

## FOURTEENTH DIVISION

[ CA-G.R. SP NO. 83884, August 31, 2006 ]

**MARIE ANNE E. DEL ROSARIO, PETITIONER, VS. NATIONAL  
LABOR RELATIONS COMMISSION AND MAYNILAD WATER  
SERVICES, INC., RESPONDENTS.**

### D E C I S I O N

**REYES, J.:**

This is a Petition for Certiorari under Rule 65 of the 1997 Rules of Court which seeks the reversal and the setting aside of the NLRC Resolutions dated 28 November 2003 and 27 February 2004 which reversed the Labor Arbiter's Decision dated 30 August 2002.

Petitioner's version:

On 01 February 1999, petitioner Marie Anne E. Del Rosario ("**Del Rosario**" *for brevity*) was hired by respondent Maynilad Water Services, Inc. ("**Maynilad**" *for brevity*) as Head of the Corporate Services Division with a rank of Senior Assistant Vice-President. Her Division had six departments under her control and supervision, namely: Facilities Management; Information Technology; Security Safety and Auxilliary Services; Change Management; Legal; and Records and Communication. (**Rollo, p. 36**)

On 15 October 1999, Mr. Rafael Alunan ("**Mr. Alunan**" *for brevity*) formally assumed his post as the President of respondent Maynilad vice Mr. Jose Gabriel D. Olives ("**Mr. Olives**" *for brevity*). And immediately thereafter, Mr. Alunan, removed one by one the departments from petitioner Del Rosario's Division and transferred the same to his alleged favored new appointees. (**Id. at p. 36**)

On 06 November 1999, a Management Committee meeting was held and it was announced thereat that Mr. Ignacio Gimenez ("**Mr. Gimenez**" *for brevity*) would head the Purchasing and Logistics and later she learned from Mr. Gimenez that the Facilities Management Department had been placed under Purchasing and Logistics. In December 1999, at the meeting of the Non-Revenue Water Council, Msrs. Alunan and Carlos Salonga, Vice-President for Human Resources presented a table of organization which showed Facilities Management under Mr. Gimenez and Change Management under Mr. Salonga; thus, petitioner Del Rosario was left with four (4) departments; that Mr. Alunan had never discussed the changes with petitioner Del Rosario. (**Id. at p. 36**)

In March 2000, the Billing Management was transferred to a newly created Customer Service Division headed by Mr. Luis Afable ("**Mr. Afable**" *for brevity*) while petitioner Del Rosario continued to serve the company. In October 2000, she recommended a person to fill up the vacancy for the manager position in the

Information Technology (IT) department but Mr. Alunan did not consider her recommendation. (***Id.***)

On 09 February 2001, Mr. Alunan who was on his way out of his office, invited her (Del Rosario) to walk with him and told her that he would divest her of Information Technology and he would appoint another person to head it. Mr. Alunan directed her to discuss the details of the transfer of IT department with his Chief of Staff - Col. Arnulfo Ramirez. (***Id.***)

On 12 February 2001, Mr. Alunan issued a Memorandum appointing Mr. Romel O. Dimabuyu ("***Mr. Dimabuyu" for brevity***) as Chief Information Officer. When Mr. Dimabuyu went to see her and told her that he was taking the Systems and Methods group of employees to form part of his unit she expressed her opinion that the transfer was not necessary. Due to the impasse, a meeting was later held attended by Col. Ramirez, Mssrs. Dimabuyu and Salonga and petitioner Del Rosario where a resolution was reached that there was a standing issue on the wisdom of transferring the Systems and Methods group to Mr. Dimabuyu. From February to April 2001, her colleagues, staff and contractors asked her if she has resigned because Mr. Dimabuyu allegedly told them so. (***Id. at pp. 36-37***)

On 16 May 2001 she learned that a memorandum was circulated on 11 May 2001 transferring the Systems and Methods to Mr. Dimabuyu as Process Architecture; that said memorandum was also posted on the electronic bulletin board but she was not furnished a copy thereof; that she also learned that the people under the Systems and Methods groups were being asked to resign or transfer to another department or re-apply positions in the new Process Architecture group. (***Id. at p. 37***)

In June 2001, a colleague asked her if she had resigned because allegedly Mr. Afable would assume her position and the position of Mr. Afable was offered to the said colleague. (***Id.***)

On 19 July 2001, Col. Ramirez urged her to apply for the Special Separation Program (SSP), then being implemented by respondent Maynilad but she told Col. Ramirez that she has no intention of leaving the company and SSP was not applicable to her. Col. Ramirez retorted that if she would not resign, she would find herself without any position in the company, reiterating that Mr. Salonga would present her a special separation package. In one meeting, Mr. Dimabuyu announced that she was leaving the company and was just waiting for the computation of her benefits; and later on, one of the Vice-Presidents approached and invited her secretary to transfer to his division. (***Id.***)

On 25 July 2001, Mr. Salonga presented her a calculation of her separation benefits upon the instruction of Col. Ramirez but she clarified that she was not availing of the SSP; that respondent Maynilad allegedly continued to undermine her and made the condition of her employment intolerable wherein she was not invited to attend meetings and even social functions. Mr. Alunan and Col. Ramirez constantly bypassed her and they directly gave orders to her subordinates. (***Id.***)

Sometime in October 2001, Col. Ramirez had meetings with the Security Manager without her knowledge and she later learned from Col. Ramirez that the security manager would now be directly reporting to the Office of the President. (***Id.***)

