



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

ALILEM CREDIT
COOPERATIVE, INC., now
known as ALILEM
MULTIPURPOSE
COOPERATIVE, INC.,
Petitioner,

- versus -

G.R. No. 173489

Present:

VELASCO, JR., J., Chairperson,
PERALTA,
ABAD,
MENDOZA, and
LEONEN, JJ.

SALVADOR M. BANDIOLA,
JR.,

Respondent.

Promulgated:

February 25, 2013

X-----

Macapuno
X

DECISION

PERALTA, J.:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court filed by petitioner Alilem Credit Cooperative, Inc. against respondent Salvador M. Bandiola, Jr. assailing the Court of Appeals (CA) Decision¹ dated January 16, 2006 and Resolution² dated July 5, 2006 in CA-G.R. SP No. 64554.

The case stemmed from the following facts:

Respondent was employed by petitioner as bookkeeper. Petitioner's Board of Directors (the Board) received a letter from a certain Napoleon Gao-ay (Napoleon) reporting the alleged immoral conduct and unbecoming

¹ Penned by Associate Justice Roberto A. Barrios, with Associate Justices Mario L. Guariña III and Santiago Javier Ranada, concurring; *rollo*, pp. 29-37.

² *Id.* at 44-45.

N

behavior of respondent by having an illicit relationship with Napoleon's sister, Thelma G. Palma (Thelma). This prompted the Board to conduct a preliminary investigation.³

During the preliminary investigation, the Board received the following evidence of respondent's alleged extramarital affair:

1. Melanie Gao-ay's (Melanie) sworn statement declaring that sometime in December 1996, respondent slept on the same bed with Thelma in a boarding house in San Fernando, La Union where she (Melanie) and Thelma resided. She personally witnessed the intimacy of respondent and Thelma when they engaged in lovemaking as they slept in one room and openly displayed their affection for each other.⁴
2. Rosita Tegon's (Rosita) sworn statement that on May 23, 1997, she saw Thelma talk to respondent in petitioner's office asking him to accompany her in San Fernando, La Union.⁵
3. Emma Gao-ay Lubrin's (Emma, Thelma's sister) interview wherein she admitted that she and her family confronted Thelma about the alleged extramarital affair which Thelma allegedly admitted.⁶
4. Napoleon's interview with the Board wherein he claimed that their family tried to convince Thelma to end her extramarital affair with respondent but instead of complying, she in fact lived together with respondent.⁷

The Board decided to form an Ad Hoc Committee to investigate the charges against respondent yielding the following additional evidence:

1. Agustina Boteras' (Agustina) sworn statement that she witnessed a confrontation between Thelma and her sister in the latter's residence concerning the alleged extramarital affair. At that time, respondent's wife was allegedly present who in fact pleaded Thelma to end her relationship with respondent but she supposedly said "No way!"⁸
2. Milagros Villacorte's sworn statement that while she was at the Bethany Hospital in San Fernando, La Union where her husband was confined, respondent approached her and asked her to look for Thelma who was then having her class. When he finally found her, respondent and Thelma met and talked in the hospital premises.⁹

³ *Rollo*, pp. 99-100.

⁴ *Id.* at 30.

⁵ *Id.* at 31.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 31-32.

⁹ *Id.* at 32.

3. Julianne Marie L. Dalangey's certification that on August 9 to 10, 1996, respondent attended a seminar on Internal Control and Systems Design I at the Northern Luzon Federation of Cooperatives and Development Center (NORLU) Pension House in Baguio City, together with a lady companion whom he introduced as his wife. Apparently, the lady was not his wife because at that time, his wife reported for work in the Municipal Hall of Alilem.¹⁰

Respondent, on the other hand, denied the accusation against him. He, instead, claimed that the accusation was a result of the insecurity felt by some members of the cooperative and of the Board because of his growing popularity owing to his exemplary record as an employee.¹¹ Thelma executed an affidavit likewise denying the allegations of extra-marital affair.¹²

Meanwhile, on June 7, 1997, the Board received a petition from about fifty members of the cooperative asking the relief of respondent due to his illicit affair with Thelma.¹³

In its Summary Investigation Report, the Ad Hoc Committee concluded that respondent was involved in an extra-marital affair with Thelma. On July 10, 1997, the Chairman of the Board sent a letter¹⁴ to respondent informing him of the existence of a *prima facie* case against him for "illicit marital affair, an act that brings discredit to the cooperative organization and a cause for termination per AMPC (Alilem Multi-Purpose Cooperative) Personnel Policy. Respondent was directed to appear and be present at the AMPC office for a hearing. He was likewise advised of his right to be assisted by counsel.

