SUPREME COURT
THIRD DIVISION

CEBU MARINE BEACH RESORT, OFELIA PELAEZ AND TSUYOSHI SASAKI,
Petitioners,

-versus-

G.R. No. 143252
October 23, 2003

NATIONAL LABOR RELATIONS COMMISSION (FOURTH DIVISION), RIC RODRIGO RODRIGUEZ, MANULITO VILLEGAS and LORNA G. IGOT,
Respondents.
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D E C I S I O N

SANDOVAL-GUTIERREZ, *J.*:

Probationary employees need strong protection from the exploitation of employers since they are usually the lowliest of the lowly and the most vulnerable to abuses of management, who would rather suffer in silence than risk losing their jobs.[1]

At bar is a petition for review on certiorari seeking to reverse and set aside the Decision[2] dated November 5, 1999 and Resolution[3] dated

April 18, 2000 of the Court of Appeals in CA-G.R. SP No. 54548, entitled "Cebu Marine Beach Resort, Ofelia Pelaez, and Tsuyoshi Sasaki vs. The Honorable National Labor Relations Commission (Fourth Division), Ric Rodrigo Rodriguez, Manulita Villegas, and Lorna G. Igot".

The facts as borne by the records are:

> Cebu Marine Beach Resort (herein petitioner company), a single proprietorship owned by Victor Dualan, commenced its operations sometime in January, 1990 with the recruitment of its employees, including Ric Rodrigo Rodriguez, Manulita Villegas and Lorna G. Igot, respondents.
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> On the last week of March, 1990 when Japanese tourists began arriving at the resort, petitioner company became fully operational.
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> Inasmuch as the beach resort was intended to cater principally to Japanese tourists, respondents had to undergo a special training in Japanese customs, traditions, discipline as well as hotel and resort services. This special training was supervised by Tsuyoshi Sasaki, also a petitioner.
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> During a seminar conducted on May 24, 1990, petitioner Sasaki suddenly scolded respondents and hurled brooms, floor maps, iron trays, fire hoses and other things at them. In protest, respondents staged a walk-out and gathered in front of the resort.
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> Immediately, petitioner Sasaki reacted by shouting at them to go home and never to report back to work. Heeding his directive, respondents left the premises. Eventually, they filed with the Regional Arbitration Branch at Cebu City a complaint for illegal dismissal and other monetary claims against petitioners.
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> On May 28, 1990, petitioner company, through its acting general manager, Ofelia Pelaez, also a petitioner, sent letters to respondents requiring them to explain why they should not be

terminated from employment on the grounds of abandonment of work and failure to qualify with the standards for probationary employees.

In due course, the Labor Arbiter rendered a Decision dated March 23, 1993 dismissing respondents' complaint but directing them to immediately report back to work.

On appeal, the National Labor Relations Commission (NLRC), in its Decision dated June 28, 1994, reversed the Labor Arbiter's Decision, declaring that the respondents were dismissed illegally and ordering their reinstatement with payment of full backwages from May 24, 1990 up to their actual reinstatement or in lieu thereof, the payment of their respective separation pay (equivalent to one month salary) from May 24, 1990 up to the date they were supposed to be reinstated, as well as attorney's fees (equivalent to 10% of the total monetary award).

On February 28, 1995, the NLRC issued a Resolution declaring that the backwages shall correspond only to the period from May 24, 1990 (the date of their dismissal) until March 23, 1993 (when they were ordered reinstated by the Labor Arbiter), subject to the deduction of their earnings from other sources during the pendency of the appeal.

On March 22, 1995, petitioners filed with this Court a petition for certiorari, prohibition and injunction with prayer for the issuance of a temporary restraining order.

Pursuant to our ruling in St. Martin's Funeral Home vs. NLRC,[4] we referred the petition to the Court of Appeals for its appropriate action and disposition.

