Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

JEROME M. DAABAY,
Petitioner,

-versus-

COCA-COLA BOTTLERS PHILS., INC.,
Respondent.

G.R. No. 199890

Present:

SERENO, *C.J.*,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
MENDOZA,* and
REYES, *JJ.*

Promulgated:

AUG 19 2013

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DECISION

REYES, *J.*:

This resolves petitioner Jerome M. Daabay's (Daabay) Verified Petition for Review[1], which assails the Decision[2] dated June 24, 2011 and Resolution[3] dated December 9, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 03369-MIN.

The case stems from a complaint for illegal dismissal, illegal suspension, unfair labor practice and monetary claims filed by Daabay against respondent Coca-Cola Bottlers Phils., Inc. (Coca-Cola) and three officers of the company.[4] The records indicate that the employment of Daabay with Coca-Cola as Sales Logistics Checker was terminated by the company in June 2005,[5] following receipt of information from one Cesar

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* Acting Member per Special Order No. 1502 dated August 8, 2013.

1 *Rollo*, pp. 3-38.

2 Penned by Associate Justice Edgardo A. Camello, with Associate Justices Abraham B. Borreta and Melchor Quirino C. Sadang, concurring; id. at 39-48.

3 Id. at 49-53.

4 Id. at 41.

5 Id. at 81.

Sorin (Sorin) that Daabay was part of a conspiracy that allowed the pilferage of company property.[6]

The allegations of Sorin were embodied in an affidavit which he executed on April 16, 2005.[7] The losses to the company were also confirmed by an inventory and audit conducted by Coca-Cola's Territory Finance Head, Silvia Ang. Such losses comprised of cases of assorted softdrinks, empty bottles, missing shells and missing pallets valued at ₱20,860,913.00.[8]

Coca-Cola then served upon Daabay a Notice to Explain with Preventive Suspension, which required him to explain in writing his participation in the scheme that was reported to involve logistics checkers and gate guards. In compliance therewith, Daabay submitted an Explanation dated April 19, 2005 wherein he denied any participation in the reported pilferage.[9]

A formal investigation on the matter ensued. Eventually, Coca-Cola served upon Daabay a Notice of Termination that cited pilferage, serious misconduct and loss of trust and confidence as grounds. At the time of his dismissal, Daabay had been a regular employee of Coca-Cola for eight years, and was receiving a monthly pay of ₱20,861.00, exclusive of other benefits.[10]

Daabay then filed the subject labor complaint against Coca-Cola and Roberto Huang (Huang), Raymund Salvador (Salvador) and Alvin Garcia (Garcia), who were the President and Plant Logistics Managers, respectively, of Coca-Cola at the time of the dispute.[11] On April 18, 2008, Executive Labor Arbiter Noel Augusto S. Magbanua (ELA Magbanua) rendered his Decision[12] in favor of Daabay. He ruled that Daabay was illegally dismissed because his participation in the alleged conspiracy was not proved by substantial evidence. In lieu of reinstatement and considering the already strained relations between the parties, ELA Magbanua ordered the payment to Daabay of backwages and separation pay or retirement benefits, as may be applicable. The dispositive portion of ELA Magbanua's Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered declaring the dismissal of complainant Jerome Daabay as illegal, and ordering respondents to pay complainant his backwages in the amount of [₱]750,996.00.

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6 Id. at 40.
7 Id.
8 Id. at 40, 54.
9 Id. at 40-41.
10 Id.
11 Id. at 81.
12 Id. at 54-79.

> Additionally, respondents are hereby ordered to pay complainant his separation pay at one (1) month for every year of service, or his retirement benefits based on the latest Collective Bargaining Agreement prior to his suspension/termination.
>
> Other claims are hereby ordered dismissed for failure to substantiate.
>
> **SO ORDERED.**[13]

Dissatisfied, Coca-Cola, Huang, Salvador and Garcia, appealed from ELA Magbanua's Decision to the National Labor Relations Commission (NLRC). Daabay filed a separate appeal to ask for his reinstatement without loss of seniority rights, the payment of backwages instead of separation pay or retirement benefits, and an award of litigation expenses, moral and exemplary damages and attorney's fees.

