SUPREME COURT
SECOND DIVISION

VIRGILIO CALLANTA,
***Petitioner*,**

-versus-

G.R. No. 70615
October 28, 1986

CARNATION PHILIPPINES, INC., and NATIONAL LABOR RELATIONS COMMISSION [NLRC],
***Respondents*.**
x----------x

D E C I S I O N

FERNAN, *J.*:

The issue raised in this Petition for *Certiorari* is whether or not an action for illegal dismissal prescribes in three (3) years pursuant to Articles 291 and 292 of the Labor Code which provide:

> "Art. 291. Offenses. — Offenses penalized under this Code and the rules and regulations issued pursuant thereto shall prescribe in three (3) years.
>
> x x x

> "Art. 292. Money Claims. — All money claims arising from employer-employee relations accruing during the effectivity of this Code shall be filed within three (3) years from the time the cause of action accrued; otherwise, they shall be forever barred.
>
> x x x."

Petitioner Virgilio Callanta was employed by private respondent Carnation Philippines, Inc. (Carnation, for brevity) in January 1974 as a salesman in the Agusan del Sur area. Five (6) years later or on June 1, 1979, respondent Carnation filed with the Regional Office No. X of the Ministry of Labor and Employment (MOLE), an application for clearance to terminate the employment of Virgilio Callanta on the alleged grounds of serious misconduct and misappropriation of company funds amounting to P12,000.00, more or less.

Upon approval on June 26, 1979 by MOLE Regional Director Felizardo G. Baterbonia, of said clearance application, petitioner Virgilio Callanta's employment with Carnation was terminated effective June 1, 1979.

On July 5, 1982, Virgilio Callanta filed with the MOLE, Regional Office No. X, a complaint for illegal dismissal with claims for reinstatement, backwages, and damages against respondent Carnation.

In its position paper dated October 5, 1982, respondent Carnation put in issue the timeliness of petitioner's complaint alleging that the same is barred by prescription for having been filed more than three (3) years after the date of Callanta's dismissal.

On March 24, 1983, Labor Arbiter Pedro C. Ramos rendered a decision finding the termination of Callanta's employment to be without valid cause. Respondent Carnation was therefore ordered to reinstate Virgilio Callanta to his former position with backwages of one (1) year without qualification including all fringe benefits provided for by law and company policy, within ten (10) days from receipt of the decision. It was likewise provided that failure on the part of respondent to comply with the decision shall entitle

complainant to full backwages and all fringe benefits without loss of seniority rights.

On April 18, 1983, respondent Carnation appealed to respondent National Labor Relations Commission (NLRC) which in a decision dated February 25, 1985,[1] set aside the decision of the Labor Arbiter. It declared the complaint for illegal dismissal filed by Virgilio Callanta to have already prescribed. Thus:

> "Records show that Virgilio Callanta was dismissed from his employment with respondent company effective June 1, 1979; and that on 5 July 1982, he filed the instant complaint against respondent for: Unlawful Dismissal with Backwages, etc.
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> "The provisions of the Labor Code applicable are:
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> > "Art. 291. Offenses. — Offenses penalized under this Code and the rules and regulations issued pursuant thereto shall prescribe in three (3) years.
> >
> > "Art. 292. Money claims. — All money claims arising from employer-employee relations accruing during the effectivity of this Code shall be filed within three (3) years from the time the cause of action accrued; otherwise, they shall be forever barred.
>
> "Obviously, therefore, the causes of action, i.e., 'Unlawful Dismissal' and 'Backwages, etc.' have already prescribed, the complaint therefore having been filed beyond the three-year period from accrual date.
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> "With this finding, there is no need to discuss the other issues raised in the appeal.
>
> "WHEREFORE, in view of the foregoing, the Decision appealed from is hereby SET ASIDE and another one entered, dismissing the complaint.
>
> "SO ORDERED."

Hence, this petition, which We gave due course in the resolution dated September 18, 1985.[2]

Petitioner contends that since the Labor Code is silent as to the prescriptive period of an action for illegal dismissal with claims for reinstatement, backwages and damages, the applicable law, by way of supplement, is Article 1146 of the New Civil Code which provides a four (4)-year prescriptive period for an action predicated upon "an injury to the rights of the plaintiff" considering that an action for illegal dismissal is neither a "penal offense" nor a mere "money claim," as contemplated under Articles 291 and 292, respectively, of the Labor Code. Petitioner further claims that an action for illegal dismissal is a more serious violation of the rights of an employee as it deprives him of his means of livelihood; thus, it should correspondingly have a prescriptive period longer than the three (3) years provided for in "money claims."

