SUPREME COURT
FIRST DIVISION

GENERAL TEXTILE, INC. and EDGAR TOLENTINO,
***Petitioners*,**

-versus-

G.R. No. 102969
April 4, 1995

NATIONAL LABOR RELATIONS COMMISSION, LABOR ARBITER MANUEL P. ASUNCION and RODOLFO LOPEZ,
***Respondents*.**
x----------x

D E C I S I O N

QUIASON, *J.*:

This is a Petition for *Certiorari* under Rule 65 of the Revised Rules of Court to nullify and set aside the Decision of the National Labor Relations Commission (NLRC) dated August 29, 1991, and its Resolution dated October 1, 1991 in Case No. NLRC-NCR-00-09-04180-89.

Private respondent Rodolfo Lopez was employed by petitioner General Textiles, Inc. (Gentex) as machine operator on March 26, 1984.

On July 17, 1988, Lopez fell ill. He was later diagnosed as suffering from moderately advanced pulmonary tuberculosis. He went on sick leave upon the advice of the company physician and was later granted by the Social Security System sickness benefits for 60 days, from August 2 to September 30, 1988.

In December 1988, Lopez went to Gentex with the intention of returning to work. He was instead told by the company physician to extend his leave for another six months.

From May 4 to July 24, 1989, Lopez was confined at the Quezon Institute. This fact was known to Gentex, as its personnel manager, petitioner Edgar Tolentino, accomplished Lopez' Medicare form.

On August 2, 1989, Gentex, through Tolentino, sent Lopez a Notice of Termination informing him of the termination of his employment "immediately upon receipt of this notice" on the ground that he had been absent without official leave (Rollo, p. 20).

On September 6, 1989, Lopez filed a complaint against Gentex and Tolentino for illegal dismissal and for non-payment of the thirteenth-month pay and service incentive leave for the year 1988. In their defense, petitioners contended that Lopez abandoned work beginning September 17, 1988.

The Labor Arbiter did not give merit to the posture of petitioners, pointing out that they could not but know that Lopez was granted sickness benefits until September 30, 1988 and was on sick leave. Thus, in his Decision dated December 7, 1990, the Labor Arbiter ordered the reinstatement of Lopez with full back wages from the time his salary was withheld until his actual reinstatement, subject to his fitness for work. The other monetary claims of Lopez were dismissed.

On appeal, NLRC ruled that as there was no abandonment, Lopez' dismissal on such ground was illegal. However, NLRC ruled that Lopez' reinstatement could not be forced upon Gentex, since there was no showing that his pulmonary tuberculosis was already arrested. Hence, in its August 29, 1991 Decision, NLRC held as follows:

> "WHEREFORE, the decision appealed from is hereby AFFIRMED with modification in that respondents are ordered to pay complainant Ronaldo Lopez (sic) six (6) months back wages only and in lieu of reinstatement, he should be paid separation pay equivalent to one (1) month pay for every year of service, a fraction of at least six (6) months being considered as one whole year" (Rollo, p. 29).

II

> In this petition for certiorari, petitioners first contend that NLRC acted with grave abuse of discretion when it held that they belatedly interposed for the first time on appeal the defense of illness as the cause of Lopez' termination. They claim that they had called attention to Lopez' illness in the proceedings before the Labor Arbiter.

The cause of Lopez' dismissal is very clearly stated in the Notice of Termination dated August 2, 1989 of Gentex, signed by Tolentino. The Notice reads in part: "Your department report received by this office discloses your having been absent without official leave (AWOL) since September 17, 1988 up to the present. Under our policy on leave of absence without prior approval of the company, this constitutes job abandonment with penalty of dismissal for cause" (Rollo, p. 20).

We agree with the Solicitor General's observation that petitioners' reliance on Lopez' disease during the course of the proceedings did not rectify or justify the fact of the termination of Lopez on the ground stated in the Notice of Termination.

Petitioners next contend that, contrary to the conclusion reached by NLRC, Lopez had indeed abandoned work.

The issue of whether or not an employee has abandoned his work is factual (Palencia vs. National Labor Relations Commission, 153 SCRA 247 [1987]). Petitioners failed to show that the findings of fact of the Labor Arbiter and NLRC are not supported by substantial evidence; thus, these findings must be accorded respect and finality (Five J.

Taxi vs. National Labor Relations Commission, 212 SCRA 225 [1992]).

