



Republic of the Philippines  
**Supreme Court**  
Manila

SECOND DIVISION

MYLENE CARVAJAL,  
Petitioner,

G.R. No. 186169

Present:

CARPIO, J.,  
Chairperson

-versus-

ABAD,\*  
VILLARAMA, JR.,\*\*  
PEREZ, and  
REYES, JJ.

LUZON DEVELOPMENT BANK  
AND/OR OSCAR Z. RAMIREZ,  
Respondents.

Promulgated:

AUG 01 2012

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DECISION

PEREZ, J.:

In this Petition for Review on *Certiorari*, petitioner Mylene Carvajal assails the Decision<sup>1</sup> of the Court of Appeals, Second Division, dated 20 August 2008 which dismissed her complaint for illegal dismissal. The Court of Appeals reversed and set aside the Resolution<sup>2</sup> of the National Labor Relations Commission (NLRC) affirming with modification the Labor

\* Per S.O. No. 1278 dated 1 August 2012.

\*\* Per S.O. No. 1274 dated 30 July 2012.

<sup>1</sup> Penned by Associate Justice Teresita Dy-Liacco Flores with Associate Justices Portia Alino-Hormachuelos and Hakim S. Abdulwahid, concurring. *Rollo*, pp. 168-183.

<sup>2</sup> Penned by Commissioner Gregorio O. Bilog III with Presiding Commissioner Lourdes C. Javier and Commissioner Tito F. Genilo, concurring. *Id.* at 64-70.

Arbiter's Decision<sup>3</sup> finding petitioner's dismissal as illegal and ordering reinstatement or payment of backwages and attorney's fees.

The facts are as follows:

Petitioner Mylene Carvajal was employed as a trainee-teller by respondent Luzon Development Bank (Bank) on 28 October 2003 under a six-month probationary employment contract, with a monthly salary of ₱5,175.00. Respondent Oscar Ramirez is the President and Chief Executive Officer of the Bank.

On 10 December 2003, the Bank sent petitioner a Memorandum<sup>4</sup> directing her to explain in writing why she should not be subjected to disciplinary action for "chronic tardiness" on November 3, 5, 6, 14, 18, 20, 21 and 28 2003 or for a total of eight (8) times. Petitioner apologized in writing and explained that she was in the process of making adjustments regarding her work and house chores.<sup>5</sup> She was thus reprimanded in writing and reminded of her status as a probationary employee.<sup>6</sup> Still, on 6 January 2004, a second Memorandum was sent to petitioner directing her to explain why she should not be suspended for "chronic tardiness" on 13 occasions or on December 2, 3, 4, 5, 8, 10, 11, 12, 15, 16, 18, 22, and 23 2003. On 7 January 2004, petitioner submitted her written explanation and manifested her acceptance of the consequences of her actions.<sup>7</sup> On 12 January 2004, petitioner was informed, through a Memorandum,<sup>8</sup> of her suspension for three (3) working days without pay effective 21 January 2004. Finally, in a Memorandum dated 22 January 2004, petitioner's suspension was lifted but

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<sup>3</sup> Presided by Labor Arbiter Clarito D. Demaala, Jr. Id. at 112-117.

<sup>4</sup> Id. at 102.

<sup>5</sup> Id. at 103.

<sup>6</sup> Id. at 104.

<sup>7</sup> Id. at 106.

<sup>8</sup> Id. at 107.

in the same breath, her employment was terminated effective 23 January 2004.<sup>9</sup>

Hence, petitioner's filing of the Complaint for illegal dismissal before the Labor Arbiter. Petitioner alleged, in her position paper, that the following were the reasons for her termination: 1) she is not an effective frontliner; 2) she has mistakenly cleared a check; 3) tardiness; 4) absenteeism; and 5) shortage.<sup>10</sup>

In their position paper, respondents averred that petitioner was terminated as a probationary employee on three grounds, namely: 1) chronic tardiness; 2) unauthorized absence; and 3) failure to perform satisfactorily as a probationary employee. Respondents explained that petitioner was a chronic violator of the bank's rules and regulations on tardiness and absenteeism. Aside from her numerous tardiness, petitioner was absent without leave for 2 days. She also cleared a check which later turned out to be a bounced check. Finally, petitioner garnered only a rating of 2.17, with 4 being the highest and 1 the lowest, in her performance evaluation.

