

FIFTEENTH DIVISION

[CA-G.R. SP NO. 89250, August 18, 2006]

**EDGARDO D. ALVIAR, ELMER P. SALVADOR, AMANTE A. PRING
AND ZINNIA S. LESTANO, PETITIONERS, VS. NATIONAL LABOR
RELATIONS COMMISSION AND PHIL. POSTAL SAVINGS BANK,
INC., RESPONDENTS.**

D E C I S I O N

REYES, JR., J., J.:

This is a Petition for Certiorari from the Decision of the National Labor Relations Commission dated September 30, 2004 (Rollo, pp. 18-23) which reversed the Decision of the Labor Arbiter and its previous Decision dated April 19, 2004, to wit:

"WHEREFORE, premises considered, this Commission finds the Motion for Reconsideration of respondents-appellants meritorious. The decision of the labor arbiter a quo and this Commission dated April 19, 2004, is hereby **REVERSED** and **SET ASIDE**, and a new one entered, finding retrenchment of complainants valid." (Rollo, p. 22).

The case arose out of two separate complaints filed by petitioners. Petitioners Edgardo D. Alviar (Alviar, for brevity) and Elmer P. Salvador (Salvador, for brevity) filed a complaint (docketed as NLRC NCR Case No. 30-10-00294-99) claiming that Alviar was hired as a Credit Investigation Specialist by respondent Phil. Postal Savings Bank, Inc. (PPSBI) while Salvador was hired as Credit Investigator.

Petitioners Amante A. Pring (Pring, for brevity) and Zinnia S. Lestano (Lestano, for brevity) alleged in their complaint (docketed as NLRC Case No. 30-10-00591-99) that Pring occupied the position of Manager at the time of his termination while Lestano was an Account Officer II at the time of the termination.

Both of the above-mentioned complaints uniformly alleged that on April 27, 1999 the Board of PPSBI passed Board Resolution No. 99-14 approving the bank reorganization. It was also alleged that on October 4, 1999 petitioners were each given a notice of termination effective November 4, 1999. They also alleged that prior to their termination, Alviar and Salvador, pursuant to the expanded guidelines issued, took and passed their examination for the new positions they were applying for.

As a result of their separation from service, petitioners filed the above-mentioned complaints assailing the validity of the reorganization of the bank. They claimed that there was no valid retrenchment because the bank was not suffering from any financial losses.

PPSBI, on its part, asserted that the reorganization was valid because it was done in order to avoid further losses. It claimed that under the reorganization, departments

with related or overlapping functions were merged and as a result of which 36 positions were abolished. It was claimed that petitioners' positions were among those abolished. PPSBI maintained that retrenched employees were given the opportunity to apply for positions under the new company set-up. PPSBI further asserted that Pring and Lestano did not even apply for any new position (See: Rollo, p. 412).

After submission of the parties' respective pleadings, the Labor Arbiter on June 30, 2000 rendered a Decision (Rollo, pp. 56-73) in favor of petitioners. The Labor Arbiter found that PPSBI failed to show evidence that it sustained substantial losses to justify the retrenchment. It was also held that the financial statement for one year submitted by PPSBI was not sufficient to justify the retrenchment. It was further held that PPSBI failed to show that it adopted a reasonable criteria to guide it in the retrenchment. The Labor Arbiter also agreed with petitioners that what happened was merely a change in the nomenclature of positions. The dispositive portion of the Decision reads:

"WHEREFORE, premises considered, judgment is hereby rendered declaring Philippine Postal Savings Bank Inc. guilty of illegal dismissal and it is hereby ordered to reinstate complainants to their former positions without loss of seniority rights and to pay them full backwages reckoned from the time they were dismissed up to their actual or payroll reinstatement which as of this date is in the total amount of P528,100.57. Additionally, respondent is ordered to pay complainants attorney's fees in an amount equivalent to 10% of whatever they may receive by virtue of this decision.

