SUPREME COURT
SECOND DIVISION

GERMAN MACHINERIES CORPORATION,
***Petitioner*,**

-versus-

G.R. NO. 156810
November 25, 2004

EDDIE D. ENDAYA,
***Respondent*.**
x----------x

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Before us is a Petition for Review on Certiorari under Rule 45 of the Rules of Court assailing the November 14, 2002 Resolution[1] of the Court of Appeals in CA-G.R. SP No. 71460[2] which dismissed the petition for certiorari filed by petitioner; and the January 16, 2003 Resolution[3] denying petitioner's motion for reconsideration.

The antecedents of the case as summarized by the labor arbiter are as follows:

> Complainant, Eddie Endaya alleged that he was employed by respondent company on January 18, 1993, as a car painter with a salary of P8,000.00 a month for work performed from 7:30 A.M. to 5:15 P.M., Monday to Friday; that before March 1, 1999,

he requested management that his SSS premiums already deducted from his salary be remitted to the SSS but management did not pay attention to his request; that on March 29, 1999, he filed a complaint with the Social Security System against respondent company for failure to remit his SSS premiums; that when management learned about his complaint, he was reprimanded and became the object of harassment; that he was shouted at and belittled; that on August 27, 1999, he at first refused to paint the trusses of the newly-constructed building, an extension of office of respondent company because his position is that of a car painter, not that of a construction worker and besides he finds difficulty working in high places as he was not trained for the purpose; but, later, he consented to do the painting job; that at about 11:00 A.M., he felt thirsty, so he went down to drink; but when he was about to go back to work, Mr. Andy Junginger who asked him where he came from got irked when told that he (complainant) went down to drink and, immediately, told complainant to get his separation pay from the Cashier and go home as he was already terminated.

Complainant also alleged that on September 6, 1999, he reported for work but he was surprised that Mr. Joseph Baclig handed him letters of suspension, dated August 27, 1999 and September 6, 1999 and he was told to go home; that he reported for work several times thereafter but he was told to stop reporting for work since his services were already terminated as of August 27, 1999.

Complainant, thus, contends that he was illegally dismissed.

Controverting complainant's allegations, respondents averred that complainant was employed, as painter, on January 18, 1993, with a salary of P8,000.00; that he was performing well in the first years in his employment but in the later years, particularly in July and August 1999, he became lazy, inefficient and hardheaded; that on August 27, 1999, after an investigation, complainant was suspended for acts of insubordination on August 23, 1999, when he did not follow instruction of the company president who asked him to help

and assist a co-worker and instead turned his back on the president as if he heard nothing; that complainant was also warned of several offenses, such as "(a) negligence in the performance of his work in quality and efficiency, for doing a below par painting job, (b) evading work by leaving the working area without permission of his superior, (c) showing no interest in his work, (d) not cooperating or supporting co-employees during work, and (e) cutting short working time;" that when complainant returned to work on September 6, 1999, after his suspension, he was observed to be working halfheartedly, did not cooperate with his co-employees and did not follow instructions of his superiors for which respondent called his attention in a Memorandum dated September 6, 1999; that after he received the Memorandum, complainant never reported for work; and that respondent sent a Memorandum requiring complainant to explain his absences from work, which Memorandum was received by complainant's wife on September, 28, 1999; and that thereafter, nothing was heard of the complainant.

Further, respondents alleged that deductions from complainant's salary were amounts authorized by law or with the authority of complainant; that he was paid his holiday pay, five (5) days service incentive leave pay, 13th month pay for 1999 and vacation and sick leaves; that complainant has unpaid cash advances in the total amount of P8,600.00 secured from May, 1998 to May, 1999 for enrollment of his children, hospitalization of his parents, medicine and other personal family needs; that his sick leave, vacation leave and incentive leave had been fully paid by way of cash advances given to him on July 5, 1999, for the death of his father.

