

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

ADAM GARCIA,
Petitioner,

-versus-

**G.R. No. 147427
February 7, 2005**

**NATIONAL LABOR RELATIONS
COMMISSION and LEGASPI OIL
COMPANY, INC./ROMEO MERCADO
and GUS ZULUAGA,**

Respondents.

X-----X

DECISION

CALLEJO, SR., J.:

Before us is a petition for review on certiorari of the Decision^[1] of the Court of Appeals (CA) dismissing the petition for certiorari filed by petitioner Adam Garcia docketed as CA-G.R. SP No. 51307 and its Resolution denying the motion for reconsideration thereof.

The Antecedents

Garcia worked as the Production Maintenance Foreman of Legaspi Oil Company, Inc. (Legaspi Oil) since April 15, 1991.^[2] His responsibilities included the preparation of the work schedule for oil

and pier loading maintenance, machine shop and production work supervision. He was also the shifter-in-charge, quality controller in the night shift, and was appointed as loading supervisor. Before he was employed by Legaspi Oil, Garcia worked at the Department of Public Works and Highways (DPWH).

In December 1992, Romeo Mercado, the Plant Manager, instructed Garcia to look for a road grader which was needed to clear and level the plant road network. This was to be done in preparation for the arrival of certain plant visitors. Garcia failed to secure one because no road grader was available then.^[3]

After a week, Mercado reminded Garcia about the road grader. The latter went to the Albay Area Equipment Service of the DPWH at Paulog, Ligao, Albay, in search of the equipment,^[4] and informed Engineer Antonio Abo, the Fleet-in-Charge, of Mercado's request. Abo, however, advised Garcia to come back as there was no available unit at the time.^[5]

Mercado further pressed the petitioner to follow up the request with the DPWH. This time, Regional Equipment Engineer Bienvenido Bogayong allowed the use of the newly-rehabilitated road grader by way of operational test, with the condition that Legaspi Oil would shoulder fuel consumption and repairs as may be necessary, including materials, equipment and labor cost, as well as the wages of the operator and the helper. Abo then informed Garcia that the road grader was available and when it could be driven to the company premises.^[6] Abo also informed Mercado that Legaspi Oil would have to shoulder the wages of the operator and helpers, fuel consumption, and, if need be, repairs and labor costs, to which Mercado agreed.^[7]

Oscar de la Torre, an employee of the DPWH, hired retired DPWH employee Jesus Torregoza to drive the road grader to the company premises, without, however, entering into an agreement as to the latter's compensation. Torregoza later drove the grader to the company premises, along with Abo and Simplicio Sistoso, a classmate of Mercado. Garcia and Mercado met up with them upon their arrival.^[8]

On January 2, 1993, the road grader broke down. Garcia instructed the company's machinist, Rolly Balanta, to repair the road grader and fabricate its shear pin with the use of a bolt taken from the company's warehouse. The following day, the road grader stopped functioning again, apparently due to the defective shear pin. Using material given to him by Garcia, Balanta fabricated another shear pin to replace the one fabricated the day before. The road grader broke down anew on January 12, 1993.^[9] Spare parts brought by the DPWH personnel were used for the said repairs, except for the bolt piece taken from the company's stockroom.^[10] The grader was used for a total of 55.384 hours.^[11]

Since Abo and De la Torre were not authorized to rent out government property for private use, they, along with Mercado, agreed to make it appear to the company that Torregoza was the one who rented out the equipment. The billings for the usage of the equipment were prepared and later approved by Mercado. Legaspi Oil issued a check in the amount of P37,373.32 in the name of Torregoza. The latter, however, endorsed the check to Garcia, who, in turn, encashed the same.^[12]

The same road grader was again used by the company on January 14 and 15, 1993. The company then issued a check amounting to P5,541.45 on January 26, 1993 with Torregoza as the payee. The latter endorsed the check and the petitioner encashed it.

On November 25, 1994, Torregoza filed a complaint-affidavit against Garcia with Legaspi Oil, claiming that he was made to endorse a check which the latter encashed, and that out of the total amount of P37,373.32, only P2,000.00 was given to him. Torregoza further alleged that when he tried to claim a second check paid to him in the amount of P5,541.45, the company's cashier refused to give it to him because of the petitioner's instructions not to release the check unless he was around.^[13]

On December 7, 1994, Mercado issued a Memorandum to Garcia requiring him to explain Torregoza's allegations in his complaint-affidavit. The memorandum reads as follows:

TO : Adam B. Garcia

FROM : Operation's Manager
RE : Company Rules and Regulations Violation.

