

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
EN BANC**

VICENTE A. GOMEZ,
Plaintiff-Appellant,

-versus-

**G.R. No. L-22702
July 28, 1969**

**CENTRAL VEGETABLE OIL
MANUFACTURING COMPANY,**
Defendant-Appellee.

X-----X

DECISION

MAKALINTAL, J.:

This appeal from the decision of the Court of First Instance of Manila dismissing the complaint in its Civil Case No. 44551 was forwarded to us by the Court of Appeals, there being no question of fact involved.

On October 25, 1960 Vicente A. Gomez filed with the Court of First Instance of Manila a complaint against the Central Vegetable Oil Manufacturing Company for the recovery of the sums of P7,200.00 as separation pay in accordance with the provisions of Republic Act No. 1052 as amended by Republic Act No. 1787; P1,700.68 as unpaid salary from February 16, 1960 to April 19, 1960; and P1,000.00 as attorney's fees. He alleged, among other things, that he had been

employed by the defendant as its Plant Engineer since May 1938 up to April 19, 1960, when he was dismissed without cause and previous notice; that his salary was P800 a month at the time of his dismissal; and that he had not been paid his salary from February 16, 1960 to April 19, 1960. After the defendant's motion to dismiss was denied it filed its answer admitting the existence of the alleged employer-employee relationship but denying, inter alia, the allegations that the plaintiff was dismissed from employment and that he was entitled to the salary which he was claiming.

On August 6, 1961 the plaintiff died. Without first securing leave of court, the surviving spouse through plaintiff's counsel filed on September 25, 1961 a pleading purporting to be an amended complaint, claiming the sum of P1,167.57 representing medical expenses incurred by her deceased husband, the amount due under the Workmen's Compensation Act and the corresponding attorney's fees. On October 9, 1961 counsel for the plaintiff filed a notice of his death, stating that Alejandra S.J. Vda. de Gomez, the surviving spouse, and several children of age (whose names were not given) might be substituted as plaintiffs. The court required plaintiff's counsel to file a motion for substitution within ten days from December 5, 1961, but counsel failed to comply. Instead, on February 21, 1962 a second amended complaint was filed. Except for the designation of Alejandra S.J. Vda. de Gomez as party plaintiff and the additional allegation that she was the legal wife of the deceased Vicente A. Gomez. it was almost identical to the original complaint. On February 27, 1962 the defendant moved to dismiss the amended complaint on the ground that plaintiff's counsel failed and refused to comply with the court's order with respect to the proper substitution of parties. Consequently, in a belated move to comply with said order counsel for the plaintiff filed on March 1, 1962 a motion for admission and approval of the second amended complaint which had been filed earlier. The defendant reiterated its prayer for the dismissal of the complaint, alleging among other things that the substitution by Alejandra S. J. Vda. de Gomez as party-plaintiff did not conform with the requirements of Section 17, Rule 3 of the Rules of Court because she was neither the legal representative of the deceased nor his only heir. However, the lower court denied the motion to dismiss.

Trial was held on June 29, 1962 and the case was submitted for decision solely on the basis of the admissions of facts made by both parties in open court. In effect, the following facts were admitted: That Vicente A. Gomez during his life was employed by the defendant as its plant engineer, whose duties were to supervise the functioning of the machinery in the defendant's factory and to see to it that necessary repairs were immediately made on any machine requiring the same; that on February 13, 1960 he was stricken ill while working in the factory and was advised by the company doctor to go to a hospital for treatment; that since then he stopped working with the company; that he died on August 6, 1961; that the cause of his death was "auricular pulmonary edema secondary cardiac trouble"; that the deceased was survived by his legal wife, Alejandra S.J. Vda. de Gomez, their six (6) children, all of legal age, and several illegitimate children; that the widow did not have any appointment from any court authorizing her to represent the estate of the deceased; and that there was a pending case in the Department of Labor wherein the plaintiff was claiming benefits under the Workmen's Compensation Act.

On September 19, 1962 the trial court rendered its decision dismissing the complaint. Unable to secure a reconsideration, the plaintiff instituted this appeal.

The appellant alleges that the lower court erred (1) in not awarding separation pay and unpaid salaries; (2) in not awarding medical expenses; (3) in holding that Alejandra San Jose Vda. de Gomez was not the legal representative of the deceased Vicente A. Gomez; and (4) in not awarding the claim for attorney's fees.