Respondents contended that complainant was never dismissed but he was the one who voluntarily left the company after his attention was called by management to his inefficiency and bad attitude toward his co-employees and superiors, which is chaotic and disorderly and troublesome; and that respondents offered to accept complainant back during the preliminary conference but he declined the offer and demanded payment of backwages and to be allowed to finish his painting job contract.

> Respondents, thus, contend that complainant was never dismissed.[4]

On January 8, 2001, the Labor Arbiter rendered judgment in favor of herein respondent, ratiocinating as follows:

> On the first issue – whether or not complainant was illegally dismissed – it has invariably been ruled by the Supreme Court that, in termination cases, the burden of proof rests on the respondent to show that the dismissal is for a just cause and when there is no showing of a clear, valid and legal cause for the termination of employment, the law considers that matter a case of illegal dismissal. (See Cosep, et. al. vs. NLRC, et. al., G. R. No. 124960, June 6, 1998).

In this case, the respondents contend that complainant abandoned his work and submitted in evidence a Memorandum dated September 15, 1999 (Annex 'E', Position Paper for respondent), stating:

> Date : September 15, 1999
> To : EDDIE D. ENDAYA
> From : EBERHARD JUNGINGER
> Memo : Absence from work
>
> Since the time you had received the memo dated September 6, 1999 you choose not to report for work since then, and you did not also reply this memo as required.
>
> Please explain why you do not like to work, and if you fail to do so you can be considered having abandoned your work.
>
> Also you have failed to explain our charge of insubordination as stated in our memo.
>
> Very truly yours,
>
> German Machineries Corporation
> (Sgd.) Eberhard Junginger

Said Memorandum appears to have been received by one Margie Endaya on September 28, 1999. (Annex "E-1," ibid.)

We note, however, that complainant has filed a complaint with the Department of Labor and Employment, National Capital Region, on August 30, 1999, charging the respondents of illegal dismissal (Annex 'F', ibid.). Summons was issued by the Chief, Industrial Relations Division of DOLE-NCR on September 13, 1999, ordering the parties to appear at the DOLE-NCR on September 24, 1999, at 10:00 A.M.

There is, thus, good reason to believe that the said Memorandum, dated September 15, 1999, was issued by respondent Junginger for the purpose of justifying the prior illegal dismissal of complainant.

Besides, abandonment is inconsistent with the filing of a complaint for illegal dismissal seeking reinstatement, as in this case.

As regards respondents' charges of absenteeism, painting job contract, bad attitude towards co-employees and superior and alleged bad working habits, suffice it to state that complainant was not asked to explain his said offenses and, therefore, the same cannot constitute as valid causes for dismissal of the complainant.

From all the foregoing, it is clear that complainant did not abandon his work and respondent has no just or authorized cause to terminate the services of the complainant.[5]

The dispositive portion of the Labor Arbiter's decision reads:

> WHEREFORE, judgment is hereby rendered:
>
> > 1. declaring the dismissal of complainant to be without a just or authorized cause and, therefore, illegal;
> >
> > 2. ordering respondent German Machineries Corporation to reinstate the complainant to his former position without loss of seniority rights and other privileges and to pay complainant his full backwages inclusive of allowances and other benefits, computed from August 27, 1999 up to his actual reinstatement. As of the date of this

> Decision, complainant's full backwages totaled P143,884.06.
>
> Should reinstatement of complainant be no longer feasible due to some valid reasons, respondent German Machineries Corporation is ordered to pay to complainant in addition to his full backwages, separation pay equivalent to one (1) month salary for every year of service, a fraction of at least six (6) months to be computed as one (1) whole year.
>
> 3. Ordering respondent German Machineries Corporation to pay to complainant the amount equivalent to ten (10%) percent of the total award in this decision as attorney's fees.

The other claims of complainant are hereby DISMISSED for lack of merit.

SO ORDERED.[6]

Aggrieved by the Labor Arbiter's decision, herein petitioner filed an appeal with the National Labor Relations Commission (NLRC).

In a decision promulgated on February 28, 2002, the NLRC affirmed, with modification, the Labor Arbiter's decision. Accordingly, it disposed of the case as follows:

> PREMISES CONSIDERED, the Decision of January 8, 2001 is hereby MODIFIED in that the award of 10% attorney's fees shall be based on awards representing 13th month pay and service incentive leave pay.
>
> SO ORDERED.[7]

Petitioner filed a motion for reconsideration but the same was denied by the NLRC in a resolution promulgated on April 19, 2002.[8]

On July 3, 2002, herein petitioner filed a petition for certiorari with prayer for a temporary restraining order and/or preliminary

injunction with the Court of Appeals assailing the aforementioned decision and resolution of the NLRC.[9] On November 14, 2002, the Court of Appeals issued the herein assailed resolution dismissing the petition for certiorari,[10] to wit:

> It is axiomatic that for a writ of preliminary injunction to prosper, it must be shown that the invasion of the right sought to be protected is material and substantial, that the right of complainant is clear and unmistakable, and that there is an urgent and paramount necessity for the writ to prevent serious damage.
>
> In the present petition, the foregoing circumstances are not present. The findings of fact by the Labor Arbiter were affirmed by public respondent to the effect that private respondent Eddie Endaya was illegally dismissed by petitioner. It therefore pains us to conclude that private respondent stands to suffer more due to the said illegal dismissal. Such that, it is the private respondent who may suffer irreparable injury should the writ for preliminary injunction be issued. Such being the case, the prayer for the issuance of a restraining order and/or writ of preliminary injunction is hereby DENIED for LACK OF MERIT.
>
> Insofar as the prayer of private respondent for the immediate dismissal of the instant petition is concerned, we find merit in the same. The factual issues raised in the instant petition had already been passed upon by public respondent. As such, we give our imprimatur to the same since it is in agreement with that of the Labor Arbiter, and hence deems (sic) binding and conclusive on us.
>
> ACCORDINGLY, the instant petition is hereby DISMISSED for LACK OF MERIT and that the questions raised are too UNSUBSTANTIAL to require consideration.
>
> SO ORDERED.[11]

Petitioner filed a motion for reconsideration but the appellate court denied the same in a resolution issued on January 16, 2003.[12]

On March 7, 2003, petitioner filed the present petition for review on certiorari with prayer for the issuance of temporary restraining order and/or preliminary injunction.

On September 24, 2003, this Court issued a temporary restraining order enjoining the enforcement of the disputed resolutions of the Court of Appeals, as well as the writ of execution dated October 21, 2002, issued by Labor Arbiter Aliman D. Mangandog in connection with the decision dated February 28, 2002 and resolution dated April 18, 2002, issued by the NLRC.

In the present petition, petitioner contends that:

> 1. THE HONORABLE COURT OF APPEALS HAS VIOLATED THE CONSTITUTIONAL PROVISION THAT NO DECISION SHALL BE RENDERED BY ANY COURT WITHOUT EXPRESSING CLEARLY AND DISTINCTLY THE FACTS AND THE LAW ON WHICH IT IS BASED.
>
> 2. THE HONORABLE COURT OF APPEALS HAS CLEARLY NOT ONLY FAILED TO CONSIDER THE EVIDENCE ON RECORD BUT ALSO MISAPPRECIATED THEM TO THE DAMAGE AND PREJUDICE OF PETITIONER:
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> A. THE HONORABLE APPELLATE COURT IN SUMMARILY DISMISSING THE PETITION ALLOWED THE ASSAILED DECISION OF THE LABOR ARBITER, AS AFFIRMED BY THE NATIONAL LABOR RELATIONS COMMISSION, TO STAY, IN VIOLATION OF THE TIME-HONORED PRINCIPLES, LAW AND JURISPRUDENCE.
>
> B. THE HONORABLE APPELLATE COURT DEVIATED FROM ESTABLISHED RULES AND PRONOUNCEMENTS OF THE SUPREME COURT IN THE PROPER RESOLUTION OF THE CASE PRESENTED BEFORE IT.[13]

