SUPREME COURT
THIRD DIVISION

JARDINE DAVIES, INC.,
***Petitioner*,**

-versus-

G.R. No. 106915
August 31, 1993

NATIONAL LABOR RELATIONS COMMISSION, FOURTH DIVISION, CEBU CITY, and SALVADOR SALUTIN,
***Respondents*.**
x----------x

D E C I S I O N

VITUG, *J.*:

The instant Petition for *Certiorari* seeks the reversal of the resolution of respondent National Labor Relations Commission, dated 22 July 1992, which declared private respondent Salvador Salutin as not having abandoned his work by his alleged failure to report for work during the pendency of the petitioner's appeal before the respondent Commission.

Respondent Salvador Salutin ("Salutin") was employed by petitioner Jardine Davies, Inc. ("JDI"), on 15 July 1985, as a demonstrator/agronomist to provide services relating to, and to give

advice on, the promotion and use of JDI's pesticides and other products.

The controversy that spawned two (2) special civil actions for *certiorari* (this instance included) with this Court, began when respondent Salutin filed a complaint against petitioner JDI for illegal dismissal, with prayer for reinstatement and backwages or, in the alternative, separation pay plus wage differential, service incentive leave pay, thirteenth (13th) month pay, holiday pay, moral and exemplary damages, and attorney's fees. The complaint was decided by the Labor Arbiter in favor of respondent Salutin in a decision, dated 08 August 1991, the decretal portion of which reads:

> "WHEREFORE, PREMISES CONSIDERED, respondent Jardine Davies, Inc./Jardine Agchem is hereby ordered to reinstate complainant to his former position, without loss of seniority and other rights, and with backwages, in amount of FIFTY SIX THOUSAND SEVEN HUNDRED PESOS (P56,700.00), without deduction and qualification.
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> "Respondent is further ordered to pay complainant the following:
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> a.) 13th Month pay P 8,100.00
> b.) Holiday pay 13,115.84
> c.) Service Incentive pay 1,557.60
> d.) Moral Damages 20,000.00
> e.) Exemplary Damages 10,000.00
> f.) Attorney's fees, which is ten percent (10%) of the total awarded amount.
>
> "SO ORDERED."

JDI appealed the case to the National Labor Relations Commission (NLRC), and it posted a supersedeas bond to answer for the monetary awards. It also reinstated Salutin, "on payroll only", beginning 26 August 1991,[1] in compliance with the writ of execution issued by the Labor Arbiter pursuant to Article 223, paragraph 3, of the Labor Code. In a Decision, dated 17 October 1991, NLRC dismissed JDI's appeal for lack of merit but modified the decision by eliminating the

awards given for holiday pay, service incentive leave pay, moral and exemplary damages.[2] A motion for reconsideration was filed which was denied in NLRC's Resolution of 13 January 1992.[3]

On 14 February 1992, JDI filed its first petition for *certiorari* with this Court, docketed as G.R. No. 103720, assailing the 17 October 1991 decision and the resolution of 13 January 1992 of respondent Commission. In our resolution, dated 26 February 1992, the petition was dismissed for failure to comply with this Court's Circular No. 28-91 on forum-shopping. Its subsequent motion for reconsideration was itself denied on 20 May 1992. The resolution of 26 February 1992 became final and executory on 19 June 1992, and an entry of judgment was accordingly made on 20 August 1992.

At the time when the above narrated events were still unfolding, some material facts occurred beginning with JDI's appeal to the NLRC on the 08 August 1991 decision of the Labor Arbiter. Shortly after the reinstatement of Salutin "on payroll only", JDI sent a letter, dated 21 September 1991, to Salutin directing him to report for work to their Bacolod Branch Manager. Salutin, as directed, reported on the 24th of September 1991 at around 9:20 a.m. He did not stay long, however, since after fifteen minutes or so, he left and was reported not to have thereafter returned for work. JDI forthwith stopped further payment of salary to Salutin.

