SUPREME COURT
THIRD DIVISION

ASIA WORLD PUBLISHING HOUSE, INC.,
***Petitioner*,**

-versus-

G.R. No. L-56398
July 23, 1987

HON. BLAS OPLE, MINISTER OF LABOR & EMPLOYMENT, and CONCEPCION M. JOAQUIN,
***Respondents*.**
x----------x

D E C I S I O N

GUTIERREZ, JR., *J.*:

This is a petition for review which seeks the reversal of the respondent Minister of Labor and Employment's order dated February 24, 1981 denying the petitioner's motion for reconsideration and affirming the order of the Labor Regional Director, National

Capital Region which ordered the reinstatement of the private respondent to her former position with full backwages from May 16, 1978 up to the actual reinstatement without loss of seniority rights.

On March 17, 1975, the private respondent was hired by Asiaworld Publishing House, Inc., as its advertising sales director. As such, she managed and supervised the petitioner's advertising sales force, prepared advertising sales campaign programs, and solicited advertisements from local and foreign advertisers.

To enable the private respondent to entertain advertisers in the course of her duties, she was allowed to establish a credit line with Shiruko Restaurant with the petitioner agreeing to pay whatever amount was incurred by her for representation purposes. Sometimes, the private respondent had to entertain clients elsewhere, spending her own money and petitioner would later reimburse her for such expenses.

Due to the respondent's able management and hard work, Asiaworld's income from sales advertising increased tremendously. Sometime in 1976, Vicente Pesayco, Jr., the corporation's president and private respondent's immediate superior, requested Ms. Joaquin not to go on vacation leave because she was needed to help direct the advertising sales campaign of Asia Forum, a magazine the petitioner had newly acquired. Respondent Joaquin acceded to such request. She did not avail of her vacation leave benefits for three times at the request of Pesayco. Meanwhile, in October of 1976, the respondent was eventually designated to take charge of the advertising sales work for Asia Forum.

In 1977, the private respondent was appointed Vice President for marketing in a concurrent capacity and her monthly compensation was increased to P2,300.00.

On May 3, 1978, the petitioner advised the private respondent in writing that her services would be terminated effective May 16, 1978 because of continued losses and offered to pay her one (1) month's salary for her more than three (3) years of service.

The private respondent filed a complaint with the Office of the Regional Director, National Capital Region (NCR), Minister of Labor and Employment for illegal dismissal and for recovery of unpaid earned and unused vacation leave credits and reimbursement of representation expenses which she advanced for the petitioner.

On May 31, 1978, the case was set for hearing on June 6, 1978 before NCR Hearing Officer Demetrio Marero. The petitioner appeared on that date and requested that the hearing be postponed to June 14, 1978. The private respondent acceded to the petitioner's request.

The June 14, 1978 hearing, by agreement of both parties, was also reset to June 23, 1978., On this latter date, both parties agreed to simultaneously submit their respective position papers not later than July 19, 1978.

On July 19, 1978, Joaquin requested that she be granted seven working days to submit her position paper. Subsequently, the parties submitted their respective position papers with supporting evidence.

On February 28, 1979, the Regional Director promulgated an order, the dispositive portion of which reads:

> "WHEREFORE, premises considered, respondent is hereby ordered to reinstate complainant to her former position with full backwages from May 16, 1978 up to actual reinstatement without loss of seniority rights and other benefits. Further, respondent is hereby ordered to pay complainant the cash equivalent of her vacation leave totalling forty-five days and reimburse her representation expenses amounting to P1,517.00." (p. 10, Rollo).

On March 19, 1979, the petitioner filed a motion for reconsideration which was treated as an appeal and which, upon review, was denied for lack of merit by the respondent Minister. Hence, petitioner filed this petition raising the following assignments of errors:

I

THE HONORABLE MINISTER OF LABOR COMMITTED GRAVE ABUSE OF DISCRETION IN AFFIRMING THE ORDER OF THE REGIONAL DIRECTOR WITHOUT ASCERTAINING IF PROCEDURAL DUE PROCESS WAS OBSERVED OR NOT.

II

THE HONORABLE MINISTER OF LABOR ERRED IN AFFIRMING THE ORDER OF THE REGIONAL DIRECTOR REINSTATING THE RESPONDENT BECAUSE OF SERIOUS ERRORS IN THE FINDINGS OF FACTS WHICH IF NOT CORRECTED WOULD CAUSE GRAVE OR IRREPARABLE DAMAGE OR INJURY TO THE PETITIONER. (pp. 2-3, Rollo).

In its first assignment of error, Asiaworld maintains that although it submitted its position paper together with the private respondent, there was no hearing or trial on the merits conducted after the submission of their respective position papers. Furthermore, the private respondent did not even furnish petitioner with a copy of her position paper. There was also no manifestation made by the petitioner to the effect that it was submitting the case before the Regional Director for decision. It, therefore, alleges a denial of procedural due process.