Explain in writing within 24 hours upon receipt of this memo why the company will not impose penalty against you for violating the Company Rules and Regulations.

Facts and Basis for your Violations:

1. That, on January 14, 1993, you have made the Road Grader Operator endorsed (sic) his check amounting to P37,373.32 and you personally encashed it somewhere.
2. That out of the amount of the check issued to the Road Grader Operator, you gave him only P2,000.00 in cash.
3. That, on January 14 and 15, 1993, the same equipment was operated by him at the rate of P350.00 per hour, then the amount of P5,541.45 was paid to the order of said Road Grader Operator.
4. That when he tried to claim the check which was named after him, the cashier refused to release the check in view of your order not to release the check unless you are around.
5. The Road Grader Operator insisted to claim the check, and finally was released when the claimant said to report the matter to the manager.

INFRACTIONS AND DISCIPLINARY ACTIONS

a.) CATEGORY NO. 4, Item No. 8

Offering or accepting directly/indirectly anything of value in exchange for a job, business transactions or any favor in connection with the work, for personal gain or profit.

b.) CATEGORY NO. 4, Item No. 19, Letter (e) Breach of Trust and Confidence

Any act of dishonesty with the intention to defraud company.

PENALTY:

You may refer these rulings from the handouts provided to you by the personnel staff for your guidance. First offense is dismissal.

(SGD.) ROMEO F. MERCADO
Operation's Manager^[14]

In his Explanation dated December 8, 1994, Garcia admitted having encashed the checks. However, he claimed that he did so only upon the request of Torregoza, and that he gave the proceeds thereof to Abo, less the amount of P1,300.00 which he paid to the carinderia. He insisted that since it was against the policy of the Bureau of Equipment of the DPWH to engage in private business, Abo designated Torregoza, a retired employee, to sign the necessary papers in his behalf, as well as to collect the amounts due for the use of the road grader and the wages of the workers. He claimed that Mercado had agreed to the arrangement. Garcia insisted that he did not retain a single centavo out of the proceeds of the checks. He then requested Mercado to invite all persons involved, including Abo, for an investigation.^[15]

On December 28, 1994, Mercado placed Garcia under preventive suspension for thirty (30) working days without pay effective December 29, 1994.^[16]

On January 13, 1995, Mercado submitted to the Personnel and Administrative Manager his findings and recommendation on Garcia's alleged infractions.^[17]

On February 3, 1995, another Memorandum was issued to Garcia requiring him to explain the alleged unauthorized use of manpower, equipment, and materials used in the repair of the road grader. The Memorandum reads in part:

In the course of our investigation on the case of the Road Grader that was leased to us, it was disclosed that when the Grader broke down you caused the same to be repaired using company personnel, equipment and materials without prior approval by the management. This is a violation of our rules and your act, favored our contractor without the corresponding payment to the company for manpower, equipment, and materials used for the said repair. Attached is a copy of the affidavit of our employee pertaining to that incident.

You are, therefore, directed to submit your explanation to the above incident within 48 hours from receipt hereof. Your failure to explain will mean a waiver of your right to be heard on the incident.

In the meantime, you are placed on forced leave with pay for the period of 5 working days beginning February 4, 1995.^[18]

Garcia explained that he did not bother to seek Mercado's permission before making the repairs because of the latter's instructions to assist the DPWH men in the course of their work. He maintained that Mercado knew about these repairs because he was aware of the condition of the road grader and even once saw the company machinist, Rolly Balanta, doing the repairs. He then reiterated his request to invite the DPWH men to clear up everything.^[19]

In a Memorandum dated February 10, 1995, Garcia's services were terminated due to dishonesty and loss of trust and confidence.^[20]

On February 14, 1995, Garcia filed with the Regional Arbitration Branch No. V, Legaspi City, a complaint for illegal suspension, dismissal, and other labor standard violations against Legaspi Oil, Mercado and Gus Zuluaga, docketed as RAB V Case No. 02-0018-95.^[21] Part of the evidence adduced was the affidavit of Engr. Antonio Abo, dated March 16, 1995, where the latter alleged that the amounts of the checks were received by Bogayong from Garcia and that out of the amounts of the checks, Garcia retained P1,300.00 for the payment of the meals consumed by the crew. Garcia also submitted an affidavit executed by De la Torre. The Labor Arbiter propounded

clarificatory questions on the affiants and/or witnesses, and the latter were, likewise, cross-examined by the respondents' counsel.

