SUPREME COURT
THIRD DIVISION

THE HONGKONG AND SHANGHAI BANKING CORPORATION,
***Petitioner*,**

-versus-

G.R. No. 116542
July 30, 1996

NATIONAL LABOR RELATION COMMISSION and EMMANUEL A. MENESES,
***Respondents*.**
x----------x

D E C I S I O N

PANGANIBAN, *J.*:

What species of dishonesty would constitute a ground for termination? Is a provision in the employees' handbook stating that "any form of dishonesty" shall constitute "serious offense(s) calling for termination" valid and binding upon the respondent NLRC?

These questions are answered by this Court in resolving the instant petition for certiorari which seeks a partial reversal of the Decision[1] of the respondent National Labor Relations Commission[2] promulgated on April 19, 1994 insofar as it directs reinstatement of private respondent to his former position.

The Antecedent Facts

The undisputed facts, as summarized in the Labor Arbiter's decision, are as follows:

> "Complainant is a regular rank and file employee of Hongkong and Shanghai Banking Corp. Ltd., with office address at Royal Match Building, Ayala Avenue, Makati, Metro Manila. He started working with the said bank in July 1986 as a clerk until his dismissal on February 17, 1993.
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> It appears that on February 3, 1993, complainant called the bank to inform the latter that he had an upset stomach and would not be able to report for work. His superior, however, requested him to report for work because the department he was then in was undermanned but complainant insisted that it was impossible for him to report for work, hence, he was allowed to go on sick leave on that day.
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> Later on that day, the bank called complainant at his given Tel. No. 521-17-54 in order to obtain vital information from him, but the bank was informed by the answering party at the phone number given by complainant that complainant had left early that morning.
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> When complainant reported for work the following day, February 4, 1993, he was asked by his superior to explain why he was not at his residence on February 3, 1993 when he was on sick leave because of an upset stomach.
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> Complainant explained that he indeed suffered from an upset stomach and that he even consulted Dr. Arthur Logos at 4:00 o'clock in the afternoon of the same day and the reason why he could not be reached by telephone was because he had not been staying at his given residence for over a week.
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> On February 4, 1993 the bank called up Dr. Logos to verify the truth of complainant's statement but the doctor denied that he examined or attended to complainant on February 3, 1993 and

the last time complainant consulted him was in December 1992. For this reason, the bank directed complainant to explain his acts of dishonesty because allegedly he was not honest in telling the bank that he had an upset stomach on February 3, 1993, and that he consulted Dr. Logos on that day.

In his written statement, by way of answer to the memorandum, complainant insisted that he had diarrhea on February 3, 1993 and attached a certification from his aunt where he stayed from the evening of February 2, 1993 and the whole day of February 3, 1993 as well as a certification from his uncle named Andre R. Lozano attesting to the conversation between complainant and Melvin Morales regarding the whereabouts of complainant on that day. Complainant further admitted that his statement about his not staying at his house for one week and his consulting a doctor was incorrect, but that the said statement was not given with malicious intention or deceit or meant to commit fraud against the bank, its operations, customers and employees. The said statement according to him was impulsive reaction as a result of his emotional stress he had been going through because of his marital problems. He pleaded for leniency such that instead of termination, he be given a lighter penalty.

However, on February 16, 1993, the bank came out with a memorandum from the Vice-President, Human Resources Department terminating his services effective March 16, 1993 pursuant to Article 13, Section VI of the Collective Bargaining Agreement between the union of the rank and file employees of the bank and the company and the bank's Code of Conduct.

The following day, February 17, 1993, the bank sent complainant another memorandum directing him to settle his outstanding loan amounting to PH P179,834.00, net of a month's salary the bank was paying him in lieu of notice not later than June 16, 1993. The import of the said letter was while the effectivity of the said termination is March 16, 1993, the company opted to pay him in lieu of the notice from February 17, 1993 up to March 16, 1993 his pay without having to report for work."

