465 Phil. 785

SECOND DIVISION

[G.R. No. 148340, January 26, 2004]

J.A.T. GENERAL SERVICES AND JESUSA ADLAWAN TOROBU, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND JOSE F. MASCARINAS, RESPONDENTS.

DECISION

QUISUMBING, J.:

For review are the Decision[1] dated February 27, 2001 of the Court of Appeals in CA-G.R. SP No. 60337, and its Resolution[2] dated May 28, 2001, denying the motion for reconsideration. The Court of Appeals dismissed the petition for certiorari filed by petitioners and affirmed the Resolution[3] of the National Labor Relations Commission (NLRC), Third Division, which affirmed the Decision[4] of Labor Arbiter Jose G. De Vera in NLRC-NCR Case No. 00-03-02279-98, which found petitioners liable for illegal dismissal and ordered petitioners to pay private respondent Jose Mascarinas separation pay, backwages, legal holiday pay, service incentive leave pay and 13th month pay in the aggregate sum of P85,871.00.

The facts, as culled from the records, are as follows:

Petitioner Jesusa Adlawan Trading & General Services (JAT) is a single proprietorship engaged in the business of selling second-hand heavy equipment. JAT is owned by its namesake, co-petitioner Jesusa Adlawan Torobu. Sometime in April 1997, JAT hired private respondent Jose F. Mascarinas as helper tasked to coordinate with the cleaning and delivery of the heavy equipment sold to customers. Initially, private respondent was hired as a probationary employee and was paid P165 per day that was increased to P180 in July 1997 and P185 in January 1998.

In October 1997, the sales of heavy equipment declined because of the Asian currency crisis. Consequently, JAT temporarily suspended its operations. It advised its employees, including private respondent, not to report for work starting on the first week of March 1998. JAT indefinitely closed shop effective May 1998.

A few days after, private respondent filed a case for illegal dismissal and underpayment of wages against petitioners before the NLRC.

In his Complaint, private respondent alleged that he started as helper mechanic of JAT on January 6, 1997 with an initial salary rate of P165.00 per day, which was increased to P180.00 per day after six (6) months in employment. He related that he was one of those retrenched from employment by JAT and was allegedly required to sign a piece of paper which he refused, causing his termination from employment.

On December 14, 1998, JAT filed an Establishment Termination Report with the

Department of Labor and Employment (DOLE), notifying the latter of its decision to close its business operations due to business losses and financial reverses.

After due proceedings, the Labor Arbiter rendered a decision on March 25, 1999, finding the dismissal of herein private respondent unjustified and ordering JAT to pay private respondent separation pay and backwages, among others. The decretal portion of the decision reads as follows:

> WHEREFORE, all the foregoing premises being considered, judgment is hereby rendered ordering the respondents [herein petitioners] to pay complainant the aggregate sum of P85,871.00.
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> SO ORDERED.[5]

The Labor Arbiter ruled that (1) private respondent Jose F. Mascarinas' dismissal was unjustified because of petitioners' failure to serve upon the private respondent and the DOLE the required written notice of termination at least one month prior to the effectivity thereof and to submit proof showing that petitioners suffered a business slowdown in operations and sales effective January 1998; (2) private respondent may recover backwages from March 1, 1998 up to March 1, 1999 or P66,924.00[6] and separation pay, in lieu of reinstatement, at the rate of one (1) month pay for every year of service, or P10,296.00;[7] (3) the payrolls submitted by JAT showed that effective May 1, 1997, private respondent's wages did not conform to the prevailing minimum wage, hence, private respondent is entitled to salary differentials from May 1, 1997 to January 6, 1998, in the amount of P1,066.00;[8] (4) that private respondent be awarded legal holiday pay in the amount of P1,850.00,[9] service incentive leave pay in the amount of P925.00[10] and 13th month pay for 1997 in the amount of P4,810.00.[11]

On appeal, the NLRC affirmed the decision of the labor arbiter.[12] The NLRC found that the financial statements submitted on appeal were questionable, unreliable and inconsistent with petitioners' allegations in the pleadings, particularly as to the date of the alleged closure of operation; hence, they cannot be used to support private respondent's dismissal. The NLRC also affirmed the monetary awards because petitioners failed to prove the payment of benefits claimed by private respondent.

Dissatisfied, petitioners filed a Petition for Certiorari under Rule 65 before the Court of Appeals, which the latter dismissed. The decretal portion of the decision reads as follows:

> WHEREFORE, foregoing premises considered, the instant petition, having no merit in fact and in law, is hereby DENIED DUE COURSE, and ordered DISMISSED, and the assailed decision of the National Labor Relations Commission AFFIRMED, with costs to petitioners.
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> SO ORDERED.[13]

The Court of Appeals affirmed the findings of the NLRC, particularly on the illegal dismissal of the private respondent. The appellate court held that the petitioners failed to prove by clear and convincing evidence their compliance with the requirements for valid retrenchment. It cited the findings of the NLRC on the

belated submission of the financial statements during appeal that could not be given sufficient weight, and that the petitioners' late submission of notice of closure is indicative of their bad faith.

