

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**GALLARDO U. LUCERO,
*Petitioner,***

-versus-

**G.R. No. 152032
July 3, 2003**

**HON. COURT OF APPEALS and
PHILIPPINE NATIONAL BANK,
*Respondents.***

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DECISION

VITUG, J.:

Before the Court is a Petition for Review on Certiorari under Rule 45 of the 1997 Rules of Civil Procedure, assailing the decision of the Court of Appeals in CA-G.R. SP No. 59684, entitled “Philippine National Bank vs. NLRC (Second Division) and Gallardo U. Lucero,” which has reversed and set aside the decision of the National Labor Relations Commission (NLRC) on a case involving a complaint for illegal dismissal.

On 18 January 1995, petitioner Gallardo U. Lucero started working on a contractual basis with private respondent Philippine National Bank (PNB). He was hired by Excellent Manpower Services, a manning agency, which then supplied the manpower requirements of the PNB.

On 06 December 1995, the PNB extended Lucero an original and permanent appointment as Liaison Officer 1, with Salary Grade II, at the bank's cash division.

On 23 May 1996, Lourdes V. Ledesma, Vice-President of the Human Resources Department (HRD) of the PNB, issued a memorandum to Linda U. Gaerlan, then Vice-President of the Cash Division, informing the latter that the management approved the termination of services of Lucero due to the "unsatisfactory" performance rating obtained by him during the probationary period of his employment. Acting on the memorandum, Gaerlan wrote to the HRD requesting that Lucero's name be dropped from the official roll of PNB employees effective at the close of business hours of 31 May 1996. Meanwhile, on 24 May 1996, Lucero was served his termination papers.

On 07 June 1996, Lucero wrote to the Civil Service Commission (CSC) protesting his dismissal by the PNB and asking for his reinstatement. The CSC referred Lucero's letter to the PNB for comment and appropriate action. In compliance with the directive of the CSC, the PNB wrote to Lucero on 25 June 1996 and furnished him with copies of the evaluation reports of his superiors at the bank. The CSC acknowledged the response of the PNB to the former's letter regarding Lucero's complaint and informed the PNB that it considered the complaint "closed." When informed of the action of the CSC, Lucero pressed for a clarification on what "closed" meant. The CSC explained that, at the time he filed his complaint on 07 June 1996, the PNB had already been privatized and that it was no longer covered by the CSC rules.

On 04 September 1996, Lucero filed a complaint for illegal dismissal against the PNB before the Labor Arbiter. On 28 September 1998, the Labor Arbiter dismissed the complaint for lack of jurisdiction. The Labor Arbiter declared that Lucero was still a government employee when he was dismissed on 24 May 1996, the PNB having been privatized only on 27 May 1996.

On 17 December 1998, Lucero went on appeal to the NLRC. The NLRC issued its judgment, dated 14 March 2000, which reversed the assailed decision of the Labor Arbiter and held that Lucero had been illegally dismissed by the PNB. The NLRC concluded:

“WHEREFORE, the foregoing premises considered, the respondent bank is hereby declared guilty of having illegally dismissed the complainant; and it is hereby ordered:

- “1) to immediately reinstate complainant without loss of seniority rights and privileges;
- “2) to pay his backwages inclusive of his allowances, other benefits or their monetary equivalent, based on his last gross salary rate of P8,009.00 and computed from the time his compensation was withheld up to the time of his reinstatement, whether actual or in the payroll; and
- “3) attorney’s fees equivalent to 10% of the above awards.

“All other claims are dismissed for lack of factual basis to award the same.”^[1]

The PNB filed in due time a motion for reconsideration which was denied by the NLRC in its resolution of 28 April 2000. Consistently with the decision of the NLRC, Lucero was meanwhile reinstated to his former position by the PNB, and he resumed his functions in the bank. The PNB, nevertheless, filed with the Court of Appeals on 07 July 2000 a petition for certiorari under Rule 65 of the 1997 Rules of Procedure, contending that the NLRC committed grave abuse of discretion in assuming jurisdiction over the case and in ruling that Lucero’s dismissal was illegal. The PNB argued that since Lucero was dismissed on 24 May 1996, or prior to its privatization (on 27 May 1996), the case should have been decided on the basis of the Civil Service Law and not the Labor Code; that the NLRC erred in finding, even assuming that the NLRC had jurisdiction to take cognizance of the case, that Lucero was illegally dismissed; and that the probationary employment was validly terminated because of his “unsatisfactory” performance.

On 31 July 2001, the Court of Appeals rendered a decision to the effect that the NLRC properly assumed jurisdiction over the case;

nevertheless, it found Lucero not to have been illegally dismissed. The appellate court held:

“WHEREFORE, the petition is GRANTED. The assailed decision of the National Labor Relations Commission is REVERSED and SET ASIDE, with the result that the complaint of Gallardo U. Lucero for illegal dismissal against the Philippine National Bank is DISMISSED.”^[2]

Lucero filed a motion for reconsideration; the Court of Appeals denied, in its resolution of 24 January 2002, the motion.

