

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
SECOND DIVISION**

**NYK INTERNATIONAL KNITWEAR  
CORPORATION PHILIPPINES and/or  
CATHY NG,**

***Petitioners,***

***-versus-***

**G.R. No. 146267  
February 17, 2003**

**NATIONAL LABOR RELATIONS  
COMMISSION and VIRGINIA M.  
PUBLICO,**

***Respondents.***

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**DECISION**

**QUISUMBING, J.:**

In this Petition for Review, petitioners NYK International Knitwear Corporation Philippines (henceforth NYK, for brevity) and its manager, Cathy Ng, assail the Resolution<sup>[1]</sup> dated September 15, 2000 of the Court of Appeals in CA-G.R. SP No. 60542, which dismissed their petition for certiorari for non-compliance with Section 1, Rule 65 of the 1997 Rules of Civil Procedure. Also assailed is the appellate court's Resolution<sup>[2]</sup> of December 5, 2000, which denied the motion for reconsideration.

The facts, as gleaned from the findings of the Labor Arbiter as affirmed by the National Labor Relations Commission (NLRC), show that:

On February 8, 1995, herein petitioner NYK hired respondent Virginia Publico as a sewer. Under the terms and conditions of her employment, Publico was paid on a piece-rate basis, but required to work from 8:00 A.M. to 12:00 midnight. On the average, she earned P185.00 daily.

At about 10:00 P.M. of May 7, 1997, Publico requested that she be allowed to leave the work place early, as she was not feeling well due to a bout of influenza. Permission was refused but nonetheless, Publico went home.

The following day, Publico called up her employer and notified management that she was still recovering from her ailment.

On May 9, 1997, Publico reported for work. To her mortification and surprise, however, the security guard prevented her from entering the NYK premises, allegedly on management's order. She begged to be allowed inside, but the guard remained adamant. It was only when Publico declared that she would just complete the unfinished work she had left on May 7 that the guard let her in.

Once inside the factory, Publico requested to see the owner, one Stephen Ng. Her request was declined. She was instead asked to come back the following day.

On May 10, 1997, Publico returned to NYK as instructed. After waiting for three and half (3½) hours, she was finally able to see Stephen Ng. When she inquired why she was barred from reporting for work, Mr. Ng told her she was dismissed due to her refusal to render overtime service.

Aggrieved, private respondent filed a complaint for illegal dismissal against petitioner corporation and its manager, petitioner Cathy Ng, docketed as NLRC NCR Case No. 00-06-03925-97.

Before the Labor Arbiter, petitioners predictably had a different version of the story. Allegedly, they took the pains to verify why Publico did not report for work on May 7, 1997 and found out that her husband did not allow her to work at night. As night work is a must in their line of business, particularly when there are rush orders, petitioners claimed that given Publico's failure to render overtime work, they were left with no other recourse but to fire her.

On March 19, 1998, the Labor Arbiter held Publico's dismissal to be illegal, disposing as follows:

WHEREFORE, the respondents are hereby ordered to reinstate the complainant to her former position with full backwages from the date her salary was withheld until she is actually reinstated, which amounted to P50,168.30. The respondents are, likewise, assessed the sum of P5,016.83 representing 10% of the amount awarded as attorney's fees. The rest of the claims are dismissed for lack of merit.

SO ORDERED.<sup>[3]</sup>

On appeal, the NLRC, in a Resolution<sup>[4]</sup> dated May 17, 2000, affirmed the decision of the Labor Arbiter in toto.

In due time, petitioners impugned the NLRC decision by way of a special civil action of certiorari filed before the Court of Appeals, docketed as CA-G.R. SP No. 60542. Petitioners ascribed grave abuse of discretion amounting to lack or excess of jurisdiction to public respondent NLRC for affirming the ruling of the Labor Arbiter.

In its resolution of September 15, 2000, the appellate court dismissed the petition outright. The Court of Appeals pointed out that there was non-compliance with Section 1 of Rule 65 of the 1997 Rules of Civil Procedure as the petition was merely accompanied by a certified xerox copy of the assailed NLRC decision, instead of a certified true copy thereof as required by the Rules of Court.<sup>[5]</sup> Furthermore, petitioners failed to attach the other pleadings and documents pertinent and material to their petition, such as the parties' position papers, their evidence and the motion for reconsideration in contravention of the said rule.<sup>[6]</sup>

Petitioners duly moved for reconsideration, explaining that they had requested for a certified true copy of the NLRC's decision but since the original NLRC decision was printed on onionskin was not legible, the NLRC itself photocopied the resolution and certified it afterwards. As proof of payment of petitioners' request for a certified true copy of the NLRC decision, petitioners attached a copy of the official receipts issued by the NLRC, which described the nature of the entry as "CERT. TRUE COPY."<sup>[7]</sup> Petitioners, likewise, appended in their motion copies of pertinent pleadings and documents not previously attached in their petition.

