

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
THIRD DIVISION**

BIENVENIDO R. BATONGBACAL,
Petitioner,

-versus-

**G.R. No. 72977
December 21, 1988**

**ASSOCIATED BANK and NATIONAL
LABOR RELATIONS COMMISSION,**
Respondents.

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DECISION

FERNAN, J.:

The issue in this Petition for Certiorari is whether or not an employer bank may legally dismiss its assistant vice-president for refusal to tender his courtesy resignation which the bank required in line with its reorganization plan.

Petitioner Bienvenido R. Batongbacal, a lawyer who was admitted to the Bar in 1952, began his banking career in 1961 as manager of the Second Rizal Development Bank. On November 2, 1966, he transferred to the Citizens Bank and Trust Company. He was appointed assistant vice-president therein "to assist the Senior Vice-President as directly in charge of the Loans and Discounts Department" and, concurrently, as acting manager of the personnel

and administration department in “lieu of the Vice-President and Treasurer.”^[1] Said appointment was without a definite period.

On October 14, 1975, Citizens Bank and Trust Company merged with the Associated Banking Corporation. The merged corporate entity later became known as Associated Bank. In the new bank, petitioner resumed his position as assistant vice-president.

More than six years later or in March, 1982, petitioner learned that the salary and allowances he was receiving were very much below the standard remuneration of the bank’s other assistant vice presidents as in fact they were even less than those paid for employees holding positions lower than the rank of assistant vice-president.

Consequently, he wrote the bank’s board of directors requesting that he be paid “the accrued salary and allowance arbitrarily withheld from him.”^[2] He later wrote the board of directors a follow-up letter on November 12, 1982.^[3] Since his letters were unanswered, on February 4, 1983, petitioner wrote the newly appointed vice-president for administration about the glaring inequality in the salaries and allowances of the bank’s assistant vice-presidents. Thus, he stated therein that while he was the most senior of them all, he was receiving an annual salary of P27,000 while the four other assistant vice-presidents were each receiving P42,000, P54,000, P60,000 and P72,000 annual salaries.^[4] Apparently, said letter fell on deaf ears.

Meanwhile, on March 15, 1983, the bank’s board of directors met and approved the following resolution:

“BE IT RESOLVED that the new management be given the necessary flexibility in streamlining the operations of the Bank and for the purpose it is hereby resolved that the Bank officers at the Head Office and the Branches with corporate rank of Manager and higher be required, as they hereby are required to submit IMMEDIATELY to the President their courtesy resignations.

“IT IS FURTHER RESOLVED to authorize the President as he is hereby authorized to implement this resolution.”^[5]

Petitioner did not submit his courtesy resignation. On May 3, 1983, he received the following letter:

“26 April 1983

Atty. Bienvenido Batongbacal
Acquired Assets Unit
Administrative Division
Present

Dear Atty. Batongbacal:

We have been given the task of advising you that the Board of Directors of our Bank has accepted your resignation effective immediately.

Therefore, please arrange with the Personnel Administration Unit for the settlement of any accountabilities and turn over all pending official matters to your respective division/department head as soon as possible.

We wish you all the best in your future endeavors.

Very truly yours,

For the Steering Committee:

(Sgd.)
RAMON F. CHANYUNGCO
Exec. Vice-President”^[6]

Shocked by this turn of events, petitioner on the same day wrote the bank’s executive vice-president requesting a reconsideration of the board of director’s decision accepting his resignation. He stated therein that he thought the call for the submission of courtesy resignations was only for erring “loathsome” officers and not those like him who had served the bank honestly and sincerely for sixteen years; that although he was a stockholder with the smallest investment in the bank, he had called the attention of higher officers on matters that are of vital importance to the bank’s financial

stability; and that should there be evidence of any act of dishonesty on his part, the bank should so inform him so that he could accordingly submit his voluntary resignation.^[7]

Starting May 4, 1983, petitioner was not paid his usual salary and allowance. Nevertheless, he made repeated requests for the reconsideration of the bank's decision to terminate his employment. His requests were ignored. Hence, he filed a complaint for illegal dismissal and damages in the arbitration branch of the National Labor Relations Commission (NLRC).

On January 31, 1984, the labor arbiter upheld the petitioner's arguments and claims in an Order the dispositive portion of which states:

“IN VIEW OF THE FOREGOING, judgment is rendered in the following tenor:

- “1. Respondent is hereby ordered to reinstate complainant to his former post with full backwages and other fringe benefits until actually reinstated;
- “2. Respondent should make good the salary differential of complainant computed from his last rate up to P42,000.00 per annum, the next rate of Asst. Vice President effective on the date said P42,000.00 was given to the next higher salary rate Asst. Vice President up to the present;
- “3. Respondent is further ordered to pay the complainant the amount of P500,000.00 moral damages and P200,000.00 exemplary damages;
- “4. Respondent is finally ordered to post this decision in at least two conspicuous (sic) places in the bank for all concerned to see, read and be informed for at least two months from receipt.