The NLRC reversed the finding of illegal dismissal. In a Resolution[14] dated August 27, 2009, the NLRC held that there was "reasonable and well-founded basis to dismiss [Daabay], not only for serious misconduct, but also for breach of trust or loss of confidence arising from such company losses."[15] Daabay's participation in the conspiracy was sufficiently established. Several documents such as checkers receipts and sales invoices that made the fraudulent scheme possible were signed by Daabay.[16] The NLRC also found fault in Daabay for his failure to detect the pilferage, considering that the "timely recording and monitoring as security control for the outgoing [sic] of company products are necessarily connected with the functions, duties and responsibilities reposed in him as Sales Logistics Checker."[17] Notwithstanding its ruling on the legality of the dismissal, the NLRC awarded retirement benefits in favor of Daabay. The dispositive portion of its Resolution reads:

> **WHEREFORE**, premises considered, the appeal of complainant is **DENIED** for lack of merit, while that of respondent Coca-Cola Bottlers Philippines, Inc. is **GRANTED**.
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> Accordingly, the assailed 18 April 2008 Decision of the Executive Labor Arbiter is hereby **REVERSED** and **SET ASIDE**, and a *new judgment* is entered **DISMISSING** the present complaint for want of evidence.
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> Let, however, this case be **REMANDED** to the Executive Labor Arbiter or the Regional Arbitration Branch of origin for the *computation* of complainant's retirement benefits in accordance with the latest Collective Bargaining Agreement prior to his termination.

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13 Id. at 79.
14 Id. at 80-91.
15 Id. at 89-90.
16 Id. at 86-87.
17 Id. at 88.

SO ORDERED.[18]

Coca-Cola's partial motion for reconsideration to assail the award of retirement benefits was denied by the NLRC in a Resolution[19] dated October 30, 2009. The NLRC explained that there was a need "to *humanize* the severe effects of dismissal"[20] and "tilt the scales of justice in favor of labor as a measure of equity and compassionate social justice."[21] Daabay also moved to reconsider, but his motion remained unresolved by the NLRC.[22] Undaunted, Coca-Cola appealed to the CA.

The CA agreed with Coca-Cola that the award of retirement benefits lacked basis considering that Daabay was dismissed for just cause. It explained:

> We are not oblivious of the instances where the Court awarded financial assistance to dismissed employees, even though they were terminated for just causes. Equity and social justice was the vague justification. Quickly realizing the unjustness of these [s]o-called equitable awards, the Supreme Court took the opportunity to curb and rationalize the grant of financial assistance to legally dismissed employees. Thus, in *Philippine Long Distance Telephone Company v. National Labor Relations Commission*, the Supreme Court recognized the harsh realities faced by employees that forced them, despite their good intentions, to violate company policies, for which the employer can rightfully terminate their employment. For these instances, the award of financial assistance was allowed. But, in clear and unmistakable language, the Supreme Court also held that the award of financial assistance should not be given to validly terminated employees, whose offenses are *iniquitous* or reflective of some *depravity in their moral character.* x x x.[23] (Citation omitted)

Thus, the dispositive portion of its Decision dated June 24, 2011 reads:

> **FOR THESE REASONS**, the writ of *certiorari* is **GRANTED**; the portion of the Resolution promulgated on 27 August 2009 remanding of the case to the Executive Labor Arbiter or the Regional Arbitration Branch of origin for computation of retirement benefits is **DELETED**.
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> **SO ORDERED**.[24]

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18 Id. at 91.
19 Id. at 92-94.
20 Id. at 93
21 Id.
22 Id. at 11, 42.
23 Id. at 46.
24 Id. at 48.

Daabay's motion for reconsideration was denied in a Resolution[25] dated December 9, 2011; hence, this petition.

It bears stressing that although the assailed CA decision and resolution are confined to the issue of Daabay's entitlement to retirement benefits, Daabay attempts to revive through the present petition the issue of whether or not his dismissal had factual and legal bases. Thus, instead of confining itself to the issue of whether or not Daabay should be entitled to the retirement benefits that were awarded by the NLRC, the petition includes a plea upon the Court to affirm ELA Magbanua's Decision, with the modification to include: (a) his allowances and other benefits or their monetary equivalent in the computation of his backwages; (b) his actual reinstatement; and (c) damages, attorney's fees and litigation expenses.

