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SUPREME COURT
FIRST DIVISION

GELMART INDUSTRIES PHILS., INC.,
***Petitioner*,**

-versus-

G.R. No. 85668
August 10, 1989

THE HON. NATIONAL LABOR RELATIONS COMMISSION AND FELIX FRANCIS,
***Respondents*.**
x---x

D E C I S I O N

GANCAYCO, *J.*:

At issue in this Petition is whether or not the National Labor Relations Commission (hereinafter referred to as NLRC) committed a grave abuse of discretion amounting to lack or excess of jurisdiction in ordering the reinstatement of private respondent to his former position with payment of backwages equivalent to six (6) months.[1]

As revealed by the records, the background facts are as follows:

Private respondent Felix Francis started working as an auto mechanic for petitioner Gelmart Industries Phils., Inc. (herein-after referred to

as GELMART) sometime in 1971. As such, his work consisted of the repair of engines and under chassis, as well as trouble shooting and overhauling of company vehicles. He is likewise entrusted with some tools and spare parts in furtherance of the work assigned to him.

On April 11, 1987, private respondent was caught by the security guards taking out of GELMART's premises one (1) plastic container filed with about 16 ounces of "used" motor oil, without the necessary gate pass to cover the same as required under GELMART's rules and regulations. By reason thereof, petitioner, on April 13, 1987, was placed under preventive suspension pending investigation for violation of company rules and regulations. Under the said rules, theft and/or pilferage of company property merits an outright termination from employment.

After due investigation, or on May 20, 1987, private respondent was found guilty of theft of company property. As a consequence, his services were severed.

Thereafter, private respondent filed a complaint for illegal dismissal before the NLRC. In a decision dated February 26, 1988, Labor Arbiter Ceferina J. Diosana ruled that private respondent was illegally dismissed and, accordingly, ordered the latter's reinstatement with full backwages from April 13, 1987 up to the time of actual reinstatement.[2]

The ground relied upon by the labor arbiter in her decision is worth quoting hereunder, to wit:

> "The most important aspect that should be considered in interpreting this rule (referring to the company's rules on theft and pilferages) is the deprivation of the company of property belonging to it without any compensation. Hence, the property that must be stolen or pilfered must be property which has value.
>
> x x x
>
> In the respondent company, the used oil is thrown away by the mechanics. In other words, the taking by complainant of the

> subject 16 ounces of used oil did not deprive the respondent company of anything. As it appears, the said used oil forms part of the waste that should be thrown away and the respondent company had no use for the same, hence, the respondent company was not deprived of any property and, therefore, and (sic) it is the position of this Labor Arbiter that there was no stealing or pilferage to speak of."[3] (Emphasis supplied.)

From this decision, GELMART interposed an appeal with the NLRC. In its decision dated October 21, 1985, the NLRC affirmed with modification the ruling of Labor Arbiter Diosana,[4] the dispositive portion of which reads as follows:

> "WHEREFORE, in view of the foregoing, the decision is hereby MODIFIED. Respondent-appellant is hereby directed to reinstate complainant-appellee to his former position without loss of seniority rights and to pay him backwages equivalent to six (6) months.
>
> SO ORDERED."[5]

On December 12, 1988, GELMART filed before this Court a special civil action for *certiorari* with a prayer for the issuance of a temporary restraining order.

On January 18, 1989, this Court, without necessarily giving due course to the petition, issued a temporary restraining order enjoining respondents from enforcing the assailed decision. On the same date, this Court required respondents to comment on the petition.

Aside from the substantive issues raised in their comment which will be discussed later on in this decision, public respondent pointed to a procedural error allegedly committed by petitioner.[6] The Solicitor General contends that petitioner failed to exhaust "[t]he administrative remedies afforded by law before resort can be had to the courts."[7] More specifically, our attention is called to the fact that no motion for reconsideration of the NLRC decision was filed by petitioner. The Solicitor General then concludes that "[s]ince petitioners failed to avail of the "plain, speedy and adequate' remedy accorded to them in the ordinary course of law, the instant petition

for *certiorari* is prematurely filed, and hence, does not state a cause of action."[8]

The legal provision pertinent to this issue is found in Article 223 of the Labor Code which provides, in part:

> "ART. 223. Appeal. —
>
> x x x
>
> "The decision of the Commission shall be immediately executory even pending appeal." (Emphasis supplied.)