SO ORDERED. (Rollo, pp. 72-73)

On appeal, the NLRC rendered a Decision on April 19, 2004 (Rollo, pp. 147-156) affirming the Decision of the Labor Arbiter holding that:

"After a careful examination of the financial statements and the reports of the PDIC on appellants financial assets and liabilities we, however, are not convinced that retrenchment is necessary and likely to prevent losses on appellants business operation. The reports of the PDIC on the examinations conducted on May 24, 1996, August 11, 1998 and September 16, 1998 glaringly show that appellants operation losses were primarily due to inability of appellant to harness its resources towards a more profitable ventures; appellants engagement in hazardous lending practices, high compensation and fringe benefits of its employees and officers, an increase in the consumption loan transaction; appellants failed to update its loan ledgers, thus, the past due accounts were still on current status. Under such given circumstances we believe that retrenchment is not a solution to the worsening liquidity of appellants but a sound business management of appellants' officials, i.e. to adopt measures to put in proper order the negative findings pf the PDIC." (Rollo, pp. 155-156)

PPSBI then filed a Motion for Reconsideration (Rollo, pp. 157-165) asserting that in the case of *Tanjuan vs. PPSB, Inc.*, the NLRC (3rd Division) held that the PPSBI retrenchment was valid. PPSB further asserted that said NLRC decision had been affirmed by the Court of Appeals and the Supreme Court (See: Rollo, pp. 159-160).

On September 30, 2004, the NLRC rendered its questioned Decision which reversed its prior decision (dated April 19, 2004) and ruled that the retrenchment was valid. Relevant portion of the September 30, 2004 Decision reads:

"Respondents-appellants then filed a Motion for Reconsideration and Manifestation, this time calling the attention of this Commission to a similar case rendered by another division (3rd Division) of this Commission, entitled '**Prudencio L. Tanjuan vs. Philippine Postal Savings Bank, Inc., et., al.,**' NLRC NCR Case No. 30-11-00567-99 (C.A. No. 026604-00). In the said case, the decision of the labor arbiter a quo which incidentally is the same labor arbiter who handled and resolved this instant case, was reversed by the Third Division of this Commission, stating that the retrenchment was valid, hence, there was no illegal dismissal. In the aforesaid case, the Third Division, gave due course to the presentation of the pieces of evidence of respondents to prove their alleged losses and the need for reorganization, first time on appeal. The said decision of the Third Division, reached the Court of Appeals and the Supreme Court which affirmed the findings and decision of the Third Division of this Commission.

Based on the foregoing circumstances, this Commission deemed it wise to study the circumstances of both cases and concludes now that both cases were similar and arose out exactly from the retrenchment undertaken by respondent-appellant Philippine Postal Savings Bank, Inc., et. al., The same pieces of evidence were also presented to this Commission to prove respondents-appellants losses and the need for them to reorganize and effect retrenchment. As earlier emphasized in its decision dated April 19, 2004, this Commission did not consider the pieces of evidence submitted for the first time on appeal by respondents-appellants for the simple reason that they failed to justify its reason for the delay in its submission.

Perusal however of the records, will show that on page 17 rollo (respondent's position paper), respondents stated, and to quote: 'The first requisite regarding losses has long been a 'favorite' item in the various exceptions and findings of the BSP, PDIC and COA in their examination reports.' **For reasons of confidentiality and due to the nature of respondent's business, respondents reserves the right to hold on in the meantime and present to the Honorable Commission later relevant documents on the matter if and when respondent is required to do so** (underscoring for emphasis). Having failed to take note of this reservation of respondents-appellants when it disregarded the submission of the relevant documents for the first time on appeal, it is but proper to rectify such error for which reason the motion for reconsideration as allowed in our NLRC Rules of Procedure is hereby granted." (Rollo, pp. 20-22)

Petitioners' Motion for Reconsideration dated November 2, 2004 (Rollo, pp. 198-203) was denied and they are now before this Court on a petition for certiorari alleging that: