

## **EIGHTEENTH DIVISION**

**[ CA-G.R. SP. NO. 07501, November 27, 2014 ]**

**REGINA P. TORRES, PETITIONER, VS. NATIONAL LABOR  
RELATIONS COMMISSION, SEVENTH (7<sup>TH</sup>) DIVISION AND  
ARMED FORCES AND POLICE MUTUAL BENEFIT ASSOCIATION,  
RESPONDENTS.**

### **D E C I S I O N**

**INGLES, G. T., J.:**

This is a Petition for Certiorari under Rule 65 of the Rules of Court assailing the Decision<sup>[1]</sup> dated August 24, 2012 and the Resolution<sup>[2]</sup> dated November 29, 2012, all issued by the respondent National Labor Relations Commission in NLRC Case No. VAC-06-000397-2012.

#### ***The case for the petitioner***

Petitioner Torres had been an employee of respondent AFPMBAI since March 1, 1988. Prior to this controversy, petitioner was the Regional Supervisor of AFPMBAI Regional Office VI located at Camp Delgado, Iloilo City.

As Regional Supervisor, Torres' job mainly consists of overseeing the smooth flow of operations in the office, submission of reports, investigation of claims and processing of salary loans, among others.

Before her preventive suspension on June 3, 2011, petitioner had been receiving a total amount of P35,000.00 representing her monthly salary, allowances, commissions and other benefits.

The controversy in the instant case started when Rafael V. Dacanay was appointed as Head, ROG sometime in 2010. After such appointment, a hostile environment was created, even up to the extent of uttering defamatory and insensitive remarks to the employees.

On May 31, 2011, a Memorandum was issued by (Ret.) Bgen Ricardo C. Morales to petitioner Torres, requiring her to explain her misconduct of allowing the discounting of AFPMBAI checks inside the Iloilo Regional Office. She was given five (5) calendar days to explain the administrative charge against her, and meanwhile, she was placed under preventive suspension for thirty (30) days pending investigation of the offense.

Pursuant to said Memorandum, which was received by Torres on June 3, 2011, she did not report for work and instead filed her explanation letter dated June 8, 2011, controverting the accusations made against her and questioning her preventive suspension as the requisites for the same were not met by the respondents.

On June 30, 2011, Torres attended the administrative hearing at the AFPMBAI head office in Quezon City.

On July 4, 2011, Torres reported for work as her preventive suspension had already ended. Instead of allowing her back, private respondent, through its President, Ricardo Morales, issued another Memorandum extending the period of Torres' preventive suspension for another thirty (30) calendar days upon receipt of said memorandum.

Torres thereafter filed a case for constructive dismissal against respondents.

On August 3, 2011, when Torres again reported for work following the end of her extended preventive suspension, Torres again received a third Memorandum from the AFPMBAI President ordering her transfer to the Office of the Head, Regional Office Visayas, Regional Operations Group.

At the time of filing of Torres' position paper, the administrative investigation concerning the alleged violation committed by the complainant was still pending resolution by the administrative body concerned.

### ***The case for the respondent AFPMBAI***

AFPMBAI is a non-stock, non-profit corporation. Petitioner Torres is an employee of AFPMBAI, who at the time of the filing of the complaint, occupied the position of Supervisor, Iloilo Regional Office. Petitioner now reports as Supervisor, Office of the Head, Regional Office Visayas – occupying the same rank and enjoying the same salary and other benefits.

This petition stems from a Disposition Form dated April 27, 2011 issued by Commo Rafael V. Dacanay, then Head, Regional Operations Group, to the Human Resources Division (HRD) which reported the incidents of discounting of AFPMBAI checks allegedly committed and tolerated inside the premises of the Iloilo Regional Office. The report/DF is supported by an affidavit executed by one Ellen Importado dated May 19, 2011.

At the time of the alleged discounting of AFPMBAI checks, the Iloilo Regional Office was under the control and supervision of petitioner Torres.

Since the discounting of AFPMBAI checks is among the prohibited acts under the AFPMBAI Employees Code of Conduct, a Notice to Explain was issued to the petitioner on May 31, 2011.

Considering the nature and gravity of the offenses leveled against her, and by virtue of her position as Supervisor of the AFPMBAI Iloilo Regional Office which gives her considerable access to Iloilo personnel, confidential files and documents, AFPMBAI was constrained to put petitioner under preventive suspension for thirty (30) days.