We disagree.

Article 221 of the Labor Code provides:

> "Technical rules not binding. — In any proceeding before the Commission or any of the Labor Arbiters, the rules of evidence prevailing in courts of law or equity shall not be controlling and it is the spirit and intention of this Code that the Commission and its members and the Labor Arbiters shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure, all in the interest of due process. In any proceeding before the Commission or any Labor Arbiter, the parties may be represented by legal counsel but it shall be the duty of the

> Chairman, any Commissioner or any Labor Arbiter to exercise complete control of the proceedings at all stages."

Under the afore-quoted provision, the respondent Minister or the Regional Director can decide the case on the basis of the position papers and other documents submitted by the contending parties without resorting to the technical rules of evidence observed in the courts of justice. Such a procedure substantially complies with the requirements of due process. (See Manila Doctors Hospital vs. National Labor Relations Commission, 135 SCRA 262, 266-267). Moreover, it is a settled rule that what the law prohibits is not the absence of previous notice but the absolute absence thereof and the lack of opportunity to be heard. (Tajonera vs. Lamaroza, 110 SCRA 438, 448)

In the case at bar, it is not disputed that when the case was set for hearing, it was the petitioner who first requested for postponement. Subsequently, both parties asked the hearing officer for a re-setting of the hearing until they both agreed to submit their position papers. When the order was handed down by the Regional Director, the petitioner filed a motion for reconsideration which was treated as an appeal and which was decided on the merits by the respondent Minister. The petitioner, therefore, was given sufficient opportunity to be heard. Assuming that there was any procedural defect in arriving at the Regional Director's order, the same was cured when the petitioner filed a motion for reconsideration and the motion was considered. As we have ruled in Remerco Garments Manufacturing vs. Minister of Labor and Employment (135 SCRA 167, 179):

> "As regards the due process argument, petitioner contend (sic) that it was denied the opportunity to cross-examine private respondents and rebut their documentary evidence allegedly submitted only on appeal. At the inception of the case however, both parties, after failing to arrive at an amicable settlement, agreed to submit their case for resolution on the basis of their respective position papers. While private respondents insisted on its (sic) claim that they have submitted their documentary evidence together with their position papers, petitioner, on the other hand, claim (sic) otherwise. Surprisingly though, it is only after the rendition of an adverse decision that petitioner now

> raised (sic) this matter of non-submission of documentary evidence. And petitioner did not insist on this alleged non-submission of evidence apparently because the Acting Director of the National Capital Region decided the case in its favor.
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> "Even on the assumption that no documentary evidence was ever submitted by private respondents, still, on appeal, the entire record of the case was reviewed by the respondent Minister of Labor and in fact, decided the case on the merits. Besides, a motion for reconsideration filed by petitioner invoking due process cured the defect based on the alleged lack of procedural due process. (De Leon vs. Comelec, 129 SCRA 117 [1984]; National Multi-Service Labor Union vs. Agcaoili, 64 SCRA 274; Maglasang vs. Ople, 63 SCRA 508)."

We, therefore, cannot sustain the petitioner's contention that there was no observance of procedural due process in arriving at the questioned order.

As regards the second assigned error, the petitioner maintains that the respondent Minister should not have affirmed the findings of facts of the Regional Director because the same are erroneous and not supported by evidence.

Petitioner, in raising this second issue, is, in effect, asking this Court to review the respondent Minister's findings of facts.

The decisions or orders of the Minister of Labor are reviewable by this Court through a petition for *certiorari* and not by way of appeal. This means that the findings of facts of the respondent Minister are generally accorded great weight unless there was grave abuse of discretion or lack of jurisdiction in arriving at such findings.

Even if we treat the instant petition captioned as "Petition for Review" as a petition for *certiorari*, there is still no reason why we should arrive at different factual findings. In the first place, the only justification presented by the petitioner for dismissing the private respondent was its financial statement showing a loss of P196,087.83 for the year 1977. Asiaworld failed to show that fair and reasonable

standards were used in ascertaining who would be dismissed and who would be retained among its employees.

As the Solicitor General correctly stated, there must be fair and reasonable criteria to be used in selecting employees to be dismissed, such as: (a) less preferred status (e.g. temporary employee); (b) efficiency rating, and (c) seniority. (Fernandez, P.V., The Law of Employee Dismissal, pp. 130-131, 1976 Ed.) In the case at bar, the petitioner never denied the fact that the private respondent was performing her job satisfactorily so much so that its income from sales advertising increased.

