

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
THIRD DIVISION**

ALAN D. GUSTILO,
Petitioner,

-versus-

**G.R. No. 149629
October 4, 2004**

**WYETH PHILIPPINES, INC., FILEMON
VERZANO, JR., AURELIO MERCADO
and EDGAR EPILEPSIA,**
Respondents.

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DECISION

SANDOVAL-GUTIERREZ, J.:

At bar is a Petition for Review on Certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision^[1] dated January 24, 2001 and Resolution^[2] dated August 10, 2001 rendered by the Court of Appeals in CA-G.R. SP No. 57545, entitled “Wyeth Phils., Inc. and/or Filemon Verzano, Jr., Aurelio Mercado and Edgar Epilepsia vs. National Labor Relations Commission (Fourth Division) and Alan Gustilo.”

The facts as borne by the records are:

On November 7, 1990, Alan D. Gustilo, petitioner, was employed by Wyeth Philippines, Inc., respondent company, as a pharmaceutical territory manager. Eventually, he was placed in charge of its various branches in Metro Bacolod City and Negros Occidental. To ensure a profitable sale of its pharmaceutical products, he performed various functions, such as visiting hospitals, pharmacies, drugstores and physicians concerned; preparing and submitting his pre-dated itinerary; and submitting periodic reports of his daily call visits, monthly itinerary, and weekly locator and incurred expenses.

Petitioner's employment records show that respondent company, on various dates, reprimanded and suspended him for habitually neglecting to submit his periodic reports. On November 28, 1994, respondent company sent petitioner a notice reprimanding him for submitting late his weekly expense report. Again, on July 5, 1995, he was late in submitting the same report, prompting respondent company to suspend him for five (5) days. Still, petitioner repeatedly incurred delay in submitting his daily call reports dated October 16-20, 1995, October 23-27, 1995, November 6-10, 1995, and November 13-17, 1995. He did not submit his daily call reports for the period from November 20 to 24, 1995. As a consequence, respondent company sent petitioner another notice suspending him for fifteen (15) days or from January 2 to 22, 1996.

Meantime, respondent company, after integrating its pharmaceutical products with Lederle, a sister company, conducted a nationwide on-the-job training of sales personnel. With this development, petitioner was assigned in charge of promoting four (4) Lederle pharmaceutical products.

Subsequently, petitioner submitted to respondent company a plan of action dated February 6, 1996 where he committed to make an average of 18 daily calls to physicians; submit promptly all periodic reports; and ensure 95% territory program performance for every cycle.

However, petitioner failed to achieve the above objectives, prompting respondent company to send him two (2) separate notices dated February 20, 1996 and April 10, 1996, charging him with willful violation of company rules and regulations and directing him to submit a written explanation.

In his explanation, petitioner stated that he was overworked and an object of reprisal by his immediate supervisor.

On May 22, 1996, upon recommendation of a Review Panel, respondent company terminated the services of petitioner.

Aggrieved, petitioner, on June 21, 1996, filed with the Regional Arbitration Branch No. VI at Bacolod City a complaint against respondent company for illegal suspension, illegal dismissal and payment of allowances, other monetary benefits, damages and attorney's fees, docketed as RAB Case No. 06-10267-96. Impleaded also as party respondents were Filemon Verzano, Jr., petitioner's immediate supervisor, and Aurelio Mercado and Edgar Epilepsia, corporate officers of respondent company.

On March 5, 1998, the Labor Arbiter rendered a Decision holding that petitioner was illegally dismissed from employment and ordering respondents company and Verzano, jointly and severally, to pay him P991,157.90 representing his backwages, separation pay, car reimbursement, damages and attorney's fees. The dispositive portion of the Decision reads:

“WHEREFORE, premises considered, judgment is hereby rendered against respondent company WYETH PHILS., INC. and respondent FILEMON VERZANO, JR., ordering them to pay jointly and severally, complainant ALAN D. GUSTILO, the following:

1.	Backwages	P 676,162.64
2.	Separation pay	106,890.00
3.	Car reimbursement	68,000.00
4.	Moral damages	25,000.00
5.	Exemplary damages	25,000.00

6. Attorney's fees	90,105.26

Grand Total	P 991,157.90
	=====

Respondents are further directed to deposit the total amount of NINE HUNDRED NINETY ONE THOUSAND ONE HUNDRED FIFTY SEVEN PESOS and 90/100 (P991,157.90) with the Cashier, this Arbitration Branch, within ten (10) days from receipt hereof, for proper disposition.