Petitioners further argue that they "should not be penalized for not having utilized the more appropriate cause (incurable disease) for terminating the services of [Lopez]" (Rollo, p. 19). They are begging the question. Gentex is faulted for having dismissed Lopez upon a cause, which in the words of NLRC was "false or nonexistent." It is this lack of clear, valid and legal cause that is constitutive of illegal dismissal warranting reinstatement and the award of back wages (Labor Code of the Philippines, Art. 279).

Lastly, petitioners contend that NLRC erred when, after ruling that Lopez may be separated from employment on the ground of illness, it awarded him separation pay equivalent to one month salary for every year of service, instead of one-half month salary for every year of service provided for in Article 284 of the Labor Code of the Philippines.

The applicable law is Article 284 of the Labor Code of the Philippines, as implemented by, Section 8, Rule I, Book VI of the Rules to Implement the Labor Code.

Article 284 of the Labor Code of the Philippines, reads as follows:

> Disease as ground for termination. — An employer may terminate the services of an employee who has been found to be suffering, from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees; Provided, That he is paid separation pay equivalent to at least one (1) month salary or to one-half (½) month salary for every year of service, which ever is greater, a fraction of at least six (6) months being considered as one (1) whole year.
>
> Section 8, Rule I, Book VI of the Rules to Implement the Labor Code, reads as follows:
>
> > "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 preceding provision explicitly requires 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 months even with proper medical treatment. There is no showing that such a certification was presented in the course of the proceedings before the Labor Arbiter and NLRC. In fact, in its Memorandum submitted in the case, petitioners stated: "[I]t is a fact that [Lopez] is ill with PTB for more than one year. Thus, it is a more conclusive proof that his illness, which is undeniably contagious, cannot be cured for (sic) a period of six months, than a certification from a public health officer as required by the rules implementing said Article [284] of the Labor Code" (Rollo, p. 52). This statement can only mean that petitioners deemed a certification superfluous and did not submit one.

Notwithstanding the lack of a certification, we cannot ignore the fact that Lopez has been suffering from pulmonary tuberculosis in its moderately advanced stage for a considerable length of time. Lopez' continued employment would be harmful to his health as well as to the health of his co-employees. Hence, although we must rule in favor of Lopez' reinstatement to which he is entitled by virtue of the illegality of his dismissal, such reinstatement must be subject to his fitness to resume work, as certified by competent public health authority. We have had occasion to impose the same condition in Cebu Royal Plant vs. Deputy Minister of Labor, 153 SCRA 38 (1987).

The Labor Arbiter awarded Lopez full back wages from the time his salary was withheld until his actual reinstatement. The NLRC,

however, modified the award by granting back wages for six months and separation pay.

The NLRC gravely abused its discretion when it limited the award of back wages to six months. The NLRC based the amount on its finding that six months after Lopez was dismissed, his disease had "manifestly become incurable in contemplation of Art. 284 of the Labor Code" (Rollo, p. 287). The NLRC could not simply conclude on its own that Lopez' pulmonary tuberculosis had become incurable. Without the certification required in Section 8, Rule I, Book VI of the Rules to Implement the Labor Code, NLRC was not competent to conclude that "the disease [of Lopez] was of such nature or at such a stage that it cannot be cured within a period of six months even with proper medical treatment."

Lopez is entitled to full back wages, 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 (Labor Code of the Philippines, Art. 279).

Back wages represent compensation that should have been earned by the employee but were lost because of the unjust or illegal dismissal (Torillo vs. Leogardo, Jr., 197 SCRA 471 [1991]; Lim vs. NLRC, 171 SCRA 328 [1989]).

We are also aware of the contingency that the illness of private respondent be certified by a competent public health authority as being of such nature or at such a stage that renders him physically unfit to return to work. In such a case, separation pay at the rate provided for in Article 284 must be paid private respondent, in addition to the back wages for his illegal dismissal.

WHEREFORE, the Decision dated August 29, 1991 and the Resolution dated October 1, 1991 of NLRC are MODIFIED. Petitioners are ordered —

(a) to **REINSTATE** private respondent subject to certification by a competent public health authority that he is fit to return to work; and

(b) to PAY private respondent full back wages.

Should private respondent be certified as physically unfit to return to work and his employment terminated as a result thereof, petitioners are ordered to pay him separation pay at the rate provided for in Article 284 of the Labor Code of the Philippines in addition to the payment of back wages.

The Temporary Restraining Order issued by this Court on February 10, 1992 is **LIFTED.**

SO ORDERED.

Padilla, Davide Jr., Bellosillo and Kapunan, *JJ.*, concur.