Secondly, both the Regional Director and the respondent Minister found that after the private respondent's termination, the petitioner hired a new employee to take the former's position. Although the petitioner belies the fact that the person who assumed the private respondent's job was a new employee, it did not present any employment contract or other proof to support its allegation. It merely presented BIR forms of the new employee showing reported income from commissions given by the petitioner and its record of payment to the employee of sales commission, gasoline allowances, and incentive bonus purportedly received for the years 1977 and 1978.

Thirdly, the petitioner never controverted the private respondent's allegation that in all instances when she did not go on vacation leave it was upon the request of the president of Asiaworld. Clearly, she was prevented from taking the vacation leaves to which she was entitled.

To argue now that the private respondent should have secured the authority of her superior and the approval of management to liquidate and convert into cash her unused vacation leaves for 1975, 1976, and 1977, would be grossly unfair. The respondent Minister correctly affirmed the decision of the Regional Director in awarding the respondent the cash equivalent of her unused vacation leaves.

We do not see any justifiable reason from the foregoing why the findings of facts of the respondent Minister should be set aside. Such findings are not tainted with grave abuse of discretion. As we have ruled in National Federation of Labor Union (NAFLU) vs. Ople (143 SCRA 124, 128-129):

> "We see no reason to disturb the findings of fact of the public respondent, supported as they are by substantial evidence in the light of the well established principle that findings of administrative agencies which have acquired expertise because their jurisdiction is confined to specific matters are generally accorded not only respect but at times even finality, and that judicial review by this Court on labor cases does not go so far as to evaluate the sufficiency of the evidence upon which the Deputy Minister and the Regional Director based their determinations but are limited to issues of jurisdiction or grave abuse of discretion (Special Events and Central Shipping Office Workers Union vs. San Miguel Corporations, 122 SCRA 557)."

However, as regards the order of reinstatement, we have to take into account that antagonism between the petitioner and the private respondent has been brought about by the filing of this case plus the fact that a new employee had been hired to take over the place of the respondent. There is no showing that an equivalent position is available to Ms. Joaquin. All of these militate against the propriety of reinstating the respondent. As we have ruled in Divine Word High School vs. National Labor Relations Commission (143 SCRA 346, 350):

> "Nonetheless We hesitate ordering the reinstatement of private respondent Luz Ballano Catenza as a high school teacher in the petitioner high school, which is a Catholic institution, serving the educational and moral needs of its Catholic studentry. While herself innocent, the continued presence of Mrs. Catenza as a teacher in the school may well be met with antipathy and antagonism by some sectors in the school community."

If the respondent had been a laborer, clerk, or other rank and file employee, there would be no problem in ordering her reinstatement with facility. But she was Vice President for Marketing of Asiaworld. An officer in such a key position can work effectively only if she enjoys the full trust and confidence of top management.

Likewise, in Balaquezon EWTU vs. Zamora (97 SCRA 5, 8), we ruled:

> "It should be underscored that the backwages are being awarded on the basis of equity or in the nature of a severance pay. This means that a monetary award is to be paid to the striking employees as an alternative to reinstatement which can no longer be effected in view of the long passage of time or because of the 'realities of the situation.'"

We, therefore, affirm the award of backwages with modifications as an alternative to reinstatement. We limit the award to a maximum of three (3) years. In Talisay Employees' & Laborers Association (TELA) vs. Court of Industrial Relations (143 SCRA 213, 224-225), we ruled:

x x x

> "Secondly, while the Supreme Court ruled in Manila Hotel Corporation vs. National Labor Relations Commission, et al. (G.R. No. 53453, Jan. 22, 1986) that where there was no valid termination, private respondent is entitled under Article 280 of the Labor Code to reinstatement without loss of seniority rights and with backwages from the time his compensation was withheld up to the time of his reinstatement, still in a great number of illegal dismissal cases, this Court in the interest of justice and expediency adopted the policy of granting backwages for a maximum period of three (3) years without qualification and deduction."

Since the private respondent has worked for the petitioner since 1975, twelve months salaries as severance pay appear reasonable.

WHEREFORE, the factual findings of the public respondent are **AFFIRMED**. The order appealed from is **MODIFIED**. The petitioner is hereby ordered, in lieu of reinstatement, to pay the private respondent the equivalent of twelve (12) months salaries as severance pay. The petitioner is also ordered to pay the private respondent three (3) years backwages. Both the severance pay and the backwages shall be computed on the basis of the private respondent's pay as of May 16, 1978, without qualification and deduction.

In all other respects, the appealed order is **AFFIRMED** and the Temporary Restraining Order issued on March 18, 1981 is hereby **LIFTED** and **SET ASIDE.**

SO ORDERED.

Fernan, Bidin and Cortes, *JJ.*, concur.
Feliciano, *J.*, took no part.