SO ORDERED.”

Respondents then appealed to the National Labor Relations Commission (NLRC), Fourth Division at Cebu City.

On August 13, 1999, the NLRC (Fourth Division) promulgated a Decision affirming with modification the Labor Arbiter's Decision in the sense that respondent company is ordered to reinstate petitioner, or in lieu of reinstatement, to pay his separation benefits, thus:

“WHEREFORE, premises considered, the appeal filed by complainant is GRANTED and that of respondents is DENIED. The Decision of Labor Arbiter Reynaldo J. Gulmatico dated March 5, 1998 is MODIFIED, to wit:

Respondents are ordered:

1. To reinstate complainant Alan Gustilo to his former position without loss of seniority rights and other privileges and to pay his full backwages, inclusive of allowances and other benefits, or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. If reinstatement is no longer feasible, complainant may opt to receive his separation pay equivalent to at least one month salary for every year of service, in lieu of reinstatement.

2. To refund, jointly and severally, complainant in the amount of P4,190.00; and
3. To pay 10% of the total monetary award as attorney's fees.

SO ORDERED.”

Respondents filed their motion for reconsideration but was denied by the NLRC in a Resolution dated December 28, 1999.

As a consequence, respondents filed with the Court of Appeals a petition for certiorari with prayer for issuance of a temporary restraining order and a writ of preliminary injunction.

On January 24, 2001, the Appellate Court rendered a Decision reversing the NLRC's Decision and dismissing petitioner's complaint for illegal dismissal, but awarding him separation pay considering the mitigating "factors" of length of service, the loyalty awards he received, and respondent Verzano's "grudge" against him.

The Court of Appeals held:

“Respondent Gustilo cannot deny the numerous violations of company rules during his employment with Wyeth. Gustilo's 201 file reveal the following:

1. On February 2, 1993, he was suspended for falsifying, tampering and/or altering the gasoline receipt (Annex '12', Wyeth's Position Paper, Rollo, p. 142).
2. On June 28, 1993, he was warned for false reporting of his trade outlet calls (Annex '13', Wyeth's Position Paper, Rollo, p. 143).
3. On September 8, 1993, he was guilty of unauthorized availment of sick leaves, emergency leaves, vacation leaves and unauthorized absences (Annex '14', Wyeth's Position Paper, Rollo, p. 144).

4. On November 28, 1994, he was cited for his repeated delay in submitting his expense reports (Annex '4', Wyeth's Position Paper, Rollo, p. 132).
5. On July 10, 1995, he was cited for failure to submit his expense report on time (Annex '5', Wyeth's Position Paper, Rollo, p. 133).
6. On September 26, 1995, he was charged with breach of the rule on submission of required reports (Annex '8', Wyeth's Position Paper, Rollo, p. 136).
7. On November 28, 1995, he was again cited for unauthorized absence on October 19, 1995 and other violations of company rules as contained in a letter of the same date (Annex '9', Wyeth's Position Paper, Rollo, p. 137).

From 1993 up to 1995, respondent has repeatedly guaranteed not to repeat transgressing company rules under pain of termination, but to no avail (Letter dated January 16, 1993; Rollo, p. 141; Internal Memo dated February 1, 1993; Rollo, p. 142; Internal Memo dated July 11, 1995; Rollo, p. 134; Plan of Action dated February 6, 1996; Rollo, p. 147). It has become clear that respondent Gustilo is a habitual offender whose numerous contraventions of company rules has left Wyeth with no choice but to terminate him based on Article 282 of the Labor Code, gross and habitual neglect by the employee of his duties, being a valid cause for termination.

While dismissal is proper, the Court however considers the length of service of respondent Gustilo with Wyeth, the loyalty awards he received and the grudge of petitioner Verzano, Jr. as mitigating factors. The Court is inclined to reinstate respondent Gustilo to his former position without backwages and other benefits. However in view of the strained relationship between respondent Gustilo and petitioner Verzano, Jr., the Court rules to award separation pay to respondent Gustilo in the amount of P106,890.00.