On December 5, 2000, the appellate court denied petitioners' motion for reconsideration.<sup>[8]</sup>

Hence this petition for review.

Before us, petitioners submit the following issues for our resolution:

I

WHETHER OR NOT THE COURT OF APPEALS SHOULD HAVE GIVEN DUE COURSE TO THE PETITION FOR CERTIORARI.

II

WHETHER OR NOT THERE EXISTS EVIDENCE ON RECORD TO WARRANT THE RULING THAT COMPLAINANT WAS ILLEGALLY DISMISSED, AND COROLLARY THERETO, WHETHER OR NOT THERE IS LEGAL JUSTIFICATION TO AWARD BACKWAGES AND ORDER REINSTATEMENT.

III

WHETHER OR NOT THERE WAS GRAVE ABUSE OF DISCRETION ON THE PART OF THE PUBLIC RESPONDENT NLRC SO AS TO JUSTIFY A REVERSAL OF ITS RESOLUTIONS DATED MAY 17, 2000 AND JUNE 30, 2000.<sup>[9]</sup>

Only two issues need resolution, one having to do with adjective law and the other with substantial law, namely:

- (1) Did the Court of Appeals commit a reversible error in dismissing CA-G.R. SP No. 60542 on purely technical grounds, i.e., that the attached copy of the NLRC decision is a mere photocopy of the original decision; and
- (2) Did the Court of Appeals err in refusing to rule on the correctness of the NLRC's findings that private respondent was illegally dismissed?

On the first issue, petitioners, contend that they have substantially complied with the requirements of Section 1, Rule 65, hence, in the interests of justice and equity, the Court of Appeals should have given due course to their special civil action for certiorari.

Private respondent, on the other hand, maintains that petitioners' wanton disregard of the Rule warrant the outright dismissal of their petition. She adds that the present petition raises factual issues that the Court cannot pass upon at the first instance.

Section 1 of Rule 65,<sup>[10]</sup> 1997 Rules of Civil Procedure, requires that the petition shall be accompanied by a certified true copy of the judgment or order subject thereof, together with copies of all pleadings and documents relevant and pertinent thereto. The precursor of the Revised Rules of Civil Procedure, Administrative Circular No. 3-96, which took effect on June 1, 1996, instructs us what a "certified true copy" is:

1. The "certified true copy" thereof shall be such other copy furnished to a party at his instance or in his behalf, duly authenticated by the authorized officers or representatives of the issuing entity as hereinbefore specified.

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3. The certified true copy must further comply with all the regulations therefor of the issuing entity and it is the authenticated original of such certified true copy, and not a

mere xerox copy hereof, which shall be utilized as an annex to the petition or other initiatory pleading. (*Emphasis supplied*)

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Applying the preceding guidepost in the present case, the disputed document although stamped as “certified true copy” is not an authenticated original of such certified true copy, but only a xerox copy thereof, in contravention of paragraph 3 of the above-quoted guidelines. Hence, no error may be ascribed to the Court of Appeals in dismissing the petition for certiorari outright pursuant to paragraph 5 of Administrative Circular No. 3-96, which provides:

5. It shall be the duty and responsibility of the party using the documents required by Paragraph (3) of Circular No. 1-88 to verify and ensure compliance with all the requirements therefor as detailed in the preceding paragraphs. Failure to do so shall result in the rejection of such annexes and the dismissal of the case. Subsequent compliance shall not warrant any reconsideration unless the court is fully satisfied that the non-compliance was not in any way attributable to the party, despite due diligence on his part, and that there are highly justifiable and compelling reasons for the court to make such other disposition as it may deem just and equitable. (*Emphasis supplied.*)

The members of this Court are not unmindful that in exceptional cases and for compelling reasons, we have disregarded similar procedural defects in order to correct a patent injustice made. However, petitioners here have not shown any compelling reason for us to relax the rule. Petitioners are hereby reminded that the right to file a special civil action of certiorari is neither a natural right nor a part of due process. A writ of certiorari is a prerogative writ, never demandable as a matter of right, never issued except in the exercise of judicial discretion.<sup>[11]</sup> Hence, he who seeks a writ of certiorari must apply for it only in the manner and strictly in accordance with the provisions of the law and the Rules.