On the day of the hearing, respondent requested¹⁵ for postponement on the ground that his lawyer was not available. The request was, however, denied and the hearing proceeded as scheduled.

In a Memorandum¹⁶ dated July 16, 1997, respondent was informed of Board Resolution No. 05, series of 1997¹⁷ embodying the Board's decision to terminate his services as bookkeeper of petitioner, effective July 31, 1997, without any compensation or benefit except the unpaid balance of his regular salary for services actually rendered.¹⁸

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 31.

¹⁴ *Id.* at 85.

¹⁵ Embodied in a letter dated July 12, 1997; *id.* at 86.

¹⁶ *Rollo*, p. 87.

¹⁷ *Id.* at 88-89.

¹⁸ *Id.* at 88.

Aggrieved, respondent filed a Complaint for Illegal Dismissal against petitioner before the Regional Arbitration Branch of the National Labor Relations Commission (NLRC).¹⁹

On April 30, 1998, the Labor Arbiter (LA) dismissed²⁰ respondent's complaint for lack of merit. The LA concluded that respondent had been or might still be carrying on an affair with a married woman. The LA found it unforgiving in the case of a married employee who sleeps with or has illicit relations with another married person for in such case, the employee sullies not only the reputation of his spouse and his family but the reputation as well of the spouse of his paramour and the latter's family.²¹ As opposed to respondent's claim that the accusation is a mere fabrication of some of the directors or cooperative members who were allegedly envious of his growing popularity, the LA gave more credence to the testimonies of petitioner's witnesses who were relatives of Thelma and who had no motive to falsely testify because their family reputation was likewise at a risk of being tarnished.²² The LA, thus, found respondent to have been validly dismissed from employment for violation of the cooperative's Personnel Policy, specifically "the commission of acts that bring discredit to the cooperative organization, especially, but not limited to conviction of any crime, illicit marital affairs, scandalous acts inimical to established and accepted social mores." The LA also found no violation of respondent's right to due process as he was given ample opportunity to defend himself from the accusation against him.²³

On appeal, the NLRC set aside²⁴ the LA decision and rendered a judgment disposed in this wise:

WHEREFORE, the appealed Decision of the Executive Labor Arbiter is SET ASIDE. Judgment is hereby rendered:

1. declaring respondent Alilem Credit Cooperative, Inc. (ACCI) also known as Alilem Multi-Purpose Cooperative (AMPC) guilty of illegal dismissal for the reasons above-discussed;
2. directing the said respondent to pay complainant Salvador Bandiola, Jr. full backwages computed from the time of (sic) his wages were withheld until finality of this judgment;

¹⁹ *Id.* at 33.

²⁰ *Id.* at 99-110.

²¹ *Id.* at 106.

²² *Id.* at 106-107.

²³ *Id.* at 108.

²⁴ Embodied in a Decision dated June 21, 2000, penned by Commissioner Vicente S.E. Veloso III and concurred in by Commissioner Alberto R. Quimpo; *id.* at 131-156.

3. directing, on account of strained relationship between the parties, the above-named respondent to pay complainant, in lieu of reinstatement, separation pay computed at one (1) month pay for every year of service, a fraction of six (6) months to be computed as one (1) whole year; [and]
4. directing respondent to pay complainant ten (10%) percent attorney's fees based on the total monetary award.

SO ORDERED.²⁵

The NLRC found petitioner's Personnel Policy to be of questionable existence and validity because it was unnumbered.²⁶ It held that even assuming that respondent had an extra-marital affair with a married woman, the latter is not his fellow worker in petitioner's business establishment.²⁷ It, thus, concluded that respondent's dismissal was not founded on any of the just causes for termination of employment under Article 282 of the Labor Code, as amended.²⁸ It, likewise, declared that respondent was not afforded his right to his counsel of choice as his request for postponement was not allowed.²⁹ Therefore, the NLRC declared respondent's dismissal from employment illegal, entitling him to the payment of backwages, separation pay, and attorney's fees.³⁰

Petitioner elevated the matter to the CA, but it failed to obtain a favorable decision. The CA found respondent's dismissal being founded on the serious misconduct he allegedly committed by carrying an illicit relationship with a married woman.³¹ While considering said act a serious misconduct, it refused to consider it sufficient to justify respondent's dismissal, because it was not done in the performance of his duties as would make him unfit to continue working for petitioner.³² Petitioner's motion for reconsideration was likewise denied in the assailed July 5, 2006 resolution.