“SO ORDERED.”^[8]

The bank filed a motion for reconsideration of said order. Its motion having been denied, the bank appealed to the National Labor Relations Commission (NLRC) which, in its decision of July 12, 1985, ruled in favor of the legality of petitioner's dismissal from employment. The dispositive portion of said Decision states:

“WHEREFORE, premises considered, the appealed Decision is as it is hereby SET ASIDE and another one issued considering the dismissal valid but ordering respondent-appellant to pay complaint-appellee his accumulative leave credits and separation pay equivalent to one (1) month for every year of service, a period of at least six (6) months considered as one (1) year, as well as other benefits he is entitled to under existing policies of respondent-appellant granted to any of its retiring personnel.

“The Corporate Auditing Examiner of this Commission is directed to proceed to the premises of respondent-appellant to compute the amount of accumulative leave credits and termination pay and such other benefits he is entitled as above-mentioned.

“SO ORDERED.”^[9]

Petitioner's motion for reconsideration of said decision was denied. Hence, the instant petition for certiorari.

We are aware of the circumstances surrounding the dismissal of the petitioner. Private respondent was, since 1981, in the throes of financial reverses due to the Dewey Dee scandal. It was through the infusion of capital supplied by the Development Bank of the Philippines and the emergency loan provided by the Central Bank that private respondent was able to redeem itself. Accordingly, to “streamline” its operation, the new management of the bank called upon all its employees to submit their courtesy resignations and considered all executive positions vacant. Private respondent claims that those who submitted letters of resignation were allowed to re-apply for positions where their qualifications were best suited while those who did not submit such letters were terminated from

employment for their alleged deliberate refusal to cooperate in its rehabilitation.^[10]

While it may be said that the private respondent's call for courtesy resignations was prompted by its determination to survive, we cannot lend legality to the manner by which it pursued its goal. By directing its employees to submit letters of courtesy resignation, the bank in effect forced upon its employees an act which they themselves should voluntarily do. It should be emphasized that resignation per se means voluntary relinquishment of a position or office.^[11] Adding the word "courtesy" did not change the essence of resignation. That courtesy resignations were utilized in government reorganization did not give private respondent the right to use it as well in its own reorganization and rehabilitation plan. There is no guarantee that all employers will not use it to rid themselves arbitrarily of employees they do not like, in the guise of "streamlining" its organization. On the other hand, employees would be unduly exposed to outright termination of employment which is anathema to the constitutional mandate of security of tenure.

Petitioner's dismissal was effected through a letter "accepting" his resignation. Private respondent rationalizes that this was done, even if petitioner did not actually submit such letter, so as not to jeopardize his chances of future employment.^[12] But it is also clear from its pleadings that private respondent terminated petitioner's employment for insubordination in view of his failure to comply with the order to submit his letter of courtesy resignation. We hold, however, that insubordination may not be imputed to one who refused to follow an unlawful order.

Private respondent asserts that petitioner's refusal to submit his letter of courtesy resignation was "sufficient reason to distrust him."^[13] Loss of confidence as a ground for dismissal must be supported by satisfactory evidence. Even with respect to managerial employees who, under Policy Instructions No. 8, may be dismissed for lack of confidence, loss of trust must be substantiated and clearly proven.^[14]

The record fails to show any valid reasons for terminating the employment of petitioner. There are no proofs of malfeasance or misfeasance committed by petitioner which jeopardized private

respondent's interest. The latter's allegations that petitioner was "purged" because he sabotaged the bank^[15] and that he "contributed, directly or indirectly" to its downfall^[16] are mere subjective conclusions unsubstantiated by hard facts. To clothe with legality petitioner's dismissal for his failure to submit his letter of courtesy resignation is to add a ground for termination of employment to the provisions of the Labor Code.

However, we agree with the Solicitor General and the NLRC that petitioner is not entitled to an award of the difference between his actual salary and that received by the assistant vice-president who had been given the salary next higher to his. There is a semblance of discrimination in this aspect of the bank's organizational set-up but we are not prepared to preempt the employer's prerogative to grant salary increases to its employees. In this connection, we may point out that private respondent's claim that it needed to trim down its employees as a self-preservation measure is belied by the amount of salaries it was giving its other assistant vice-presidents.

Notwithstanding the foregoing discussion, the Court cannot rule outright in favor of the petitioner. There are factual issues which must be dealt with below.