On 17 October 1991, JDI filed a "Manifestation and Motion" with the respondent Commission stating, inter alia, that:

> "Salutin be considered as having abandoned his work considering his continuous absence of more than three (3) weeks since he was required to report for work and that any award for reinstatement 'to his former position, without loss of seniority and other rights,' in the Arbiter's decision subject of this appeal be considered and held as waived or lost."[4]

Salutin opposed the motion, claiming that he was forced to leave in haste because he was then suffering from a serious ailment. He submitted a medical certificate to support his claim.[5]

On 13 January 1992, respondent Commission denied JDI's "Manifestation & Motion" stating, among other things, that:

> As to the issue of whether the complainant-appellee Salvador Salutin is guilty of work abandonment, this is a new and factual matter which has to be determined and resolved in appropriate proceedings before the Arbitration Branch, more especially in the present case, where the charge of abandonment is seriously controverted.
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> Prescinding from its receipt of an information that Salutin was employed elsewhere, JDI filed an ex parte motion, dated 16 June 1992, to set for hearing the aforestated "Manifestation and Motion"[6] . Salutin, on his part, also filed a motion praying that JDI be ordered to release his withheld salary,[7] claiming that he had reported for work when he recovered from his ailment on 11 December 1991.[8]

On 22 July 1992, respondent Commission issued its assailed resolution stating, viz.:

> "WHEREFORE, Premises considered, the respondent's prayer to declare or consider the complainant to have abandoned his job for his alleged failure to report back to work during the pendency of the appeal in this case is hereby denied for lack of merit."
>
> "The complainant's motion for release of his salary since 24 September 1991, until he formally seeks for the enforcement of the decision is likewise denied."
>
> "SO ORDERED."[9]

When the Motion for Reconsideration was likewise denied, JDI instituted on 18 September 1992 the present petition for *certiorari*.

During the pendency of this petition, JDI filed an "urgent motion for the issuance of a writ of preliminary injunction and/or restraining order" to prevent the respondent Commission from enforcing its resolutions of 22 July 1992 and 25 August 1992 insofar as it ordered

the reinstatement of Salutin. In its resolution, dated 3 March 1993, this Court resolved to issue a temporary restraining order.[10]

Petitioner raises this sole assignment of error, to wit:

> THE RESPONDENT COMMISSION ACTED WITH GRAVE ABUSE OF DISCRETION IN DENYING PETITIONER'S CONTENTION/SUBMISSION THAT PRIVATE RESPONDENT SALUTIN SHOULD BE CONSIDERED AS HAVING ABANDONED HIS WORK WHEN HE FAILED TO REPORT FOR WORK PENDING THE PETITIONER-EMPLOYER'S APPEAL FROM THE ARBITER'S DECISION GRANTING REINSTATEMENT, ALTHOUGH AT THAT TIME HE WAS ON REINSTATEMENT ON PAYROLL — THIS NOTWITHSTANDING PETITIONER'S SHOWING THAT SUCH FAILURE TO REPORT WAS BECAUSE RESPONDENT-EMPLOYEE WAS THEN WORKING ALSO WITH ANOTHER COMPANY, HENCE HE WAS RECEIVING SALARIES FROM BOTH.

In the subsequent pages of its petition, JDI paraphrased the assigned issue in this wise: Is Salutin, who was then on payroll reinstatement since 26 August 1991, not guilty of abandonment when his failure to report for work was because he was also working for another entity from 01 September 1991 to 31 December 1991? Correlatively, did respondent Commission not gravely abuse its discretion when it did not take into consideration such other employment?

Our answer is in the negative.

The records show that at the time JDI filed its Manifestation and Motion, dated 17 October 1991, the sole basis of its prayer for a declaration that Salutin abandoned his work was his alleged unauthorized absences from the date he was notified to report for work.[11] A shift to a new focus took place when, on 30 January 1992, JDI, at its request, received a letter-certification issued by the Officer-in-Charge of King's Enterprises of Iloilo City that Salutin was employed by Monsanto Philippines, Inc., from 01 September to 31 December 1991, as Aggressive Crop Technician, for which he was paid P5,146.00 per month.[12] Thus, this was the reason given by JDI in its

ex parte motion, dated 16 June 1992, to set for hearing the Manifestation and Motion of 17 October 1991. NLRC denied the said ex parte motion in the now assailed resolution of 22 July 1992.