Unsatisfied, petitioner now comes before the Court in this petition for review on *certiorari* insisting on the validity of respondent's dismissal from employment.

We find merit in the petition.

²⁵ *Rollo*, pp. 155-156.

²⁶ *Id.* at 150.

²⁷ *Id.* at 152.

²⁸ *Id.*

²⁹ *Id.* at 149-150.

³⁰ *Id.* at 153.

³¹ *Id.* at 35.

³² *Id.* at 36.

It is undisputed that respondent was dismissed from employment for engaging in extramarital affairs, a ground for termination of employment stated in petitioner's Personnel Policy. This basis of termination was made known to respondent as early as the first communication made by petitioner. In its June 20, 1997 letter, petitioner directed respondent to explain in writing or personal confrontation why he should not be terminated for violation of Section 4.1.4 of the Personnel Policy.³³ Respondent merely denied the accusation against him³⁴ and did not question the basis of such termination. When the LA was called upon to decide the illegal dismissal case, it ruled in favor of petitioner and upheld the basis of such dismissal which is the cited Personnel Policy. The NLRC, however, refused to recognize the existence and validity of petitioner's Personnel Policy on which the ground for termination was embodied.³⁵

The existence of the Personnel Policy containing provisions on the grounds for termination of employees was not questioned by respondent. In his position paper, respondent only assailed the effectivity of the policy, as for him as it was amended on the same date as the letter-complaints against him. In other words, he claimed that the policy was amended in order to include therein the ground for his termination to make sure that he is removed from his position.³⁶

We do not subscribe to such an argument.

A comparison of petitioner's old and new Personnel Policies attached by respondent himself to his Position Paper shows that under the old policy, one of the grounds for termination of an employee is "***commission of acts or commission (sic) of duties that bring discredit to the organization,***"³⁷ while under the new policy, one of the grounds is the "***commission of acts that brings (sic) discredit to the cooperative organization, especially, but not limited to, conviction of any crime, illicit marital affairs, scandalous acts inimical to established and accepted social mores.***"³⁸ Contrary to respondent's claim, with the amendment of the Personnel Policy, petitioner did not create a new ground for the termination of employment to make sure that respondent is removed from his position. The quoted ground under the old policy is similar to that provided for in the new policy. The enumeration containing the specific act of "illicit marital affairs" is not an additional ground, but an example of an act that brings discredit to the cooperative. It is merely an interpretation of what petitioner considers as such. It is, thus, clear from the foregoing that engaging in extra-marital affairs is a ground for termination of employment not only under the new but even under the old

³³ *Id.* at 80.

³⁴ *Id.* at 84.

³⁵ *Id.* at 150.

³⁶ *Id.* at 69-70.

³⁷ *Id.* at 90.

³⁸ *Id.* at 93.

Personnel Policy of petitioner. The effectivity of the policy as to respondent cannot, therefore, be questioned.

To be sure, an employer is free to regulate all aspects of employment.³⁹ It may make reasonable rules and regulations for the government of its employees which become part of the contract of employment provided they are made known to the employee.⁴⁰ In the event of a violation, an employee may be validly terminated from employment on the ground that an employer cannot rationally be expected to retain the employment of a person whose lack of morals, respect and loyalty to his employer, regard for his employer's rules and application of the dignity and responsibility, has so plainly and completely been bared.⁴¹

Applying now the above-discussed ground for termination, we now determine whether respondent was properly dismissed from employment. In other words, did petitioner adequately prove that respondent indeed engaged in extra-marital affairs, an act which petitioner considers as would bring discredit to the cooperative?

We answer in the affirmative.

The employer's evidence consists of sworn statements of either relatives or friends of Thelma and respondent. They either had direct personal knowledge of the illicit relationship or revealed circumstances indicating the existence of such relationship. As aptly observed by the LA:

x x x Moreover, the credibility of the persons who bore witness against him can hardly be questioned because some of these persons are relatives or friends of either [respondent] or his lover. In particular, it is hard to see how Napoleon Gao-ay, the brother of his lover, Thelma, could have resorted to a lie just to destroy him when the same scandal could also result in tarnishing the reputation of his own family. The motive of Napoleon in bringing the matter to the attention of the Board of Directors, after all, was based on ethical grounds – he wanted a stop to the affair because it was a disgrace to the community.