In view of our finding that there are valid causes for dismissal, it follows that the award for payment of backwages, damages and attorney's fees has to be recalled for want of basis.

Being uncontested, the refund of car expenses in the amount of P4,190.00 to respondent Gustilo and payment of P68,000.00 representing the difference between the KIA car, the supposed car and the NISSAN LEC have to be maintained.

In view of our finding that there was a valid dismissal, petitioners Aurelio Mercado and Edgar Epilepsia, as a consequence, cannot be held personally liable to respondent Gustilo. Even assuming *ex grati argumenti* that termination is illegal, corporate officers like petitioners Mercado and Epilepsia are mere agents of Wyeth and acts done in good faith and in representation or on behalf of said company and within the scope of their authority cannot give rise to any liability on their part as said acts are considered corporate acts:

X X X

WHEREFORE, the subject Decision and Resolution, promulgated on August 13, 1999 and December 28, 1999, respectively, by respondent National Labor Relations Commission are SET ASIDE and REVERSED and a new judgment is rendered, as follows:

1. The Complaint for illegal dismissal against petitioners Wyeth Philippines, Inc., Aurelio Mercado and Edgar Epilepsia is dismissed for lack of merit;
2. Petitioner Wyeth Philippines, Inc. is ordered to pay respondent Alan Gustilo P106,890.00 as separation pay;
3. Wyeth Philippines, Inc. is ordered to pay respondent Gustilo P68,000.00 representing the difference between the prices of the supposed car, KIA and the NISSAN LEC, and P4,190.00 equivalent to the cost of one piece of tire, headlight and tire wrench.

SO ORDERED.”

On February 16, 2001, petitioner filed a motion for reconsideration, but was denied by the Appellate Court in a Resolution dated August 10, 2001.

Hence, this petition for review on certiorari.

Petitioner, in the present petition, contends that he was illegally dismissed from the service by respondent company. Hence, he should be reinstated and paid his full backwages and other benefits and privileges.

In *Philippine Journalists, Inc. vs. Mosqueda*,^[3] we reiterated the well-established rule that “findings of fact by the Court of Appeals are conclusive on the parties and are not reviewable by this Court. The rationale behind this doctrine is that review of the findings of fact by the Court of Appeals is not a function that the Supreme Court normally undertakes.”

Here, the Court of Appeals unequivocally ruled that “Gustilo (herein petitioner) is a habitual offender whose numerous contraventions of company rules has left Wyeth (herein respondent) with no choice but to terminate his services.”

Evidently, there is no cogent reason why we should not accord deference and finality to the Appellate Court’s factual findings which are supported by substantial evidence as shown by the records.

In *Family Planning Organization of the Philippines, Inc. vs. NLRC*,^[4] we held:

“It is the employer’s prerogative to prescribe reasonable rules and regulations necessary or proper for the conduct of its business or concern, to provide certain disciplinary measures to implement said rules and to assure that the same be complied with. At the same time, it is one of the fundamental duties of the employee to yield obedience to all reasonable rules, orders, and instructions of the employer, and willful or intentional disobedience thereof, as a general rule, justifies rescission of the

contract of service and the preemptory dismissal of the employee.”

Records show the various violations of respondent company’s rules and regulations committed by petitioner. His dismissal from the service is, therefore, in order. Indeed, in *Piedad vs. Lanao del Norte Electric Cooperative, Inc.*,^[5] we ruled that a series of irregularities when put together may constitute serious misconduct, which under Article 282 of the Labor Code, as amended,^[6] is a just cause for dismissal.

But the Court of Appeals still awarded him separation pay of P106,890.00 by reason of several mitigating factors mentioned in its assailed Decision. The issue for our determination now is whether he is entitled to such an award.

The rule embodied in the Omnibus Rules Implementing the Labor Code is that a person dismissed for cause as defined therein is not entitled to separation pay.^[7] However, in *PLDT vs. NLRC and Abucay*,^[8] we held:

“x x x henceforth, separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. Where the reason for the valid dismissal is, an offense involving moral turpitude, the employer may not be required to give the dismissed employee separation pay, or financial assistance, or whatever other name it is called, on the ground of social justice.”

