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THIRD DIVISION

[G.R. No. 121791, December 23, 1998]

ENRIQUE SALAFRANCA, PETITIONER, VS. PHILAMLIFE (PAMPLONA) VILLAGE, HOMEOWNERS ASSOCIATION, INC., BONIFACIO DAZO AND THE SECOND DIVISION, NATIONAL LABOR RELATIONS COMMISSION (NLRC), RESPONDENTS.

D E C I S I O N

ROMERO, J.:

Petitioner Enrique Salafranca started working with the private respondent Philamlife Village Homeowners Association on May 1, 1981 as administrative officer for a period of six months. From this date until December 31, 1983, petitioner was reappointed to his position three more times.[1] As administrative officer, petitioner was generally responsible for the management of the village's day to day activities.[2] After petitioner's term of employment expired on December 31, 1983, he still continued to work in the same capacity, albeit, without the benefit of a renewed contract.

Sometime in 1987, private respondent decided to amend its by-laws. Included therein was a provision regarding officers, specifically, the position of administrative officer under which said officer shall hold office at the pleasure of the Board of Directors. In view of this development, private respondent, on July 3, 1987, informed the petitioner that his term of office shall be coterminus with the Board of Directors which appointed him to his position. Furthermore, until he submits a medical certificate showing his state of health, his employment shall be on a month-to-month basis.[3] Oddly, notwithstanding the failure of herein petitioner to submit his medical certificate, he continued working until his termination in December 1992.[4] Claiming that his services had been unlawfully and unceremoniously dispensed with, petitioner filed a complaint for illegal dismissal with money claims and for damages.[5]

After the submission by the parties of their respective position papers and other pleadings, the Labor Arbiter rendered a decision[6] ordering private respondent to pay the petitioner the amount of P257,833.33 representing his backwages, separation pay and 13th month pay. In justifying the award, the Labor Arbiter elucidated:

> "Respondents' contention that complainant's term of employment was co-terminus with the term of Office of the Board of Directors, is wanting in merit. Records show that complainant had been hired in 1981 while the Amendment of the respondents' By-Laws making the position of an Administrative Officer co-terminus with the term of the Board of Directors was made in 1987. Evidently, the said Amendment would not be

applicable to the case of complainant who had become a regular employee long time before the Amendment took place. Moreover, the Amendment should be applied prospectively and not retroactively."

On appeal by the private respondent, the NLRC reversed the decision of the Labor Arbiter and rendered a new one[7] reducing petitioner's monetary award to only one-half (1/2) month pay for every year of service representing his retirement pay. In other words, the NLRC viewed the dismissal of the petitioner as a valid act by the private respondent.

"The fact that he continued to perform the function of the office of administrative officer without extension or re-appointment thereafter, to our mind, did not in any way make his employment permanent as in fact, he was even reminded of the nature of his position by then president of the association Jaime Y. Ladao in a letter of 3 July 1987. His reply to the aforesaid letter, claiming his employment regular, and viz a viz, referring to submit his medical certificate, notwithstanding, to our mind, merely underscored the need to define his position as, in fact, the Association's Rules and Regulations were amended if but to put to rest the tenural (sic) limit of the office of the Administrative Officer in accordance with its earlier intention, that it is co-terminus with that of the members of the Board of Directors.

WHEREFORE, the decision appealed from is hereby set aside. Respondents are hereby ordered to pay herein appellee one half (1/2) month pay for every year of service representing his retirement pay."

In view of the sudden turn of events, petitioner has elevated the case to this Court assigning the following errors:[8]

1. The NLRC gravely abused its discretion when it ruled that the employment of the Petitioner is not purely based on considerations of Employer-Employee relationship.

2. Petitioner was illegally dismissed by private respondents.

As to the first assigned error by the petitioner, we need not dwell on this at length. We agree with the Solicitor General's observation that an employer-employee relationship exists between the petitioner and the private respondent.[9]

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The first element is present in this case. Petitioner was hired as Administrative Officer by respondents. In fact, he was extended successive appointments by respondents.

