482 Phil. 408

SECOND DIVISION

[G.R. No. 148156, September 27, 2004]

BRISTOL MYERS SQUIBB, (PHILS.), INC. PETITIONER, VS. ROGELIO T. VILORIA, RESPONDENT.

D E C I S I O N

CALLEJO, SR., J.:

Before us is a petition for review on certiorari under Rule 45 of the Revised Rules of Court of the Resolution[1] dated January 16, 2001 of the Court of Appeals in CA-G.R SP No. 55445, directing the National Labor Relations Commission (NLRC) to give due course to the respondent's belated appeal of the decision of the Labor Arbiter in favor of the petitioner herein.

The facts as culled from the records of the case are as follows:

Respondent Rogelio T. Viloria was accepted by Mead Johnson Phils., Inc. as a medical representative-trainee. After successfully completing his training, he was employed on January 2, 1985 as a Territory Manager of the company's Pharma Sales Group, Marketing Division. He became a regular employee of the company on April 1, 1985.

After the merger of Mead Johnson International, Bristol-Myers Company and E.R. Squibb & Sons Corporation, Bristol Myers Squibb, Inc., became the surviving company, and the respondent became the Territory Manager of its Oncology Business Unit.

Sometime in 1997, the petitioner noticed a drastic change in the respondent's work attitude and a sudden deterioration in the latter's work performance.

On November 10, 1997, Dr. Linda Luz G. Amante, the Manager of the Oncology Business Unit, issued a Memorandum requiring him to submit a written explanation within forty-eight (48) hours of the following:

1. Failure to see Dr. Tommy Reyes on 13 October '97 after you committed to see him on the said day.

2. Failure to answer paging of the same doctor for two days (13-14 October) to order Vepesid. As a result, doctor got in touch with me for his needs.

3. Failure to answer paging from the office on 13-15 October '97. You finally answered on 15 October at 11 am after allegedly receiving a message form *(sic)* the office.

4. Failure to accompany Dr. de los Reyes to the Mimosa Meeting of the Taxol Investigators on 18 October '97 as committed.

5. Failure to meet Dr. de los Reyes on the lobby of the Holiday Inn Hotel, Clarkfield, on 18 October '97, 7:00 p.m. as committed to the doctor. As a result, doctor was 1 hour and 30 minutes late for the meeting despite arriving early.

6. Failure to arrive on time for the Taxol Investigators' Meeting at Clarkfield on 18 October '97. (Arrived 2 hours late)

7. Discrepancy between your Medicheck report regarding calls made to Dr. Maria Warren on 26 August and 11 September '97 and the doctor's claim (that you have not done those particular visits).

8. Failure to visit Dr. Carlos Dy weekly as required. Doctor further claims that you only see him when called upon.

9. You committed a business class ticket for Dr. Dy to attend the recent ESMO in Hamburg, Germany for which we gave a USD2,000 financial assistance. As a result, doctor feels shortchanged because of the earlier commitment.

10. Failure to answer paging of same doctor on 29-30 October '97 to order Nestor Uy's Taxol needs. As a result, doctor got in touch with me.

11. Failure to submit to date, the right affidavit regarding loss of the company pager issued to you despite numerous reminders.

12. Failure to submit your Medicheck cards for August and October '97.

13. Failure to give Dra. Gostibolo an update regarding our BMS sponsorship to the APCCC. As a result, Dr. Gostibolo called to inform me that ypou *(sic)* have not been getting in touch so she does not know whether the sponsorship will materialize or not.[2]

In his written explanation,[3] the respondent stated, *inter alia*, that he did not attend his scheduled meeting with Dr. Tommy Reyes because they would only talk about the latter's golf game. He claimed that he failed to call back the office because his pager could only receive thirty percent (30%) of sent messages, and, as such, the other incoming messages could not be accommodated. The respondent explained that he did not visit Dr. Carlos Dy because the latter disliked the face of his saleswoman. He denied promising to give a business class ticket to Dr. Dy for the trip to Hamburg, and asserted that it was, in fact, the latter who requested the money equivalent thereof. The respondent also claimed that he had already submitted an affidavit regarding the loss of the pager, as well as his Medicheck reports on November 3, 1997. He averred that he was not able to get in touch with Dra. Gostibolo since the doctor had been on leave for the past two (2) weeks.