In December 2001, she learned from a personnel notice form and a memo request for cellular phones which was routed to her that Col. Rene Silva had been appointed as Security Director/AVP way back in July 2001; that all the while she knew that Col. Silva was just a security consultant of the company; that with the foregoing oppressions and vexations against her, she went to see Col. Ramirez for an explanation but found none. (***Id. at p. 37-38***)

On 23 January 2001, a janitress personally delivered to her a letter from Mr. Alunan which turned out to be a termination letter and upon receipt thereof, she surrendered the company vehicle assigned to her on 31 January 2001 and after which she secured her clearance. Hence, a complaint for illegal dismissal with prayer for reinstatement and payment of full backwages, moral and exemplary damages and attorney's fees was filed before the Labor Arbiter. (***Id. at pp. 36-38***)

Respondent's version:

Respondent Maynilad contends that it is a public utility company which has a Concession Agreement with the Metropolitan Waterworks and Sewerage Systems (MWSS) since 01 August 1997 to deliver water to the areas specified in the Agreement. It has about 2,400 employees since it absorbed most of the employees of the MWSS. Through the years of its operations, it was burdened with a large number of employees which the management thought to be inefficient. The company was sustaining losses particularly in the years 2000 and 2001 at around P 2.4 billion and P1.1 billion pesos respectively; that many of the positions were found to be duplicitous, redundant or unnecessary or which could be absorbed by other departments. And in order to make the company cost efficient, the management took steps to streamline its operations and reorganize and there are positions which were abolished. It offered a special separation program for 1.5 months of basic salary for every year of service to the employees. The company offered said program: a) in January 1999, b) September 1999 for employees under the Engineering Department which was abolished in 1999 and again c) in July 1999 which offer was open to all the company employees regardless of rank or position; that aside from the SSP, a reorganization of the Operations Division has been on-going since 1988. (***Id. at p. 38***)

In regard to the abolition of Corporate Services Division, Maynilad contends that the said decision was reached after continuing evaluation of the organization and the needs of the company and after finding that the functions and positions thereof are redundant and may be done by other departments. The abolition thereof would save company money in the long run and it (company) would be more efficient and effective for its (Corporate Services Division) functions being performed by other departments. Maynilad avers that no other persons were appointed to a newly created same or similar position of petitioner Del Rosario; that before the reorganization, Corporate Services Division had the legal unit under it but it was best to transfer said unit to the Administration Group which is Human Resources under the said department. The functions of Corporate Services Division relating to security were absorbed by the Office of the President which has personnel with experience on security services. (***Id. at pp. 38-39***)

On 21 January 2001, Mr. Alunan issued a Memorandum informing all Maynilad employees of the Organizational Adjustment as part of the organizational streamlining efforts "aimed at higher operating efficiency and functional integration".

**(Id. at p. 39)**

As early as May 2001, petitioner Del Rosario already knew of the impending reorganization and in fact she met with her subordinates to inform them of this development. (**Id.**)

On 22 January 2002, Mr. Alunan wrote petitioner Del Rosario informing her in advance of the reorganization and the abolition of the Corporate Services Division and inviting her to discuss with Col. Ramirez and Mr. Salonga her benefits under company's SSP. Consequently, petitioner Del Rosario wrote Mr. Alunan that she was contesting her alleged dismissal and she refused the SSP. Thereafter, a notice of termination dated 01 February 2002 was sent to petitioner Del Rosario by registered mail since she refused to receive the same personally. And on 12 March 2002, a notice of the said termination was sent to the Department of Labor and Employment (DOLE). Respondent Maynilad submits that the position of petitioner Del Rosario was redundant and no longer necessary for the efficient and effective operations of the company; that the company has the management prerogative to reorganize provided it complies with the requirements of the Labor Code; that the abolition of petitioner Del Rosario's position and the Corporate Services Division were done in good faith and fully justified and not discriminatory; and that petitioner Del Rosario is not entitled to separation pay, damages and attorney's fees and other costs. (**Id.**)

On 30 August 2002, the Labor Arbiter rendered a Decision, the dispositive portion of which reads:

"WHEREFORE, premises considered, judgment is hereby rendered declaring the complainant's dismissal to be illegal. The respondent company is hereby ordered to immediately reinstate complainant to her former position or to a substantially equivalent position without loss of all benefits or seniority rights which she previously enjoyed prior to her dismissal and with full backwages from the time of dismissal until actual reinstatement. The respondent is further ordered to pay the complainant P3,984,426.60 by way of moral damages and P1,328,142.00 as exemplary damages plus attorney's fees equivalent to ten percent (10%) of the total monetary award.

SO ORDERED". (**Id. at p. 245**)

Disgruntled, respondent Maynilad filed an appeal before public respondent NLRC and on 28 November 2003, it issued a Resolution, the decretal text of which reads:

"WHEREFORE, premises considered, the appeal is GRANTED and the Decision dated 30 August 2002 is SET ASIDE. A new Decision is rendered finding complainant-appellee's dismissal ineffectual hence; respondent-appellant company is hereby ordered to pay separation pay to complainant-appellee in accordance with the Special Separation Program it offered to other employees and to pay full backwages from the time compensation was withheld from complainant-appellee until the finality of this Resolution.

SO ORDERED". (**Id. at p. 49**)