

SECOND DIVISION

[G.R. No. 156104, June 29, 2004]

**R.P. DINGLASAN CONSTRUCTION, INC., PETITIONER, VS.
MARIANO ATIENZA AND SANTIAGO ASI, RESPONDENTS.**

D E C I S I O N

PUNO, J.:

This is an appeal from the decision^[1] and resolution^[2] of the Court of Appeals, dated January 17, 2001 and October 30, 2002, respectively, upholding the finding of constructive dismissal against petitioner.

Petitioner R.P. Dinglasan Construction, Inc. provided janitorial services to Pilipinas Shell Refinery Corporation (Shell Corporation) in Batangas City. Private respondents Mariano Atienza and Santiago Asi served as petitioner's janitors assigned with Shell Corporation since 1962 and 1973, respectively.

Private respondents claim that on July 7, 1994, petitioner called for a meeting and informed private respondents and three (3) other employees that their employment with Shell Corporation would be terminated effective July 15, 1994. They were told that petitioner lost the bidding for janitorial services with Shell. Petitioner notified respondents that they may reapply as helpers and redeployed in other companies where petitioner had subsisting contracts but they would receive only a minimum wage. Private respondents refused as the offer would be a form of demotion --- they would lose their seniority status and would not be guaranteed to work at regular hours.

In December 1994, private respondents filed a complaint against petitioner for non-payment of salary with the district office of the Department of Labor and Employment (DOLE) in Batangas City. In February 1995, during the conciliation proceedings with the DOLE, petitioner sent notices to respondents informing them that they would be reinstated with Shell Corporation as soon as they submit their barangay clearance, medical certificate, picture and information sheet as per the new identification badge requirements of Shell Corporation. Thereafter, petitioner again met with private respondents, who were then accompanied by the barangay captain and a councilor, and the latter confirmed to the former their willingness to be reinstated. Private respondents duly submitted the documents required for their reinstatement.

In May 1995, respondents demanded the payment of their backwages starting from July 15, 1994. On June 1, 1995, petitioner notified private respondents that they have been declared absent without leave (AWOL) as they allegedly failed to signify their intention to return to work and submit the badge requirements for their reinstatement. On June 13, 1995, private respondents wrote petitioner and insisted that they had complied with the badge requirements. Accompanied by the barangay

officials, private respondents attempted to meet with the officers of petitioner but the latter refused to dialogue with them. As proof of their compliance with the Shell requirements, private respondents submitted to the DOLE their x-ray results, dated May 17 and 19, 1995 and their barangay certification, dated May 13, 1995.

The case was eventually referred to the National Labor Relations Commission (NLRC) for compulsory arbitration. Private respondents amended their complaint charging petitioner with illegal dismissal and non-payment of 13th month pay, with a claim for payment of attorney's fees and litigation expenses, and a prayer for reinstatement with payment of full backwages from July 15, 1994.

Petitioner gave a different version of the incident. It allegedly informed respondents and the other affected employees that they would be deployed to petitioner's other principal companies but that their work would be different. Except for private respondents, all the affected employees accepted its offer of redeployment and reported back to work. Respondents failed to submit a resignation letter to signify their intention not to return to work.

Thereafter, during the pendency of the labor case, petitioner in two (2) separate notices,^[3] informed private respondents that they could be reinstated at Shell Corporation with no diminution in their salary provided that they submit the documents for the new identification badge requirement of Shell Corporation. Private respondents, however, refused to return to work until they were paid their backwages. Consequently, petitioner was constrained to consider them as having abandoned their work and to terminate their employment on September 19, 1995. Petitioner, thus, justified the dismissal of private respondents on the grounds of gross and habitual neglect of duties and abandonment of work.

On September 3, 1998, labor arbiter Andres Zavalla rendered a decision^[4] finding that private respondents were illegally dismissed from service and ordering their reinstatement. The dispositive portion reads:

WHEREFORE, premises considered, the following orders are hereby entered:

1. declaring that the complainants were illegally dismissed from their employment;
2. ordering the respondent to pay complainants the aggregate amount of P755,942.15 representing their full backwages and benefits from July 15, 1994 up to the promulgation of this decision; separation pay in lieu of reinstatement; 13th month pay for 1994 and attorney's fees equivalent to 10% of the total monetary award due complainants, broken down as follows:

Mariano Atienza	-	P366,594.67
Santiago Asi	-	P320,625.50
Attorney's fees	-	P 68,722.02

3. dismissing the claims for litigation expenses for lack of basis.

SO ORDERED.

On appeal, the decision of the labor arbiter was affirmed by the NLRC.^[5] Without moving for reconsideration, petitioner immediately filed a petition for certiorari before the Court of Appeals but petitioner suffered the same fate. On the procedural aspect, the Court of Appeals ruled that the petition could not prosper as petitioner failed to move for a reconsideration of the NLRC decision. On the substantive issues, the appellate court upheld the findings of the labor arbiter and the NLRC that: (1) private respondents were constructively dismissed as petitioner's offer of reassignment involved a diminution in pay and demotion in rank that made their continued employment unacceptable; and, (2) private respondents could not be considered to have abandoned their work.^[6]

As petitioner's motion for reconsideration was denied,^[7] petitioner filed this appeal and assigned the following errors:

I

THE COURT OF APPEALS, CONTRARY TO APPLICABLE DECISIONS OF THIS HONORABLE SUPREME COURT, ERRED IN RULING THAT A MOTION FOR RECONSIDERATION OF THE DECISION OF THE NLRC IS A CONDITION SINE QUA NON TO THE INSTITUTION OF A SPECIAL CIVIL ACTION OF (sic) CERTIORARI, AS THE INSTANT CASE FALLS UNDER THE EXCEPTIONS.

II

THE COURT OF APPEALS, CONTRARY TO EXISTING LAW, ERRED IN DISMISSING THE PETITION FOR CERTIORARI AND AFFIRMING THE DECISION OF THE NLRC INSOFAR AS THE MONETARY AWARD IS CONCERNED.

We find no merit in the petition.

On the first issue, petitioner faults the Court of Appeals for dismissing its appeal for its failure to move for a reconsideration of the NLRC Decision. Petitioner contends that its filing would have been purely *pro forma* and a clear exercise in futility as the issues of illegal dismissal and abandonment heard and passed upon by the NLRC were the same issues it brought on appeal to the Court of Appeals.

Indeed, the well-established rule is that a motion for reconsideration of the decision of the NLRC is necessary before an appeal may be allowed.^[8] The rule on exhaustion of administrative remedies intends to afford the tribunal or agency the first opportunity to rectify the errors it may have committed before resort to courts of justice can be had.^[9] Nonetheless, strict and rigid application of technical rules of procedure, **without regard to the merits of the case**, is not encouraged as it will only frustrate rather than promote substantial justice. Rules of procedure should be viewed as tools designed to facilitate the dispensation of justice.^[10]

In the case at bar, however, we note that **the Decision of the Court of Appeals dismissing petitioner's appeal was not grounded solely on a procedural lapse, i.e.,** failure of the petitioner to move for a reconsideration of the NLRC Decision. The records clearly show that after ruling against petitioner on this