Public respondent, on the other hand, counters with the arguments that a case for illegal dismissal falls under the general category of "offenses penalized under this Code and the rules and regulations pursuant thereto" provided under Article 291 or a money claim under Article 292, so that petitioner's complaint for illegal dismissal filed on July 5, 1982, or three (3) years, one (1) month and five (5) days after his alleged dismissal on June 1, 1979, was filed beyond the three-year prescriptive period as provided under Articles 291 and 292 of the Labor Code, hence, barred by prescription; that while it is admittedly a more serious offense as it involves an employee's means of livelihood, there is no logic in assuming that it has a longer prescriptive period, as naturally, one who is truly aggrieved would immediately seek the redress of his grievance; that assuming arguendo that the law does not provide for a prescriptive period for the enforcement of petitioner's right, it is nevertheless beyond dispute that the said right has already lapsed into a stale demand; and that considering the seriousness of the act committed by petitioner, private respondent was justified in terminating the employment.

We find for petitioner.

Verily, the dismissal without just cause of an employee from his employment constitutes a violation of the Labor Code and its

implementing rules and regulations. Such violation, however, does not amount to an "offense" as understood under Article 291 of the Labor Code. In its broad sense, an offense is an illegal act which does not amount to a crime as defined in the penal law, but which by statute carries with it a penalty similar to those imposed by law for the punishment of a crime.[3] It is in this sense that a general penalty clause is provided under Article 289 of the Labor Code which provides that "any violation of the provisions of this code declared to be unlawful or penal in nature shall be punished with a fine of not less than One Thousand Pesos (P1,000.00) nor more than Ten Thousand Pesos (10,000.00), or imprisonment of not less than. three (3) months nor more than three (3) years, or both such fine and imprisonment at the discretion of the court." (Emphasis supplied.)

The confusion arises over the use of the term "illegal dismissal" which creates the impression that termination of an employment without just cause constitutes an offense. It must be noted, however that unlike in cases of commission of any of the prohibited activities during strikes or lockouts under Article 265, unfair labor practices under Articles 248, 249 and 250 and illegal recruitment activities under Article 38, among others, which the Code itself declares to be unlawful, termination of an employment without just or valid cause is not categorized as an unlawful practice.

Besides, the reliefs principally sought by an employee who was illegally dismissed from his employment are reinstatement to his former position without loss of seniority rights and privileges, if any, backwages and damages, in case there is bad faith in ,his dismissal. As an affirmative relief, reinstatement may be ordered, with or without backwages. While ordinarily, reinstatement is a concomitant of backwages, the two are not necessarily complements, nor is the award of one a condition precedent to an award of the other.[4] And, in proper cases, backwages may be awarded without ordering reinstatement. In either case, no penalty of fine nor imprisonment is imposed on the employer upon a finding of illegality in the dismissal. By the very nature of the reliefs sought, therefore, an action for illegal dismissal cannot be generally categorized as an "offense" as used under Article 291 of the Labor Code, which according to public respondent, must be brought within the period of three (3) years from

the time the cause of action accrued, otherwise, the same is forever barred.

It is true that the "backwages" sought by an illegally dismissed employee may be considered, by reason of its practical effect, as a "money claim." However, it is not the principal cause of action in an illegal dismissal case but the unlawful deprivation of one's employment committed by the employer in violation of the right of an employee. Backwages is merely one of the reliefs which an illegally dismissed employee prays the labor arbiter and the NLRC to render in his favor as a consequence of the unlawful act committed by the employer. The award thereof is not private compensation or damages[5] but is in furtherance and effectuation of the public objectives of the Labor Code.[6] Even though the practical effect is the enrichment of the individual, the award of backwages is not in redress of a private right, but, rather, is in the nature of a command upon the employer to make public reparation for his violation of the Labor Code.[7]

The case of Valencia vs. Cebu Portland Cement, et. al., 106 Phil. 732, a 1959 case cited by petitioner, is applicable in the instant case insofar as it concerns the issue of prescription of actions. In said case, this Court had occasion to hold that an action for damages involving a plaintiff separated from his employment for alleged unjustifiable causes is one for "injury to the rights of the plaintiff, and must be brought within four (4) years."[8]

In Santos vs. Court of Appeals, 96 SCRA 448 (1980), this Court, thru then Chief Justice Enrique M. Fernando, sustained the stand of the Solicitor General that the period of prescription mentioned under Article 281, now Article 292, of the Labor Code, refers to and "is limited to money claims, all other cases of injury to rights of a workingman being governed by the Civil Code." Accordingly, this Court ruled that petitioner Marciana Santos, who sought reinstatement, had four (4) years within which to file her complaint for the injury to her rights as provided under Article 1146 of the Civil Code.

