



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

JENNY F. PECKSON,

Petitioner,

G.R. No. 198534

Present:

SERENO, C.J.,

Chairperson,

LEONARDO-DE CASTRO,

BERSAMIN,

VILLARAMA, JR., and

REYES, JJ.

- versus -

ROBINSONS SUPERMARKET
CORPORATION, JODY GADIA,
ROENA SARTE, and RUBY ALEX,
Respondents.

Promulgated:

JUL 03 2013

X-----X

DECISION

REYES, J.:

For resolution is the Petition for Review on *Certiorari*¹ of the Decision² dated June 8, 2011 of the Court of Appeals (CA) in CA-GR. SP No. 109604 affirming the Decision³ dated February 25, 2009 of the National Labor Relations Commission (NLRC) in NLRC NCR Case No. 00-11-09316-06/NLRC LAC No. 002020-07, which upheld the dismissal⁴ by the Labor Arbiter (LA) on May 30, 2007 of Jenny F. Peckson's (petitioner) complaint for constructive dismissal.

¹ Rollo, pp. 11-32.

² Penned by Associate Justice Mario L. Guariña III, with Associate Justices Apolinario D. Bruselas, Jr. and Manuel M. Barrios, concurring; id. at 522-532.

³ Penned by Presiding Commissioner Gerardo C. Nograles, with Commissioners Perlita B. Velasco and Romeo L. Go, concurring; id. at 330-336.

⁴ Issued by LA Arthur L. Amansec; id. at 453-459.

Antecedent Facts and Proceedings

The petitioner first joined the Robinsons Supermarket Corporation (RSC) as a Sales Clerk on November 3, 1987. On October 26, 2006, she was holding the position of Category Buyer when respondent Roena Sarte (Sarte), RSC's Assistant Vice-President for Merchandising, reassigned her to the position of Provincial Coordinator, effective November 1, 2006.⁵ Claiming that her new assignment was a demotion because it was non-supervisory and clerical in nature, the petitioner refused to turn over her responsibilities to the new Category Buyer, or to accept her new responsibilities as Provincial Coordinator. Jody Gadia (Gadia) and Ruby Alex (Alex) were impleaded because they were corporate officers of the RSC.

In a memorandum to the petitioner dated November 13, 2006,⁶ the RSC, through Sarte, demanded an explanation from her within 48 hours for her refusal to accept her new assignment despite written and verbal demands. Sarte cited a company rule, Offenses Subject to Disciplinary Action No. 4.07, which provided that “[d]isobedience, refusal or failure to do assigned task or to obey superior's/official's orders/instructions, or to follow established procedures or practices without valid reason” would be meted the penalty of suspension.

The petitioner ignored the 48-hour deadline to explain imposed by Sarte. On November 23, 2006, Sarte issued her another memorandum,⁷ reiterating her demand to explain in writing within 48 hours why she persistently refused to assume her new position, and warning her that this could be her final chance to present her side or be deemed to have waived her right to be heard.

In her one-paragraph reply submitted on November 27, 2006,⁸ the petitioner stated that she could not accept the position of Provincial Coordinator since she saw it as a demotion. As it turned out, however, on November 9, 2006, the petitioner had already filed a complaint for constructive dismissal⁹ against RSC, Sarte, Gadia and Alex (respondents).

On November 30, 2006, Sarte issued an instruction to the petitioner to report to RSC's Metroeast Depot to help prepare all shipping manifests for Cagayan de Oro and Bacolod, but as witnessed by RSC employees Raquel Torrechua and Alex, she did not obey as instructed.¹⁰ Again on December 8,

⁵ Id. at 77.

⁶ Id. at 120.

⁷ Id. at 121.

⁸ Id. at 122.

⁹ Id. at 57.

¹⁰ Id. at 123.

2006, Sarte issued a similar instruction, citing the need for certain tasks from the petitioner in preparation for the coming Christmas holidays, but the petitioner again refused to heed.¹¹

As culled from the assailed appellate court decision,¹² the petitioner argued before the LA that the true organizational chart of the RSC showed that the position of Category Buyer was one level above that of the Provincial Coordinator, and that moreover, the job description of a Provincial Coordinator was largely clerical and did not require her to analyze stock levels and order points, or source new local and international suppliers, or monitor stock level per store and recommend items for replenishment, or negotiate better items and discounts from suppliers, duties which only a Category Buyer could perform. She also claimed that she was instructed to file a courtesy resignation in exchange for a separation pay of one-half salary per year of service.

