SUPREME COURT
FIRST DIVISION

CEBU ROYAL PLANT (SAN MIGUEL CORPORATION),
***Petitioner*,**

-versus-

G.R. No. L-58639
August 12, 1987

THE HONORABLE DEPUTY MINISTER OF LABOR and RAMON PILONES,
***Respondents*.**
x----------x

D E C I S I O N

CRUZ, *J.*:

The private respondent was removed by the petitioner and complained to the Ministry of Labor. His complaint was dismissed by the regional director, who was, however, reversed by the public respondent. Required to reinstate the separated employee and pay him back wages, the petitioner has come to us, faulting the Deputy Minister with grave abuse of discretion. We have issued in the meantime a temporary restraining Order.[1]

The public respondent held that Ramon Pilones, the private respondent, was already a permanent employee at the time of his dismissal and so was entitled to security of tenure. The alleged

ground for his removal, to wit, “pulmonary tuberculosis minimal,” was not certified as incurable within six months as to justify his separation.[2] Additionally, the private respondent insists that the petitioner should have first obtained a clearance, as required by the regulations then in force, for the termination of his employment.

The petitioner for its part claims that the private respondent was still on probation at the time of his dismissal and so had no security of tenure. His dismissal was not only in conformity with company policy but also necessary for the protection of the public health, as he was handling ingredients in the processing of soft drinks which were being sold to the public. It is also argued that the findings of the regional director, who had direct access to the facts, should not have been disturbed on appeal. For these same reasons, it contends, the employee’s reinstatement as ordered by the public respondent should not be allowed.

The original findings were contained in a one-page Order[3] reciting simply that “complainant was employed on a probationary period of employment for six (6) months. After said period, he underwent medical examination for qualification as regular employee but the results showed that he is suffering from PTB minimal. Consequently, he was informed of the termination of his employment by respondent.” The order then concluded that the termination was “justified.” That was all.

As there is no mention of the basis of the above order, we may assume it was the temporary payroll authority[4] submitted by the petitioner showing that the private respondent was employed on probation on February 16, 1978. Even supposing that it is not self-serving, we find nevertheless that it is self-defeating. The six-month period of probation started from the said date of appointment and so ended on August 17, 1978, but it is not shown that the private respondent’s employment also ended then; on the contrary, he continued working as usual. Under Article 282 of the Labor Code, “an employee who is allowed to work after a probationary period shall be considered a regular employee.” Hence, Pilones was already on permanent status when he was dismissed on August 21, 1978, or four days after he ceased to be a probationer.

The petitioner claims it could not have dismissed the private respondent earlier because the x-ray examination was made only on August 17, 1978, and the results were not immediately available. That excuse is untenable. We note that when the petitioner had all of six months during which to conduct such examination, it chose to wait until exactly the last day of the probation period. In the light of such delay, its protestations now that reinstatement of Pilones would prejudice public health cannot but sound hollow and hypocritical. By its own implied admission, the petitioner had exposed its customers to the employee's disease because of its failure to examine him before entrusting him with the functions of a "syrup man." Its belated concern for the consuming public is hardly persuasive, if not clearly insincere and self-righteous.

There is proof in fact that the private respondent was first hired not on February 16, 1978, but earlier in 1977. This is the 1977 withholding tax statement[5] issued for him by the petitioner itself which it does not and cannot deny. The petitioner stresses that this is the only evidence of the private respondent's earlier service and notes that he has not presented any co-worker to substantiate his claim. This is perfectly understandable. Given the natural reluctance of many workers to antagonize their employers, we need not wonder why none of them testified against the petitioner.

We are satisfied that whether his employment began on February 16, 1978, or even earlier as he claims, the private respondent was already a regular employee when he was dismissed on August 21, 1978. As such, he could validly claim the security of tenure guaranteed to him by the Constitution and the Labor Code.

The applicable rule on the ground for dismissal invoked against him is Section 8, Rule I, Book VI, of the Rules and Regulations Implementing the Labor Code reading as follows:

> "Sec. 8. Disease as a ground for dismissal.— Where the employee suffers from a disease and his continued employment is prohibited by law or prejudicial to his health or to the health of his co-employees, the employer shall not terminate his employment unless there is a certification by a competent public health authority that the disease is of such nature or at

> such a stage that it cannot be cured within a period of six (6) months even with proper medical treatment. If the disease or ailment can be cured within the period, the employer shall not terminate the employee but shall ask the employee to take a leave. The employer shall reinstate such employee to his former position immediately upon the restoration of his normal health."

The record does not contain the certification required by the above rule. The medical certificate offered by the petitioner came from its own physician, who was not a "competent public health authority," and merely stated the employee's disease, without more. We may surmise that if the required certification was not presented, it was because the disease was not of such a nature or seriousness that it could not be cured within a period of six months even with proper medical treatment. If so, dismissal was unquestionably a severe and unlawful sanction.

It is also worth noting that the petitioner's application for clearance to terminate the employment of the private respondent was filed with the Ministry of Labor only on August 28, 1978, or seven days after his dismissal.[6] As the NLRC has repeatedly and correctly said, the prior clearance rule (which was in force at that time) was not a "trivial technicality." It required "not just the mere filing of a petition or the mere attempt to procure a clearance" but that "the said clearance be obtained prior to the operative act of termination."[7]

We agree that there was here an attempt to circumvent the law by separating the employee after five months' service to prevent him from becoming a regular employee, and then rehiring him on probation, again without security of tenure. We cannot permit this subterfuge if we are to be true to the spirit and mandate of social justice. On the other hand, we have also the health of the public and of the dismissed employee himself to consider. Hence, although we must rule in favor of his reinstatement, this must be conditioned on his fitness to resume his work, as certified by competent authority.

We take this opportunity to reaffirm our concern for the lowly worker who, often at the mercy of his employers, must look up to the law for his protection. Fittingly, that law regards him with tenderness and

even favor and always with faith and hope in his capacity to help in shaping the nation's future. It is error to take him for granted. He deserves our abiding respect. How society treats him will determine whether the knife in his hands shall be a caring tool for beauty and progress or an angry weapon of defiance and revenge. The choice is obvious, of course. If we cherish him as we should, we must resolve to lighten "the weight of centuries" of exploitation and disdain that bends his back but does not bow his head.

WHEREFORE, the Petition is **DISMISSED** and the Temporary Restraining Order of November 18, 1981, is **LIFTED**. The Order of the public respondent dated July 14, 1981, is **AFFIRMED**, but with the modification that the backwages shall be limited to three years only and the private respondent shall be reinstated only upon certification by a competent public health authority that he is fit to return to work. Costs against the petitioner.

SO ORDERED.

Teehankee, *C.J.*, *(Chairman)*, Narvasa, Paras and Gancayco, *JJ.*, concur.

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[1] Rollo, pp. 37-39.
[2] Ibid., p. 36.
[3] Id., p. 28.
[4] Annex B, p. 21.
[5] Rollo, pp. 7-8.
[6] Annex D, p. 22.
[7] Victor Pacularang, et al. vs. Emelio Teves, et al., NLRC Case No. 7-1722.