Indeed there is, merit in the contention of petitioner that the four (4)-year prescriptive period under Article 1146 of the New Civil Code, applies by way of supplement, in the instant case, to wit:

> "Art 1146. The following actions must be instituted within four years.
>
> (1) Upon an injury to the rights o f the plaintiff.
>
> x x x." (Emphasis supplied)

As this Court stated in Bondoc vs. People's Bank and Trust Co.,[9] when a person has no property, his job may possibly be his only possession or means of livelihood, hence, he should be protected against any arbitrary and unjust deprivation of his job. Unemployment, said the Court in Almira vs. B.F. Goodrich Philippines,[10] brings "untold hardships and sorrows on those dependent on the wage earners. The misery and pain attendant on the loss of jobs thus could be avoided if there be acceptance of the view that under all the circumstances of this case, petitioners should not be deprived of their means of livelihood."

It is a principle in American jurisprudence which, undoubtedly, is well-recognized in this jurisdiction that one's employment, profession, trade or calling is a "property right," and the wrongful interference therewith is an actionable wrong.[11] The right is considered to be property within the protection of a constitutional guaranty of due process of law.[12] Clearly then, when one is arbitrarily and unjustly deprived of his job or means of livelihood, the action instituted to contest the legality of one's dismissal from employment constitutes, in essence, an action predicated "upon an injury to the rights of the plaintiff," as contemplated under Art. 1146 of the New Civil Code, which must be brought within four (4) years.

In the instant case, the action for illegal dismissal was filed by petitioners on July 5, 1982, or three (3) years, one (1) month and five (5) days after the alleged effectivity date of his dismissal on June 1, 1979 which is well within the four (4)-year prescriptive period under Article 1146 of the New Civil Code.

Even on the assumption that an action for illegal dismissal falls under the category of "offenses" or "money claims" under Articles 291 and 292, Labor Code, which provide for a three-year prescriptive period, still, a strict application of said provisions will not destroy the enforcement of fundamental rights of the employees. As a statutory provision on limitations of actions, Articles 291 and 292 go to matters of remedy and not to the destruction of fundamental rights.[13] As a general rule, a statute of limitation extinguishes the remedy only. Although the remedy to enforce a right may be barred, that right may be enforced by some other available remedy which is not barred.[14]

More so, in the instant case, where the delay in filing the case was with justifiable cause. The threat to petitioner that he would be charged with estafa if he filed a complaint for illegal dismissal, which private respondent did after all on June 22, 1981, justifies, the delayed filing of the action for illegal dismissal with the Regional Office No. X, MOLE on July 5, 1982. Laches will not in that sense strengthen the cause of public respondent. Besides, it is deemed waived as it was never alleged before the Labor Arbiter nor the NLRC.

Public respondent dismissed the action for illegal dismissal on the sole issue of prescription of actions. It did not resolve the case of illegal dismissal on the merits. Nonetheless, to resolve once and for all the issue of the legality of the dismissal, We find that petitioner, who has continuously served respondent Carnation for five (5) years was, under the attendant circumstances, arbitrarily dismissed from his employment. The alleged shortage in his accountabilities should have been impartially investigated with all due regard for due process in view of the admitted enmity between petitioner and E.L. Corsino, respondent's auditor.[15] Absent such an impartial investigation, the alleged shortage should not have been attended with such a drastic consequence as termination of the employment relationship. Outright dismissal was too severe a penalty for a first offense, considering that the alleged shortage was explained to respondent's Auditor, E.L. Corsino, in accordance with respondent's accounting and auditing policies.

