**SUPREME COURT**
**FIRST DIVISION**

**ADELAIDA DANGAN,**
***Petitioner*,**

***-versus-***

**G.R. Nos. 63127-28**
**February 20, 1984**

**NATIONAL LABOR RELATIONS COMMISSION, SECOND DIVISION and TIERRA FACTORS CORPORATION,**
***Respondents*.**
**x----------x**

**D E C I S I O N**

**GUTIERREZ, JR., *J.*:**

This is a Petition for Review on *Certiorari* of the Resolution issued on November 10, 1982 by the respondent National Labor Relations Commission (NLRC) in Case No. AB-8-12274-81, entitled "Adelaida Dangan vs. Tierra Factors Corporation", dismissing petitioner's appeal and affirming the decision of the labor arbiter which ordered her reinstatement without backwages.

This case arose out of two complaints filed by the petitioner against Tierra Factors Corporation for illegal demotion and illegal constructive dismissal.

We have given partial due course to the petition and considered the respondent's comments as an answer.

The antecedent facts are undisputed.

The petitioner started her employment with the respondent firm on January 24, 1977 as a purchasing clerk on probationary basis with a basic salary of P450.00. On May 1, 1977, she was made a permanent employee with a monthly salary of P500.00. On July 16, 1979, she was transferred from the Purchasing Department to the Financial Services Department as clerk-typist. On May 1, 1980, she was promoted as Secretary to the Manager of the Financial Services Department with a new salary rate of P1,090.00 per month, On February 15, 1981, the petitioner's boss, Manager Andres S. Roy F. Lim tendered his resignation from the company effective a month later. Sometime in March, 1981, petitioner Dangan was re-assigned as clerk-typist in the Logistics Department. On May 15, 1981, she was pulled out of Logistics and assigned as billing clerk in the Accounting Department. From July 20, 1981 to October 1, 1981, the petitioner went on maternity leave. On October 3, 1981, the corporation transferred Dangan from her temporary assignment in the Billing Section to Secretary to the Technical Training Senior Manager with office at Bicutan, Taguig, Metro Manila. It was at this juncture that she filed the first complaint for illegal demotion. Because her maternity leave had expired, the petitioner applied for vacation and sick leaves which were approved by management ending November 1, 1981.

On November 6, 1981, in response to a telegram sent by her employer, Mrs. Dangan submitted a letter to the respondent's Personnel Manager Leonardo A. Pineda, informing him that she will not be reporting for work until the instant case has been decided and terminated.

On November 10, 1981, the respondent sent Mrs. Dangan a memorandum requiring her to report for work on November 12, 1981.

On December 10, 1981, the petitioner filed the second case against the respondent for illegal dismissal and unfair labor practice.

The dispositive portion of the arbiter's decision which was affirmed by the NLRC reads:

> "WHEREFORE, all the foregoing considered, this case should be, as it is hereby DISMISSED for lack of merit.
>
> "Respondent, however, is ordered to accept complainant back to work but without backwages. And complainant is directed to report to work within fifteen (15) days from receipt of this decision. Failure to do so would mean waiver on her right to reinstatement."

Petitioner prays for the modification of the aforequoted decision and assigns as errors the following:

> I
>
> THE HONORABLE RESPONDENT COMMISSION ERRED IN ORDERING THE REINSTATEMENT OF THE PETITIONER WITHOUT PAYMENT OF BACKWAGES FROM THE TIME OF HER TERMINATION FROM EMPLOYMENT AND WITHOUT DECLARING THAT SAID REINSTATEMENT SHOULD BE TO HER FORMER POSITION OF DEPARTMENT SECRETARY AT PRIVATE RESPONDENT'S MAKATI OFFICES.
>
> II
>
> IF EVER PETITIONER'S POSITION WITH THE COMPANY BECAME REDUNDANT AS UPHELD BY THE HONORABLE RESPONDENT COMMISSION, PRIVATE RESPONDENT SHOULD NOT TRANSFER PETITIONER TO ITS BICUTAN OFFICE BUT INSTEAD SHOULD PAY HER THE SEPARATION PAY PURSUANT TO ARTICLE 284 OF THE NEW LABOR CODE, AS AMENDED.

It is petitioner's contention that as the secretary of Mr. Andres Roy F. Lim, Manager of the Financial Services Department, she was merely following-up Mr. Lim's termination pay after his resignation but these follow-ups were resented by the respondent's officials. As a result, she claims to have been harassed and discriminated against in her job,

transferred from one position to another against her will and demoted from department secretary to clerk typist and to billing clerk. The petitioner alleges that the order to report to the Bicutan office was really intended to ease her out of the service.

The recorded evidence supports the private respondent's allegations that the relief of the petitioner from her job as secretary to the manager for financial services was warranted by actual and substantial economic justifications. As early as September 15, 1980, and long before the resignation of Mr. Lim from the company, the private respondent had already adopted remedial measures designed to counteract economic problems faced by the company. The private respondent stopped all manpower hiring except for certain technical positions and informed its staff that in the exercise of optimum utilization of manpower movements, personnel may be transferred laterally and vertically and even in office locations, if necessary. Pursuant to the company's retrenchment program, the Financial Services Department was abolished. As a result of the abolition, the petitioner had to be assigned elsewhere. The labor arbiter found nothing questionable nor suspicious in the company's retrenchment program and instead recognized that it was genuinely motivated. Thus, the company proved that in 1980, twenty-nine (29) personnel who had either resigned or had been terminated were not replaced.

We, therefore, agree with the public respondent's findings that the company was not guilty of illegal constructive dismissal and that instead of being terminated in her employment, the petitioner was merely re-assigned pursuant to a legitimate exercise of managerial prerogatives.