There is also no reason to doubt the statement of Melanie Gao-ay, the wife of Napoleon, who witnessed the embarrassing “encounter”, to borrow the term she used, between [respondent] and Thelma in her own boarding house.⁴²

³⁹ *Lagatic v. NLRC*, 349 Phil. 172, 179 (1998).

⁴⁰ *Id.* at 179-180.

⁴¹ *Salavarria v. Letran College*, G.R. No. 110396, September 25, 1998, 296 SCRA 184, 190; 357 Phil. 189, 195 (1998).

⁴² *Rollo*, pp. 106-107.

While respondent's act of engaging in extra-marital affairs may be considered personal to him and does not directly affect the performance of his assigned task as bookkeeper, aside from the fact that the act was specifically provided for by petitioner's Personnel Policy as one of the grounds for termination of employment, said act raised concerns to petitioner as the Board received numerous complaints and petitions from the cooperative members themselves asking for the removal of respondent because of his immoral conduct.⁴³

The next question is whether procedural due process was observed in the termination of respondent's services. "Before the services of an employee can be validly terminated, the employer must furnish him two written notices: (a) a written notice served on the employee specifying the ground or grounds for termination, and giving the employee reasonable opportunity to explain his side; and (b) a written notice of termination served on the employee indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination."⁴⁴ The employer must inform the employee of the charges against him and to hear his defenses. A full adversarial proceeding is not necessary as the parties may be heard through pleadings, written explanations, position papers, memorandum or oral argument.⁴⁵

In this case, respondent was adequately afforded the opportunity to defend himself and explain the accusation against him. Upon receipt of the complaint, petitioner conducted a preliminary investigation and even created an Ad Hoc Committee to investigate the matter. Respondent was directed to explain either in writing or by a personal confrontation with the Board why he should not be terminated for engaging in illicit affair.⁴⁶ Not only did petitioner give him the opportunity but respondent in fact informed petitioner that he opted to present his side orally⁴⁷ and did so as promised when he specifically denied such allegations before the AdHoc Committee.⁴⁸ Moreover, respondent was also allowed to peruse the investigation report prepared by the Ad Hoc Committee and was advised that he was entitled to assistance of counsel.⁴⁹ After which, hearing was conducted. It was only after thorough investigation and proper notice and hearing to respondent that petitioner decided whether to dismiss the former or not. The decision to terminate respondent from employment was embodied in Board Resolution No. 05, series of 1997 a copy of which was furnished respondent.⁵⁰ With this resolution, respondent was adequately notified of petitioner's decision to

⁴³ *Id.* at 101.

⁴⁴ *Ventura v. Court of Appeals*, G.R. No. 182570, January 27, 2009, 577 SCRA 83, 91.

⁴⁵ *Id.* at 91-92.

⁴⁶ *Rollo*, p. 80.

⁴⁷ *Id.* at 83.

⁴⁸ *Id.* at 84.

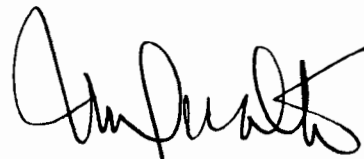
⁴⁹ *Id.* at 85.

⁵⁰ *Id.* at 88-89.

remove him from his position. Respondent cannot now claim that his right to due process was infringed upon.


WHEREFORE, premises considered, the petition is hereby **GRANTED**. The Court of Appeals Decision dated January 16, 2006 and Resolution dated July 5, 2006 in CA-G.R. SP No. 64554, are **SET ASIDE**. The Labor Arbiter's Decision dated April 30, 1998 in NLRC Case No. RAB-I-08-1144-97 (IS) dismissing respondent Salvador M. Bandiola, Jr.'s complaint against petitioner Alilem Credit Cooperative, Inc., is **REINSTATED**.

SO ORDERED.




DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



ROBERTO A. ABAD
Associate Justice




JOSE CATRAL MENDOZA
Associate Justice



MARVIC MARIO VICTOR F. LEONEN
Associate Justice

ATTESTATION

I attest 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.



PRESBITERO J. VELASCO, JR.

Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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