The respondents in their position paper denied the correctness of the organizational chart presented by the petitioner. They maintained that her transfer was not a demotion since the Provincial Coordinator occupied a “Level 5” position like the Category Buyer, with the same work conditions, salary and benefits. But while both positions had no significant disparity in the required skill, experience and aptitude, the position of Category Buyer demanded the traits of punctuality, diligence and attentiveness because it is a frontline position in the day-to-day business operations of RSC which the petitioner, unfortunately, did not possess.

The respondents also raised the petitioner’s record of habitual tardiness as far back as 1999, as well as poor performance rating in 2005. In addition to her performance rating of “2.8” out of “4.0” in 2005 equivalent to “*below expectation*,” the petitioner was found to be tardy in June and July 2005, 13 times, and for the entire 2005, 57 times; that she was suspended twice in 2006 for 20 instances of tardiness and absences from July to September 2006 alone.¹³ We also note that the petitioner was suspended for seven (7) days in September and October 2005 for deliberately violating a company policy after she was seen having lunch with a company supplier.¹⁴

In her affidavit,¹⁵ respondent Sarte denied that the reassignment of the petitioner as Provincial Coordinator was motivated by a desire to besmirch the name of the latter. She asserted that it was made in the exercise of management prerogative and sound discretion, in view of the sensitive position occupied by the Category Buyer in RSC’s daily operations, *vis-à-vis*

¹¹ Id. at 124.

¹² Id. at 522-532.

¹³ Id. at 107-119, 225-226, 268, 308.

¹⁴ Id. at 212.

¹⁵ Id. at 230-231.

the petitioner's "*below expectation*" performance rating and habitual tardiness.

In dismissing the petitioner's complaint, the LA in its Decision¹⁶ dated May 30, 2007 ruled that job reassignment or classification is a strict prerogative of the employer, and that the petitioner cannot refuse her transfer from Category Buyer to Provincial Coordinator since both positions commanded the same salary structure, high degree of responsibility and impeccable honesty and integrity. Upholding the employer's right not to retain an employee in a particular position to prevent losses or to promote profitability, the LA found no showing of any illegal motive on the part of the respondents in reassigning the petitioner. The transfer was dictated by the need for punctuality, diligence and attentiveness in the position of Category Buyer, which the petitioner clearly lacked. Moreover, the LA ruled that her persistent refusal to accept her new position amounted to insubordination, entitling the RSC to dismiss her from employment.

A month after the above ruling, or on June 22, 2007, the petitioner tendered her written "forced" resignation,¹⁷ wherein she complained that she was being subjected to ridicule by clients and co-employees alike on account of her floating status since the time she refused to accept her transfer. She likewise claimed that she was being compelled to accept the position of Provincial Coordinator without due process.

On appeal, the NLRC in its Decision¹⁸ dated February 25, 2009 sustained the findings of the LA. It agreed that the lateral transfer of the petitioner from Category Buyer to Provincial Coordinator was not a demotion amounting to constructive dismissal, since both positions belonged to Job Level 5 and between them there is no significant disparity in terms of the requirements of skill, experience and aptitude. Contrary to the petitioner's assertion, the NLRC found that the position of Provincial Coordinator is not a rank-and-file position but in fact requires the exercise of discretion and independent judgment, as well as appropriate recommendations to management to ensure the faithful implementation of its policies and programs; that it even exercises influence over the Category Buyer in that it includes performing a recommendatory function to guide the Category Buyer in making decisions on the right assortment, price and quantity of the items, articles or merchandise to be sold by the store.

The NLRC then reiterated the settled rule that management may transfer an employee from one office to another within the business establishment, provided there is no demotion in rank or diminution of salary, benefits, and other privileges, and the action is not motivated by

¹⁶ Id. at 453-459.

¹⁷ Id. at 272.

¹⁸ Id. at 330-336.

discrimination or bad faith or effected as a form of punishment without sufficient cause. It ruled that the respondents were able to show that the petitioner's transfer was not unreasonable, inconvenient or prejudicial, but was prompted by her failure to meet the demands of punctuality, diligence, and personal attention of the position of Category Buyer; that management wanted to give the petitioner a chance to improve her work ethic, but her obstinate refusal to assume her new position has prejudiced respondent RSC, even while she continued to receive her salaries and benefits as Provincial Coordinator.