On January 24, 1996, Executive Labor Arbiter Vito C. Bose rendered judgment in favor of Garcia. The dispositive portion of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered finding respondent Legaspi Oil Co./Romeo Mercado, manager, guilty of illegal dismissal and thereby directing said respondent to reinstate complainant to his former position without loss of seniority rights plus all other benefits, privileges and emoluments he may have been entitled to at the time of his termination from his employment and to pay him full backwages subject to deduction of his earnings elsewhere, reckoned with from the time his compensation was withheld on December 29, 1994 up to the time of actual reinstatement which to date amounted to P127,710.88, together with the certificate to the effect that complainant was actually reinstated.

Respondent is further ordered to pay complainant moral and exemplary damages in the total amount of P10,000.00 plus 10% attorney's fees of the total award.

That the aggregate amount of P151,481.97, together with the certificate to the effect that complainant was actually reinstated, be coursed thru this Branch within ten (10) days from receipt hereof for proper disposition.

Other claims and charges are hereby dismissed for lack of merit.

SO ORDERED.^[22]

The Labor Arbiter gave credence and full probative weight to the affidavits and testimonies of Garcia and his witnesses, including Abo and De la Torre. He declared that there was no valid cause for Garcia's dismissal from employment, and that the latter was not afforded due process. The Labor Arbiter pronounced that in encashing the two checks, Garcia merely accommodated Torregozza

and did not profit therefrom; moreover, Torregoza admitted that he received P2,000.00 from De la Torre, and not from Garcia.^[23]

On appeal, the National Labor Relations Commission (NLRC) set aside the decision of the Labor Arbiter and dismissed the complaint for lack of merit.^[24] While it found that Garcia was dismissed for valid cause, it also ruled as follows:

However, we cannot subscribe to the manner the dismissal was effected. While the complainant was given the chance to submit his explanation regarding his alleged violation of company rules, we are not ready to concede to the respondent's position that his right of due process was accorded to him to its fullest. Hence, in this regard, by virtue of this violation, complainant should be awarded an indemnity pay equivalent to his one (1) month salary in accordance with existing jurisprudence. (Wenphil Corp. vs. NLRC, 170 SCRA 69; Rubberworld Phils., Inc. vs. NLRC, 183 SCRA 421; Reta vs. NLRC, 232 SCRA 613; Falguera vs. Labor Arbiter Linsangan, G.R. No. 114843, Dec. 14, 1995).^[25]

The NLRC did not give credence to Garcia's claims, as well as the affidavits and testimonies of Abo and De la Torre. The NLRC ruled that Garcia failed to prove that he gave the proceeds of the checks to Abo. Garcia's claim was belied by Abo himself, who averred in his affidavit that it was Bogayong who received the said proceeds. According to the NLRC, Abo's affidavit and testimony were not worthy of belief because while he alleged in his affidavit that Garcia talked to him about the grader in December 1992, he claimed during clarificatory questioning that Garcia conferred with him in January 1993.

Garcia filed a motion for reconsideration of the said decision, but this was, likewise, denied on July 8, 1998.

Garcia filed a petition for certiorari before this Court on September 28, 1998. However, pursuant to A.M. No. 99-201-SC dated February 9, 1999, the case was remanded to the CA and was docketed as CA-G.R. SP No. 51307.

The petition for certiorari alleged that the NLRC committed grave abuse of discretion amounting to lack of jurisdiction when:

1. The NLRC set aside the Decision dated January 24, 1996 (Annex "C") rendered by the Executive Labor Arbiter and dismissed the complaint of Petitioner in complete disregard of the evidences on records.
2. The NLRC reversed the Decision dated January 24, 1996 (Annex "C") rendered by the Executive Labor Arbiter without factual and adequate basis.
3. The NLRC committed grave abuse of discretion in reversing the Decision dated January 24, 1996 (Annex "C") rendered by the Executive Labor Arbiter on mere supposition, conjectures and speculations unsupported by facts and evidences on record.
4. The NLRC committed grave abuse of discretion when it found the dismissal by private respondent of Petitioner upon ground of dishonesty and loss of trust and confidence to be valid. Such finding of the NLRC is an erroneous conclusion and bereft of factual and adequate basis and not obtaining from the evidences and facts as well as law.^[26]

The Decision of the Court of Appeals

On December 29, 2000, the CA dismissed the special civil action for certiorari on the ground that it only raised questions of fact. According to the CA, considering that what was filed before it was a petition for certiorari and not an appeal or a petition for review, it could not review the finding of the NLRC that the petitioner was guilty of dishonesty.^[27]

Relying on the ruling of this Court in ComSavings Bank vs. NLRC,^[28] the CA ruled that a petition for certiorari is limited to issues of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction, and does not extend to an inquiry into the correctness of the evaluation made by the labor official concerned.^[29] The appellate court ruled that the errors ascribed to the NLRC were mere

errors of judgment, and not errors of jurisdiction correctible by certiorari.

