334 Phil. 604

THIRD DIVISION

[G.R. No. 111897, January 27, 1997]

GONPU SERVICES CORPORATION, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, OSCAR AGONOY AND MANUEL FREGILLANA, RESPONDENTS.
R E S O L U T I O N

FRANCISCO, J.:

The facts, as stated by public respondent National Labor Relations Commission, are as follows:

> "Complainants [private respondents] Oscar Agonoy and Manuel Frigillana started employment with the respondent [petitioner] in August 3, 1987 and February 1, 1982, respectively. While employed, both actively participated in the formation of the GONPU Services Corporation, Local - PFL. In fact, both were elected union officer - as president and director, respectively. Sometime on June 15, 1989, both were informed of a transfer of assignment to PUREX MINERAL CORPORATION at Cagayan de Oro City. In response, complainants [private respondents] sought reconsideration of said transfer order citing the incoming certification election and as to complainant Frigillana, he cited family dislocation. Subsequently, they were issued termination orders for insubordination for failure to heed such transfer orders.
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> "In dismissing the complaint, the Labor Arbiter cited the fact that the explanation given by complainants [private respondents] herein in refusing transfer was not laudable enough as to reconsider transfer order. The Labor Arbiter also pointed to the managerial prerogative to select, hire and transfer employees in the best way a company may see it fit and convenient."[1]

Private respondents appealed before the NLRC. In a decision dated September 13, 1993, the NLRC reversed the decision of the Labor Arbiter and entered a new one declaring the dismissal of private respondents illegal and ordering their immediate reinstatement. Without filing a motion for reconsideration with the NLRC, petitioner Gonpu Services Corporation filed the instant petition substantially premised on the NLRC's alleged grave abuse of discretion in finding it guilty of illegal dismissal and unfair labor practice. Acting on the petition, the Court required the respondents to comment thereon.[2] Thereafter, on July 6, 1994 the Court gave due course to the petition and required the parties to submit their respective memoranda.[3] The parties filed their manifestations adopting their petition and reply to comment, in the case of petitioner, and their comment. in the case of respondents, as their memoranda.

At the outset, the Court notes petitioner's inexcusable failure to move for the reconsideration of the assailed decision. While in some exceptional cases we allowed

the immediate recourse to this Court, we find nothing herein that could warrant an exceptional treatment to this petition which justifies the omission on the dubious pretext that "*the motion for reconsideration is . . . . not necessary insofar as the instant petition is concerned*"[4]. A motion for reconsideration is indispensable for it affords the NLRC an opportunity to rectify errors or mistakes it might have committed before resort to the courts can be had. We have had an occasion to stress this significant matter in *Zapata v. NLRC*.[5] Thus:

> "Petitioner cannot, on its bare and self-serving representation that reconsideration is unnecessary, unilaterally disregard what the law requires and deny respondent NLRC its right to review its pronouncements before being haled to court to account therefor. On policy considerations, such prerequisite would provide an expeditious termination to labor disputes and assist in the decongestion, of court dockets by obviating improvident and unnecessary recourse to judicial proceedings. The present case exemplifies the very contingency sought to be, and which could have been, avoided by the observance of said rules."

Likewise, a motion for reconsideration is an adequate remedy, hence certiorari proceeding, as in this case, will not prosper.[6] Rule 65 of the Rules of Court clearly provides that:

> "When any tribunal, board, or officer exercising judicial functions, has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion and *there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law*, a person aggrieved thereby may file a verified petition in the proper court alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings, as the law requires, of such tribunal, board, or officer. x x x."

On the merits, we fail to see any cogent reason to set aside the NLRC's decision. As correctly declared by the NLRC, the prerogative of the employer to transfer an employee from one work station to another is not unlimited.[7] Thus:

> "In the case at bar, it is of judicial notice that dictates of business exigencies demand utmost flexibility. On the part of respondent's guards as to be ready to assume any given and required posting upon notice of clients. But then, even the nature of this business could not be governed by hard and fast rule of complete and total subservience. Unlike in any other case, it should admit certain exceptions. Respondent in the instant case would want Us to swallow hook, line, and sinker that complainants were dismissed simply because of insubordination. Initially, the same does appear to be the reason. A closer perusal of the records which the Labor Arbiter should have done, would reveal otherwise. In the first place, what appears to be simply an order of transfer actually rules with attempts to stifle efforts at labor union formation. The records of this case are bereft of any evidence why complainant was being transferred and who requested the transfer. Moreso, the fact that the two-transferees were union officers and there is a pre-set certification election hearing should have forewarned the Labor Arbiter and made him see through this