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SECOND DIVISION

[G.R. No. 115414, August 25, 1998]

PHILIPPINE TUBERCULOSIS SOCIETY, INC., PETITIONER, VS. NATIONAL LABOR UNION AND NATIONAL LABOR RELATIONS COMMISSION, RESPONDENTS.

D E C I S I O N

MENDOZA, J.:

This is a petition for *certiorari* to set aside the decision, dated August 31, 1993, and the resolution, dated April 20, 1994, of the National Labor Relations Commission declaring the retrenchment of one hundred sixteen (116) employees of petitioner Philippine Tuberculosis Society, Inc. invalid and ordering the reinstatement of thirty-eight (38) employees and the payment of backwages to them. The rest of the employees were dropped from the complaint after it was found that they had executed deeds of quitclaim releasing petitioner from liability.

The facts of the instant case are as follows:

> The Philippine Tuberculosis Society, Inc. is a non-stock and non-profit domestic corporation with the primary objective of fighting tuberculosis in the Philippines. It has employees who are represented by private respondent National Labor Union.
>
> In the proceedings before the NLRC, it was shown that, in 1989, the Society began to experience serious financial difficulties when it incurred a deficit of P2 million. The shortfall increased to P9,100,000.00 in 1990 and was certain to become worse were it not for quick measures taken by petitioner.[1]
>
> First, the Society leased a property in Tayuman to a fastfood outlet, cancelled its service agreement with a janitorial company, and sold its equity in the Philippine Long Distance Telephone Company (PLDT). Second, it withdrew from the Pag-Ibig Fund Program, negotiated with the Government Service Insurance System for the restructuring of its obligations, and applied for exemption from minimum wage increases. Finally, it disapproved the overtime pay of supervisory and managerial employees, obtained the waiver of personnel of their entitlement to wage differentials, and implemented the retrenchment of one hundred sixteen (116) employees.[2] The retrenchment is the subject of the present suit.

On September 27, 1991, respondent NLU filed a notice of strike against the Society with the National Conciliation and Mediation Board (NCMB), charging the Society with unfair labor practice in terminating the services of the aforementioned employees.

Conferences were scheduled by the NCMB, which however failed to resolve the case. On November 6, 1991, then Secretary of Labor and Employment Ruben Torres certified the case to the NLRC on the ground that the labor dispute seriously affected the national interest.

On August 31, 1993, the NLRC rendered a decision declaring as invalid the retrenchment of the employees concerned on the ground that the Society did not take seniority into account in their selection. The NLRC held:

The seniority factor, an indispensable criterium for a retrenchment program to be valid, was admittedly not employed in the selection process. It was omitted in favor of the very subjective criteria of dependability, adaptability, trainability, job performance, discipline, and attitude towards work. Because of this failure, a number of those retrenched were senior in years of service to some of those retained. This failure . . . certainly invalidates the retrenchment program.[3]

In its resolution dated April 20, 1994, the NLRC excluded seventy-eight (78) of the one hundred sixteen (116) employees whom it had ordered reinstated on the ground that they had executed deeds of quitclaim releasing the Society from further liability. The resolution of the NLRC stated:

> Finding that there is no opposition to the said quitclaims, the same are approved and the employees who executed the same are excluded/dropped as complainants herein who are to be reinstated as ordered.
>
> WHEREFORE, the resolution of this Commission promulgated on August 31, 1993 is hereby modified by dropping/deleting the herein above-named employees who executed quitclaims as party complainants.[4]

In its present petition, the Society charges that:

> RESPONDENT COMMISSION COMMITTED PALPABLE AND PATENT ERROR IN DECLARING AS INVALID THE RETRENCHMENT PROGRAM IMPLEMENTED BY RESPONDENT FOR FAILURE TO EMPLOY THE CRITERIUM OF SENIORITY IN THE SELECTION PROCESS OF THE EMPLOYEES TO BE RETRENCHED.[5]

Article 283 of the Labor Code provides:

> 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 operations 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 termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. 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 at least one (1) month pay or at

> least one-half (1/2) month pay for every year of service, whichever is hig her. A fraction of at least six (6) months shall be considered as one (1) whole year.

Clearly, retrenchment or reduction of the workforce in cases of financial difficulties is recognized as a ground for the termination of employment. In *Sebuguero v. NLRC*, [6] this Court essayed on the nature of this form of termination of employment, thus:

> Retrenchment . . . is the termination of employment initiated by the employer through no fault of the employees and without prejudice to the latter, resorted to by management during periods of business recession, industrial depression, or seasonal fluctuations, or during lulls occasioned by lack of orders, shortage of materials, conversion of the plant for a new production program or the introduction of new methods or more efficient machinery or of automation. Simply put, it is an act of the employer of dismissing employees because of losses in the operation of a business, lack of work, and considerable reduction on the volume of his business, a right consistently recognized and affirmed by this Court.

