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**SUPREME COURT
THIRD DIVISION**

**LEMERY SAVINGS & LOAN BANK and
SERAFIN DIMAILIG. ZOSIMA
HERNANDEZ and CRISPINIANO
HERNANDEZ,**

Petitioners,

-versus-

**G.R. No. 96439
January 27, 1992**

**NATIONAL LABOR RELATIONS
COMMISSION, LABOR ARBITER
ALLEN R. ABUBAKAR, CENTRAL
LUZON LABOR CONGRESS and
RESTITUTO CASTILLO,**

Respondents.

X-----X

DECISION

GUTIERREZ, JR., J.:

The instant Petition raises the issue of whether or not an employee, who filed a complaint for illegal dismissal and who now refuses to go back to work on the alleged ground that he was constructively dismissed, should be awarded separation pay.

Private respondent Restituto Castillo was hired as a janitor-messenger of the Lemery Savings and Loan Bank in February 1980. Castillo is a relative of the Hernandez family that owns a substantial number of shares of Lemery Savings and Loan Bank. He and his family stayed in the house of Generosa Hernandez-Aquino, the sister of the bank president Zosima Hernandez, who is one of the petitioners herein.

Sometime in January, Castillo received a “strongly-worded” letter from Zosima Hernandez dated January 20, 1988 demanding that he leave Generosa’s house on the ground of disloyalty for not supporting Generosa’s candidates in the 1988 elections. The letter reads as follows:

“Dear Mr. Castillo,

“Thank you for keeping your promise because you are a very good boy, please pack your things and look for another boarding house.

“It is OK that Ate Unsang loses the company. It’s very timely that you showed your color and your wife was so arrogant.

“I want you to leave the house immediately and want to see you out before I arrive. I don’t want to see you linger around our premises. Get out, you will only make me sick. I don’t want you to stay there. Ate Unsang will not be comfortable with you because you, and your wife, and your family deceived her, her son, and Adeling and the rest of the family. So I don’t want to see you in the house.

(SGD.)

“ZOSIMA C. HERNANDEZ”

(Rollo, p. 102).

Private respondent Castillo then applied for and was granted a leave of absence from January 27, 1988 to February 26, 1988.

However, since February 27, 1988 or after the lapse of the leave period, Castillo has not returned to work in the bank.

The general manager of the bank, petitioner Serafin Dimailig required Castillo in a letter dated March 3, 1988, to explain his continued absence. Mr. Dimailig also asked him in the same letter to inform the bank if he was still interested in his job or if anything had happened to him. (See Rollo. p. 38)

On March 6, 1988, Castillo replied without giving any definite explanation at all, to wit:

“There’s no need of explaining why I’m still absent up to this date I hope you understand and you know why.

“Enclosed herewith a xerox letter of President Zosima C. Hernandez address (sic) to me last January 20, 1988. We have settled this matter with Ninong and he understand (sic) my problem.

“I hope you all know the cause and you know this.” (Rollo, p. 39)

On March 9, 1988, Castillo filed with the Labor Arbiter a complaint for illegal dismissal and non-payment of overtime pay and separation pay in the belief that his services were already terminated by the bank president from the wordings of her letter.

On March 14, 1988, the petitioner bank through Mr. Dimailig sent Castillo a memorandum stating that the bank officials were one convinced by his reply letter as personal differences between him and the bank officers should not interfere with the official employer-employee relationship. In the same memorandum, the petitioner reminded Castillo that he should report for duty after the expiration of the leave period and that he would be subjected to disciplinary action or be terminated for lawful cause including abandonment of duty in case of failure to report.

The Labor Arbiter, Allen R. Abubakar, rendered a decision dated October 26, 1988 ruling that Castillo was not dismissed by the petitioner bank. He noted that the bank, in fact, asked him to return to work because the problem of Castillo was purely personal.

However, the Labor Arbiter ordered the reinstatement of Castillo to his former employment or in the alternative, the payment of separation pay “if the complainant chooses not to return to work”. The labor arbiter took special consideration of the private respondent’s moral dependence on Zosima Hernandez, his lowly position and lack of education which contributed to his erroneous conclusion that he was dismissed. The labor arbiter also ruled that there were strained relations which could possibly negate reinstatement.

On appeal, the National Labor Relations Commission (NLRC) modified the decision of the labor arbiter by ordering the payment to Castillo, by way of financial assistance, of the equivalent of one (1) month salary for every year of service. It ruled on the ground of social and compassionate justice as it found Castillo’s belief to be the basis for the failure to report back to work. Furthermore, it stated that the subsequent order by the bank officials for Castillo to return to work and the allegation that President Zosima Hernandez was a mere minority stockholder who does not have the authority to dismiss him, were not enough to overcome his fear.

The NLRC affirmed the arbiter’s finding that there was actually no illegal dismissal. The NLRC found that there was not even abandonment by private respondent of his job.

A motion for reconsideration of the NLRC resolution was denied. Hence, this petition.

A close examination of the facts and the records of the case convince this Court that there was no termination of the services of respondent Castillo. We, therefore, uphold the finding of the respondent NLRC and the labor arbiter on this point. There is no illegal dismissal to speak of for which a prayer for reinstatement with backwages can prosper.