Garcia moved to reconsider the decision which the CA denied in a Resolution^[30] dated March 12, 2001.

Hence, this petition for review.

The Present Petition

The petitioner argues that the CA should have reviewed the decision of the NLRC, considering the fact that it contradicts the findings of the Labor Arbiter.^[31] He claims that the NLRC displayed partiality when it declared that he violated the rules and regulations of the company despite the lack of substantial evidence to show his infraction or culpability.^[32]

The petitioner also avers that the CA committed a reversible error when it simply affirmed the decision of the NLRC and dismissed the complaint without awarding full backwages, and despite the findings of the NLRC and the Labor Arbiter that he was denied due process. He claims that the CA should have applied the ruling in *Serrano vs. National Labor Relations Commission*,^[33] which awarded full backwages to the employee, computed from his dismissal until the finality of judgment, finding such dismissal to have been for a just cause.^[34]

The private respondents, for their part, agree that a conflict between the factual findings of the NLRC and the Labor Arbiter necessitates a review by the CA. They aver, however, that such review is not proper in a petition for certiorari under Rule 65 of the Rules of Court, but only in a petition for review under Rule 45.^[35]

The private respondents further argue that the evidence on record adequately established the petitioner's culpability. The circumstances surrounding the encashment of the check belonging to the road grader operator engendered doubt as to the petitioner's character and his worthiness to be trusted any further by the private respondents.^[36]

Moreover, the private respondents posit that due process simply means an opportunity to be heard, and this opportunity was never denied to the petitioner. He was issued a memorandum apprising him of the alleged infractions and was required to explain first before he was finally terminated. The private respondents further maintain that even assuming that the petitioner was denied due process, this does not give rise to illegal dismissal, considering that his termination from employment was for a valid cause under the law.^[37]

The Office of the Solicitor General, for its part, avers that the issues raised by the petitioner do not involve any question of law that would warrant a review of a CA decision. However, it agrees with the ruling of the NLRC that while there was just cause for the petitioner's dismissal, he was nevertheless denied his right to due process; hence, the petitioner should be paid full backwages from the time of his dismissal until the court finds that he was dismissed for a just cause.^[38]

The issue for resolution is whether the CA erred in dismissing outright the petition for certiorari simply and merely on its finding that the only question raised by the petitioner therein was factual in nature, and whether or not the errors committed by the CA, if any, were mere errors of judgment.

The Ruling of the Court

The petition is meritorious.

We agree with the ruling of the CA that in a petition for certiorari under Rule 65 of the Rules of Court, errors of jurisdiction and grave abuse of discretion amounting to excess or lack of jurisdiction are ascribed to the lower courts or quasi-judicial tribunals. The general rule is that certiorari does not lie to review errors of judgment of the trial court, as well as that of a quasi-judicial tribunal. In certiorari proceedings, judicial review does not go as far as to examine and assess the evidence of the parties and to weigh the probative value thereof. (See *Travelaire & Tours Corp. vs. NLRC*, 294 SCRA 505 [1998]).^[39] Such questions are proper only in an ordinary appeal either by writ of error from the judgment or final order of the trial court, or a petition for review under Rule 43 of the Rules of Court

from a decision or final order of a quasi-judicial body. Indeed, a certiorari proceeding is limited in scope and narrow in character.