On 9 June 2005, the Labor Arbiter ruled that petitioner was illegally dismissed. Respondents were held solidarily liable for payment of money claims. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, judgment is rendered declaring that complainant as probationary employee was illegally dismissed. Respondents are ordered to immediately reinstate complainant to her former position, without loss of any seniority rights and other monetary benefits. However, if reinstatement is no longer feasible due to strained relationship between the parties, respondents are further ordered to pay complainant, jointly and severally the amount of ₱20,070.38, representing full backwages of complainant from the time of her illegal

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<sup>9</sup> Id. at 110.  
<sup>10</sup> Records, pp. 3-4.

dismissal up to the end of her probationary contract of employment with respondent bank. Plus, 10% of the monetary award as attorney's fee.<sup>11</sup>

The Labor Arbiter found that petitioner was dismissed without due process because "she was not afforded the notice in writing informing her of what respondent (the Bank) would like to bring out to her for the latter to answer in writing." The Labor Arbiter also did not consider "unsatisfactory performance" as a valid ground to shorten the six-month contract of petitioner with the Bank.<sup>12</sup>

The decision of the Labor Arbiter was partially appealed to the NLRC by petitioner. Petitioner contended that she should be considered a regular employee and that the computation by the Labor Arbiter of backwages up to the end of her probationary contract is without basis. In its Comment, respondent argued against the illegality of petitioner's dismissal and their joint and solidary liability to pay complainant's monetary claims. On 31 May 2006, the NLRC affirmed with modification the Labor Arbiter's Decision and ordered for petitioner's reinstatement, to wit:

WHEREFORE, premises considered, the assailed decision is hereby affirmed with MODIFICATION ordering the respondents to reinstate the complainant to her former position, without loss of any seniority rights and other monetary benefits and to pay her full backwages from the date of her dismissal to the date of her reinstatement, actual or in payroll.

All other aspect[s] of the assailed decision stands.<sup>13</sup>

Respondents filed a motion for reconsideration but the NLRC denied the same in a Resolution<sup>14</sup> dated 20 July 2006.

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<sup>11</sup> *Rollo*, p. 117.

<sup>12</sup> *Id.* at 116.

<sup>13</sup> *Id.* at 69.

<sup>14</sup> *Id.* at 72-73.

In a petition for *certiorari* filed by respondents, the Court of Appeals rendered the 20 August 2008 Decision reversing the NLRC ruling, thus:

IN VIEW OF ALL THE FOREGOING, the instant petition is GRANTED. The assailed NLRC Resolution in NLRC CA No. 046866-05 dated May 31, 2006 which affirmed with modification the Decision of the Labor Arbiter in NLRC Case No. RAB IV-2-18910-04-L dated June 9, 2005 is hereby REVERSED and SET ASIDE. All monetary liabilities decreed in the Labor Arbiter's Decision against petitioners are hereby SET ASIDE. The Complaint for illegal dismissal, money claims and damages is ORDERED DISMISSED.<sup>15</sup>

The Court of Appeals found that petitioner is not entitled to backwages because she was rightfully dismissed for failure to meet the employment standards.

The motion for reconsideration filed by petitioner was likewise dismissed.

Petitioner elevated the case to this Court *via* petition for review on *certiorari*, raising the following errors allegedly committed by the Court of Appeals:

THE HON. COURT OF APPEALS COMMITTED ERRORS IN LAW IN DECIDING THE ISSUE ON PETITIONER'S VALIDITY OF DISMISSAL DESPITE SUCH ISSUE HAD LONG BEC[O]ME FINAL AND EXECUTORY FOR FAILURE OF PRIVATE RESPONDENT LUZON DEVELOPMENT BANK TO APPEAL THE DECISION OF THE LABOR ARBITER FINDING PETITIONER'S DISMISSAL ILLEGAL.

THE HON. COURT OF APPEALS COMMITTED ERROR IN LAW IN DECIDING ISSUES WHICH WERE NOT RAISED BEFORE THE NLRC ON APPEAL.<sup>16</sup>

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<sup>15</sup> Id. at 183.