We deny the petition.

We emphasize that the appeal to the CA was brought not by Daabay but by Coca-Cola, and was limited to the issue of whether or not the award of retirement benefits in favor of Daabay was proper. Insofar as CA-G.R. SP No. 03369-MIN was concerned, the correctness of the NLRC's pronouncement on the legality of Daabay's dismissal was no longer an issue, even beyond the appellate court's authority to modify. In *Andaya v. NLRC,*[26] the Court emphasized that a party who has not appealed from a decision may not obtain any affirmative relief from the appellate court other than what he had obtained from the lower court, if any, whose decision is brought up on appeal.[27] Further, we explained in *Yano v. Sanchez,*[28] that the entrenched procedural rule in this jurisdiction is that a party who did not appeal cannot assign such errors as are designed to have the judgment modified. All that he can do is to make a counter-assignment of errors or to argue on issues raised below only for the purpose of sustaining the judgment in his favor.[29] Due process prevents the grant of additional awards to parties who did not appeal.[30] Considering that Daabay had not yet appealed from the NLRC's Resolution to the CA, his plea for the modification of the NLRC's findings was then misplaced. For the Court to review all matters that are raised in the petition would be tolerant of what Daabay was barred to do before the appellate court.

Before the CA and this Court, Daabay attempts to justify his plea for relief by stressing that he had filed his own motion for reconsideration of the NLRC's Resolution dated August 27, 2009 but the same remained unacted upon by the NLRC. Such bare allegation, however, is insufficient to allow the issue to be disturbed through this petition. We take note of Daabay's

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25 Id. at 49-53.
26 502 Phil. 151 (2005).
27 Id. at 159, citing *Policarpio v. CA*, 336 Phil. 329, 341 (1997).
28 G.R. No. 186640, February 11, 2010, 612 SCRA 347.
29 Id. at 358.
30 *Unilever Philippines, Inc. v. Maria Ruby M. Rivera*, G.R. No. 201701, June 3, 2013.

failure to attach to his petition a copy of the motion which he allegedly filed with the NLRC. It is also quite baffling why Daabay does not appear to have undertaken steps to seek the NLRC's resolution on the motion, even after it remained unresolved for more than two years from its supposed filing.

Granting that such motion to reconsider was filed with the NLRC, the labor tribunal shall first be given the opportunity to review its findings and rulings on the issue of the legality of Daabay's dismissal, and then correct them should it find that it erred in its disposition. The Court cannot, by this petition, pre-empt the action which the NLRC, and the CA in case of an appeal, may take on the matter.

Even as we limit our present review to the lone issue that was involved in the assailed CA decision and resolution, the Court finds no cogent reason to reverse the ruling of the CA.

Daabay was declared by the NLRC to have been lawfully dismissed by Coca-Cola on the grounds of serious misconduct, breach of trust and loss of confidence. Our pronouncement in *Philippine Airlines, Inc. v. NLRC*[31] on the issue of whether an employee who is dismissed for just cause may still claim retirement benefits equally applies to this case. We held:

> At the risk of stating the obvious, **private respondent was not separated from petitioner's employ due to mandatory or optional retirement but, rather, by termination of employment for a just cause**. Thus, any retirement pay provided by PAL's "Special Retirement & Separation Program" dated February 15, 1988 or, in the absence or legal inadequacy thereof, by Article 287 of the Labor Code does not operate nor can be made to operate for the benefit of private respondent. Even private respondent's assertion that, at the time of her lawful dismissal, she was already qualified for retirement does not aid her case because **the fact remains that private respondent was already terminated for cause thereby rendering nugatory any entitlement to mandatory or optional retirement pay that she might have previously possessed.**[32] (Citation omitted and emphasis ours)

In ruling against the grant of the retirement benefits, we also take note of the NLRC's lone justification for the award, to wit:

> Where from the facts obtaining, as in this case, there is a need to ***humanize*** the severe effects of dismissal and where complainant's entitlement to retirement benefits are even admitted in [Coca-Cola's] motion to reduce bond, **[w]e can do no less but tilt the scales of justice in favor of labor as a measure of equity and compassionate social**

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31 G.R. No. 123294, October 20, 2010, 634 SCRA 18.