In the instant petition, petitioner Lucero focused his argument on the following asseverations; thus:

“The Court of Appeals committed a serious legal error in failing to hold that petitioner was already a regular employee at the time of his dismissal and hence, could not be dismissed without just or authorized cause.

“The Court of Appeals legally erred in not holding that petitioner’s subsequently high performance rating should have been taken in his favor.”^[3]

The petition lacks merit.

It would appear that on 18 January 1996, petitioner was hired by Excellent Manpower Services, a manning agency, which used to supply the manpower requirements of the PNB, to work as an administrative assistant at the bank’s cash division. On 06 December 1995, petitioner was given by the PNB an original appointment as Liaison Officer I, with a permanent status, thereby foregoing his previous relationship with the bank, as aforesaid, and accepting thereby the terms appurtenant to his new appointment. At the time of the appointment, PNB was still a government agency subject to civil service rules and regulations that, among other things, subjected appointments “into the career service under a permanent status” to a probationary period.

Section 2, Rule VII, of the Rules Implementing the Civil Service Law reads:

“Section 2. Original appointment refers to initial entry into the career service under a permanent status of a person who meets all the requirements of the position including the civil service eligibility.

“(a) All such persons must serve a probationary period of six (6) months following their original appointment and shall undergo a thorough character investigation. A probationer may be dropped from the service for unsatisfactory conduct or want of capacity anytime before the expiration of the probationary period: Provided, that such action is appealable to the Commission.”

The Court of Appeals, reiterating the findings of the NLRC, held that at the time of the services of petitioner were dispensed with on 31 May 1996, his employment with the PNB was still under probationary status, i.e., that he was still on trial during which time his qualification for his career employment would be determined.^[4] The performance by Gallardo was found inadequate by the PNB that entitled it to drop him from the service. Whether, indeed, that performance was satisfactory or unsatisfactory, was a factual question best addressed for final determination by the Court of Appeals, the findings on which, when supported by substantial evidence, would be binding on this Court.^[5] The appellate court said:

“Applying the foregoing standards, we hold that PNB validly exercised its prerogative to terminate Lucero’s probationary employment for unsatisfactory performance. Before expiration of his probationary employment, Lucero was informed of his termination. And it is noteworthy that his immediate superiors were one in saying that his attitude and work performance left much to be desired.

“Thus, in his memorandum dated June 17, 1996 for Ms. Ledesma, Ubaldo L. Laranang, Suvpg., Money Position Specialist, stated that Lucero ‘was oftenly given oral reprimand for his negative attitude and willful neglect of his duties;’ that

considering the ‘negative feedbacks from other Units where he was previously assigned, he was sufficiently advised to reform and mend his ways in order to give a good account of himself;’ that ‘his irresponsible ways was already a common knowledge in the entire Department;’ that ‘he never reformed;’ and that ‘several Units heads are in unison in giving him unsatisfactory rating.’

“On the other hand, Norma P. Perez, Dept. Manager III, in her memorandum for Ms. Ledesma dated June 17, 1996, declared that they ‘always reminded Mr. Lucero to improve his work attitude and performance while assigned in my division;’ that ‘he ignored all our reminders and oral reprimands as manifested in his work output;’ and that she ‘observed no improvements on his work attitude and performance.’

“Finally, Roger V. Estanislao, Asst. Dept. Manager I, in his memorandum dated June 17, 1996 for Ms. Ledesma, stated that ‘for several times, Mr. Lucero was called upon at the Office of the Vice President to explain his poor performance and misconduct reported by his assigned supervisors;’ that Lucero ‘was absorbed by the Bank after he promised to the Vice-President that he will do good and improve his performance;’ that Lucero ‘ignored the counseling and oral reprimands by his supervisors;’ and that he ‘received a written complaint from a lady employee of this department on Mr. Lucero’s untoward behavior which has affected her work performance.’

“A probationary appointment is intended to afford the employer an opportunity to observe the skill, competence and attitude of a probationer (Escorpizo vs. University of Baguio, 306 SCRA 497). In the instant case, Lucero proved himself unworthy of permanent employment. Consequently, PNB cannot be faulted for terminating his services.”^[6]

It would be difficult to sustain the stand taken by petitioner that the Court of Appeals erred in ignoring his subsequent high performance rating. The high rating of “very satisfactory” obtained by petitioner after his reinstatement, in compliance with the order of the NLRC,

was not controlling, the point in question being his performance during the probationary period of the employment.

WHEREFORE, the assailed decision and resolution of the Court of Appeals in CA-G.R. SP No. 59687 are **AFFIRMED**. No costs.

SO ORDERED.

Davide, Jr., C.J., Ynares-Santiago, Carpio and Azcuna, JJ., concur.

[1] Rollo, p. 70.

[2] Rollo, p. 38.

[3] Rollo, p. 19.

[4] Philippine Federation of Credit Cooperatives, Inc. vs. NLRC, 300 SCRA 72.

[5] Mani vs. Court of Appeals, 332 SCRA 475.

[6] Rollo, pp. 36–37.