On November 18, 1997, the respondent filed an application[4] for a leave of absence

for the period of November 21, 1997 to December 31, 1997 which the petitioner disapproved. Nonetheless, the respondent absented himself from work. The petitioner was impelled to assign one of its employees to take over the duties of the respondent.[5]

On December 2, 1997, Dr. Amante issued a memorandum to the respondent directing him to explain within forty-eight (48) hours why he had absented himself despite the disapproval of his application for leave of absence. The respondent failed to comply. On December 5, 1997, Dr. Amante issued a Memorandum[6] setting a conference for 2:00 p.m. of December 16, 1997, to enable the respondent to examine the evidence against him.

Instead of attending the conference, the respondent tendered his resignation letter on December 23, 1997, which by its tenor was to take effect on January 15, 1998. The respondent stated that he resigned for personal reasons.[7] The petitioner decided to terminate his employment.

On December 24, 1997, the petitioner notified the respondent that his employment was being terminated for violation of the company's Code of Ethics, giving false information in his Medicheck reports, violating the company's rule on falsification, tampering and fraudulent statements, as well as submitting false statements related to the performance of his duties.[8]

The respondent thereafter filed a complaint for illegal dismissal against the petitioner on June 11, 1998, praying for reinstatement, backwages from the date of his dismissal, moral damages and his "team share" (stock option).[9] The case was docketed as NLRC-NCR Case No. 00-06-04799-98.

On April 26, 1999, the Labor Arbiter rendered a Decision[10] dismissing the complaint for lack of merit.

The respondent, through his counsel, received a copy of the decision on May 26, 1999, and thus had a period of ten (10) calendar days counted therefrom, or until June 5, 1999, to file his appeal. However, instead of doing so, the respondent filed a motion for extension of time to file "Notice of Memorandum" on June 8, 1999.[11] He stated therein that he received on May 26, 1999, a copy of the decision of the Labor Arbiter. Thereafter, on June 9, 1999, he filed his memorandum of appeal with the NLRC.[12] The petitioner moved to dismiss the appeal on the ground that the memorandum of appeal was filed beyond the period therefor. The respondent opposed the motion, contending that per the certification of the Quezon City Central Post Office, he received a copy of the decision of the Labor Arbiter on June 4, 1999. [13]

On July 30, 1999, the NLRC issued a Resolution[14] dismissing the appeal for the respondent's failure to perfect his appeal within the reglementary period. He, thereafter, filed a motion for reconsideration contending that his appeal was filed only four (4) days beyond the period therefor;[15] hence, the Rules of Procedure of the NLRC should be construed in his favor.

On September 16, 1999, the NLRC issued a Resolution[16] denying his motion for

lack of merit.

The respondent filed a petition[17] for *certiorari* and prohibition with the CA for the nullification of the decision of the Labor Arbiter and the resolution of the NLRC dismissing his appeal of the Labor Arbiter's decision. The CA rendered a Decision[18] dismissing the petition for lack of merit on September 29, 2000, ruling that the respondent failed to perfect his appeal of the decision of the Labor Arbiter within the reglementary period therefor.

The respondent filed a motion for reconsideration[19] of the decision, alleging that the appeal was filed only two (2) days late because June 5, 1999 was a Saturday. However, he submitted no meritorious explanation for the delay, but posited that the merits of the case was sufficient reason for the NLRC to relax the rules.[20]

On January 16, 2001, the CA issued a Resolution granting the motion for reconsideration of the respondent. Citing Article 221 of the Labor Code, the appellate court declared that technicalities of law and procedure should be relaxed. The CA also cited the ruling of this Court in *Visayan v. NLRC*.[21]

The petitioner filed a motion for the reconsideration[22] which the CA denied in a Resolution[23] dated May 10, 2001.