<sup>16</sup> Id. at 18.

Petitioner harps on the finality of the Labor Arbiter's ruling on illegal dismissal and questions the judgment of the Court of Appeals in discussing and upholding the validity of her dismissal.

Indeed, respondents did not assail the ruling of the Labor Arbiter. It was in fact petitioner who partially appealed the Labor Arbiter's computation of backwages. Provided with the opportunity, respondents assailed the Labor Arbiter's Decision in their Comment to the Partial Appeal. Upon affirmance of the Labor Arbiter's Decision by the NLRC, respondent filed a petition for *certiorari* with the Court of Appeals insisting on the validity of the dismissal.

Petitioner seeks to limit the issues to her employment status and backwages, her basis being that the illegality of her dismissal has already been finally determined by the Labor Arbiter.

We disagree. As We noted, the facts show that the illegality of petitioner's dismissal was an issue that was squarely before the NLRC. When the NLRC decision was reversed by the Court of Appeals, from which the issue was elevated to us, we had a situation where "the findings of facts are conflicting." Thus, we find applicable the rule that while generally, only questions of law can be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court, the rule admits of certain exceptions, namely: (1) when the findings are grounded entirely on speculations, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is a grave abuse of discretion; (4) when the judgment is based on misappreciation of facts; (5) when the findings of fact are conflicting; (6) when in making its findings, the same are contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions

without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.<sup>17</sup>

The petition comes within the purview of exception (5) and by analogy, exception (7). Hence, the Court resolves to scour the records of this case.

Truly, it is axiomatic that an appeal, once accepted by this Court, throws the entire case open to review, and that this Court has the authority to review matters not specifically raised or assigned as error by the parties, if their consideration is necessary in arriving at a just resolution of the case.<sup>18</sup>

Petitioner premised her appeal on Article 279 of the Labor Code which provides:

Art. 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 other monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

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<sup>17</sup> *Macasero v. Southern Industrial Gases Philippines*, G.R. No. 178524, 30 January 2009, 577 SCRA 500, 504 citing *Uy v. Villanueva*, G.R. No. 157851, 29 June 2007, 526 SCRA 73, 83-84.

<sup>18</sup> *Aliling v. Feliciano*, G.R. No. 185829, 25 April 2012; *Maricalum Mining Corporation v. Hon. Brion*, 517 Phil. 309, 320 (2006) citing *Sociedad Europea De Financiacion, S.A v. Court of Appeals*, 271 Phil. 101, 110-111 (1991) citing further *Saura Import & Export Co., Inc. v. Philippine International Co., Inc.*, 118 Phil. 150, 156 (1963); *Miguel v. Court of Appeals*, 140 Phil. 304, 312 (1969).

Petitioner maintained that she became a regular employee by virtue of Book VI, Rule 1, Section 6(d) of the Implementing Rules of the Labor Code which states:

(d) In all cases of probationary employment, the employer shall make known to the employee the standards under which he will qualify as a regular employee at the time of his engagement. Where no standards are made known to the employee at that time, he shall be deemed a regular employee.

It is beyond dispute that petitioner was hired as a probationary employee. Whether her employment status ripened into a regular one is the point of contention.

Under the very provision cited by petitioner, we cannot, by any hermeneutics, see petitioner's employment status as regular. At the time of her engagement and as mandated by law, petitioner was informed in writing of the standards necessary to qualify her as a regular employee. Her appointment letter<sup>19</sup> reads:

Dear Ms. Carvajal:

We are pleased to confirm your appointment as follows:

Position : Trainee- Teller  
Assignment : Main Branch  
Status : Probationary (6 months)  
Effectivity : October 28, 2003  
Remuneration : P5,175.00 (262)

**Possible extension of this contract will depend on the job requirements of the Bank and your overall performance. Performance review will be conducted before possible renewal can take effect.**

The Bank reserves the right to immediately terminate this contract in the event of a below satisfactory performance, serious disregard of company rules and policies and other reasons critical to its interests.

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<sup>19</sup> *Rollo*, p. 101.