From this provision, it can be gleaned that the filing of a motion for reconsideration may not prove to be an adequate remedy. For one, assuming that a motion for reconsideration is filed, nowhere does it state that the filing thereof would automatically suspend the execution of the decision. Second, although a motion for reconsideration has often been considered a condition precedent for granting the writ of *certiorari*, this rule, however, finds exception in cases where execution had been ordered and the need for relief is extremely urgent.[9]

This Court is not unaware of Section 2, Rule XI of the Revised Rules of the National Labor Relations Commission which provides in paragraphs (a) and (b) thereof:

> "Sec. 2. Finality of Decisions of the Commission —
>
> (a) The decisions, resolutions or orders of the Commission shall become executory after ten (10) calendar days from receipt of the same.
>
> (b) Should there be a motion for reconsideration in accordance with Sec. 9, Rule X of these Rules, the decision shall be executory after 10 days from receipt of the resolution on such motion.
>
> x x x"

However, this Court has already ruled against the validity of the abovecited rule, particularly Section 2, Rule XI, paragraph (a)in Juan vs. Musñgi.[10] Interpreting the word "immediately" in Article 223 of the Labor Code to mean "without interval of time" or "without delay," this Court declared that the NLRC rules which provide that decisions, resolutions or orders of the Commission shall become executory after ten (10) calendar days from receipt thereof cannot prevail over Article 223 of the Labor Code. Further amplifying on this ruling, this Court stated that administrative regulations under legislative authority by a particular department must be in harmony with the provision of the law for the sole purpose of carrying into effect its general provisions.[11] Otherwise stated, no period of time need elapse before the decision of the NLRC becomes executory.

From the foregoing, it will be seen that a motion for reconsideration may not be a plain, speedy and adequate remedy. Hence, a petition for *certiorari* with this Court with a prayer for the issuance of a temporary restraining order is but a proper remedy to forestall the immediate execution of the assailed decision.

The Court will now look into the substance of this petition.

In their petition, GELMART ascribes grave abuse of discretion on the part of the NLRC for rendering a decision that is contrary to law and existing jurisprudence.

We find no merit in this petition.

Consistent with the policy of the State to bridge the gap between the under privileged workingmen and the more affluent employers, the NLRC right fully tilted the balance in favor of the workingmen — and this was done without being blind to the concomitant right of the employer to the protection of his property. The NLRC went on to say as follows:

> "We do not fully concur with the findings of the Labor Arbiter. Complainant-appellee's suspension prior to termination had sufficient basis. We disagree with the conclusion that complainant-appellee did not violate respondent-appellant's role requiring a gate pass for taking out company property as

> the used motor oil was not really in a sense 'property' considering that it was plain waste and had no commercial value. Used motor oil is not plain waste because it had its use to respondent-appellant's motor pool. Besides, it is not for complainant-appellee to interpret the rule according to his own understanding. Respondent-appellant had the right to interpret the role and to exact discipline in the light of its policy to instill discipline on its 6,000 workforce.
>
> We find, however, complainant-appellee's dismissal unwarranted. The penalty of preventive suspension was sufficient punishment for the violation under the circumstances."[12] (Emphasis supplied)

Thus, without being too harsh to the employer, on the one hand, and naively liberal to labor, on the other, the NLRC correctly pointed out that private respondent cannot totally escape liability for what is patently a violation of company rules and regulations.

To reiterate, be it of big or small commercial value, intended to be re-used or altogether disposed of or wasted, the "used" motor oil still remains, in legal contemplation, the property of GELMART. As such, to take the same out of GELMART's premises without the corresponding gate pass is a violation of the company rule on theft and/or pilferage of company property. However, as this Court ruled in Meracap vs. International Ceramics Mfg. Co., Inc., "[w]here a penalty less punitive would suffice, whatever missteps may be committed by labor ought not to be visited with a consequence so severe.[13] On this score, it is very difficult for this Court to discern grave abuse of discretion on the part of the NLRC in modifying the appealed decision. The suspension imposed upon private respondent is a sufficient penalty for the misdemeanor committed.

As stated earlier, petitioner assails the NLRC decision on the ground that the same is contrary to existing jurisprudence, particularly citing in support thereof Firestone Tire and Rubber Co. of the Phil. vs. Lariosa.[14] Petitioner contends that by virtue of this ruling they have the right to dismiss private respondent from employment on the ground of breach of trust or loss of confidence resulting from theft of company property.

We believe otherwise.