Article 279 of the Labor provides that:

“ARTICLE 279. Security of Tenure. — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this

Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. (As emended by RA 6715)” (Emphasis supplied)

Contrary to the theory of private respondent Castillo, no constructive discharge can be deduced from the contents of the letter of Zosima Fernandez which reveal a conflict existing between him and petitioner Hernandez. What transpired between them definitely had nothing to do with their respective official functions in the bank.

Furthermore, it is very much apparent that the stern demand by petitioner Hernandez for him to vacate the residence of Gloria Hernandez-Aquino did not spring from her authority as the bank president but only as a blood relative of respondent Castillo with respect to matters about which only they and their kin were aware and which are outside the realm of their duties in the bank. A dispute regarding partisanship in the 1988 local elections may result in Castillo’s eviction from the Hernandez residence but should not immediately affect their status as bank employee and officer, respectively, nor the performance of their respective functions. Respondent Castillo must learn to discern what matters are personal and what are not.

Likewise, no constructive dismissal can be derived from the March 14, 1988 letter of petitioner general manager Dimailig. The same letter merely advised him to return to work and warned him that his failure to return would constitute abandonment which is a lawful ground for possible disciplinary action. (Rollo, p. 40) As of that time and until now, the petitioner bank has not enforced any disciplinary action against Castillo.

Constructive dismissal exists when there is “a quitting because continued employment is rendered impossible, unreasonable or unlikely; as an offer involving a demotion in rank and a diminution in pay.” (quoted in *Philippine Japan Active Carbon Corporation vs. National Labor Relations Commission*, 171 SCRA 164 [1989]).

Hence, where a company suffers great financial losses such that it has no choice but to resort to reassignment of its employees to lower positions, or to reduction of working hours and days, eventually resulting in retrenchment or virtually depriving them of their jobs by gradual diminution of salaries and benefits, there is constructive dismissal. (Philippine Japan Active Carbon Corporation vs. National Labor Relations Commission, supra; International Hardware Inc. vs. National Labor Relations Commission, 176 SCRA 256 [1989]). In the present case, respondent Castillo was not transferred nor were his working days or wages reduced. He was not retrenched. Moreover, the bank was not suffering great losses that would force it to discontinue his employment.

There being no dismissal, an award of separation pay as a form of financial assistance is not in order.

An employee is entitled to separation pay only in cases such as the installation of labor saving devices, redundancy, retrenchment to prevent losses, closing or cessation of operation of the establishment, or in case the employee was found to have been suffering from a disease such that his continued employment is prohibited by law. (See Articles 283 and 284, Labor Code)

Public respondent NLRC insists on the applicability to the present case of this Court's ruling in Philippine Long Distance Telephone Co. vs. NLRC, 164 SCRA 671 [1988] which allows an award of separation pay as a measure of social justice. This argument is without merit. A closer look at the same ruling specifies that separation pay can be granted only in instances of valid dismissal for causes other than serious misconduct or those reflecting on his moral character.

It would be an abuse of the avowed principle of "compassionate justice" in favor of the working man, were we to permit a grant of financial assistance to an employee who, from the bare facts and circumstances, was not at all dismissed.

It is true that the Constitution has placed a high regard for the welfare of the labor sector. However, social and compassionate justice does not contemplate a situation whereby the management stands to suffer

for certain misconceptions created in the mind of an employee. Where there is no dismissal, legal or illegal, no retribution nor compensation to the employee involved is due from the employer.

Nevertheless, the mistaken belief on the part of the employee should not lead to a drastic conclusion that he has chosen to abandon his work. There is no showing that Castillo deliberately refused to continue his employment without a justifiable reason. The private respondent's complaint for illegal dismissal included a prayer for reinstatement as he thought he was removed from his job. We cannot readily infer abandonment even if, sometime during the pendency of this case, he refused to heed the warning given him by petitioner Dimailig while believing that he was dismissed through no fault of his.

At any rate, it is futile to resolve the existence of abandonment because there is no act on the part of the employer which needs to be justified by a charge for intentional refusal to continue to work. In fact, as the Solicitor General correctly observed:

“Petitioners (sic) had not withdrawn its offer to Castillo to return to work, as can be gleaned in the Prayer of its last Motion for Reconsideration with the NLRC dated July 13, 1990, to wit:

‘WHEREFORE, it is respectfully prayed that —

3. A new Resolution be issued declaring that complainant has not been dismissed from his employment, ordering him under pain of losing his employment to return to work.’ (Motion for Reconsideration, Records, p. 107)

Hence, Castillo may still return to work, if he so desires.” (Rollo, pp. 115-116)

The present dispute between the petitioners and the private respondent can be concluded by requiring the latter to report back to his place of work and to abide by the official instructions to be given to him. Only when the personal animosity which led to his eviction from the residence is transferred to his working place and overt acts

of discrimination and harassment take place can he file an action for constructive dismissal.

WHEREFORE, the Petition is **GRANTED**. The Resolutions of the National Labor Relations Commission dated June 8, 1990 and August 10, 1990 are hereby set aside and another decision is rendered dismissing the private respondent's complaint.

SO ORDERED.

Bidin, Davide, Jr. and Romero, JJ., concur.
Feliciano, J., took no part. One party is represented by my former firm.