The petitioner now comes before this Court *via* a petition for review on certiorari, asserting that –

> THE HONORABLE COURT GRAVELY ABUSED ITS DISCRETION IN SETTING ASIDE ITS EARLIER DECISION DATED SEPTEMBER 29, 2000 AND ORDERING THE PUBLIC RESPONDENT NLRC TO GIVE DUE COURSE TO PETITIONER'S APPEAL.[24]

The Petition In The Court of Appeals Does Not State The Prima Facie Basis For The Issuance Of A Writ Of Certiorari.

Section 6, Rule 65 of the Rules of Court, as amended, provides that if a petition (for certiorari or prohibition) is sufficient in form and substance to justify such process, the Court shall issue an order requiring the respondent to comment on the petition within ten (10) days from receipt of a copy thereof. For a petition for certiorari or prohibition to be sufficient in substance, it must set out and demonstrate, plainly and distinctly, all the facts essential to establish a right to a writ,[25] or at least a *prima facie* basis for the issuance of the writ.[26] The petition must allege facts showing that any existing remedy is not speedy or adequate.[27] It must contain the following allegations: (a) that the writ is directed against a tribunal, board or officer exercising judicial or quasi-judicial functions; (b) that such tribunal, board or officer has acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack of or in excess of jurisdiction; and (c) there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.[28]

The respondent acts without jurisdiction if he does not have the legal power to determine the case; there is excess of jurisdiction where the respondent, being clothed with the power to determine the case, oversteps its authority as determined by law. There is grave abuse of discretion where the respondent acts in a capricious, whimsical, arbitrary or despotic manner in the exercise of his judgment as to be equivalent to lack of jurisdiction.[29] A remedy is plain, speedy and adequate if it will promptly retrieve the petitioner from the injurious effects of that judgment and the acts of the tribunal or inferior court.[30]

Nonetheless, the settled rule is that a writ of certiorari may be granted in cases where, despite availability of appeal after trial, there is at least a *prima facie* showing on the face of the petition and its annexes that (a) the trial court issued the order with grave abuse of discretion amounting to lack of or in excess of jurisdiction; (b) appeal would not prove to be a speedy and adequate remedy;[31] (c) where the order is a patent nullity; (d) the decision in the present case will arrest future litigations; and (e) for certain considerations such as public welfare and public policy.[32]

In this case, the respondent failed to allege even a *prima facie* basis for the issuance of the writs of certiorari and prohibition for the nullification of the decision of the Labor Arbiter. The respondent made no allegations in his petition in the appellate court which would justify the requisites for the issuance of a writ of certiorari and/or prohibition. There is no allegation that the Labor Arbiter abused his discretion in rendering his decision, and that the respondent had no appeal or any plain, speedy and adequate remedy in the ordinary course of law. In fact, the petitioner therein appealed the decision of the Labor Arbiter to the NLRC. If the respondent wanted to enjoin the decision of the Labor Arbiter while his petition for the nullification of the assailed resolution of the NLRC dismissing his appeal was still unresolved, his remedy was to pray for the issuance of a temporary restraining order or a writ of preliminary prohibitory injunction against the petitioner therein, not to nullify the said decision *via* a petition for certiorari and prohibition.

The NLRC Did Not Commit
Any Grave Abuse of Its
Discretion Correctible By A
Cert Writ In Dismissing the
Respondent's Appeal

Rule VI, Section 1 of the Rules of Procedure of the NLRC provides for the period within which to appeal the decisions, resolutions or orders of the Labor Arbiter, thus:

> SECTION 1. PERIOD OF APPEAL. Decisions, resolutions or orders of the Labor Arbiter shall be final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, resolutions or orders of the Labor Arbiter and in case of a decision of the Regional Director within five (5) calendar days from receipt of such decision, resolutions, or orders. If the 10th or 5th day, as the case may be, falls on a Saturday, Sunday or a holiday, the last day to perfect the appeal shall be the next working day.

Rule VI, Section 4 of the said Rules enumerates the requisites for the perfection of appeal from the decision of the Labor Arbiter –