In its first assigned error, petitioner asserts that the Court of Appeals issued the above-quoted resolution without any analysis of the evidence of the parties or reference to any legal basis. As such, it

violated Section 14, Article VIII of the Constitution, which provides that:

> No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.
>
> No petition for review or motion for reconsideration of a decision of the court shall be refused due course or denied without stating the legal basis therefor.

We are not persuaded.

> The assailed resolution is not the "decision" contemplated under Section 14, Article VIII of the Constitution. The mandate embodied in this constitutional provision is applicable only in "cases submitted for decision" i.e., given due course and after the filing of briefs or memoranda and/or other pleadings, but not where a resolution is issued denying due course to a petition and stating the legal basis thereof.[14] Thus, when the court, after deliberating on a petition and subsequent pleadings, decides to deny due course to the petition and states that the questions raised are factual or there is no reversible error in the respondent court's decision, there is sufficient compliance with the constitutional requirement.[15] In the present case, the Court of Appeals denied due course and outrightly dismissed the petition for certiorari filed by herein petitioner on the grounds that the factual issues had already been passed upon by the NLRC, and since its factual findings are in agreement with the findings of the labor arbiter, the same are binding and conclusive upon the Court of Appeals; and that the questions raised are too unsubstantial to require consideration. We find these legal bases in conformity with the requirements of the Constitution.

The writ of certiorari dealt with in Rule 65 of the Rules of Court is a prerogative writ, never demandable as a matter of right, never issued except in the exercise of judicial discretion. (Nunal vs. Commission on Audit, et al., 169 SCRA 356 [1989]).[16] Moreover, the second paragraph of Section 8, Rule 65 of the Rules of Court provides that

the court may dismiss a petition for certiorari if it finds the same to be patently without merit, prosecuted manifestly for delay, or that the questions raised therein are too unsubstantial to require consideration.[17]

Furthermore, a reading of the petition filed with the Court of Appeals shows that the main issue raised is factual as it questions the finding of the NLRC that respondent Endaya was illegally dismissed from his employment. Petitioner brought up issues the resolution of which necessarily involves a review of the evidence presented by both parties. It is settled that resort to a judicial review of the decisions of the NLRC in a petition for certiorari under Rule 65 of the Revised Rules of Court is confined only to issues of want or excess of jurisdiction or grave abuse of discretion on the part of the rendering tribunal, board or office. It does not include an inquiry as to the correctness of the evaluation of evidence which was the basis of the labor official or officer in determining his conclusion. It is not for the appellate court to reexamine conflicting evidence, reevaluate the credibility of witnesses nor substitute the findings of fact of an administrative tribunal which has gained expertise in its specialized field. Considering that the findings of fact of the Labor Arbiter and the NLRC are supported by evidence on record, the same must be accorded due respect and finality. (ComSavings Bank vs. NLRC, 257 SCRA 307, 317 [1996]).[18]

In its second assigned error, petitioner would have us review the factual findings of the Labor Arbiter and the NLRC.[19] Settled is the rule that the findings of the Labor Arbiter, when affirmed by the NLRC and the Court of Appeals, are binding on the Supreme Court, unless patently erroneous.[20] It is not the function of the Supreme Court to analyze or weigh all over again the evidence already considered in the proceedings below. (Metro Transit Organization, Inc. vs. Court of Appeals, 392 SCRA 229, 239 [2002]).[21] The jurisdiction of this Court in a petition for review on certiorari is limited to reviewing only errors of law, not of fact, unless the factual findings being assailed are not supported by evidence on record or the impugned judgment is based on a misapprehension of facts. (Bolinao Security and Investigation Service, Inc. vs. Arsenio M. Toston, G.R. No. 139135, January 29, 2004).[22] We find none of these exceptions in the present case.