There is nothing in Firestone which categorically gives management an unhampered right in terminating an employee's services. The decision in Firestone specifically focuses only on the legality of a dismissal by reason of acts of dishonesty in the handling of company property for what was involved in that case is theft of sixteen (16) flannel swabs which were supposed to be used to clean certain machineries in the company.[15] In fact, a careful review of the cases cited in Firestone[16] will readily reveal that the underlying reason behind sustaining the penalty of dismissal or outright termination is that, under the circumstances obtaining in those cases, there exists ample reason to distrust the employees concerned.

Thus, in upholding the dismissal of a cashier found guilty of misappropriating corporate funds, this Court, in Metro Drug,[17] made a distinction between managerial personnel and other employees occupying positions of trust and confidence from ordinary employees. On the other hand, in Dole Philippines,[18] this Court spoke of the "nature of participation" which readers one absolutely unworthy of the trust and confidence demanded by the position in upholding the dismissal of employee found guilty of illegally selling for their own benefit two (2) drums of crude oil belonging to the company.

Additionally, in Firestone, it clearly appears that to retain the employee would "[i]n the long run, endanger the company's viability."[19]

The Court rules that these circumstances are not present in this instant case.

Contrary to the assertion of petitioner, the ruling in Firestone does not preclude the NLRC from looking into the particular facts of the case to determine if there is ample reason to dismissal employee charged and subsequently found guilty of theft of company property. The said decision cannot be deemed as a limitation on the right of the State in the exercise of its paramount police power to regulate or temper the prerogative of management to dismiss an erring employee.[20] Consequently, even when there exists some rules agreed

upon between the employer and the employee, it cannot preclude the State from inquiring on whether or not its rigid application would work too harshly on the employee.

Considering that private respondent herein has no previous derogatory record in his fifteen (15) years of service with petitioner GELMART, the value of the property pilfered (16 ounces of used motor oil) is very minimal, plus the fact that petitioner failed to reasonably establish that non dismissal of private respondent would work undue prejudice to the viability of their operation or is patently inimical to the company's interest, it is more in consonance with the policy of the State, as embodied in the Constitution, to resolve all doubts in favor of labor. This is our ruling in Philippine Air Lines, Inc. vs. Philippine Air Lines Employees Association[21] involving as it does essentially the same facts and circumstances. At this point, this Court does not see any reason to deviate from the said ruling.

WHEREFORE, in view of the foregoing, the Petition is **DISMISSED** for lack of merit. The restraining order issued by this Court on January 18, 1989 enjoining the enforcement of the questioned decision of the National Labor Relations Commission is hereby lifted. No pronouncement as to costs.

SO ORDERED.

Narvasa, Cruz, Griño-Aquino and Medialdea, *JJ.*, concur.

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[1] Decision of the Fifth Division of the NLRC in LRC-NCR Case No. 00-05-01912-87 dated October 21, 1988; pages 17-24, Rollo.
[2] Page 25-30, Rollo.
[3] Pages 26-27, Rollo.
[4] Pages 17-24, Rollo.
[5] Page 24, Rollo.
[6] Pages 57-66, Rollo.
[7] Page 62, Rollo.
[8] Citing the cases of Atlas Consolidated Mining and Dev. Corp. vs. Mendoza, 2 SCRA 1064 (1961) and Pilar vs. Sec. of Public Works and Communication, 19 SCRA 358 (1967); page 63, Rollo.
[9] Socco vs. Vda. de Leary, 12 SCRA 326 (1964).
[10] 155 SCRA 133, (1987).

[11] Juan vs. Musñgi, supra, at 140.
[12] Pages 23-24, Rollo.
[13] 92 SCRA 412 (1975).
[14] 148 SCRA 187 (1987).
[15] Firestone Tire and Rubber Co. of the Phils. vs. Lariosa, supra, at 192.
[16] Metro Drug Corporation vs. NLRC, 143 SCRA 132 (1982); Dole Philippines, Inc., vs. NLRC, 123 SCRA 673, (1983); Philippine Geothermal, Inc. vs. NLRC, 117 SCRA 692 (1982); and Reynolds Philippine Corp. vs. Eslava, 137 SCRA 259(1985).
[17] Supra.
[18] Supra.
[19] Supra, at 192.
[20] Manila Trading and Supply Co. vs. Zulueta, et al., 69 Phil. 485 (1940).
[21] 57 SCRA 489 (1974).

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