On November 5, 1999, the Court of Appeals rendered its Decision affirming with modification the Decision and Resolution of the NLRC. The dispositive portion reads:

> "WHEREFORE, the Decision, dated June 28, 1994, and the Resolution dated February 28, 1995, both issued by

> the public respondent, are hereby AFFIRMED with the following modifications: the backwages should be computed from the date of the dismissal of private respondents until the finality of this Decision without deduction from earnings during the pendency of the appeal and the award of separation pay must be equivalent to one-half month's salary for every year of service commencing likewise on the date of the dismissal of private respondents until the finality of this Decision. The petition is dismissed. Costs against petitioners.
>
> "SO ORDERED."

From the said Decision, petitioners filed a motion for reconsideration, but was denied.

Hence, this petition for review on certiorari.

Petitioners contend that the Appellate Court committed a serious error when it unilaterally extended the 6-month probationary employment contracts of the respondents by awarding them full backwages, or in lieu of their reinstatement, when it ordered payment of their separation pay computed from the time of their dismissal up to the finality of its Decision.

The sole legal issue for our Resolution is whether respondents were illegally dismissed from employment by petitioner company.

We hold that the Court of Appeals did not err when it ruled that respondents were illegally dismissed from the service.

It is settled that while probationary employees do not enjoy permanent status, they are entitled to the constitutional protection of security of tenure. Their employment may only be terminated for just cause or when they fail to qualify as regular employees in accordance with reasonable standards made known to them by their employer at the time of engagement, and after due process.[5]

Here, petitioners terminated respondents' probationary employment on the grounds of abandonment and failure to qualify for the positions for which they were employed.

On this point, we quote with approval the findings of the Court of Appeals, thus:

> "It is undisputed that Mr. Sasaki made an utterance to the effect that private respondents should go home and never come back to work for the company again. Such utterance is tantamount to a dismissal. Its meaning is also clear and unmistakable no matter which accent was used by Mr. Sasaki. Considering further that Mr. Sasaki was in charge of the training of the private respondents, his words carry authority and conviction. Even assuming for the sake of argument that Mr. Sasaki was never vested with the power of dismissal, the petitioner company ratified Mr. Sasaki's acts. When petitioner company sent a strongly worded memorandum to private respondents asking them to explain why their services should not be terminated for failure to live up to the company's expectations, it showed intention to terminate.:
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> > "xxx xxx xxx
> >
> > "The subsequent issuances of the memos were, as rightly interpreted by the public respondent, merely an afterthought to escape the legal liability arising from the illegal termination of the private respondents' services.:
> >
> > > "xxx xxx xxx
> > >
> > > "The next three reasons adduced by the petitioners sought to prove the existence of a just cause for the dismissal of private respondents, which is, abandonment. We are not convinced. The fact that private respondents never came back to work despite the issuance of the memoranda by the petitioner does not support the allegation of abandonment."

Indeed, we find no indication that respondents have shown by some overt acts their intention to sever their employment in petitioner company. To constitute abandonment, there must be clear proof of deliberate and unjustified intent to sever the employer-employee relationship. Clearly, the operative factor is still the employer's ultimate act of putting an end to his employment.

Here, respondents did not report back for work because they were warned by petitioner Sasaki not to return. But immediately, they filed with the Labor Arbiter's Office a complaint for illegal dismissal. It is a settled doctrine that the filing of a complaint for illegal dismissal is inconsistent with the charge of abandonment, for an employee who takes steps to protest his dismissal cannot by logic be said to have abandoned his work.[6]

That respondents failed to qualify for their positions, suffice it to state that at the time they were dismissed, they were still in a "trial period" or probationary period. Being in the nature of a "trial period," the essence of a probationary period of employment fundamentally lies in the purpose or objective sought to be attained by both the employer and the employee during said period. While the employer observes the fitness, propriety and efficiency of a probationer to ascertain whether he is qualified for permanent employment, the probationer, on the other hand, seeks to prove to the employer that he has the qualifications to meet the reasonable standards for permanent employment which obviously were made known to him.[7] To reiterate, in the case at bar, far from allowing the respondents to prove that they possessed the qualifications to meet the reasonable standards for their permanent employment, petitioners peremptorily dismissed them from the service.