Petitioner's main asseveration is that the Labor Arbiter and the NLRC erred in finding that respondent Endaya was illegally dismissed from his employment. A perusal of the records at hand convinces us otherwise. We agree with the Labor Arbiter's conclusion that the Memorandum dated September 15, 1999 was simply an afterthought on the part of the petitioner. In the same manner, we find that the suspension letter dated August 27, 1999 and the memorandum of September 6, 1999 addressed to Endaya were merely issued to justify his prior illegal dismissal. Aside from the letter dated August 27, 1999, which Endaya claimed to have been given to him only on September 6, 1999, petitioner failed to present proof that Endaya was indeed suspended prior to the filing of his complaint for illegal dismissal on August 30, 1999. If Endaya was in fact suspended, there should have been a record of proceedings taken by petitioner to investigate the latter's alleged infractions before suspending him; or at the least, petitioner should have handed out a memorandum, like the ones it subsequently issued, calling Endaya's attention for his shortcomings or directing him to explain his side. Despite petitioner's claim that there was an investigation, we find no evidence to this effect. Hence, we are led to no conclusion other than the fact that the letter of suspension dated August 27, 1999 and the memorandums of September 6, 1999 and September 15, 1999 were all issued as a means of validating the prior illegal dismissal of Endaya.

WHEREFORE, the instant petition is **DENIED** and the temporary restraining order issued on September 24, 2003 is forthwith **LIFTED**. The Resolutions of the Court of Appeals dated November 14, 2002 and January 16, 2003 are **AFFIRMED**.

SO ORDERED.

PUNO, *J.*, *(Chairman)*, CALLEJO, SR., TINGA, and CHICO-NAZARIO, *JJ.*, concur.

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[1] Penned by Justice Eubulo G. Verzola, concurred in by Justices Jose L. Sabio and Amelita G. Tolentino.

[2] Entitled, "German Machineries Corporation, Petitioner, versus Eddie Endaya and National Labor Relations Commission (Third Division), Respondents."

[3] Rollo, p. 57.
[4] Id., pp. 156-159.
[5] Id., pp. 159-161.
[6] Id., pp. 162-163.
[7] Id., pp. 194-195.
[8] Id., p. 196.
[9] CA Rollo, p. 2.
[10] Id., pp. 246-247.
[11] CA Rollo, pp. 246-247.
[12] Id., pp. 270-271.
[13] Rollo, p. 24.
[14] Komatsu Industries (Phils.), Inc. vs. Court of Appeals, et al., 289 SCRA 604, 609(1998), citing Que vs. People, et al., 154 SCRA 160 (1987); and Nunal vs. Commission on Audit, et al., 169 SCRA 356 (1989).
[15] Ibid.
[16] (Nunal vs. Commission on Audit, et al., 169 SCRA 356 [1989]).
[17] Sec. 8. Proceedings after comment is filed. – After the comment or other pleadings required by the court are filed, or the time for the filing thereof has expired, the court may hear the case or require the parties to submit memoranda. If after such hearing or submission of memoranda or the expiration of the period for the filing thereof the court finds that the allegations of the petition are true, it shall render judgment for the relief prayed for or to which the petitioner is entitled.
The court, however, may dismiss the petition if it finds the same to be patently without merit, prosecuted manifestly for delay, or that the questions raised therein are too unsubstantial to require consideration.
[18] (ComSavings Bank vs. NLRC, 257 SCRA 307, 317 [1996]).
[19] Ibid.
[20] Ibid.
[21] (Metro Transit Organization, Inc. vs. Court of Appeals, 392 SCRA 229, 239 [2002]).
[22] (Bolinao Security and Investigation Service, Inc. vs. Arsenio M. Toston, G.R. No. 139135, January 29, 2004).