

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**GREAT PACIFIC LIFE ASSURANCE
CORPORATION,**

Petitioner,

-versus-

**G.R. No. 88011
July 30, 1990**

**NATIONAL LABOR RELATIONS
COMMISSION and ROSA ALLADO,**

Respondents.

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DECISION

MEDIALDEA, J.:

The main issue, in this Petition is whether private respondent, Rosa Allado voluntarily resigned from her work at petitioner corporation, Great Pacific Life Assurance Corporation, or whether the corporation constructively dismissed her or forced her to resign.

Ms. Rosa Allado alleged that she was hired by GREPALIFE as clerk in its regional office in Laoag, Ilocos Norte sometime in January, 1969. After only three (3) months on the job, she was promoted to Regional Cashier at the same station. In 1971, she was transferred to Baguio City, following the transfer of the corporation's regional office to that

city, where she remained with the company until May 25, 1984. At the time of her separation she was receiving P2,230.00 a month.

She further alleged that on April 4, 1984, Ms. Rosa Y. Choa, the corporation's Assistant Vice President, issued an inter-office memorandum to Ms. Ana Marie Barredo, head of the Human Resources Administration Department, instructing the latter to implement the decision taken by the company to transfer Allado to "IL Accounting Department-Premium Section" at Metro Manila to take the place of one Ms. Paz Francisco who resigned March 30, 1984. The reason given for the transfer, as stated in the memorandum, was for the company to cut down on its expenses at its Baguio office the function of Allado as Regional Cashier to be assumed by the Regional Administrator.

Barredo notified Allado of the foregoing stating that though the corporation was "well aware of [her] reservation about relocating to Manila" "present circumstances leave the company no other recourse," and informed her that she was entitled to a "relocation expense" of P1,000.00 subject to liquidation. Allado wrote the president of the corporation requesting reconsideration of the decision of her transfer. She reasoned that with the salary she was receiving she could not afford to live in a highly urbanized area as Metro Manila, and "more importantly," she wrote, she has "dependents who are studying in Baguio City whom she cannot simply leave" behind.

The corporation's president, through Barredo, denied reconsideration explaining that management had decided to abolish her item since the volume of business in her station "can more than adequately be handled by the Regional Administrator." It was emphasized that "the only existing vacancy in the company suitable at present to [her] qualification will be one at the IL Accounting Department" and that there "will be no demotion in rank or pay." She was urged to "please understand that [the corporation has] no other recourse but to assign [her] to [the] vacancy since there [was] no other suitable position where [the corporation] can accommodate [her] at present." She was assured that "once a vacancy for a regional cashier arises in the future [she] will be given first priority." There was no mention of what position Allado was to assume but was told merely that "the duties

and functions [she] will be performing will be discussed with her in detail by [her] manager on the day [she] report[s] for work.” Her “relocation expense,” moreover, was increased to P1,500.00. She was given until May 16, 1984 to report to her new assignment on the pain of being terminated from the service.

Upon receiving the letter of denial, Allado repaired to the corporation’s head office in Makati to plead her case to Barredo and Mr. Carmelo Valera, an attorney in the corporation’s legal department, but to no avail. On May 15, 1984 she tendered her resignation effective May 25, 1984. She also signed a quitclaim and release in favor of GREPALIFE renouncing any claim or action she might have against the corporation. Thereafter, she was paid gratuity pay and other employee benefits.

On November 29, 1984, Allado instituted a complaint with the Sub-Regional Arbitration Branch of the NLRC in Baguio City against the corporation docketed as NLRC Case No. RAB-1-0307-84, charging illegal dismissal. Allado contends that during her meeting with Barredo she was told that her new position is two grades lower than her present status although there would be no decrease in her salary. She continued that Valera advised her to accept her new assignment even if it be lower in rank, but if she was not amenable to this, that she resign. Valera supposedly told Allado that should she choose to resign he would work it out for her to receive one-month pay for every year of service as her separation pay provided she makes it appear that her resignation was voluntary. As it turned out she was only given one-half month pay for every year of service. She concluded that she was “waylaid” or “trapped,” her transfer being an elaborate scheme for her to resign.

To this, the corporation answered that the termination of Allado was not a result of her dismissal but rather of her own voluntary act of resigning, as in fact she signed a quitclaim in its favor.

On July 28, 1986 the labor arbiter promulgated his decision finding that Rosa Allado was illegally dismissed and ordered her reinstatement to her former position in Baguio City without loss of seniority rights and for the payment to her of backwages equivalent to one year pay minus the amount she already received from the

corporation as a consequence of her “resignation.” The labor arbiter found that the transfer of Allado would cause her and her family “financial dislocation” and, therefore, “such transfer . . . amounts to constructive dismissal.” The contention of GREPALIFE that Allado voluntarily resigned was rejected, the labor arbiter reasoning that Allado wanted to continue to work for the company, as shown by her repeated pleas, but, forced to accept a position two-grades lower than her present status and at a place inconvenient for her, and presented with Valero’s representation that he could work it out for Allado to receive one month pay for every year of service as her separation pay. This, to the mind of the labor arbiter, gave Allado no choice but to resign and sign the quitclaim for her to receive her separation pay.

