

EIGHTH DIVISION

[CA-G.R. SP NO. 127747, February 27, 2014]

**REMEDIOS A. HABAL, PETITIONER, VS. NATIONAL LABOR
RELATIONS COMMISSION AND EGM ENTERPRISES AND/OR
EDGARDO GO MUNDO, RESPONDENTS.**

D E C I S I O N

REYES, JR., J.C., J.:

Assailed in the instant petition filed under Rule 65 of the 1997 Rules of Civil Procedure are the following:

- a) The NLRC (Fifth Division) Decision (Rollo, pp. 88-97) dated August 23, 2012 which Denied the appeal of petitioner;
- b) The Resolution (Rollo, pp. 63-65) dated September 28, 2012 which denied petitioner's motion for reconsideration likewise issued by public respondent NLRC (Fifth Division) in NLRC NCR Case No. 10-14999-11; NLRC LAC No. 05001401-12.

The facts:

The case arose from an amended complaint filed by petitioner Remedios Habal against private respondents EGM Enterprises (EGM) and its Owner Edgardo Go Mundo for illegal dismissal, non- payment of overtime pay, non-payment of 13th month pay, illegal deduction, payment of separation pay and attorney's fees.

Petitioner alleged that Edgardo Go Mundo is the Owner of EGM, a business entity engaged in the distribution of diesel and Rebisco biscuits. Sometime in 2006, she was hired by private respondents as a "Cashier" for the diesel business and as a "Checker" for the Rebisco business. She worked from Monday to Saturday (8:00 pm to 8:00 am) with a salary of P7,000.00.

Petitioner claimed that for almost five (5) years, she served the private respondents with honesty, sincerity and loyalty. However, on February 28, 2011, she was suddenly relieved from the job on the basis that she has no more work to do. She was forced to sell food or viands while waiting for the private respondents to give her work. She allegedly waited for six (6) months but private respondents were still unable to find her a position in the company. Hence, she instituted this complaint.

On the other hand, private respondents denied dismissing the petitioner and claimed that they hired petitioner for almost five years and the petitioner had acquired expertise in rendering services for them. Sometime in February 2011, petitioner abandoned her job. Thus, they exerted all efforts to persuade petitioner to return to work but it was the latter who refused to return to her work for the reason that she operated a food store. Petitioner was also frequently seen gambling with some

colleagues.

Private respondents further alleged that after petitioner's food store became bankrupt, she went to Edgardo Go Mundo to ask for capital but the latter refused. It was petitioner's decision to leave the company and run a food stall. There being no actual or constructive dismissal, private respondents are not obliged to pay full backwages and separation pay. However, private respondents acknowledged that petitioner has not received her proportionate 13th month pay as she never returned back to work. Private respondents also showed cash vouchers to prove that petitioner was paid her salaries and wages from 2008, 2009 and 2010.

On March 26, 2012, Labor Arbiter Jonalyn Martinez Gutierrez rendered her decision in favor of the private respondents. The dispositive portion of the Decision states:

"WHEREFORE, premises considered, The complaint for illegal dismissal is hereby dismissed for failure of complainant to substantiate her claim. Respondent EGM enterprise or Edgardo Go Mundo is hereby ordered to pay complainant her proportionate 13th month Pay (12,000 X2/12)

Other claims are hereby dismissed for lack of substantial basis.

SO ORDERED." (Rollo, p. 61)

On April 20, 2012, petitioner filed an appeal. On August 23, 2012, the National Labor Relations Commission (NLRC) issued the appealed decision affirming the Labor Arbiter's decision. The dispositive portion of the NLRC decision states:

"WHEREFORE, premises considered, complainant's Appeal is DENIED for lack of merit. The Decision of Labor Arbiter Jonalyn Martinez Gutierrez dated March 26, 2012 is AFFIRMED.

SO ORDERED." (Rollo, p. 96)

Hence, this petition with the following assigned errors:

I.

WHETHER THE PUBLIC RESPONDENT NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION IN AFFIRMING THE LABOR ARBITER'S DECISION.

II.

WHETHER THE PETITIONER WAS ILLEGALLY DISMISSED FROM EMPLOYMENT.

The petition is without merit.

In a special civil action for certiorari, the petitioner carries the burden of proving not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent for its issuance of the impugned decision. (*Suliguin v. Commission on Elections*, 485 SCRA 219, 233 [2006]) The term grave abuse of discretion, in its juridical sense, connotes capricious, despotic,