

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
THIRD DIVISION**

**VOYEUR VISAGE STUDIO, INC.,
*Petitioner,***

-versus-

**G.R. No. 144939
March 18, 2005**

**COURT OF APPEALS and ANNA
MELISSA DEL MUNDO,
*Respondents.***

X-----X

DECISION

GARCIA, J.:

Under consideration is this appeal by way of a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court to nullify and set aside the following issuances of the Court of Appeals in CA-G.R. SP. No. 57527, to wit:

1. Decision dated 26 July 2000,^[1] reversing and setting aside the 21 October 1999 resolution of the National Labor Relations Commission (NLRC); and
2. Resolution dated 8 September 2000,^[2] denying petitioner's motion for reconsideration.

The material facts may be briefly stated, as follows:

On 15 November 1991, petitioner Voyeur Visage Studio, Inc. hired respondent Anna Melissa del Mundo (Melissa, for short) on a 6-month probationary basis. As agreed, Melissa worked as a Production and Planning Coordinator/Receptionist and was assigned at petitioner's studio located in Greenhills, San Juan, Metro Manila.

On 28 February 1992, while Melissa was at work, Kodak Philippines, Inc. made a delivery of Kodak papers at petitioner's studio in Greenhills, which delivery was received by Melissa. The delivered items were to be later transferred to petitioner's laboratory at Esteban Abada St., Loyola Heights, Quezon City.

After the transfer, however, petitioner discovered that the delivery was short by two (2) boxes of Kodak papers worth six thousand pesos (P6,000.00).

Petitioner then asked Melissa for an explanation but the latter could not account for the shortage. She insisted, however, that at the time of delivery, the delivered items and the delivery receipt therefor tallied, hence, there was no shortage.

Evidently dissatisfied with Melissa's explanation, petitioner made her responsible for the shortage and deducted from her salary the sum of P250.00 per week until such time that she shall have fully paid the amount of P6,000.00. Petitioner made it appear in its payroll that the deductions were for a salary loan, although Melissa had no such loan. Nonetheless, Melissa conformed to such arrangement.

On 31 August 1992, or after about nine (9) months since she was hired on a probationary basis, Melissa received from petitioner a memorandum bearing date 11 August 1992, informing her of petitioner's decision to terminate her employment, viz.:

We regret to inform you that you have not passed the probationary period given to you by the Management. You are hereby terminated from work effective August 30, 1992.

You will be given corresponding legal benefits in compliance with the Department of Labor and Administrative requirements.

(SGD.)
BING A. CHUA
Personnel Officer

The following day, Melissa, through counsel, addressed a letter to petitioner protesting her dismissal, therein alleging that the dismissal was illegal because at the time it was effected, she was then already a regular employee.

On 10 September 1992, Melissa filed with the Arbitration Branch, National Labor Relations Commission-National Capital Region, a complaint for illegal dismissal, unfair labor practice, violation of Presidential Decree No. 851 (Requiring All Employers to Pay Their Employees a 13th Month Pay), Payment of separation pay and violation of SSS, Medicare, PAG-IBIG and Internal Revenue laws, The complaint was later amended to include illegal deductions and claim for reinstatement and payment of full backwages.

Finding Melissa to be a regular employee, the Labor Arbiter came out with a decision on 17 August 1998, declaring the dismissal illegal and ordering petitioner to reinstate her and pay her backwages. In the same decision, however, the Labor Arbiter dismissed the charge of unfair labor practice and the other money claims of Melissa for lack of merit. More specifically, the decision dispositively reads:

WHEREFORE, judgment is hereby rendered ordering respondent Voyeur Visage Studio, Inc. to reinstate complainant Anna Melissa del Mundo to her former or equivalent position with full backwages from September 1992 up to June 30, 1996 in the computed amount of P117,480.00 less P3,560.00 corresponding to her salary for the supposed one-month suspension, or P113,920.00. This amount is still subject to further adjustment until the complainant has been reinstated physically or in the payroll.

All other issues are hereby dismissed for lack of merit.

SO ORDERED.

Therefrom, petitioner went on appeal to the NLRC. In its appeal, petitioner reiterated its thesis that at the time of Melissa's dismissal, she was a probationary employee, claiming that the probation period was earlier extended for another six (6) months and that she was unable to comply with the requirements for regularization because of her inexcusable negligence and inefficiency.

In a resolution^[3] dated 21 October 1999, the NLRC, thru its Third Division, declared Melissa to have been legally discharged even as the same resolution recognized her as a regular employee. We quote the dispositive portion of the resolution:

WHEREFORE, premises considered, the Appeal is hereby PARTIALLY GRANTED. Accordingly, the Decision appealed from is MODIFIED to the effect that complainant-appellee del Mundo is not entitled to reinstatement to her former or equivalent position without loss of seniority rights and other privileges nor to payment of full backwages from the date of her dismissal up to the date of her actual reinstatement.

As to all other aspects, the Decision is SUSTAINED.

SO ORDERED.

