FOURTH DIVISION

[CA-G.R. SP NO. 132649, August 15, 2014]

CARLITO GALVEZ, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION – SIXTH DIVISION, PHILIPPINE PLAZA HOLDINGS, INC. AND ALEX GORAN, RESPONDENTS.

DECISION

GONZALES-SISON, M., J.:

Before this Court is a Petition for Certiorari[1] assailing the 16 May 2013 Decision of the National Labor Relations Commission 6th Division in NLRC LAC No. 01-00473-13 (NLRC NCR Case No. 06-09525-13) and the 30 August 2013 Resolution denying the motion for reconsideration thereof.

Briefly, the facts of the case, are as follows:

Private respondent Sofitel Philippine Plaza Holdings is the owner/operator of Sofitel Hotel (private respondent Hotel), a five-star resort hotel located at CCP Complex, Roxas Blvd., Pasay Manila and is represented by private respondent Alex Goran as its general manager.

Petitioner Carlito Galvez (petitioner), meanwhile, is a licensed personal trainer and was hired as such by private respondent Hotel to serve in the hotel's gym or health and fitness center with a monthly salary of P30,000.00 inclusive of tips. Thereafter, petitioner became a member of the worker's union named NUWHRAIN.

Sometime in April 2012, private respondent Hotel accepted several students from different schools for an on-the-job training (OJT), six (6) of which are female students who were assigned to the hotel's fitness center under petitioner's area of responsibility.

Later on, the six (6) female students complained to the hotel management that petitioner exhibited lewd, immoral and indecent conduct against them on several occasions. In response, private respondent Hotel, on 29 May 2012, issued a notice to petitioner to explain why no disciplinary action must be taken against him for conduct unbecoming and at the same time placing petitioner under preventive prevention for fifteen (15) days while an investigations is undergoing.[2]

In his written explanation,[3] petitioner vehemently denied the charges against him and reasoned out that the same must have been prompted by his strictness towards the six (6) female students who displayed boorish behavior at work.

On 8 June 2012, an administrative hearing was then conducted which was attended by petitioner, the six complaining students, as well as representatives from the management of the hotel and the union. On said hearing, the complaining students

reiterated their claim that petitioner sexually harassed them.

Subsequently, on 11 June 2012, private respondent Hotel issued a termination notice against petitioner.[4]

Aggrieved, petitioner filed a complaint for illegal dismissal and non-payment of overtime pay, holiday pay, incentive leave pay, vacations and sick leave pay, ECOLA, 13th month pay, holiday pay, backwages and payment of attorney's fees.[5]

After the submission of the respective position papers from the parties, the Labor Arbiter,[6] to whom the case was assigned ruled in favor of the private respondents. The Labor Arbiter ratiocinated that there was just ground leading to the termination of petitioner from service as the positive and categorical assertions of the female students that petitioner engaged in indecent, lewd or immoral conduct deserve more credence than the general denial interposed by petitioner. As to the procedural compliance, the Labor Arbiter likewise ruled in the affirmative finding that private respondent Hotel furnished petitioner two notices; the first one, apprising him of the particular acts or omissions for which his dismissal is sought in order to afford him an opportunity to be heard and to defend himself with the assistance of counsel if he desires, and the second one, informing petitioner of his dismissal. With respect to the allegation of petitioner that his case should have been first referred to grievance machinery, the Labor Arbiter found that the same was not substantial to declare petitioner's dismissal as illegal considering that there were five (5) union members present during the administrative hearing. Finally, as to the monetary claims of petitioner, the Labor Arbiter struck them down after finding that private respondent Hotel either paid them or that petitioner was not entitled to them. The dispositive portion of the Decision of the Labor Arbiter dated 22 October 2012 reads:

> "WHEREFORE, PREMISES CONSIDERED, the complaint for Illegal Dismissal is DISMISSED for Utter Lack of Legal and Factual Basis.
>
> The rest of the Complainant's monetary demands are also DENIED for Lack of Basis.
>
> SO ORDERED."[7]

On appeal, petitioner maintained that he was illegally dismissed as the first notice sent to him by the private respondent Hotel did not categorically state that he could be dismissed if the charges against him were proven true citing the case of *Maquiling v. Phil. Tuberculosis Society, Inc.*[8] Also, petitioner insisted that the controversy should have been first referred to the grievance machinery as provided for by the Collective Bargaining Agreement (CBA). As to the monetary claims, the petitioner asserted that he was entitled to them as he actually rendered, among others, overtime work and holiday work. Further, petitioner claimed that private respondent Hotel was engaged in the unlawful practice of offsetting overtime work against undertime work.

