FOURTH DIVISION

[CA-G.R. SP NO. 122367, November 17, 2014]

DR. DENNIS MAYER A. TAN, PETITIONER, VS. DR. BERNABE NOEL F. SAUZ AND NATIONAL LABOR RELATIONS COMMISSION, RESPONDENTS.

DECISION

SORONGON, J.:

This is a petition for certiorari under Rule 65 assailing the June 27, 2011 Decision[1] and September 28, 2011 Resolution[2] of the National Labor Relations Commission (NLRC), Fifth Division. The assailed decision affirmed the findings of the Labor Arbiter that private respondent Dr. Bernabe Noel F. Sauz (private respondent) was illegally dismissed and ordered Dr. Dennis A. Tan (petitioner) and co-respondent therein to pay him backwages and separation pay. The assailed Resolution denied petitioner's motion for reconsideration.

The antecedent facts:

Private respondent became an Obstetrics-Gynecology (Ob-Gyne) consultant of the Casaul General Hospital (CGH for brevity) in 1991 following his arrival from the United States. After some time, he was promoted in 1997 as Chief of Clinics of the said hospital. On November 12, 2009, petitioner, as Medical Director of CGH, terminated him as Chief of Clinics and revoked his consulting services as Ob-Gyne.

Felt aggrieved, private respondent filed a Complaint[3] for illegal dismissal and non-payment of 13th month pay with prayer for moral, exemplary and nominal damages and attorney's fees before the NLRC, Quezon City against petitioner, CGH and the members of its Ethics Committee, namely: Eva Icalia, Colyn Almeda, Dr. Cecilia Perez and Dalisay Bayobay.

On October 29, 2010 Labor Arbiter Virginia T. Luyas-Azarraga rendered a decision[4] declaring all the respondents in the complaint guilty of illegal dismissal and ordering them to pay herein private respondent his backwages and separation pay. The Labor Arbiter disregarded petitioner's claim that private respondent was merely a consultant of CGH and instead found him to be its regular employee and can only therefore be dismissed based on lawful cause and after observance of due process. It was also held that private respondent's involvement in an intra-corporate controversy involving Dr. Carlos S. Lanting College, Inc. (DCLC), a sister company of CGH, in his capacity as school physician of the former, is not one of the just causes enumerated in Art. 282 of the Labor Code to justify his termination from employment. Thus:

> *"WHEREFORE, premises considered, judgment is rendered declaring the dismissal of complainant from the service illegal. Thus, respondents in solidum, are directed to pay complainant the total sum of P324,908.00 representing his separation pay and backwages.*
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> *SO ORDERED."*

On appeal, the NLRC affirmed *in toto* the judgment of the Labor Arbiter. A reconsideration was sought by the respondents therein but it was similarly denied by the NLRC.

Only petitioner interposed the present recourse based on the following issues: ***1) Whether or not private respondent as Chief of clinics of CGH is a regular employee entitled to security of tenure; (2) Whether or not petitioner is jointly and solidarily liable with CGH for private respondent's backwages and separation pay; and (3) Whether the NLRC has jurisdiction over the case.***

Is petitioner a regular employee?

In *Goma vs. Pamplona Plantation Incorporated*,[5] the Supreme Court explicitly discussed the two kinds of regular employee based on Article 280 of the Labor Code[6], to wit:

> *As can be gleaned from this provision, there are two kinds of regular employees, namely: (1) those who are engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer; and (2) those who have rendered at least one year of service, whether continuous or broken, with respect to the activity in which they are employed. Simply stated, regular employees are classified into: regular employees by nature of work; and regular employees by years of service. The former refers to those employees who perform a particular activity which is necessary or desirable in the usual business or trade of the employer, regardless of their length of service; while the latter refers to those employees who have been performing the job, regardless of the nature thereof, for at least a year. If the employee has been performing the job for at least one year, even if the performance is not continuous or merely intermittent, the law deems the repeated and continuing need for its performance as sufficient evidence of the necessity, if not indispensability, of that activity to the business.*

As Chief of Clinics, private respondent's employment with the hospital was indispensable and necessary to the operation of CGH. His duties as such involved supervision of operation of hospital clinics. Thus, it can be said that his employment was vital to CGH's operation.[7] Private respondent had been continuously performing his job as Chief of Clinics since July 18, 1997 until his termination in November 2009. In fine, private respondent is a salaried employee of CGH whose stint thereat had made the hospital paid for his SSS, Pag-Ibig and Phil Health[8] contributions as shown by the deductions in his payslips.

By virtue of private respondent's regular employment, he is entitled to security of tenure as provided under Section 2, Rule I, Book VI of the Implementing Rules of the Labor Code which provides:

> *Section 2. Security of tenure. – (a) In cases of regular employment, the employer shall not terminate the services of an employee except for just or authorized causes as provided by law, and subject to the requirements of due process.*
>
> *xxx xxx xxx*

Since he was a regular employee his dismissal may only be valid when it is based on just or authorized cause which can only be effected after due notice and hearing.[9] As a complementary principle, the employer has the *onus* of proving with clear, accurate, consistent, and convincing evidence the validity of the dismissal.[10] The failure on the part of the employer to discharge that burden would necessarily result in a finding that the dismissal is unjustified.

In the present case, petitioner failed to discharge this burden. The involvement of private respondent in an intra-corporate dispute in DCLC, the sister company of CGH, is not a just cause contemplated by Article 282,[11] Article 283[12] and Article 284[13] of the Labor Code. Apart from the fact that his dismissal was not for a valid cause, private respondent was also denied the opportunity of a notice and hearing prior to his firing. As revealed by the records, private respondent was merely notified of his termination from CGH via a letter[14] dated November 12, 2009 without citing the reasons therefor and the benefit of hearing.

When the dismissal of an employee is not for just or authorized cause and there was non-compliance with the rudiments of due process, Article 279 of the Labor Code mandates for the payment of backwages and reinstatement or separation pay if reinstatement is no longer viable. Thus, we affirm the ruling of the NLRC that private respondent, who was illegally dismissed, is entitled to payment of backwages and separation pay. We echo the NLRC's rationale that under the doctrine of strained relations, it is deemed best to award private respondent separation pay instead of reinstatement because the latter relief will only exacerbate the animosity that was already present in the relationship of the parties.

As to petitioner's liability, we find him jointly liable with CGH for private respondent's backwages and separation pay. While as a general rule, corporate officers are not personally liable for their official acts, because a corporation, by legal fiction, has a personality separate and distinct from its officers, stockholders and members,[15] there are times however, that corporate officers are equally held liable with the obligations of the corporation. In labor cases, corporate directors and officers may be held solidarily liable with the corporation for the termination of employment if done with malice or in bad faith.[16] Did petitioner act with bad faith in dismissing private respondent? For one, the basis for his dismissal is not among the just and authorized causes enumerated under the Labor Code. Private respondent was dismissed due mainly to his involvement in an intra-corporate controversy with