Noting that the bank's Employee Handbook made "any form of dishonesty" a cause for termination, the Labor Arbiter[3] ruled said ground to be overly broad, and stated that "(f)or us to agree that any form of dishonesty committed by an employee of the bank is a ground for dismissal, is to say the least stretching the import of the aforecited rule too far." The arbiter instead held that the offenses of dishonesty contemplated by the aforementioned rule which would warrant termination of services are those involving deceit and resulting in loss of trust and confidence. The arbiter further found that the private respondent's proffered excuse, assuming it to be false, did not result in any damage to the bank, and therefore the bank had no reason to lose its trust and confidence in the private respondent on account of such manner of dishonesty. Additionally, the labor arbiter did not find in the record any proof that private respondent was not really suffering from diarrhea as claimed.

Thus, in her decision dated August 13, 1993, the arbiter declared the termination illegal and ordered petitioner bank to reinstate private respondent to his former position without loss of seniority rights and with backwages.

On appeal, the respondent Commission sustained the arbiter's findings and ruled that —

> "For while there is a semblance of truth to the charge of respondent (herein petitioner bank) that complainant (private respondent) had been dishonest as to his whereabouts on February 3, 1993, such act of dishonesty cannot be considered so serious (as) to warrant complainant's outright dismissal. The dishonesty that complainant had committed cannot be considered depraved. It was a simple kind of dishonesty that was committed not in connection with his job."

Brushing aside petitioner bank's argument about strained relations, the NLRC reasoned that the private respondent's falsehoods were not of such nature as to have actually caused animosity between the private respondent and the petitioner bank, and even if there was any such strained relations, "it was not of so serious a nature or of such a degree as to justify his termination." Thus, the NLRC ordered

petitioner "to reinstate complainant to his former position but without backwages", considering that private respondent was not entirely faultless" since "he committed a certain degree of dishonesty in lying."

Now before this Court, petitioner argues[4] that the dismissal is reasonable and valid "pursuant to its Employee Handbook, specifically, Appendix A thereto which provides for serious offenses calling for termination."

The Issue

Petitioner raises the following reason to warrant this review:

> "Public respondent acted with grave abuse of discretion when it unilaterally curtailed and restricted petitioner's inherent and inalienable prerogative to set and impose reasonable disciplinary rules and regulations."

In short, the issue, as summed up by the Solicitor General, is whether or not the NLRC committed grave abuse of discretion in ruling that private respondent's act of making a false statement as to the real reason for his absence on February 3, 1993 did not constitute such dishonesty as would warrant his termination from service.

The Court's Ruling

The petition is bereft of merit.

Petitioner insists that private respondent should be dismissed in accordance with rules contained in its employees' handbook titled Working Together, Appendix A[5] of which reads as follows:

> "Appendix A
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> Serious Offenses Calling For Termination — Any form of dishonesty, like but not limited to the following:
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> — fraud.

— making false or artificial entries in the books or records of the Bank.

— failing to turn over money entrusted by a client for the Bank within a specified time.

— theft of bank property.

— using company funds/assets for any unofficial purpose.

— Any violation of the Bank's Code of Conduct which has penal consequences under relevant local laws.

— Deliberately inflicting or attempting to inflict bodily injury upon a co-employee on Bank premises, or in case it is committed elsewhere, for reasons which are work-related.

— Sabotage or causing damage to work or equipment of the Bank, or any underhanded interference in Bank operations.

— Any other serious offense analogous to the above."

While the foregoing text makes "any form of dishonesty" a "serious offense calling for termination," such general statement must however be understood in the context of the enumeration of offenses, all of which are directly related to the function of the petitioner as a banking institution. It is unarguable that private respondent's false information concerning his whereabouts on February 3, 1993 is not a fraud, nor a false entry in the books of the bank; neither is it a failure to turn over clients' funds, or theft or use of company assets, or anything "analogous" as to constitute a serious offense meriting the extreme penalty of dismissal.

Like petitioner bank, this Court will not countenance nor tolerate ANY form of dishonesty. But at the same time, we cannot permit the imposition of the maximum penalty authorized by our labor laws for JUST ANY act of dishonesty, in the same manner that death, which is

now reinstated as the supreme sanction under the penal laws of our country, is not to be imposed for just any killing. The penalty imposed must be commensurate to the depravity of the malfeasance, violation or crime being punished. A grave injustice is committed in the name of justice when the penalty imposed is grossly disproportionate to the wrong committed.