The indecent haste of his dismissal from employment was, in fact, aggravated by the filing of the estafa charge against petitioner with the City Fiscal of Butuan City on June 22, 1981, or two (2) years after

his questioned dismissal. After the case had remained pending for five (5) years, the Regional Trial Court of Agusan del Norte and Butuan City, Branch V finally dismissed the same provisionally in an order dated February 21, 1986 for failure of the prosecution's principal witness to appear in court. Admittedly, loss of trust and confidence arising from the same alleged misconduct is sufficient ground for dismissing an employee from his employment despite the dismissal of the criminal case.[16] However, it must not be indiscriminately used as a shield to dismiss an employee arbitrarily.[17] For, who can stop the employer from filing all the charges in the books for the simple exercise of it, and then hide behind the pretext of loss of confidence which can be proved by mere preponderance of evidence.

We grant the petition and the decision of the NLRC is hereby reversed and set aside. Although We are strongly inclined to affirm that part of the decision of the Labor Arbiter ordering the reinstatement of petitioner to his former position without loss of seniority rights and privileges, a supervening event, which petitioner mentioned in his motion for early decision dated January 6, 1986[18] that is, FILIPRO, Inc.'s taking over the business of Carnation, has legally rendered the order of reinstatement difficult to enforce, unless there is an express agreement on assumption of liabilities[19] by the purchasing corporation, FILIPRO, Inc. Besides, there is no law requiring that the purchasing corporation should absorb the employees of the selling corporation.[20] In any case, the very concept of social justice dictates that petitioner shall be entitled to backwages of three (3) years.[21]

WHEREFORE, respondent Carnation Philippines, Inc. is hereby ordered to pay petitioner Virgilio Callanta backwages for three (3) years without qualification and deduction. This decision is immediately executory. No costs.

SO ORDERED.

Feria, Alampay, Gutierrez, Jr. and Paras, *JJ.*, concur.

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[1] PP. 13-14, Rollo.

[2] Private respondent Carnation Phils., Inc. failed to file its comment on the petition. In the same resolution of September 18, 1985, said comment was dispensed with by the court, p. 32, Rollo.
[3] Wickham vs. Pafumi, 256 N.Y.S. 2d 868, 871. 45 Misc. 2d 344; People ex rel. Schildhaus on Behalf of Weinstein vs. Warden of the City Prison, Borough of Manhattan, Bellevue Hospital 235 N.Y.S. 2d 531, 537, 37 Misc. 2d 660; Application of Waldau, Sup., 125 N.Y.S. 2d 793, 796.
[4] Rothenberg, On Labor Relations, p. 577.
[5] Manseau vs. U.S. 52 F Supp. 395: NLRB vs. Newark Morning Ledger, 120 F[2nd] 262.
[6] NLRB vs. West Kentucky Coal Co., 116 F [2nd] 816.
[7] NLRB vs. Agwilines, Inc. 87 F [2nd] 146.
[8] Paras, Civil Code of the Philippines, Annotated, 10th Ed., Vol. IX, p. 42.
[9] 103 SCRA 599 [1981].
[10] 58 SCRA 120, 131 [1974].
[11] Carter vs. Knapp Motor Co., 11 So. 2d 383, 384, 243 Ala. 600, 144 A.L.R. 1177; Alabama State Federation of Labor vs. McAdory, 18 So. 2d 810, 828, 246 Ala. 1; Lash vs. State, 14 So. 2d 229, 232, 244 Ala. 48.
[12] Fernando, Constitution of the Philippines, Second Edition [1977] pp. 512-513.
[13] Chase Secur. Corp. vs. Donaldson, 325 US 304, 89 L Ed. 1628.
[14] 51 Am Jr. 2d p. 607.
[15] p. 4, Petitioner's Manifestation & Memorandum, p. 36, Rollo.
[16] Sea-Land Service, Inc. vs. NLRC, 136 SCRA 544 [1985] Philippine Long Distance Telephone Co. vs. NLRC, 129 SCRA 163 [1984]; San Miguel Corp. vs. NLRC, 128 SCRA 180 [1984].
[17] Central Textile Mills, Inc. vs. NLRC, 95 SCRA 9 [1979].
[18] p. 49, Rollo.
[19] Central Azucarera del Danao vs. Court of Appeals, 137 SCRA 294 [1985].
[20] MDDII Supervisors and Confidential Employees Association [FFW] vs. Presidential Assistant on Legal Affairs, 79 SCRA 40 [1977].
[21] Lepanto Consolidated Mining Co. vs. Encarnacion, 136 SCRA 258 [1985]; Medical Doctors, Inc. vs. NLRC, 136 SCRA 1 [1985]; Insular Life Assurance Co. Ltd. vs. NLRC, 135 SCRA 697 [1985].