To avoid further delay in resolving the present controversy, we now come to the second issue. Petitioners contend that private respondent's refusal to render night work is tantamount to abandonment of duties which constitutes a just ground for termination of service. They aver that the Labor Arbiter gravely erred in awarding backwages to private respondent, as there was no illegal dismissal. Petitioners allege that management did not terminate her services, but in fact asked her to return to work during the preliminary conferences. Hence, it would be the height of injustice to award backwages for work, which was never rendered through private respondent's own choice. Petitioners add that they cannot be held solidarily liable in this case as there was neither malice nor bad faith.

Petitioners' arguments fail to persuade us. Petitioners raise factual questions which are improper in a petition for review on certiorari. Findings of facts of the NLRC, particularly in a case where the NLRC and the Labor Arbiter are in agreement, are deemed binding and conclusive upon this Court.<sup>[12]</sup>

Hence, petitioners' bare allegations of abandonment cannot stand the unswerving conclusion by both quasi-judicial agencies below that private respondent was unlawfully dismissed. We find no reason to deviate from the consistent findings of the Labor Arbiter and the NLRC that there was no basis to find that Virginia abandoned her work. Indeed, factual findings of the NLRC affirming those of the Labor Arbiter, both bodies being deemed to have acquired expertise in matters within their jurisdictions, when sufficiently supported by evidence on record, are accorded respect if not finality, and are considered binding on this Court.<sup>[13]</sup> As long as their decisions are devoid of any unfairness or arbitrariness in the process of their deduction from the evidence proffered by the parties, all that is left is for the Court to stamp its affirmation and declare its finality. No reversible error may thus be laid at the door of the Court of Appeals when it refused to rule that the NLRC committed a grave abuse of discretion amounting to want or excess of jurisdiction in holding that private respondent was illegally dismissed.

Anent petitioners' assertion that they cannot be solidarily liable in this case as there was no malice or bad faith on their part has no leg to stand on. What the Court finds apropos is our disquisition in A.C.

Ransom Labor Union-CCLU vs. NLRC,<sup>[14]</sup> which held that since a corporation is an artificial person, it must have an officer who can be presumed to be the employer, being the “person acting in the interest of the employer.” In other words the corporation, in the technical sense only, is the employer. In a subsequent case, we ordered the corporate officers of the employer corporation to pay jointly and solidarily the private respondents’ monetary award.<sup>[15]</sup> More recently, a corporation and its president were directed by this Court to jointly and severally reinstate the illegally dismissed employees to their former positions and to pay the monetary awards.<sup>[16]</sup>

In this case Cathy Ng, admittedly, is the manager of NYK. Conformably with our ruling in A. C. Ransom, she falls within the meaning of an “employer” as contemplated by the Labor Code,<sup>[17]</sup> who may be held jointly and severally liable for the obligations of the corporation to its dismissed employees. Pursuant to prevailing jurisprudence, Cathy Ng, in her capacity as manager and responsible officer of NYK, cannot be exonerated from her joint and several liability in the payment of monetary award to private respondent.

**WHEREFORE**, the instant petition is **DENIED**. The assailed resolutions of the Court of Appeals dated September 15, 2000 and December 5, 2000, are hereby **AFFIRMED**. Costs against petitioners.

**SO ORDERED.**

**Bellosillo, Mendoza, Austria-Martinez and Callejo, Sr., JJ., concur.**

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[1] Rollo, pp. 21-22. Penned by Abad Santos, Jr., J., with Brawner and Reyes, Jr., JJ., concurring.

[2] Id. at 24-25.

[3] CA Rollo, pp. 59-60.

[4] Id. at 15-20.

[5] Rollo, pp. 21-22.

[6] Id. at 22, 24.

[7] CA Rollo, p. 33.

[8] Rollo, pp. 24-25.

[9] Id. at 10.



[10] SECTION 1. Petition for certiorari. — When any tribunal, board or officer exercising, judicial or quasi judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

[11] *Nunal vs. Commission on Audit*, 169 SCRA 356, 363 (1989); *Comsavings Bank vs. NLRC*, 257 SCRA 307, 309 (1996).

[12] *Permex, Inc. vs. National Labor Relations Commission*, 323 SCRA 121, 126 (2000).

[13] *Ignacio vs. Coca-Cola Bottlers Phils., Inc.*, G.R. No. 144400, September 19, 2001, p. 8; *Audion Electric Co., Inc. vs. National Labor Relations Commission*, 308 SCRA 340, 349 (1999).

[14] 142 SCRA 269, 273 (1986).

[15] See *Permex, Inc. vs. National Labor Relations Commission*, supra, at 130.

[16] *National Bookstore, Inc. vs. Court of Appeals*, G.R. No. 146741, February 27, 2002, p. 11.

[17] ART. 212. Definitions. —

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(e) “Employer” includes any person acting in the interest of an employer, directly or indirectly. The term shall not include any labor organization or any of its officers or agents except when acting as employer.