Nonetheless, public respondent National Labor Relations Commission 6th Division (public respondent) denied the appeal of petitioner. The public respondent explained that there was no need for the first notice to explicitly mention that petitioner could be dismissed as it was enough that petitioner was properly apprised of the charges

so he could properly prepare his defenses citing this time the case of *Esguerra v. Valle Verde Country Club, Inc.*[9] As to the non-referral to the grievance machinery, the public respondent reasoned that it would be just a repetitive exercise if allowed considering the same proceeding conducted during the administrative hearing would be followed. As to overtime pay, the public respondent explained that petitioner was not able to prove that he was required to work or was suffered to work beyond the his regular hours to be entitled to such benefit. There was also no basis for the allegation that private respondent Hotel allowed the offsetting of overtime against undertime. Regarding ECOLA, the public respondent found that petitioner was not entitled to it as the same is only granted to minimum wage earners. As to holiday pay, service incentive leave pay, vacation and sick leave pay and 13th month pay, the public respondent was satisfied that private respondent Hotel was able to prove that the said benefits were appropriately accorded to petitioner. The *fallo* of the Decision of the public respondent reads:

> "WHEREFORE, premises considered, the appeal is DENIED and the October 22, 2012 Decision is hereby AFFIRMED.
>
> SO ORDERED."[10]

When petitioner filed a motion for reconsideration of the above Decision, the same was also flatly denied by the public respondent in

a Resolution dated 30 August 2013, the decretal portion of which states:

> "WHEREFORE, premises considered, the Motion for Reconsideration is hereby denied.
>
> No further motion for reconsideration shall be entertained.
>
> SO ORDERED."[11]

Unperturbed, petitioner now comes to this Court for relief and in support thereof filed this instant Petition for Certiorari with the following issues at hand, thus:

I. RESPONDENT NLRC ACTED WITH GRAVE ABUSE OF DISCRETION WHEN IT DENIED PETITIONER GALVEZ' APPEAL/PRAYER CONSIDERING THAT:

A. PETITIONER GALVEZ WAS ILLEGALLY DISMISSED WHEN RESPONDENT CORPORATION FAILED TO SUFFICIENTLY COMPLY WITH THE TWO-NOTICE-RULE BY ATTACHING THE 29 MAY 2012 MEMO (ANNEX "1") IN THEIR POSITION PAPER, THE RESPONDENTS THEMSELVES EFFECTIVELY ADMITTED THAT THE CONTROLLING JURISPRUDENCE IS THAT STATED IN *Maquiling v. Phil. Tuberculosis Society, Inc.*, RATHER THAN THE ERRONEOUSLY CITED *Esguerra v. Valle Verde Country Club, Inc.*, WHICH TOOK EFFECT ONLY ON 13 JUNE 2012.

B. THE CASE SHOULD HAVE BEEN REFERRED TO THE GRIEVANCE MACHINERY (i.e., *Committee on Decorum for Sexual Harassment*) ESPECIALLY WHEN PETITIONER GALVEZ'S MEMBERSHIP TO A LABOR UNION (i.e., NUWHRAIN) AND THE NON-REFERRAL TO THE GRIEVANCE MACHINERY ARE DISPUTED FACTS.

C. THE CASE SHOULD HAVE BEEN REFERRED TO THE GRIEVANCE MACHINERY AFTER IT HAS BEEN DENIED BY THE LABOR ARBITER OF AFTER THE APPEAL HAS BEEN DENIED BY RESPONDENT NLRC.

D. RESPONDENT NLRC SHOULD HAVE AWARDED PETITIONER GALVEZ' MONETARY CLAIMS, PARTICULARY OVERTIME PAY, INCENTIVE LEAVE PAY, VACATION LEAVE PAY, SICK LEAVE PAY, ECOLA, 13th MONTH PAY, HOLIDAY PAY, BACKWAGES AND ATTORNEY'S FEES.

At the outset it bears to stress that a petition for *certiorari* is the proper remedy when any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction and there is no appeal, nor any plain speedy, and adequate remedy at law. There is "grave abuse of discretion " when respondent acts in a capricious or whimsical manner in the exercise of its judgment as to be equivalent to lack of jurisdiction.[12]

After sifting through the facts of the case and guided by the applicable laws and jurisprudence, this Court finds that the public respondent did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in rendering the assailed Decision and Resolution.

As to the first assigned issue, petitioner once again insists that he was not accorded due process because at the time the first notice was sent by the private respondent Hotel, the rule as enunciated in the case of *Maquiling v. Phil. Tuberculosis Society, Inc.*, was that it must inform outright the employee that an investigation will be conducted on the charges specified in such notice which, if proven, will result in the employee's dismissal. **We do not agree.**

At the time the Labor Arbiter and public respondent promulgated their respective Decisions, the Supreme Court in the case of *Esguerra v. Valle Verde Country Club, Inc.*, has already held that there is no requirement that an intention to terminate one's employment should be included in the first notice. It is enough that employees are properly apprised of the charges brought against them so they can properly prepare their defenses; it is only during the second notice that the intention to terminate one's employment should be explicitly stated.

It bears to state that a judicial interpretation becomes a part of the law as of the date that the law was originally passed, subject only to the qualification that when a doctrine of the Court is overruled and the Court adopts a different view, and more so when there is a reversal of the doctrine, the new doctrine should be applied prospectively and should not apply to parties who relied on the old doctrine and acted in good faith.[13]

The qualification however is not applicable in the case at bar. It is inconceivable that petitioner could have relied in good faith to the case of *Maquiling*, granting that he was aware of that case, because at the time the first notice was sent, he was not yet terminated much less a case has been filed by him for illegal termination. Simply put, the case *Maquiling* was not yet applicable to the situation of petitioner, thus it is impossible that he was already banking on it to fight off his eventual dismissal.