Similarly, in *Telefunken Semiconductors Employees Union-FFW vs. Court of Appeals*,^[9] we ruled:

“The same view holds with respect to the award of financial assistance or separation pay. The assumption for granting financial assistance or separation pay, which is, that there is an illegally dismissed employee and that illegally dismissed employee would otherwise have been entitled to reinstatement, is not present in the case at bench. Here, the striking workers have been validly dismissed ‘Where the employee’s dismissal

was for a just cause, it would be neither fair nor just to allow the employee to recover something he has not earned or could not have earned. This being so, there can be no award of backwages, for it must be pointed out that while backwages are granted on the basis of equity for earnings which a worker or employee has lost due to his illegal dismissal, where private respondent's dismissal is for just cause, as in the case herein, there is no factual or legal basis to order the payment of backwages; otherwise, private respondent would be unjustly enriching herself at the expense of petitioners.' (Cathedral School of Technology vs. National Labor Relations Commission, 214 SCRA 551). Consequently, granting financial assistance to the strikers is clearly a 'specious inconsistency' (supra). We are of course aware that financial assistance may be allowed as a measure of social justice in exceptional circumstances and as an equitable concession. We are likewise mindful that financial assistance is allowed only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character (Zenco Sales, Inc. vs. National Labor Relations Commission, 234 SCRA 689)."

In the case at bar, we find no exceptional circumstances to warrant the grant of financial assistance or separation pay to petitioner. It bears stressing that petitioner did not only violate company disciplinary rules and regulations. As found by the Court of Appeals, he falsified his employment application form by not stating therein that he is the nephew of Mr. Danao, respondent Wyeth's Nutritional Territory Manager. Also, on February 2, 1993, he was suspended for falsifying a gasoline receipt. On June 28, 1993, he was warned for submitting a false report of his trade outlet calls. On September 8, 1993, he was found guilty of unauthorized availment of sick, vacation and emergency leaves. These infractions manifest his slack of moral principle. In simple term, he is dishonest.

Neither can petitioner find reliance on the policy of social justice. As aptly held by this Court in the same case of Philippine Long Distance Telephone vs. NLRC and Abucay,^[10] "Those who invoke social justice may do so only if their hands are clean and their motives blameless." Here, petitioner failed to measure up to such requirement.

In sum, we find that petitioner was legally dismissed from employment and is, therefore, not entitled to reinstatement or an award of separation pay or other benefits. Unfortunately, respondent company did not interpose an appeal to this Court. Hence, no affirmative relief can be extended to it. A party in a case who did not appeal is not entitled to any affirmative relief.^[11] Thus, respondent company has to comply with the Appellate Court's mandate to grant petitioner his separation pay.

WHEREFORE, the petition is **DENIED**. Costs against petitioner.

SO ORDERED.

PANGANIBAN, J., (Chairman), Corona, and *Carpio Morales, JJ., concur.

* On leave.

[1] Annex "N" of the Petition, Rollo at 591-614.

[2] Annex "P", id. at 624-626.

[3] G.R. No. 141430, May 7, 2004 at 9-10, citing *Nokom vs. NLRC*, 336 SCRA 97 (2000).

[4] G.R. No. 75907, March 23, 1992, 207 SCRA 415, 421.

[5] G.R. No. L-73735, August 31, 1987, 153 SCRA 500, 509, citing *National Service Corporation vs. Leogardo, Jr.*, 130 SCRA 502 (1984).

[6] ART. 282. Termination by employer. – An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

(e) Other causes analogous to the foregoing.

[7] Section 7, Rule I, Book VI of the Omnibus Rules Implementing the Labor Code.

[8] G.R. No. L-80609, August 23, 1988, 164 SCRA 671, 682.

[9] G.R. Nos. 143013-14, December 18, 2000, 348 SCRA 565, 590.

[10] *Supra*.

[11] See *Alauya, Jr. vs. COMELEC*, G.R. Nos. 152151-52, January 22, 2003, 395 SCRA 742, 752-753, citing *Pulp and Paper, Inc. vs. NLRC*, 279 SCRA 408 (1997); and *China Banking Corporation vs. NLRC*, 260 SCRA 782 (1996).

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