Under the first assigned error, it is the contention of the appellant that an employee who did not voluntarily leave the service but was forced to stop working due to illness contracted in the course of his employment is entitled to separation pay under Section 1 of Republic Act No. 1052, as amended by Republic Act No. 1787.^[1] In support thereof, the appellant cites the case of Nadura vs. Benguet Consolidated, Inc., G.R. No. L-17780, August 24, 1962 (5 SCRA 879).

The case cited by the appellant is not in point. In said case, the fact that the employee had been dismissed was not disputed by the parties

and the issue decided by this Court was whether the employee's illness was just cause of dismissal within the meaning of the law. In the instant case, although it was alleged in the amended complaint that the late Vicente A. Gomez was dismissed without just cause and previous notice, no evidence to that effect was presented. As found by the trial court: "the evidence, however, does not show that he was in fact dismissed because when he suffered a stroke he simply stopped working and underwent treatment until he died." It is even admitted in the appellant's brief that "said employee stopped working due to illness which he contracted while in the service of the company." To be sure, the employment of the late Vicente A. Gomez was terminated, but the termination was due to his death, not to an act of the employer. The trial court therefore did not err in not awarding separation pay to the appellant.

The claim for unpaid salary from February 16, 1960 to April 19, 1960 cannot be entertained either, since Vicente A. Gomez did not actually work or perform service for the appellee during said period by reason of his illness. The claim if at all, should have been for vacation and/or sick leave with pay, in which case proof of his right thereto as well as of the amount of his leave credits should have been presented. But appellant failed to present such proof.

Regarding the second assigned error, the appellant avers that the trial court did not pass upon the claim of medical expenses in the amount of P1,167.57. In the first place, while this claim was set forth in the amended complaint which was filed without second amended complaint dated February 21, 1962. In the second place, there is no evidence whatsoever, nor any admission by appellee, to show that the late Vicente A. Gomez actually incurred medical expenses. The trial court therefore did not commit this particular error ascribed to it.

In the third assignment of error, inadvertently designed by the appellant as the fourth, the appellant insists that Alejandra S.J. Vda. de Gomez, being the wife of the late Vicente A. Gomez, is the legal representative of the deceased. This question is not of no practical importance. Anyway, it was admitted during the trial that she did not have any appointment of any court to represent the estate of her late husband, either as executrix or as administratrix. Neither was she the sole heir of the deceased, since he left six (6) legitimate children who

were already of age at the time of his death, as well as several illegitimate children. Under the circumstances, the widow cannot be legally considered as the legal representative of her husband under Section 17, Rule 3 of the Rules of Court.

In view of the foregoing considerations, we deem it unnecessary to discuss the last assignment of error, concerning the claim for attorney's fees.

WHEREFORE, the Decision appealed from is hereby affirmed, without pronouncement as to costs.

Concepcion, C.J., Reyes, Dizon, Zaldivar, Sanchez, Castro, Fernando, Capistrano, Teehankee and Barredo, JJ., concur.

[1] Section 1. In cases of employment, without a definite period, in a commercial, industrial or agricultural establishment or enterprise, the employer or the employee may terminate at any time the employment with just cause; or without just cause in the case of an employee by serving written notice on the employer at least one month in advance, or in the CASE of an employer, by serving such notice to the employee at least one month in advance or one-half month for every year of service of the employee, whichever is longer, a fraction of at least six months being considered as one whole year.

The employer, upon whom no such notice was served in case of termination of employment without just cause may hold the employee liable for damages.

The employees, upon whom no such notice was served in case of termination of employment without just cause shall be entitled to compensation from the date of termination of his employment in an amount equivalent to his salaries or wages corresponding to the required period of notice.

The following are just causes for terminating an employment without a definite period:

1. By the employer—
 - a. The closing or cessation of operation of the establishment or enterprise, unless the closing is for the purpose of defeating the intention of this law;
 - b. Serious misconduct or willful disobedience by the employee of the orders of his employer or representative in connection with his work;
 - c. Gross and habitual neglect by the employee of his duties;
 - d. Fraud or willful breach by the employee of the trust reposed in him by his employer or representative.

- e. Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family, or representative; and f. Other causes analogous to any of the foregoing.
- 2. By the employee—
 - a. Serious insult by the employer or his representative on the honor or person of the employee;
 - b. Inhuman and unbearable treatment accorded by the employer or his representative of the employee;
 - c. Commission of a crime or offense by the employer or his representative against the person of the employee or any of the immediate members of his family; and
 - d. Other causes analogous to any of the foregoing.

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