Although petitioner is a non-stock and non-profit organization, retrenchment as a measure adopted to stave off threats to its existence is available to it. Article 278 of the Labor Code states that the fiscal measures recognized therein which an employer may validly adopt apply to "all establishments or undertakings, whether for profit or not."

However, the employer's prerogative to layoff employees is subject to certain limitations set forth in *Lopez Sugar Corporation v. Federation of Free Workers*[7] as follows:

> Firstly, the losses expected should be substantial and not merely de minimis in extent. If the loss purportedly sought to be forestalled by retrenchment is clearly shown to be insubstantial and inconsequential in character, the bonafide nature of the retrenchment would appear to be seriously in question. Secondly, the substantial loss apprehended must be reasonably imminent, as such imminence can be perceived objectively and in good faith by the employer. There should, in other words, be a certain degree of urgency for the retrenchment, which is after all a drastic recourse with serious consequences for the livelihood of the employees retired or otherwise laid-off. Because of the consequential nature of retrenchment, it must, thirdly, be reasonably necessary and likely to effectively prevent the expected losses. The employer should have taken other measures prior or parallel to retrenchment to forestall losses, i.e., cut other costs than labor costs. An employer who, for instance, lays off substantial numbers of workers while continuing to dispense fat executive bonuses and perquisites or so-called "golden parachutes," can scarcely claim to be retrenching in good faith to avoid losses. To impart operational meaning to the constitutional policy of providing "full protection" to labor, the employer's prerogative to bring down labor costs by retrenching must be exercised essentially as a measure of last resort, after less drastic means - e.g., reduction of both management and rank-and-file bonuses and salaries, going on reduced

> time, improving manufacturing efficiencies, trimming of marketing and advertising costs, etc. - have been tried and found wanting.
>
> Lastly, but certainly not the least important, alleged losses if already realized, and the expected imminent losses sought to be forestalled, must be proved by sufficient and convincing evidence. The reason for requiring this quantum of proof is readily apparent: any less exacting standard of proof would render too easy the abuse of this ground for termination of services of employees.

In addition to the above, the retrenchment must be implemented in a just and proper manner. As held in Asiaworld Publishing House, Inc. v. Ople,[8]

> there must be fair and reasonable criteria to be used in selecting employees to be dismissed, such as: (a) less preferred status (e.g. temporary employee); (b) efficiency rating; and (c) seniority.

In this case, respondent NLU denies that the Society has suffered financial reverses and alleges that the real reason for the layoff of the employees was the desire of the Society's board of directors to cut expenses in anticipation of loss of government aid as a result of the elimination of the President's power to nominate candidates to the board. In addition, respondent union charges that the funds for the payment of salaries and other obligations are being used in stock trading. For these reasons, respondent prays that the resolution, dated April 20, 1994, of the NLRC, insofar as it excludes from reinstatement and the payment of backwages the seventy-eight (78) employees who signed quitclaims releasing petitioner from liability, be set aside.[9]

As the union has not filed a petition for *certiorari,* its role in this case as respondent is to defend the resolution, not to seek its annulment. However, instead of filing a comment as required in the resolution of this Court, respondent NLU filed a "Comment and Petition." This attempt to make the comment likewise serve as a petition cannot make up for the union's failure to file a separate petition. It should be noted that the union's "Comment and Petition" was filed more than the three (3) months considered as the "reasonable period" after receipt of the NLRC resolution. In addition, it is dismissible for failure of the union to pay the filing fee and to comply with the requirements to attach to the petition a certified true copy of the resolution being questioned, indicate the date of receipt of the same, and attach a certificate of nonforum shopping.

Consequently, whether petitioner has indeed suffered financial distress justifying the retrenchment of employees cannot be raised in issue by the union. The exclusion from the order to reinstate and to pay backwages of the seventy-eight (78) employees who signed quitclaims releasing petitioner from liability is not in issue either. Indeed, this action was brought by petitioner on the sole issue of whether in disregarding seniority as a factor in layingoff the remaining thirty-eight (38) employees, petitioner acted arbitrarily.

It should also be pointed out that what respondent is raising are actually questions of fact, the determination of which is beyond the scope of a petition for *certiorari*. Our function in this case is limited to determining whether the NLRC committed grave abuse of discretion when it ruled that seniority is an indispensable factor in determining the particular employees subject of retrenchment. In determining this question, our function is at an end the moment we find that there is substantial