The petitioner's contentions that her plight was ignored because she was a secretary to Mr. Lim whom the private respondent "hated" have no merit. The facts show otherwise.

It is perhaps timely to reiterate well-settled principles involving decisions of administrative agencies. Findings of quasi judicial agencies which have acquired expertise because their jurisdiction is confined to specific matters are generally accorded not only respect but at times even finality if such findings are supported by substantial evidence. (Special Events and Central Shipping Office Workers Union

vs. San Miguel Corporation, 122 SCRA 557 citing International Hardwood and Veneer Co. of the Philippines vs. Hon. Vicente Leogardo, et al., 117 SCRA 967; Genconsu Free Workers Union vs. Inciong, 91 SCRA 311; Dy Keh Beng vs. International Labor and Marine Union of the Phil., 90 SCRA 162). And in a catena of cases, this Court has held that the findings of facts of the National Labor Relations Commission are binding on the Court (Philippine Labor Alliance Council PLAC vs. Bureau of Labor Relations, 75 SCRA 162; Pan-Phil. Life Insurance Co. vs. NLRC, 114 SCRA 866; Pepsi-Cola Labor Union — BFLU-TUPAS Local Chapter No. 896 vs. NLRC, 114 SCRA 960) if supported by substantial evidence (Reyes vs. Philippine Duplicators, Inc., 109 SCRA 438).

The factual findings of the public respondent show that Tierra Factors Corporation was merely exercising management prerogatives recognized by the Labor Code which provides:

> Art. 284. Closure of Establishment and Reduction of Personnel. — The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this title." (Emphasis supplied).

This Court has always sought to implement in proper cases the social justice and protection to labor provisions found in Sections 6 and 9 respectively of Article II of the Constitution. But at the same time, we have also accorded justice to the employer by recognizing and affirming its right to lay off and dismiss employees justified by losses in its operations, lack of work, and considerable reduction in the volume of business. (Gregorio Araneta Employees' Union, et al. vs. Roldan, et al., 97 Phil. 304; Special Events and Central Shipping Office Workers' Unions vs. San Miguel Corp., 122 SCRA 557; Redundancy: Shell Oil Workers' Union vs. Shell Co. of the Phil., Ltd., L 28607, Feb. 12, 1972; LVN Pictures Employees' and Workers Association vs. LVN Pictures, Inc., 35 SCRA 147).

In a fairly recent case, this Court had occasion to reiterate management's prerogative to close or abolish a department or section

of the employer's establishment for economic reasons. We reasoned out that since the greater right to close the entire establishment and cease operations due to adverse economic conditions is granted an employer, the closure of a part thereof to minimize expenses and reduce capitalization should also be recognized. Thus, in Special Events Central Shipping Office Worker's Union vs. San Miguel Corporation (122 SCRA 557) we ruled:

> "The determination of the usefulness of a section being a company prerogative, the closure may not be questioned specially in this case where it is impelled by economic reasons due to the continuous losses sustained in its operations coupled with the lack of demand for services of such section. In Insular Lumber Co. Inc., vs. CA, 80 SCRA 28, it was held that just cause for terminating employment within a definite period is closing or cessation of operation of the establishment or enterprise. While it is true that only one section of the company is affected, the section involved in this case is one where the continuous work could not even be guaranteed, and it was held in Pan-Am World Airways, Inc. vs. CIR, et al., 17 SCRA 813 that lack of work as a cause of lay-off is justified."

We note, moreover, that instead of terminating the petitioner's employment, the private respondent merely reassigned her to other temporary positions before giving her a permanent job as secretary in the Technical Training Department located at Bicutan, Taguig, Metro Manila. The acts of the company negate the petitioner's claim of discrimination and illegal constructive dismissal. It tried its best to continue using her services. Needless to say, no reinstatement can be effected because the petitioner has not been dismissed. Neither may she be reinstated to her former position which no longer exists. Ad impossible nemo tenetur. Insofar as this aspect of the petition is concerned, the respondent NLRC committed no abuse of discretion in dismissing the petitioner's appeal.

The petitioner's termination from her last position as secretary to the Senior Manager for Technical Training based on abandonment is, however, a different matter. As earlier adverted to, the respondent Commission found the petitioner's dismissal on the ground of unauthorized absences to be illegal. Abandonment cannot be a basis

for termination of employment, because the transfer to Bicutan was precisely the issue being raised by the petitioner against the employer. According to Mrs. Dangan, her being transferred to Bicutan was an act of harassment and discrimination. She could not, therefore, be expected to report for work at her new assignment until the cases she filed had been resolved.

At the same time, the employer cannot be compelled to pay her backwages during a period when she was not working because of a sincere but mistaken belief that she was being harassed and persecuted for having worked as private secretary to an executive who resigned. The petitioner has the option of accepting a reassignment to the respondent's Bicutan offices without any backwages. Otherwise, she may avail herself of the separation pay to which an employee laid off due to retrenchment is entitled under the law.

**WHEREFORE**, the Petition is partly **GRANTED** insofar as petitioner's reinstatement as Secretary, Technical Training Department is concerned. In the alternative, the employer shall cause payment to the petitioner of separation pay computed on the basis of her compensation as Secretary, Technical Training Department. The Petition is **DENIED** insofar as it prays that private respondent be required to reinstate the petitioner to the position of Secretary, Technical Services Department, with full backwages.

**SO ORDERED.**

**Teehankee, *C.J., (Chairman)*, Melencio-Herrera, Plana and Relova, *JJ.*, concur.**