

FIRST DIVISION

[G.R. No. 111807, June 14, 1996]

**AHS/PHILIPPINES, INC., GERVACIO R. AMISTOSO AND
CONSTANCIO V. HALILI, PETITIONERS, VS. COURT OF APPEALS
AND ALFONSO R. BAYANI, RESPONDENTS.**

D E C I S I O N

BELLOSILLO, J.:

American Hospital Supplies/Philippines, Inc. (AHS), its president Gervacio R. Amistoso, and its vice-president Constancio V. Halili seek to set aside the 31 August 1993 Decision of respondent Court of Appeals^[1] in CA-G.R. CV No. 32416 affirming the 25 January 1989 Decision of the Regional Trial Court of Cebu City^[2] awarding actual and compensatory damages to private respondent Alfonso R. Bayani, a dentist, who was dismissed from the service without the clearance then required from the Secretary of Labor.

Petitioner corporation was engaged in the sale and manufacture of medicines and pharmaceuticals in the country and did substantial business with government hospitals. On 1 June 1970 it hired private respondent as an Area Manager for Visayas and Mindanao, and later appointed him Manager of its Cebu branch. On 30 January 1978 private respondent was dismissed from the service. At that time he was receiving a monthly compensation of P3,180.00.

On 5 May 1978 private respondent filed a complaint for damages before the trial court alleging that in the course of their business petitioners were directly encouraging, abetting and promoting bribery in the guise of "commissions", "entertainment expenses" and "representation expenses" which were given to various government hospital officials in exchange for favorable recommendations, approvals and actual purchases of medicines and pharmaceuticals. For his refusal to take direct and personal hand in giving "bribe money" he was dismissed. In his complaint he asked for an amount of not less than P520,000.00 as moral and consequential damages, P25,000.00 as exemplary damages and P50,000.00 for attorney's fees. On the other hand petitioner in its answer claims that private respondent was not dismissed but that he himself resigned on his own volition.

On 25 January 1989 the trial court ruled that private respondent was illegally dismissed and awarded him P297,600.00 as actual and compensatory damages representing the minimum salary that he could have earned for the next 8 years until his retirement at 60 if he was not dismissed illegally, and P25,000.00 as attorney's fees. The trial court held that there was illegal dismissal because petitioner failed to secure a prior clearance from the Secretary of Labor before actually terminating the services of private respondent, but not for insubordination or disloyalty nor for his obstinate refusal to participate in the bribery. The trial court further ruled that private respondent was not entitled to moral and exemplary

damages since "(his) hands are also tainted with the same corruption that he complained about"^[3]-

It appears that it was only when the repressive regime of then President Marcos started cracking down on "bribe takers" and "bribe givers" that Dr. Bayani must have started to have certain feelings of guilt and claimed that he wanted the "status quo" to be maintained, and that he will just allow his salesmen and agents to deliver the bribe money instead of him or Rene Simpao. Consequently, it is inescapable that as admitted by Dr. Bayani, he has been a party or privy to the giving out of sales REPS or (money) by signing checks which he bluntly called bribe money disguised as sales REP of 5%. Under the principle that he who comes to court must come with clean hands, Dr. Bayani cannot now pretend that he was innocent of the corrupt practices of his company and had clean hands as regards the same x x x x His hands are therefore equally tainted, and mired in the filth of this corruption, in the matter of the giving of these "kickbacks" x x x x As a matter of conscience, he should have resigned, as that was the most honorable thing for him to do and accept the offer of Mr. Halili to pay him separation pay if he only tendered immediately his resignation. The court, therefore, is hard put, to award damages to the plaintiff in this case after betraying the confidences of his company because it would only serve his own selfish and disloyal ends. Although this is in no way saying, that this court condones corruption, yet it is evident from the proofs submitted to this court that the plaintiff was part of the corruption spun and woven, by the giving of 5% REPS to the doctors listed in his voluminous exhibits and was dismissed for insubordination and disloyalty.^[4]

On appeal, respondent Court of Appeals affirmed in toto the decision of the trial court; hence this petition for review.

Petitioners contend that respondent court erred (1) in affirming the decision of the trial court holding that private respondent was illegally dismissed from the service for failure of petitioner to secure a prior clearance from the Department of Labor when the absence of a clearance was never put in issue during the trial; (2) in ruling that the prior-clearance rule applies to private respondent who is a managerial employee, assuming that the prior-clearance rule is a legitimate issue; (3) in affirming petitioner's liability for damages in an amount equal to private respondent's monthly salary multiplied by the number of years prior to his retirement age, assuming that lack of clearance is a proper issue; (4) when it disregarded decisions of this Court allowing back wages up to three (3) years only; (5) when it held petitioner Gervacio Amistoso personally liable when there is nothing on record to show that he had anything to do with the dismissal of private respondent; (6) when it likewise held petitioner Constancio Halili personally liable for dismissing private respondent when said act was done in his official capacity as vice-president of the corporation; and (7) when it affirmed petitioner's liability for attorney's fees.

At the outset it must be noted that when the complaint for damages was filed on 5 May 1978 the applicable law was P.D. 1367^[5] which amended Sec. 217, par. (a), of

the Labor Code by providing that "the Regional Directors (of the Ministry of Labor) shall not indorse and Labor Arbiters shall not entertain claims for moral or other forms of damages." The claim of respondent Bayani for moral, exemplary and consequential damages was thus correctly filed before the then Court of First Instance.