From this decision both parties appealed, Allado asking for full back wages while the corporation disputed the ruling that complainant was constructively dismissed. On January 18, 1989, the NLRC affirmed the decision of the labor arbiter agreeing that:

“Under the circumstances, [Allado] had no choice. Hers was one of adherence. She had no better alternative. Faced by the harsh realities of being rendered jobless, she had to accept the token gratuity being proffered to her even if it was much less than what was expected by her earlier. She had to make something under the circumstances or else she would have nothing at hand and with dependents to support at that. Payment of her severance pay was conditional, hence, she had to sign the release and quitclaim papers and thereafter her services were terminated by respondent on account of ‘resignation.’

“x x x

“When an employee is being transferred, amounting to a demotion in rank or grade compared with his actual position and on the pretext that his present position is abolished, this is certainly an arbitrary exercise of management prerogative, [Allado’s] quitting her job is of no moment because under the circumstances, she had no choice since her present position was deleted or abolished even before she could accept or object to her transfer to the head office of respondent company. Hence

the Labor Arbiter was perfectly correct in ruling that complainant was constructively dismissed.” (pp. 33-34, Rollo)

The NLRC modified, however, the award given by the labor arbiter in this wise:

“With modification by hereby ordering and directing respondent company to pay complainant full backwages without qualification effective from her date of separation from the service on May 24, 1984 up to her actual reinstatement to her former position or to an equivalent or comparable position without loss of seniority rights, subject to the three (3) years limitation. In the event that complainant’s reinstatement becomes impractical due to a lawful supervening event, complainant is entitled to one (1) month separation pay based on her latest salary, in addition to her backwages as herein decreed, but deducting therefrom the benefits she had earlier received as decreed by the Labor Arbiter.” (p. 39, Rollo)

GREPALIFE moved for reconsideration pointing out, inter alia, that there is nothing in the records which would show that the abolition of the position of Regional Cashier was contrived to ease or force Allado out of employment, but this was denied. Hence, this petition for *certiorari*.

For initial consideration is the question of whether the decision of the NLRC had matured into finality considering that, as private respondent Allado points out, GREPALIFE received the order of the NLRC denying its motion for reconsideration on March 13, 1989 whereas the instant petition was filed only after fifty-seven (57) days therefrom or only on May 9, 1989. It is basic, however, that a special civil action of *certiorari* may be filed within a reasonable time and there is no time frame fixed by Rule 65 of the Rules of Court (Cubar vs. Mendoza, No. 55035, February 23, 1983, 120 SCRA 768; Magna Rubber Manufacturing Corporation vs. Drilon, G.R. No. 81771, December 29, 1988, 168 SCRA 726). Thus, in Santos vs. NLRC, G.R. No. 76991, October 28, 1988, 166 SCRA 759, We entertained a petition for *certiorari* notwithstanding the fact that it was filed only after seven (7) months from the promulgation of the NLRC decision considering that it has not yet been executed and the substantial

issues raised merited this Court's attention. And after a careful reading of this case, We are of the opinion that the instant petition has merit.

Much has been said regarding the transfer of Allado to Makati, Metro Manila disregarding the reason for such transfer which is the abolition of Allado's position of Regional Cashier in Baguio City. That it has in fact been abolished is not disputed. It is also not disputed that the Regional Administrator had assumed the function of Regional Cashier and GREPALIFE had not hired anyone in Allado's stead. In fact, there is no serious challenge at all to the decision of GREPALIFE deleting Allado's item. It is, of course, a management prerogative to abolish a position which it deems no longer necessary and this Court, absent any findings of malice on the part of management, cannot erase that initiative simply to protect the person holding that office. And We do not see anything that would indicate that Allado's position was abolished to ease her out of employment. The deletion of Allado's office, therefore, should be accepted as a valid exercise of management prerogative.

But GREPALIFE sought to accommodate Allado by ordering her to transfer to a position recently vacated. Whether that position is two grades lower than a Regional Cashier is immaterial because GREPALIFE could have then terminated Allado's services when it abolished her position. Her proposed transfer was merely an accommodation. It is erroneous, therefore, to conclude that a situation was created by GREPALIFE to force Allado to resign.

Based on this premise, however, that Allado's services could have been terminated after her position as Regional Cashier was abolished, We adopt by analogy Article 283 of the Labor Code which provides that in case of termination of employment due to installation of labor-saving devices or redundancy, the worker affected shall be entitled to a separation pay of at least one (1) month pay or to at least one (1) month pay for every year of service whichever is higher. We took consideration of the fact that Allado's proposed transfer to Makati, Metro Manila would indeed entail much sacrifice on her part and the finding of the NLRC that the position Allado was to assume is two grades lower than a Regional Cashier so much so that GREPALIFE's accommodation to her is almost illusory. Thus, in the interest of

justice, Allado should be entitled to receive one (1) month pay for every year of service as her separation pay. Since Allado was already paid one-half (1/2) month pay for every year of service she is only entitled to the balance.

ACCORDINGLY, the Decision of the NLRC, dated January 18, 1989, and its Order, dated February 28, 1989, are **SET ASIDE** and a new one entered finding no case of illegal dismissal on the part of petitioner GREPALIFE but holding it liable for the balance of Rosa Allado's separation pay as above decreed.

SO ORDERED.

Narvasa, Cruz, Gancayco and Griño-Aquino, JJ., concur.