In the context of the instant case, dismissal is the most severe penalty an employer can impose on an employee. It goes without saying that care must be taken, and due regard given to an employee's circumstances, in the application of such punishment. Moreover, private respondent's acts of dishonesty — his first offense in his seven years of employment, as noted by the respondent NLRC — did not show deceit nor constitute fraud and did not result in actual prejudice to petitioner. Certainly, such peremptory dismissal is far too harsh, too severe, excessive and unreasonable under the circumstances.

Besides, by ordering private respondent's reinstatement without granting backwages, the NLRC effectively penalized him by disallowing compensation for the three years counted from the time he received notice of his dismissal on February 23, 1993.

Under Art. 282 of the Labor Code, "an employer may terminate an employment for any of the following causes:

(a) Series 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."

None of the above apply in the instant case. To be lawful, the cause for termination must be a serious and grave malfeasance to justify the deprivation of a means of livelihood. This is merely in keeping with the spirit of our Constitution and laws which lean over backwards in favor of the working class, and mandate that every doubt must be resolved in their favor.[6]

Petitioner further contends that the NLRC arbitrarily imposed its value judgment and standard on petitioner's disciplinary rules, thereby unilaterally restricting the Bank's power and prerogative to discipline its employees according to reasonable rules and regulations. We do not agree. Precisely, the employer's prerogative and power to discipline and terminate an employee's services may not be exercised in an arbitrary or despotic manner as to erode or render meaningless the constitutional guarantees of security of tenure and due process.[7] Our labor laws, both substantive and procedural, require strict compliance before an employee may be dismissed.[8] Clearly, it is the NLRC's right and duty to review employers' exercise of their prerogative to dismiss so as to prevent abuse and arbitrariness.

Petitioner points to GTE Directories Corporation vs. Sanchez[9] as authority for its contention that, since the disciplinary rule cited in its Handbook has not been declared illegal or improper by competent authority, "the employees ignore or disobey them at their peril." This is absurd. As pointed out by the Solicitor General:[10]

> "The cited GTE case is not applicable to the present case because of an entirely different factual setting. This case merely involves a simple reportorial requirement which the workers had deliberately and unjustifiably ignored. Besides, the management imposed the penalty of dismissal only after the workers failed to comply with (the) requirement for the sixth time and after the workers were already meted out the less severe penalty of suspension.
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> In the case at bar, it would have been different if private respondent had also been suspended first and despite that, he still continued to defy the disciplinary rule. Meneses, indeed,

was a "first offender" which is consistent at this point to his being human, who occasionally commits mistakes just like anybody else."

Indeed, upholding petitioner's argument (that the NLRC cannot review petitioner's disciplinary rules) would mean upsetting the entire labor arbitral machinery, for it would result in depriving the labor arbiter and the NLRC of their jurisdiction to determine the justness of a cause for dismissal as granted by Arts. 217 and 218 of the Labor Code.

This petition is an unwarranted attack against workers' right to security of tenure. It must be, as it is hereby, demolished at first sight.

WHEREFORE, the instant Petition is hereby **DISMISSED**, there being no showing of grave abuse of discretion on the part of the respondent NLRC.

SO ORDERED.

Narvasa, *C.J.*, Davide, Jr., Melo and Francisco, *JJ.*, concur.

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[1] Rollo, pp. 14-23.
[2] Second Division, composed of Comm. Rogelio I. Rayala, ponente, and Pres. Comm. Edna Bonto-Perez and Comm. Domingo H. Zapanta, concurring.
[3] Ceferina J. Diosana.
[4] Petition, pp. 3-4; rollo, pp. 4-5.
[5] Rollo, p. 32-33.
[6] Vide, Art. 4, Labor Code of the Philippines.
[7] Cf. De Ysasi III vs. NLRC, 231 SCRA 173 (March 11, 1994).
[8] BPI Credit Corporation vs. NLRC, 234 SCRA 441 (July 25, 1994).
[9] 197 SCRA 452 (May 27, 1991).
[10] Memorandum, pp. 13-14; rollo, pp. 141-142.