On June 8, 2011, petitioner submitted her Explanation denying all the allegations/offenses against her.

Thereafter, the Investigation Board (IB) commenced their administrative

investigation and issued two Memoranda dated June 24, 2011 and June 27, 2011 requesting petitioner to appear before the IB and present her defenses. Other witnesses and Iloilo Regional staff including the Head, Regional Operations – Visayas, were likewise invited to explain and shed light on the matter.

On June 30, 2011, an Extension of Preventive Suspension effective July 4, 2011 was issued to petitioner since the administrative investigation is still on-going and the IB had yet to submit its findings and recommendations to the President.

Pending investigation, petitioner filed a complaint for illegal/constructive dismissal, illegal suspension, non-payment of wages, harassment, damages and attorney's fees on July 8, 2011 at the NLRC Sub-Regional Arbitration Branch 6, Iloilo City.

Meanwhile, in the exercise of its management prerogative, AFPMBAI issued a Transfer Order dated August 1, 2011 to petitioner, directing her to report from Iloilo Regional Office to the Office of the Head, Regional Office Visayas in Cebu City.

### ***Ruling of the Labor Arbiter***

In a Decision dated February 9, 2012, the Labor Arbiter ruled in petitioner's favor – declared the petitioner was constructively dismissed, directed her reinstatement and the payment by AFPMBAI of backwages and attorney's fees totaling P300,300.00. The Labor Arbiter hinged the finding of constructive dismissal primarily on the preventive suspension imposed upon petitioner, which suspension the Labor Arbiter found to be without basis.

The decretal portion of the Labor Arbiter's decision is hereby quoted, to wit:

“WHEREFORE, premises considered. We render judgment finding complainant to have been constructively dismissed, and direct respondent Armed Forces and Police Mutual Benefit Association, Incorporated liable to the said complainant in the aggregate amount of Php300,300.00, comprising the latter's backwages and attorney's fees. Respondent is also directed to reinstate the complainant back to her former position, without loss of seniority rights and other privileges. Finally, respondent is ordered to deposit the foregoing sum with the Cashier of this Arbitration Branch and to submit written proof of complainant's reinstatement within ten (10) days from receipt of this Decision.

All other claims are dismissed for lack of merit.

SO ORDERED.”

### ***Ruling of the NLRC***

In a Decision dated August 24, 2012, the public respondent NLRC reversed and set aside the disposition of the Labor Arbiter. The NLRC found that there is no constructive dismissal and that petitioner is thus not entitled to her money claims.

The NLRC ruled that the petitioner's filing of an illegal dismissal case was premature as there was still an ongoing administrative investigation. The NLRC likewise opined that the extension of Torres' preventive suspension pending the completion of the administrative investigation was an act which was *"legally within the authority of the respondents to do so"*<sup>[3]</sup>. However, the NLRC refused to rule on the transfer order issued by the private respondent AFPMBAI stating that the same is a non-issue since *"what is being contested was the extended preventive suspension made by the respondents, and not the transfer order given."*<sup>[4]</sup>

The dispositive portion of the assailed NLRC Decision is hereunder quoted, as follows:

"WHEREFORE, premises considered, the Decision of the Labor Arbiter is hereby REVERSED and SET ASIDE, and a new one entered, declaring that complainant was not constructively dismissed, hence, not entitled to her money claims.

Per transfer order issued by respondents, complainant is thus directed to report for work within ten (10) days from receipt of this Decision. Her failure to comply will be construed as lack of interest to resume working for respondents tantamount to resignation from work.

SO ORDERED."

Petitioner sought reconsideration of the abovequoted Decision, but the NLRC denied Torres' motion in its Resolution dated November 29, 2012.

This petition<sup>[5]</sup> was filed before this Court on March 8, 2013. The private respondent AFPMBAI filed its Comment<sup>[6]</sup> on July 10, 2013. In a Resolution dated March 26, 2014, this Court declared the petition submitted for decision<sup>[7]</sup>.

## **ISSUES**

The petitioner raises the following issues – whether or not the respondent NLRC acted with grave abuse of discretion amounting to lack or excess of jurisdiction:

1. In ruling that there was no valid ground for the filing of the complaint;
2. In ruling that the transfer order is a non-issue therefore not ruling on its validity and legality;
3. In ruling that complainant was not constructively dismissed; and
4. In implementing an otherwise invalid and illegal transfer order and ordering the complainant to report for work as per transfer order issued by private respondent.