Melissa moved for a motion for reconsideration but her motion was denied by the NLRC in its subsequent resolution of 28 December 1999.

Melissa then went to the Court of Appeals on a petition for certiorari, thereat docketed as CA-G.R. SP No. 57527.

In the herein assailed Decision^[4] dated 26 July 2000, the Court of Appeals, finding no just cause for Melissa's dismissal and petitioner's non-compliance with the notice requirement before her dismissal was effected, reversed and set aside the resolutions dated 21 October 1999 and 28 December 1999 of the NLRC, thus:

WHEREFORE, premises considered, the instant petition is hereby GIVEN DUE COURSE, and the writ prayed for GRANTED. The Resolutions dated October 21, 1999 and December 28, 1999 of public respondent National Labor Relations Commission (NLRC) are both REVERSED and SET ASIDE. The Decision dated July 8, 1996 of Labor Arbiter Eduardo J. Carpio is hereby REINSTATED and AFFIRMED.

Costs against private respondent.

SO ORDERED.

In its Resolution of 8 September 2000,^[5] the appellate court denied petitioner's motion for reconsideration.

Hence, petitioner's present recourse, contending that the Court of Appeals seriously erred –

I

x x x IN HOLDING THAT THE PRIVATE RESPONDENT ANNA MELISSA DEL MUNDO WAS A REGULAR EMPLOYEE.

II

x x x IN HOLDING THAT PRIVATE RESPONDENT'S DISMISSAL WAS ILLEGAL FOR LACK OF A VALID AND JUST CAUSE AND NON OBSERVANCE OF DUE PROCESS IN TERMINATING HER SERVICES CONTRARY TO APPLICABLE LAWS AND JURISPRUDENCE.

III

x x x IN ORDERING PRIVATE RESPONDENT'S REINSTATEMENT CONTRARY TO THE LAW AND JURISPRUDENCE.

We DENY.

Petitioner would want us to declare that the appellate court gravely erred in holding that Melissa is a regular employee.

The three (3) offices below, namely, the Office of the Labor Arbiter, the NLRC and the Court of Appeals are one in their common finding that private respondent Anna Melissa del Mundo is petitioner's regular employee. Inarguably, the question of whether or not one is a regular employee is a question of fact.

In a long line of cases, we have made it sufficiently clear that this Court is not a trier of facts, and that factual findings of quasi-judicial bodies like the NLRC are accorded great respect by this Court.^[6] More so must this be in the instant case, what the uniform finding of the three (3) offices below that Melissa is petitioner's regular employee.

We do acknowledge that the rule thus stated admits of exceptions, to wit: when there is a showing that the findings of fact were arrived at with grave abuse of discretion;^[7] when there is a conflict between the factual findings of the NLRC and the Labor Arbiter;^[8] when it is clearly shown that such a finding was arrived at arbitrarily or in disregard of the evidence on record;^[9] or when there is a showing of fraud or errors of law.^[10] Sadly, none of these exceptions has been sufficiently shown to exist in this case.

In arguing that Melissa is not its regular employee, petitioner quoted from *Bernardo vs. NLRC*,^[11] wherein this Court allegedly wrote:

Only employees who worked for at least one year, even if the performance is not continuous (sic) and merely intermittent is considered regular. (See *Petition*, p. 13, *Rollo*, p. 19).

We have carefully perused the text of *Bernardo* and nowhere may be found therein the quoted statement ascribed to this Court. Nor can the import of such a statement be even implied from what we said in the same case.

We thus take this occasion to sternly warn counsel for the petitioner to be more precise in quoting decisions and other issuances of this Court and to remind him that a repetition thereof will be dealt with more severely.

In any event, petitioner's reliance on Bernardo is even misplaced. For there, we in fact said, partly quoting from the earlier case of Cuenco vs. NLRC:^[12]

Articles 280 and 281 of the Labor Code put an end to the pernicious practice of making permanent casuals of our lowly employees by the simple expedient of extending to them probationary appointments, ad infinitum. The contract signed by petitioners is akin to a probationary employment, during which the bank determined the employees' fitness for the job. When the bank renewed the contract after the lapse of the six-month probationary period, the employees thereby became regular employees. No employer is allowed to determine indefinitely the fitness of its employees. (Emphasis supplied)

Being a regular employee, Melissa enjoys the protection of the Labor Code on security of tenure and termination of employment only upon compliance with the legal requisites for a valid dismissal, which requisites embrace both substantive and procedural aspects, as pointed out *Colegio de San Juan de Letran-Calamba vs. Villas*:^[13]

Under the Labor Code, there are twin requirements to justify a valid dismissal from employment: (a) the dismissal must be for any of the causes provided in Article 282 of the Labor Code (substantive aspect) and (b) the employee must be given an opportunity to be heard and to defend himself (procedural aspect), non-compliance with which renders the dismissal illegal and entitles the employee concerned 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."^[14]

Here, Melissa's dismissal was not based on any of the just or authorized causes enumerated in the Labor Code. As aptly stated by the Court of Appeals in the decision under review:

Clearly, [Melissa] was not dismissed for cause. The alleged infractions committed by [Melissa] being relied upon by [petitioner] as grounds for her dismissal, save perhaps for the incomplete delivered items incident which was not even proved to be her fault and which she already paid for, were mere afterthoughts, designed to cover-up what is otherwise an illegal termination.