A pivotal point to consider is whether petitioner is a managerial or a rank-and-file employee. Petitioner claims that in spite of his pompous title of assistant vice-president, he is actually a rank-and-file employee. On the other hand, private respondent asserts that petitioner is a managerial employee because he is "not only a department/unit head but an assistant vice-president" who is ranked higher than a manager "by any standard" and therefore, to consider him a rank-and-file employee is "to stretch one's imagination too far."^[17]

Article 212(k) of the Labor Code defines a managerial employee as "one who is vested with powers or prerogatives to lay down and execute management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees, or to effectively recommend such managerial actions." The same article provides that all employees not falling within said definition are considered rank-and-file employees. Under Policy Instructions No. 8 which was issued

by the then Secretary of Labor and which took effect on April 23, 1976, managerial employees are those (1) who have the power to lay down management policies; (2) who have the power to hire, fire, demote, promote, etc.; and (3) who have the power to recommend effectively (1) and (2).

With these definitions, a determination of whether petitioner is a managerial employee would have been easy had the matter been properly threshed out below. The onus of proof on the matter fell on the private respondent but, as correctly observed by the Solicitor General, it did not present substantial proof that petitioner is vested with any of the powers and prerogatives of a managerial employee.^[18] It merely relied upon provisions of the bank's amended by-laws specifically Article V, Section 2 and Article VI, Section 5 thereof.^[19]

The only other evidence on record from which the functions of an assistant vice-president may be gleaned is the copy of petitioner's original appointment as such. It is stated therein that petitioner would "assist" the vice-president in the performance of his job. Said function implies that he was not actually a policy-determining employee but one who had to wait for assignments from his superior. Notwithstanding that, both the labor arbiter and the NLRC proceeded from the presumption that petitioner was a managerial employee.

A determination of the nature of the functions of an assistant vice-president gains importance in the face of the variance of causes for the termination of employment of rank-and-file managerial employees. Much more so in the instant petition wherein the parties present contradictory views on the status of petitioner. Of primordial consideration also is the fact that it is the nature of the employee's functions and not the nomenclature or title given to his job which determines whether the employee has rank-and-file or managerial status.^[20]

We are aware that to remand this case below would mean further delay in its disposition, particularly as the petitioner is now around sixty-three years old. However, justice and equity demand that not only the factual issue of whether or not an assistant vice-president is a managerial employee but also whether or not petitioner is entitled to

an award of moral and exemplary damages, should be considered. Indeed, the proceedings had below leave much to be desired.

We note with dismay the impracticality of the position paper method of disposing labor cases. As exemplified by this case, there are instances wherein claims of parties are not properly ventilated because they agree to dispense with the hearing not knowing that more often than not both of them suffer adverse consequences. In this case, had the parties agreed to a hearing and the concomitant presentation of evidence, private respondent could have proven that petitioner was a managerial employee when he was dismissed and petitioner could have proven the extent of damages he sustained thereby.

WHEREFORE, this case is hereby remanded to the National Labor Relations Commission for determination of the factual issues of whether petitioner, as assistant vice-president of the respondent bank, is a managerial employee and whether he is entitled to an award of moral and exemplary damages.

The respondent Commission is ordered to conduct with dispatch a hearing thereon and thereafter, to render a decision in accordance with the guidelines set herein. This decision is immediately executory. No costs.

SO ORDERED.

**Gutierrez, Jr., Bidin and Cortes, JJ., concur.
Feliciano, J., on leave.**

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- [1] Rollo, p. 28.
 - [2] Rollo, p. 29.
 - [3] Rollo, p. 30.
 - [4] Rollo, p. 31.
 - [5] Rollo, p. 58.
 - [6] Rollo, p. 33.
 - [7] Rollo, pp. 34-36.
 - [8] Rollo, pp. 81-82.
 - [9] Rollo, p. 135.
 - [10] Rollo, pp. 128-130.

- [11] See *Ortiz vs. Comelec*, G.R. No. 78957, June 28, 1988.
- [12] *Rollo*, p. 90.
- [13] *Rollo*, p. 190.
- [14] *De Leon vs. NLRC*, G.R. No. 52056, October 30, 1980, 100 SCRA 691; *St. Luke's Hospital, Inc. vs. NLRC*, G.R. Nos. 54068 & 54142, August 30, 1982, 116 SCRA 240; *D.M. Consunji, Inc. vs. NLRC*, G.R. No. 71456, July 30, 1986, 143 SCRA 204.
- [15] *Rollo*, p. 52.
- [16] *Rollo*, p. 192.
- [17] *Rollo*, p. 250.
- [18] *Rollo*, p. 208.
- [19] Article V, Section 2 provides that the board of directors may appoint any number of vice-presidents and/or assistant vice-presidents as may be deemed necessary upon the recommendation of the executive vice-president with the concurrence of the president (*Rollo*, p. 65). Article VI, Section 5 on the other hand, states that the vice-president and or assistant vice-presidents shall perform such powers and duties as the board of directors may, from time to time, prescribe according to the recommendation of the president.
- [20] *Engineering Equipment, Inc. vs. NLRC*, G.R. No. 59221, December 26, 1984, 113 SCRA 752, 760.