Kindly sign below if the above conditions are acceptable. We look forward to a performance commensurate to your presented capabilities.

Very truly yours,

[sgd]  
Oscar S. Ramirez  
Vice President

CONFORME:

[sgd]  
Mylene T. Carvajal [Emphasis Supplied]

Petitioner knew, at the time of her engagement, that she must comply with the standards set forth by respondent and perform satisfactorily in order to attain regular status. She was apprised of her functions and duties as a trainee-teller. Respondent released to petitioner its evaluation<sup>20</sup> of her performance. Petitioner was found wanting. Even the NLRC upheld petitioner's probationary status, thus:

During the time that the complainant was dismissed by respondents, she was holding the position of a trainee-teller on probationary status. Thus, with the Labor Arbiter's finding of illegal dismissal, which the respondent left unchallenged, **the complainant is entitled to be reinstated to resume the functions of a trainee-teller, no more no less. Reinstatement is not synonymous with regularization. The determination of whether the complainant can qualify to become one of respondent bank's regular employees is still within the well recognized management's prerogative.**<sup>21</sup> [Emphasis Supplied]

A probationary employee, like a regular employee, enjoys security of tenure. However, in cases of probationary employment, aside from just or authorized causes of termination, an additional ground is provided under Article 281 of the Labor Code, *i.e.*, the probationary employee may also be terminated for failure to qualify as a regular employee in accordance with

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<sup>20</sup> Id. at 108-109.

<sup>21</sup> Id. at 68.

reasonable standards made known by the employer to the employee at the time of the engagement. Thus, the services of an employee who has been engaged on probationary basis may be terminated for any of the following: (1) a just or (2) an authorized cause and (3) when he fails to qualify as a regular employee in accordance with reasonable standards prescribed by the employer.<sup>22</sup>

It is evident that the primary cause of respondent's dismissal from her probationary employment was her "chronic tardiness." At the very start of her employment, petitioner already exhibited poor working habits. Even during her first month on the job, she already incurred eight (8) tardiness. In a Memorandum dated 11 December 2003, petitioner was warned that her tardiness might affect her opportunity to become a permanent or regular employee. And petitioner did not provide a satisfactory explanation for the cause of her tardiness.

Punctuality is a reasonable standard imposed on every employee, whether in government or private sector. As a matter of fact, habitual tardiness is a serious offense that may very well constitute gross or habitual neglect of duty, a just cause to dismiss a regular employee. Assuming that petitioner was not apprised of the standards concomitant to her job, it is but common sense that she must abide by the work hours imposed by the bank. As we have aptly stated in *Aberdeen Court, Inc. v. Agustin, Jr.*,<sup>23</sup> the rule on reasonable standards made known to the employee prior to engagement should not be used to exculpate a probationary employee who acts in a manner contrary to basic knowledge and common sense, in regard to which there is no need to spell out a policy or standard to be met.

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<sup>22</sup> *Robinsons Galleria/Robinsons Supermarket Corporation v. Sanchez*, G.R. No. 177937, 19 January 2011, 640 SCRA 135, 142 citing Omnibus Rules Implementing the Labor Code, Book VI, Rule I, Sec. 6 and 6(c).

<sup>23</sup> 495 Phil. 706, 716-717 (2005).

Respondent also cited other infractions such as unauthorized leaves of absence, mistake in clearing of a check, and underperformance. All of these infractions were not refuted by petitioner. The Labor Arbiter failed to discuss the veracity of these grounds. It focused on unsatisfactory performance and concluded that such is not a sufficient ground to terminate the probationary employment. The Labor Arbiter relied on its own misappreciation of facts for a finding that, resultingly, is contradicted by the evidence on record.