The second element is also present since it is not denied that respondent PVHA paid petitioner a fixed salary for his services.

As to the third element, it can be seen from the Records that respondents had the power of dismissal over petitioner. In their letter dated December 7, 1992, respondents informed petitioner that they had decided to discontinue his services. In their Position Paper submitted to

> the Labor Arbiter, respondents stated that petitioner 'was dismissed for cause.' (p. 17, Record).
>
> With respect to the fourth and most important element, respondents controlled the work of petitioner not only with respect to the ends to be achieved but also the means used in reaching such ends."

Relative to the second assigned error of the petitioner, both the Solicitor General and the private respondent take the stance that petitioner was not illegally dismissed.[10] On this aspect, we disagree with their contentions.

On the outset, there is no dispute that petitioner had already attained the status of a regular employee, as evidenced by his eleven years of service with the private respondent. Accordingly, petitioner enjoys the right to security of tenure[11] and his services may be terminated only for causes provided by law.[12]

Viewed in this light, while private respondent has the right to terminate the services of petitioner, this is subject to both substantive and procedural grounds.[13] The substantive causes for dismissal are those provided in Articles 282 and 283 of the Labor Code,[14] while the procedural grounds refer to the observance of the requirement of due process.[15] In all these instances, it is the private respondent, being the employer, who must prove the validity of the dismissal.[16]

Having reviewed the records of this case carefully, we conclude that private respondent utterly failed to substantiate petitioner's dismissal, rendering the latter's termination illegal. At the risk of being redundant, it must be stressed that these requirements are mandatory and non-compliance therewith renders any judgment reached by the management void and inexistent.[17]

While private respondent imputes "gross negligence," and "serious misconduct" as the causes of petitioner's dismissal,[18] not a shred of evidence was offered in support thereof, other than bare and uncorroborated allegations. The facts and circumstances regarding such alleged infractions were never explained. While it is true that private respondent, through its president Bonifacio Dazo, executed an affidavit narrating the alleged violations of the petitioner,[19] these were never corroborated by concrete or competent evidence. It is settled that no undue importance should be given to a sworn statement or affidavit as a piece of evidence because, being taken *ex-parte,* an affidavit is almost always incomplete and inaccurate.[20] Furthermore, it must be noted that when petitioner was terminated in 1992, these alleged infractions were never raised nor communicated to him. In fact, these were only revealed after the complaint was filed by the petitioner in 1993. Why there was a delay was never adequately explained by private respondent.

Likewise, we note that Dazo himself was not presented as a witness to give the petitioner an opportunity to cross-examine him and propound clarificatory questions regarding matters averred in his affidavit. All told, the foregoing lapses and the belated submission of the affidavit, cast doubt as to the credibility of the allegations. In sum, the dismissal of the petitioner had no factual basis whatsoever. The rule is that unsubstantiated accusations without more, are not tantamount to guilt.[21]

As regards the issue of procedural due process, private respondent justifies its non-compliance therewith in this wise:

> "The Association Officers, being his peers and friends had a problem however in terminating his services. He had been found to have committed infractions as previously enumerated. PVHA could have proceeded with a full-blown investigation to hear these charges, but the ordeal might break the old man's heart as this will surely affect his standing in the community. So they decided to make their move as discreetly (but legally) as possible to save the petitioner's reputation. Terminating him in accordance with the provision of the by-laws of the Association without pointing out his numerous faults and malfeasance in office and with one-half month pay for every year of service in accordance with the Retirement Law was the best and only alternative."

We are not impressed. The reasoning advanced by the private respondent is as puerile as it is preposterous.