Petitioners filed a Motion of Reconsideration, which was denied by the Court of Appeals.

Hence, the present petition alleging that the:

A. THE LOWER COURT (*sic*) ERRED IN RULING THAT A NOTICE TO THE DEPARTMENT OF LABOR AND EMPLOYMENT (DOLE) IS NECESSARY IN CASE OF TEMPORARY SUSPENSION OF BUSINESS;

B. THE LOWER COURT (*sic*) ERRED IN RULING THAT PRIVATE RESPONDENT IS ENTITLED TO BACKWAGES DESPITE THE FACT THAT PRIVATE RESPONDENT WAS NOT DISMISSED FROM SERVICE AT THE TIME THE COMPLAINT WAS FILED;

C. THE LOWER COURT (*sic*) ERRED IN RULING THAT THE EMPLOYER HAS THE BURDEN OF PROVING THE EXISTENCE OF AN EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN THE PARTIES;

D. ASSUMING *ARGUENDO* THAT THE NOTICE TO THE LABOR DEPARTMENT FAILED TO COMPLY WITH THE ONE-MONTH PERIOD, THE LOWER COURT (*sic*) ERRED IN AWARDING BACKWAGES AND/OR SEPARATION PAY TO PRIVATE RESPONDENT EVEN FOR PERIOD AFTER PETITIONERS FILED A NOTICE OF ACTUAL CLOSURE OF THE COMPANY BEFORE THE LABOR DEPARTMENT.[14]

The relevant issues for our resolution are: (a) whether or not private respondent was illegally dismissed from employment due to closure of petitioners' business, and (b) whether or not private respondent is entitled to separation pay, backwages and other monetary awards.

On the *first issue*, the petitioners claim that the Court of Appeals erroneously concluded that they are liable for illegal dismissal because of non-compliance of the procedural and substantive requirements of terminating employment due to retrenchment and cessation of business. They argued that there was no closure but only suspension of operation in good faith in March 1998, when private respondent claimed to have been illegally dismissed, due to the decline in sales and heavy losses incurred in its business arising from the 1997 Asian financial crisis. Petitioners assert that under Article 286 of the Labor Code, a *bona fide* suspension of the operation of a business for a period not exceeding six (6) months shall not terminate employment and no notice to an employee is required. However, petitioners relate that JAT was compelled to permanently close its operation eight (8) months later or on November 1998, when the hope of recovery became nil but only after sending notices to all its workers and DOLE. Thus, petitioners argue that it cannot be held liable for illegal dismissal in March 1998 since there was no termination of employment during suspension of operations and a notice to employee is not required, unlike in the case of permanent closure of business operation.

We need not belabor the issue of notice requirement for a suspension of operation of business under Article 286[15] of the Labor Code. This matter is not pertinent to, much less determinative of, the disposition of this case. Suffice it to state that there is no termination of employment during the period of suspension, thus the procedural requirement for terminating an employee does not come into play yet. Rather, the issue demanding a sharpened focus here concerns the validity of dismissal resulting from the closure of JAT.

A brief discussion on the difference between retrenchment and closure of business as grounds for terminating an employee is necessary. While the Court of Appeals defined the issue to be the validity of dismissal due to alleged closure of business, it cited jurisprudence relating to retrenchment to support its resolution and conclusion. While the two are often used interchangeably and are interrelated, they are actually two separate and independent authorized causes for termination of employment. Termination of an employment may be predicated on one without need of resorting to the other.

Closure of business, on one hand, is the reversal of fortune of the employer whereby there is a complete cessation of business operations and/or an actual locking-up of the doors of establishment, usually due to financial losses. Closure of business as an authorized cause for termination of employment aims to prevent further financial drain upon an employer who cannot pay anymore his employees since business has already stopped. On the other hand, retrenchment is reduction of personnel usually due to poor financial returns so as to cut down on costs of operations in terms of salaries and wages to prevent bankruptcy of the company. It is sometimes also referred to as down-sizing. Retrenchment is an authorized cause for termination of employment which the law accords an employer who is not making good in its operations in order to cut back on expenses for salaries and wages by laying off some employees. The purpose of retrenchment is to save a financially ailing business establishment from eventually collapsing.[16]

In the present case, we find the issues and contentions more centered on closure of business operation rather than retrenchment. Closure or cessation of operation of the establishment is an authorized cause for terminating an employee under Article 283 of the Labor Code, to wit:

> ART. 283. *Closure of establishment and reduction of personnel*. – The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Department of Labor and Employment at least one (1) month before the intended date thereof. … In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or to at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.