More importantly, satisfactory performance is and should be one of the basic standards for regularization. Naturally, before an employer hires an employee, the former can require the employee, upon his engagement, to undergo a trial period during which the employer determines his fitness to qualify for regular employment based on reasonable standards made known to him at the time of engagement. This is the concept of probationary employment which is intended to afford the employer an opportunity to observe the fitness of a probationary employee while at work, and to ascertain whether he will become an efficient and productive employee. While the employer observes the fitness, propriety and efficiency of a probationer to ascertain whether he is qualified for permanent employment, the probationer, on the other hand, seeks to prove to the satisfaction of the employer that he has the qualifications to meet the reasonable standards for permanent employment.<sup>24</sup>

Moreover, in the letter of appointment, respondents reserved the right to “immediately terminate this contract in the event of a below satisfactory

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<sup>24</sup> *Tamson's Enterprises, Inc. v. Court of Appeals*, G.R. No. 192881, 16 November 2011 citing *Robinsons Galleria/Robinsons Supermarket Corporation v. Ranchez*, supra note 22 at 142 citing further Omnibus Rules Implementing the Labor Code, Book VI, Rule I, Sec. 6; *Magis Young Achievers' Learning Center v. Manalo*, G.R. No. 178835, 13 February 2009, 579 SCRA 421, 431-432 citing *International Catholic Migration Commission v. National Labor Relations Commission*, 251 Phil. 560, 567 (1989).

performance, serious disregard of company rules and policies and other reasons critical to its interests.”

In finding for illegal dismissal, the Labor Arbiter held that the dismissal was without due process. We hold otherwise. As elucidated by this Court in *Philippine Daily Inquirer, Inc. v. Magtibay, Jr.*:<sup>25</sup>

Unlike under the first ground for the valid termination of probationary employment which is for just cause, the second ground [failure to qualify in accordance with the standards prescribed by employer] does not require notice and hearing. Due process of law for this second ground consists of making the reasonable standards expected of the employee during his probationary period known to him at the time of his probationary employment. By the very nature of a probationary employment, the employee knows from the very start that he will be under close observation and his performance of his assigned duties and functions would be under continuous scrutiny by his superiors. It is in apprising him of the standards against which his performance shall be continuously assessed where due process regarding the second ground lies, and not in notice and hearing as in the case of the first ground.<sup>26</sup>

As we have underscored, respondent complied with the basic requirements of due process as defined in *Magtibay, Jr.* Petitioner had more than sufficient knowledge of the standards her job entails. Respondent had not been remiss in reminding petitioner, through memoranda, of the standards that should be observed in aspiring for regularization.

Petitioner was even notified in two (2) memoranda regarding the bank’s displeasure over her chronic tardiness. Every memorandum directed petitioner to explain in writing why she should not be subjected to disciplinary action. Each time, petitioner acknowledged her fault and assured the bank that she would, in her daily schedules, make adjustments to make amends. This certainly is compliance with due process. Taken

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<sup>25</sup> G.R. No. 164532, 24 July 2007, 528 SCRA 355.

<sup>26</sup> Id. at 364.

together with her low performance rating and other infractions, petitioner was called by the head of Human Resources who discussed with her the reasons for the discontinuance of her probationary appointment before she was formally served the termination letter on that very same day. There was, in this case, full accordance to petitioner of the opportunity to be heard.

In sum, petitioner was validly dismissed from probationary employment before the expiration of her 6-month probationary employment contract. If the termination is for cause, it may be done anytime during the probation; the employer does not have to wait until the probation period is over.<sup>27</sup>

With a valid reason for petitioner's dismissal coupled with the proper observance of due process, the claim for backwages must necessarily fail.

In view of the foregoing, we find no reason to disturb the findings and conclusions of the Court of Appeals.

**WHEREFORE**, the petition is **DENIED**.

**SO ORDERED.**

  
**JOSE PORTUGAL PEREZ**  
Associate Justice

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<sup>27</sup> Azucena, Jr., *EVERYONE'S LABOR CODE*, p. 325 citing *International Catholic Migration Commission v. National Labor Relations Commission*, supra note 24 at 568-569.

WE CONCUR:



**ANTONIO T. CARPIO**  
Senior Associate Justice  
Chairperson



**ROBERTO A. ABAD**  
Associate Justice



**MARTIN S. VILLARAMA, JR.**  
Associate Justice



**BIENVENIDO L. REYES**  
Associate Justice

### CERTIFICATION

I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**ANTONIO T. CARPIO**  
Senior Associate Justice  
(Per Section 12, R.A. 296,  
The Judiciary Act of 1948, as amended)