During the hearing, [petitioner] presented several memoranda showing that [Melissa] was dismissed for cause: notice informing her of her inexcusable negligence in receiving deliveries without thoroughly checking if they are complete or not. Hence, deductions would be made from her salary; prohibiting her from disbursing money from the petty cash fund; requiring her to give a status report concerning certain contracts she entered into in behalf of [petitioner]; and ordering her to turn-over the contracts in her possession and to properly account for them. To prove that [Melissa] was granted a second probationary period in order to improve her performance and be appointed to a regular status, [petitioner] presented a memorandum informing the former of the same. In rebuttal, [Melissa] asseverated that these memoranda, including the one extending her probationary period were never received by her during the dates mentioned therein as evidenced by the absence of her signature above her name. That the disbursements she made from the petty cash fund were not for her personal use but for the account of the office, duly documented by her, and that such disbursements were authorized by the office accountant.

In refutation, [petitioner] merely alleged that [Melissa] refused to receive the memoranda, thus they were unsigned. We are not convinced. In indeed [petitioner] sent those memoranda, [Melissa] would have received and signed the same. There appears to be no reason why she would refuse to receive the said memoranda, especially the one allegedly extending her probation, for that is clearly favorable to her. Furthermore, as pointed out by [Melissa], the memorandum dated March 16, 1992 informing her that the amount of P250.00 would be deducted from her salary starting March 20, 1992 to

compensate for the P6,000.00 lost paper supplies strengthens Our resolve that the alleged just causes were embraced as an afterthought, as exemplified by the said memorandum. A careful perusal of the payroll for the period of March 10-16, 1992 would reveal that [petitioner] started deducting P250.00 from [Melissa's] weekly salary during the said period, in contrast to the memorandum dated March 16, 1992.

Likewise, there was non-observance by the petitioner of the twin notice requirement under Article 282 of the Labor Code. In the same case of Colegio de San Juan de Letran-Calamba vs. Villas, supra, we added:

The procedural aspect requires that the employee be given two written notices before she is terminated consisting of a notice which apprises the employee of the particular acts/omissions for which the dismissal is sought and the subsequent notice which informs the employee of the employer's decision to dismiss him.

In the present case, there merely was a single notice sent to Melissa - the memorandum dated 11 August 1992 informing her that she was thereby terminated from work effective 30 August 1992. There was no notice apprising her of the particular acts or omissions for which her dismissal was sought.

With the reality that Melissa's dismissal was effected without complying with both the substantive and procedural aspects of a lawful dismissal, we entertain no doubt at all that petitioner's termination of her employment is illegal. Consequently, and pursuant to Article 279 of the Labor Code, Melissa is entitled to reinstatement without loss of seniority rights and other privileges and to full backwages, inclusive of allowances, and to her other benefits, or their monetary equivalent computed from the time her compensation was withheld up to the time of her actual reinstatement.

WHEREFORE, the instant petition is **DENIED** and the assailed Decision and Resolution of the Court of Appeals respectively dated 26 July 2000 and 8 September 2000 **AFFIRMED**.

Costs against petitioner.

SO ORDERED.

**Panganiban, J., (Chairman), Sandoval-Gutierrez, Corona,
and Carpio-Morales, JJ., concur.**

- [1] Penned by Associate Justice Martin S. Villarama, Jr. with then Presiding Justice Salome A. Montoya and then Associate Justices Romeo J. Callejo, Jr., now a member of this Court, concurring.
- [2] Rollo, p. 42.
- [3] Rollo, pp. 56-68.
- [4] Rollo, pp. 31-40.
- [5] Rollo, p. 42.
- [6] To cite a few: *Tres Reyes vs. Maxim's Tea House and Poon*, 398 SCRA 288 [2003]; *Atlas Fertilizer Corporation, et al. vs. NLRC*, 273 SCRA 549 [1997]; *Labor Congress of the Philippines vs. NLRC*, 354 Phils. 481 [1998].
- [7] *Rosario vs. Victory Ricemill*, 397 SCRA 760 [2003].
- [8] *Atlas Fertilizer Corporation, et al. vs. NLRC*, *Supra*.
- [9] *Maya Farms Employees Organization, et al. vs. NLRC*, 239 SCRA 508 [1994].
- [10] *Felix vs. Eneritech Systems Industries, Inc.*, 355 SCRA 680 [2001].
- [11] 310 SCRA 186 [1999].
- [12] 236 SCRA 108 [1944].
- [13] 399 SCRA 550, 555 [2003] citing *Molato vs. NLRC*, 334 Phils. 39 [1997].
- [14] Article 279, Labor Code.