The essence of due process is to afford the party an opportunity to be heard and defend himself, to cleanse his name and reputation from any taint. It includes the twin requirements of notice and hearing.[22] This concept evolved from the basic tenet that one's employment or profession is a property right protected by the constitutional guaranty of due process of law.[23] Hence, an individual's separation from work must be founded on clearly-established facts, not on mere conjectures and suspicions.[24]

In light of the foregoing, private respondent's arguments are clearly baseless and without merit. In truth, instead of protecting petitioner's reputation, private respondent succeeded in doing exactly the opposite - it condemned the petitioner without even hearing his side. It is stating the obvious that dismissal, being the ultimate penalty that can be meted out to an employee, should be based on a clear or convincing ground.[25] As such, a decision to terminate an employee without fully apprising him of the facts, on the pretext that the twin requirements of notice and hearing are unnecessary or useless, is an invalid and obnoxious exercise of management prerogative.

Furthermore, private respondent, in an effort to validate the dismissal of the petitioner, posits the theory that the latter's position is coterminus with that of the Village's Board of Directors, as provided for in its amended by-laws.[26]

Admittedly, the right to amend the by-laws lies solely in the discretion of the employer, this being in the exercise of management prerogative or business judgment. However this right, extensive as it may be, cannot impair the obligation of existing contracts or rights.

Prescinding from these premises, private respondent's insistence that it can legally dismiss petitioner on the ground that his tenure has expired is untenable. To reiterate, petitioner, being a regular employee, is entitled to security of tenure; hence, his services may only be terminated for causes provided by law.[27] A contrary interpretation would not find justification in the laws or the Constitution. If

we were to rule otherwise, it would enable an employer to remove any employee from his employment by the simple expediency of amending its by-laws and providing that his/her position shall cease to exist upon the occurrence of a specified event.

If private respondent wanted to make the petitioner's position co-terminus with that of the Board of Directors, then the amendment must be effective after petitioner's stay with the private respondent, not during his term. Obviously, the measure taken by the private respondent in amending its by-laws is nothing but a devious, but crude, attempt to circumvent petitioner's right to security of tenure as a regular employee guaranteed under the Labor Code.[28]

Interestingly, the Solicitor General is of the view that what actually transpired was that petitioner was retired from his employment, considering the fact that in 1992 he was already 70 years old and not terminated.[29]

While there seems to be a semblance of plausibility in this contention for the matter of extension of service of such employee or official is addressed to the sound discretion of the employer, still we have no doubt that this was just a mere after-thought - a dismissal disguised as retirement.

In the proceedings before the Labor Arbiter, it is noteworthy that private respondent never raised the issue of compulsory retirement,[30] as a cause for terminating petitioner's service. In its appeal before the NLRC, this ground was never discussed. In fact, private respondent, in justifying the termination of the petitioner, still anchored its claim on the applicability of the amended by-laws. This omission is fatal to private respondent's cause, for the rule is well-settled that matters, theories or arguments not brought out in the proceedings below will ordinarily not be considered by a reviewing court, as they cannot be raised for the first time on appeal.[31]

Undaunted, private respondent now asserts that the instant petition was filed out of time,[32] considering that the assailed NLRC decision was received on June 28, 1995 while this petition was filed on September 20, 1995. At this juncture, we take this opportunity to state that under the 1997 Rules of Civil Procedure, a petition for certiorari must now be instituted within sixty days of receipt of the assailed judgment, order or resolution.[33] However, since this case arose in 1995 and the aforementioned rule only took effect on July 1, 1997 then the old rule is applicable. Since prior to the effectivity of the new rule, a special civil action of certiorari should be instituted within a period of three months,[34] the instant petition which was filed on September 20, 1995 or two months and twenty-two days thereafter, was still within the reglementary period.

With respect to the issue of the monetary award to be given to the petitioner, private respondent argues that he deserves only retirement pay and nothing more. This position would have been tenable had petitioner not been illegally dismissed. However, since we have already ruled petitioner's dismissal as without just cause and lacking due process, the award of backwages and reinstatement is proper.[35]

In this particular case, reinstatement is no longer feasible since petitioner was