When JDI filed its first petition for *certiorari* (in G.R. No. 103720) with this Court on 14 February 1992, assailing the 17 October 1991 decision of NLRC, it also raised, as an added argument on the alleged abandonment of work by Salutin, the fact that he was gainfully employed elsewhere.[13] Considering that this matter was thus already taken up by the petitioner in its first petition for *certiorari*, which this Court dismissed with finality, the petitioner should really now be barred from invoking anew that issue in this present (second) petition.

Be that as it may, the same fate of dismissal is still inevitable. Although this Court is not a trier of facts, it may still wade through the records of a case if only to prevent any possible misgiving in its ultimate disposition.[14] The petitioner's evidence to establish Salutin's supposed abandonment of work is the certification of employment issued by King's Enterprises at the request of herein petitioner to the effect that Salutin had indeed been employed by Monsanto Philippines, Inc., during the period from 01 September to 31 December 1991. Is this enough? What we have heretofore said is this —

> For abandonment to constitute a valid cause for termination of employment, there must be a deliberate unjustified refusal of the employee to resume his employment. This refusal must be clearly shown. Mere absence is not sufficient; it must be accompanied by overt acts pointing to the fact that the employee simply does not want to work anymore.[15]

Abandonment of position is a matter of intention expressed in clearly certain and unequivocal acts. In this instance, however, certain uncontroverted facts show just exactly the opposite. Hence, Salutin did report, as directed, on 24 September 1991 but that he could not stay long because he was ailing at that time; he, although perhaps belatedly made, did seek medical consultation on 7 November 1991, at the Corazon Locsin Montelibano Memorial Regional Hospital, for

"peptic ulcer"; and on 11 December 1991, he did, in fact, manifest his desire to assume his work with the petitioner.

This Court's Resolution of 26 February 1992, denying the petition in G.R. No. 103720, became final and executory on 19 June 1992. Respondent Salutin's interim employment, stressed by the petitioner, did not stain the picture at all. Here, we second the well-considered view of NLRC, thus —

> The order of immediate reinstatement pending appeal, in cases of illegal dismissal is an ancillary relief under R.A. 6715 granted to a dismissed employee to cushion him and his family against the impact of economic dislocation or abrupt loss of earnings. If the employee chooses not to report for work pending resolution of the case on appeal, he foregoes such a temporary relief and is not paid of his salary. The final determination of the rights and obligations respectively of the parties is the ultimate and final resolution of this Commission.

WHEREFORE, the Petition is hereby **DISMISSED**. The questioned Resolutions of the National Labor Relations Commission are **AFFIRMED**, and the Temporary Restraining Order issued by this Court is hereby **LIFTED.**

SO ORDERED.

Feliciano, Bidin, Romero and Melo, *JJ.*, concur.

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[1] Rollo, 5, 12. 82.
[2] Rollo, p. 133.
[3] Ibid.
[4] Rollo, p. 29.
[5] Rollo, 54, 142.
[6] Annex "G", Rollo, pp. 38-40.
[7] Rollo, 20.
[8] Rollo, 21, 82-83.
[9] Rollo, p. 24.
[10] Rollo, pp. 99-101.
[11] Petition, Annex "D", Rollo, 28-29.
[12] Annex "F", Rollo, 37; 7.

[13] Rollo, 7-8.
[14] Valdez vs. CA, G.R. No. 85082, 194 SCRA 360[1991].
[15] Flexo Manufacturing Corp. vs. NLRC, G.R. No. 55971, 135 SCRA 145[1985]; Dagupan Bus Co., Inc. vs. NLRC, G.R. No. 94291, 191 SCRA 328[1990].