We go back to the findings and conclusions of the trial court. A reading of the complaint for damages filed by respondent Bayani readily shows that his cause of action stems from his allegation that "(he) has been unlawfully dismissed x x x because of (his) refusal to take direct and personal hand in giving out these bribe money to various hospitals or government officials with which (petitioners) have been doing business."^[6] Petitioners for their part deny the allegation of respondent Bayani that he was dismissed. They claim he resigned. Thus, as succinctly put by the trial court,"[t]he issue x x x is, whether the plaintiff (herein respondent) Dr. Alfonso R. Bayani really resigned and whether Bayani was dismissed for his alleged refusal to cooperate in giving bribe money."^[7] In resolving the instant issue, the trial court held -

From the testimonies of the plaintiff himself and that of defendants' witnesses Ranulfo Payos and Constancio Halili, the inescapable conclusion that the court can arrive at, is that Bayani did not really resign. in fact he only intended to do so. This is apparent from Exh. "FFFFF", and that Halili was forcing Bayani to tender his resignation, and so he sent Payos to Cebu City in order to receive his letter of resignation. To prove that Halili wanted really Bayani to resign, he even offered him a severance pay from their retirement fund of the company if he would tender his immediate resignation, even though according to him, the retirement fund is not supposed to be paid to any employee who resigns. It also appears very clear that Bayani was allowed to decide for himself when to resign, after he was allowed to go back to Cebu to confer and consult his family, regarding his intended resignation. It is also evident that Bayani asked if there was an opening in Manila or in Luzon. But already, the mind of Halili was closed, not to give him any other position as he said he does not believe in transferring a problem, from one area to another. In fact, it was already decided that they would close the Cebu Branch and convert it into a depot. From the telegram sent by Dr. Bayani which is Exh. "FFFFF", Bayani said that he was not going to report to Manila anymore, and he considered this as the very act of resignation because he (Halili) expected Bayani to tender his resignation. And so, when Bayani did not tender his resignation, Halili sent Payos to terminate him, when it became clear from the communications made by Payos to Halili that Bayani could not be dissuaded from filing corruption charges against the defendant corporation AHS and exposing it in the newspaper. This was evidently considered by Payos as untenable, and so they have decided to terminate the services of Bayani by compelling him to turn over the office to Mr. Roberto Veloro, who was already scheduled anyway, to replace Bayani according to the admission of Payos, notwithstanding, that the expected letter of resignation of Bayani had not yet been submitted as promised on the 31st of January by Bayani, for he was already relieved effectively on January 26. But he did not wait until January 31, 1978. The court, therefore arrives at the conclusion that

Bayani was dismissed because of his obstinate threats to file a corruption charge against the company and its officers before the Military Tribunal in Cebu which defendant company considered as insubordination and disloyalty.^[8]

However the trial court ruled that while respondent Bayani was dismissed, he was not illegally dismissed for his "obstinate threats to file a corruption charge against the company" as he was a "part of the corruption spun and woven, by the giving of 5% REPS to the doctors listed in his voluminous exhibits." Rather, he was found to have been unlawfully dismissed from the service since his employer did not secure the required prior clearance from the Ministry of Labor before his services were actually terminated-

Obviously, therefore, the state of the law at the time that the plaintiff in this case was dismissed required the employer AHS and defendants herein, to secure a clearance to terminate the plaintiff from the Ministry of Labor whether for cause or not, whenever the employee has been for at least one year with the employer. Plaintiff has worked for 7 1/2 years before he was terminated. Whether there was cause or not therefore the defendants should have obtained a prior clearance from the Ministry of Labor to dismiss the plaintiff. This is the cause of the illegality of the dismissal and not because the plaintiff was uncooperative in the giving of alleged bribe money for, as the court has already declared, it does not believe that the plaintiff is innocent of this very corrupt practice alleged by him, and that according to his own testimony, and that of defendants' witnesses, the "payola" or the giving of cash incentives directly to the doctors had already been stopped in view of the Blair Memorandum.^[9]

In resolving the case at bench we defer to the well entrenched doctrine that factual findings of the trial court shall not be disturbed on appeal unless the trial court has overlooked or ignored some fact or circumstance of sufficient weight or significance which, if considered, would alter the situation. We have carefully assessed the record of this case and find no fact or circumstance which the trial court may have disregarded. Accordingly we affirm its factual findings that Dr. Alfonso R. Bayani did not resign, as what petitioners would want to impress upon this Court, but was actually dismissed from the service for insubordination and disloyalty because of his refusal to continue to give out "commissions," "entertainment expenses," and "representation expenses" to government doctors in exchange for sales contracts, and because of his obstinate threats to file a corruption charge against petitioners.

However we cannot sustain the conclusions of the trial court that respondent Bayani was illegally dismissed on account of petitioner's failure to secure a prior clearance. For, simply, the lack of prior clearance is not a legitimate issue as it was not alleged by respondent Bayani in his complaint; neither was it litigated by the parties. In fact whether respondent Bayani is a managerial employee to which the prior-clearance rule does not apply has yet to be resolved, since from the evidence submitted it was not sufficiently established if respondent Bayani was indeed a managerial employee. Consequently, we now resolve whether respondent Bayani was validly terminated for insubordination and disloyalty.