However, in *Ong vs. People*, [342 SCRA 372 (2000)],^[40] we ruled that certiorari can be properly resorted to where the factual findings complained of are not supported by the evidence on record. Earlier, in *Gutib vs. Court of Appeals*, [312 SCRA 365 (1999)],^[41] we emphasized thus:

It has been said that a wide breadth of discretion is granted a court of justice in certiorari proceedings. The cases in which certiorari will issue cannot be defined, because to do so would be to destroy its comprehensiveness and usefulness. So wide is the discretion of the court that authority is not wanting to show that certiorari is more discretionary than either prohibition or mandamus. In the exercise of our superintending control over inferior courts, we are to be guided by all the circumstances of each particular case “as the ends of justice may require.” So it is that the writ will be granted where necessary to prevent a substantial wrong or to do substantial justice.^[42]

And in another case [*Globe Telecom, Inc. vs. Florendo-Flores*, 390 SCRA 201 (2002)] of recent vintage, we further held:^[43]

In the review of an NLRC decision through a special civil action for certiorari, resolution is confined only to issues of jurisdiction and grave abuse of discretion on the part of the labor tribunal. Hence, the Court refrains from reviewing factual assessments of lower courts and agencies exercising adjudicative functions, such as the NLRC. Occasionally, however, the Court is constrained to delve into factual matters where, as in the instant case, the findings of the NLRC contradict those of the Labor Arbiter.

In this instance, the Court in the exercise of its equity jurisdiction may look into the records of the case and re-examine the questioned findings. As a corollary, this Court is clothed with ample authority to review matters, even if they are not assigned as errors in their appeal, if it finds that their consideration is necessary to arrive at a just decision of the case.

The same principles are now necessarily adhered to and are applied by the Court of Appeals in its expanded jurisdiction over labor cases elevated through a petition for certiorari; thus, we see no error on its part when it made anew a factual determination of the matters and on that basis reversed the ruling of the NLRC.^[44]

Moreover, even a cursory reading of the NLRC decision will show that the fallo thereof is inconsistent with its body. While the body of the decision mentioned that the petitioner should be awarded indemnity for failure of private respondent Legaspi Oil to comply with the two-notice statutory requirement prior to dismissing the petitioner, no such award was included in the fallo thereof. Apropos to the matter is the decision of the Court in *Agabon vs. NLRC*, [G.R. No. 158693, promulgated on November 17, 2004]^[45] which became final and executory on December 13, 2004.

There is also a need for the CA to delve into and resolve the matter of the use of government property by private individuals, and the effects thereof on the issues raised by the parties therein.

IN LIGHT OF ALL THE FOREGOING, the petition is **GRANTED**. The assailed Decision and Resolution of the Court of Appeals are **SET ASIDE**. The records are remanded to the Court of Appeals. The said court is directed to **REINSTATE** case CA-G.R. SP No. 51307 in its docket and to conduct further proceedings with dispatch. No costs.

SO ORDERED.

PUNO, J., (Chairman), AUSTRIA-MARTINEZ, TINGA, and CHICO-NAZARIO, JJ., concur.

[1] Penned by Associate Justice Romeo A. Brawner (now Presiding Justice), with Associate Justices Cancio C. Garcia (now an Associate Justice of the Supreme Court) and Andres B. Reyes, Jr., concurring.

[2] Rollo, p. 24.

[3] CA Rollo, p. 89.

[4] Id. at 96.

- [5] Id. at 99.
- [6] Id.
- [7] Id.
- [8] Id. at 96.
- [9] Id. at 126.
- [10] Id. at 97.
- [11] Id. at 90.
- [12] Id.
- [13] Id. at 118.
- [14] Id. at 105.
- [15] Id. at 120-121.
- [16] Id. at 122.
- [17] Id. at 123.
- [18] Id. at 108.
- [19] Id. at 109.
- [20] Rollo, p. 10.
- [21] CA Rollo, p. 88.
- [22] Rollo, pp. 45-46.
- [23] Id. at 35.
- [24] Id. at 74.
- [25] Id. at 73-74.
- [26] Rollo, p. 24.
- [27] Rollo, p. 82.
- [28] 257 SCRA 307 (1996).
- [29] Id. at 317.
- [30] Rollo, p. 87.
- [31] Id. at 183.
- [32] Id. at 17-18.
- [33] 331 SCRA 331 (2000).
- [34] Ibid.
- [35] Rollo, p. 199.
- [36] Id. at 202-203.
- [37] Id. at 102-103.
- [38] Id. at 123
- [39] See *Travelaire & Tours Corp. vs. NLRC*, 294 SCRA 505 (1998).
- [40] 342 SCRA 372 (2000).
- [41] 312 SCRA 365 (1999).
- [42] Id. at 378.
- [43] *Globe Telecom, Inc. vs. Florendo-Flores*, 390 SCRA 201 (2002).
- [44] Id. at 208-209.
- [45] G.R. No. 158693, promulgated on November 17, 2004.