32 Id. at 44-46; *See* also *Aquino v. NLRC*, 283 Phil. 118 (1992).

> **justice, taking into consideration the circumstances obtaining in this case**.[33] (Emphasis ours)

Being intended as a mere measure of equity and social justice, the NLRC's award was then akin to a financial assistance or separation pay that is granted to a dismissed employee notwithstanding the legality of his dismissal. Jurisprudence on such financial assistance and separation pay then equally apply to this case. The Court has ruled, time and again, that financial assistance, or whatever name it is called, as a measure of social justice is allowed only in instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character.[34] We explained in *Philippine Long Distance Telephone Company v. NLRC*[35]:

> [S]eparation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. Where the reason for the valid dismissal is, for example, habitual intoxication or an offense involving moral turpitude, like theft or illicit sexual relations with a fellow worker**, the employer may not be required to give the dismissed employee separation pay, or financial assistance, or whatever other name it is called**, **on the ground of social justice**.
>
> A contrary rule would, as the petitioner correctly argues, have the effect, of rewarding rather than punishing the erring employee for his offense. And we do not agree that the punishment is his dismissal only and that the separation pay has nothing to do with the wrong he has committed. Of course it has. Indeed, if the employee who steals from the company is granted separation pay even as he is validly dismissed, it is not unlikely that he will commit a similar offense in his next employment because he thinks he can expect a like leniency if he is again found out. This kind of misplaced compassion is not going to do labor in general any good as it will encourage the infiltration of its ranks by those who do not deserve the protection and concern of the Constitution.[36] (Emphasis ours)

Clearly, considering that Daabay was dismissed on the grounds of serious misconduct, breach of trust and loss of confidence, the award based on equity was unwarranted.

Even the NLRC's reliance on the alleged admission by Coca-Cola in its motion to reduce bond that Daabay is entitled to retirement benefits is misplaced. Apparently, the supposed admission by Coca-Cola was based on the following:

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33 *Rollo*, p. 93.

34 *Eastern Shipping Lines, Inc., and/or Chiongbian v. Sedan*, 521 Phil. 61, 71 (2006); *San Miguel Corporation v. Lao*, 433 Phil. 890, 898-899 (2002); *Eastern Paper Mills, Inc. v. NLRC*, 252 Phil. 618, 620 (1989).

35 247 Phil. 641 (1988).

36 Id. at 649.

> In support of its position to post a bond, Coca-Cola explained that for the failure to include in the posting of the bond the monetary award for [Daabay's] retirement benefits which, as directed by the Executive Labor Arbiter, should be computed in accordance with the latest Collective Bargaining Agreement prior to his termination. Coca-Cola explains that the amount of the retirement benefits has not been determined and there is a need to compute the same on appeal. x x x.[37]

It is patent that the statements made by Coca-Cola were in light of ELA Magbanua's ruling that Daabay was illegally dismissed. Furthermore, any admission was only for the purpose of explaining the non-inclusion of the amount of retirement benefits in the computation of the appeal bond posted with the NLRC. Coca-Cola's statements should be taken in such context, and could not be deemed to bind the company even after the NLRC had reversed the finding of illegal dismissal. And although retirement benefits, where not mandated by law, may still be granted by agreement of the employees and their employer or as a voluntary act of the employer,[38] there is no proof that any of these incidents attends the instant case.

WHEREFORE, the petition is **DENIED**. The Decision dated June 24, 2011 and Resolution dated December 9, 2011 of the Court of Appeals in CA-G.R. SP No. 03369-MIN are **AFFIRMED**.

SO ORDERED.

BIENVENIDO L. REYES
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

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37 *Rollo*, pp. 83-84.

38 *Aquino v. NLRC*, G.R. No. 87653, February 11, 1992, 206 SCRA 118.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.

MARIA LOURDES P. A. SERENO
Chief Justice