On another tack, petitioners' argument that the Appellate Court's award of full backwages and separation pay in effect unilaterally extended respondents' 6-month probationary employment is bereft of merit.

In Philippine Manpower Services, Inc. vs. NLRC,[8] we held that "absent the grounds for termination of a probationary employee, he is entitled to continued employment even beyond the probationary period."

On a similar note, our ruling in Lopez vs. Javier[9] is quite explicit, thus:

> "Probationary employees who are unjustly dismissed from work during the probationary period shall be entitled to reinstatement and payment of full backwages and other benefits and privileges from the time they were dismissed up to their actual reinstatement, conformably with Article 279 of the Labor Code, as amended by Section 34 of Republic Act No. 6715, which took effect on March 21, 1989:
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> > 'An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.'"

Verily, respondents who were unjustly dismissed from work are actually entitled to reinstatement without loss of seniority rights and other privileges as well as to their full backwages, inclusive of allowances, and to other benefits or their monetary equivalent computed from the time their compensation was withheld from them up to the time of their actual reinstatement. [10]

However, the circumstances obtaining in this case do not warrant the reinstatement of respondents. Antagonism caused a severe strain in the relationship between them and petitioner company. A more equitable disposition, as correctly held by the NLRC, would be an award of separation pay[11] equivalent to at least one month pay, or one month pay for every year of service, whichever is higher,[12] in addition to their full backwages, allowances and other benefits.

WHEREFORE, the assailed Decision and Resolution of the Court of Appeals dated November 5, 1999 and April 18, 2000 are hereby **AFFIRMED WITH MODIFICATION** in the sense that, in lieu of reinstatement, respondents are awarded separation pay equivalent to at least one month pay, or one month pay for every year of service,

whichever is higher; and their full backwages, other privileges and benefits, or their monetary equivalent during the period of their dismissal up to their supposed actual reinstatement.

Costs against petitioners.

SO ORDERED.

Puno, Panganiban, Corona and Carpio Morales, *JJ.*, concur.

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[1] See Central Negros Electric Cooperative, Inc. vs. NLRC, G.R. No. 106246, September 1, 1994, 236 SCRA 108.
[2] Penned by Justice Teodoro P. Regino (retired) and concurred in by Justices Conrado M. Vasquez, Jr. and Salome A. Montoya (retired); Annex "A", Petition, Rollo at 34–48.
[3] Annex "B", Petition, Rollo at 49–50.
[4] G.R. No. 130866, September 16, 1998, 295 SCRA 494, holding that the appeal from the NLRC should be initially filed with the Court of Appeals, no longer with this Court, pursuant to the doctrine of hierarchy of courts.
[5] Secon Philippines, Ltd. vs. NLRC, G.R. No. 97399, December 3, 1999, 319 SCRA 685, 688, citing Manlimos vs. NLRC, 242 SCRA 145, 155–156 (1995) and P.I . Manpower Placements, Inc. vs. NLRC, 276 SCRA 451, 457 (1997).
[6] Samarca vs. Arc-Men Industries, Inc., G.R. No. 146118, October 8, 2003, citing KAMS International, Inc. vs. NLRC, G.R. No. 128806, September 28, 1999, 315 SCRA 316.
[7] See Grand Motor Parts Corp. vs. Minister of Labor, G.R. No. L-58958, July 16, 1984, 130 SCRA 436.
[8] G.R. No. 98450, July 21, 1993, 224 SCRA 691, 700.
[9] G.R. No. 102874, January 22, 1996, 252 SCRA 68, 77–78.
[10] See Damasco vs. NLRC, G.R. Nos. 115755 & 116101, December 4, 2000, 346 SCRA 714.
[11] See Samarca vs. Arc-Men Industries, Inc., supra.
[12] See Philippine Tobacco Flue-Curing and Redrying Corp. vs. NLRC, G.R. No. 127395, December 10, 1998, 300 SCRA 37.
