight (8) months passed but respondent received no word from petitioner.

On July 6, 1998, respondent filed a complaint against petitioner for illegal suspension and dismissal. He prayed for reinstatement, or if reinstatement is not possible, an award of separation pay, including a claim for moral damages and attorney's fees.<sup>[1]</sup>

In its Comment, petitioner alleged that respondent was dismissed for just cause. Petitioner claimed that on October 28, 1997, complainant and his assistant observed that the bulldozer produced an unusual sound during operation. The motorpool personnel inspected the bulldozer and discovered that its component parts were damaged due to the low lubrication level in its gear box.

Assistant Chief Mechanic Leoncio V. Aunzo, head of petitioner's motorpool department, reported to its President, Mr. Tan, that the root cause of the damage was respondent's gross negligence when he failed to inspect the bulldozer before he operated it. The cost of repairing the damaged parts was estimated at P112,932.00.

As the bulldozer was not in service for 3-5 months, petitioner alleged that it incurred delay in its production, with the loss valued at about P500,000.00.<sup>[2]</sup>

Petitioner averred that it required respondent to explain why he should not be found guilty of grave and habitual negligence in the performance of his duties. As respondent failed to comply, petitioner alleged that it was constrained to terminate respondent's services on November 13, 1997. The order of dismissal from service was allegedly served on respondent on the same day within petitioner's premises, but respondent refused to receive the same.

On November 25, 1998, **the labor arbiter ruled that petitioner failed to prove by substantial evidence that there was just cause for dismissing respondent from service.** It held petitioner guilty of illegal dismissal and **ordered the reinstatement of respondent and payment of his backwages.** The decretal portion reads:<sup>[3]</sup>

WHEREFORE, judgment is hereby rendered finding the dismissal to be illegal.

Respondent, PHESCHEM INDUSTRIAL CORPORATION and/or MR. TOMAS Y. TAN, President, is hereby ordered to pay complainant PABLITO B. MOLDES (sic) the amount of SIXTY ONE THOUSAND TWO HUNDRED THIRTY SIX PESOS (P61,236.00) representing his backwages from November 13, 1997 to November 25, 1998 the date of this decision, subject to recomputation until his actual reinstatement, and further, to be reinstated to his former position as heavy equipment operator, without loss of seniority rights and other benefits.

Other claims are dismissed for lack of merit.

SO ORDERED.<sup>[4]</sup>

On appeal to the NLRC, petitioner alleged that: (1) the labor arbiter erred in ordering reinstatement, as respondent, in his complaint, prayed only for separation pay; (2) respondent's dismissal from service was for a just cause, i.e., for gross and habitual neglect of his duty to inspect the bulldozer before operating it; (3) it served a termination notice on respondent on November 13, 1997 but he refused to receive it; and, (4) respondent is not entitled to backwages as he was gainfully employed with another firm after his dismissal.<sup>[5]</sup>

The NLRC dismissed petitioner's appeal for lack of merit and affirmed in toto the decision of the labor arbiter.<sup>[6]</sup> On appeal, the Court of Appeals upheld the congruent findings of the labor arbiter and the NLRC.

Hence, this appeal where petitioner raises the following assigned errors:

## I

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN DISMISSING CA-G.R. SP NO. 61564 AND THEREBY AFFIRMING THE DECISION OF THE NATIONAL LABOR RELATIONS COMMISSION IN NLRC CASE NO. V-000205-99 (RAB 08-0718-98) WHICH MAINTAINED THE

ORDER OF THE EXECUTIVE LABOR ARBITER REINSTATING THE RESPONDENT TO HIS FORMER POSITION WITHOUT LOSS OF SENIORITY RIGHTS AND OTHER BENEFITS.

## II

WHETHER OR NOT REINSTATEMENT CAN STILL BE ADJUDGED TO THE RESPONDENT UNDER THE FOREGOING CIRCUMSTANCES, AND NOTWITHSTANDING THE FACT THAT, IN THE FIRST PLACE, RESPONDENT'S CAUSE OF ACTION AND PRAYER, AS CONTAINED IN HIS COMPLAINT AGAINST THE PETITIONER, WAS ONLY FOR PAYMENT OF SEPARATION PAY.

## III

IF RESPONDENT IS ENTITLED TO SEPARATION PAY IN LIEU OF REINSTATEMENT, WHETHER OR NOT THE COMPUTATION OF HIS BACKWAGES SHOULD STOP UPON THE FINALITY OF THE NLRC DECISION IN NLRC CASE NO. V-000205-99 (RAB 08-0718-98).

At the outset, we stress that in the case at bar, **petitioner did not raise the issue regarding the illegality of respondent's dismissal from service.** Instead, in its first two (2) assigned errors, petitioner assails the order of the Court of Appeals affirming the reinstatement of respondent to his previous position on the ground that in his complaint before the labor arbiter, respondent did not pray for reinstatement, but for payment of separation pay and backwages. Petitioner adds that reinstatement is no longer feasible due to the strained relationship engendered by its filing of a complaint for damages against the respondent.<sup>[7]</sup>

We find no merit in petitioner's contentions.

A review of the records of the case reveals no compelling reason to disturb the identical rulings of the labor arbiter, the NLRC and the Court of Appeals. The legal consequences of an illegal dismissal are **reinstatement** of the employee without loss of seniority rights and other privileges, **and payment of his full backwages**, inclusive of allowances, and other benefits or their monetary equivalent.<sup>[8]</sup> **Clearly, the law intended reinstatement to be the general rule. It is only when reinstatement is no longer feasible that payment of separation pay is awarded to an illegally dismissed employee.** <sup>[9]</sup>

Reinstatement is the restoration to a state or condition from which one had been removed or separated.<sup>[10]</sup> In providing **foremost** for the reinstatement of an illegally dismissed employee, the Labor Code not only recognizes the security of tenure granted by law to regular employees, but also gives substance and meaning to the protection accorded by the Constitution to labor. Employment is significant to every working man. It is the means by which he sustains himself and his family, hence, the law mandates the reinstatement of an illegally dismissed employee to his former position. Payment of separation pay as a substitute for reinstatement is allowed only under exceptional circumstances, *viz*: (1) when reasons exist which are not attributable to the fault or beyond the control of the employer, such as, when the employer, who is in severe financial strait and has suffered serious business