On petition for *certiorari* to the CA, the petitioner insisted that her transfer from Category Buyer to Provincial Coordinator was a form of demotion without due process, and that the respondents unjustifiably depicted her as remiss in her duties, flawed in her character, and unduly obstinate in her refusal to accept her new post.

In its Decision¹⁹ dated June 8, 2011, the CA found no basis to deviate from the oft-repeated tenet that the findings of fact and conclusions of the NLRC when supported by substantial evidence are generally accorded not only great weight and respect but even finality, and are thus deemed binding.²⁰

Petition for Review in the Supreme Court

Now on petition for review to this Court, the petitioner maintains that her lateral transfer from Category Buyer to Provincial Coordinator was a demotion amounting to constructive dismissal because her reassignment was not a valid exercise of management prerogative, but was done in bad faith and without due process. She claims that the respondents manipulated the facts to show that she was tardy; that they even surreptitiously drew up a new organizational chart of the Merchandising Department of RSC, soon after she filed her complaint for illegal dismissal, to show that the position of Provincial Coordinator belonged to Job Level 5 as the Category Buyer, and not one level below; that the company deliberately embarrassed her when it cut off her email access; that they sent memoranda to her clients that she was no longer a Category Buyer, and to the various Robinsons branches that she was now a Provincial Coordinator, while Milo Padilla (Padilla) was taking over her former position as Category Buyer; that for seven (7) months, they placed her on floating status and subjected her to mockery and ridicule by the suppliers and her co-employees; that not only was there no justification for her transfer, but the respondents clearly acted in bad faith and with discrimination, insensibility and disdain to make her stay with the company intolerable for her.

¹⁹ Id. at 522-532.

²⁰ *Acebedo Optical v. National Labor Relations Commission*, 554 Phil. 524, 541 (2007).

Our Ruling

We find no merit in the petition.

This Court has consistently refused to interfere with the exercise by management of its prerogative to regulate the employees' work assignments, the working methods and the place and manner of work.

As we all know, there are various laws imposing all kinds of burdens and obligations upon the employer in relation to his employees, and yet as a rule this Court has always upheld the employer's prerogative to regulate all aspects of employment relating to the employees' work assignment, the working methods and the place and manner of work. Indeed, labor laws discourage interference with an employer's judgment in the conduct of his business.²¹

In *Rural Bank of Cantilan, Inc. v. Julve*,²² the Court had occasion to summarize the general jurisprudential guidelines affecting the right of the employer to regulate employment, including the transfer of its employees:

Under the doctrine of management prerogative, every employer has the inherent right to regulate, according to his own discretion and judgment, all aspects of employment, including hiring, work assignments, working methods, the time, place and manner of work, work supervision, transfer of employees, lay-off of workers, and discipline, dismissal, and recall of employees. The only limitations to the exercise of this prerogative are those imposed by labor laws and the principles of equity and substantial justice.

While the law imposes many obligations upon the employer, nonetheless, it also protects the employer's right to expect from its employees not only good performance, adequate work, and diligence, but also good conduct and loyalty. In fact, the Labor Code does not excuse employees from complying with valid company policies and reasonable regulations for their governance and guidance.

Concerning the transfer of employees, these are the following jurisprudential guidelines: (a) a transfer is a movement from one position to another of equivalent rank, level or salary without break in the service or a lateral movement from one position to another of equivalent rank or salary; (b) the employer has the inherent right to transfer or reassign an

²¹ *Tinio v. Court of Appeals*, G.R. No. 171764, June 8, 2007, 524 SCRA 533, 539.
²² 545 Phil. 619 (2007).

employee for legitimate business purposes; (c) a transfer becomes unlawful where it is motivated by discrimination or bad faith or is effected as a form of punishment or is a demotion without sufficient cause; (d) the employer must be able to show that the transfer is not unreasonable, inconvenient, or prejudicial to the employee.²³ (Citations omitted)

In *Philippine Japan Active Carbon Corporation v. NLRC*,²⁴ it was held that the exercise of management's prerogative concerning the employees' work assignments is based on its assessment of the qualifications, aptitudes and competence of its employees, and by moving them around in the various areas of its business operations it can ascertain where they will function with maximum benefit to the company.

It is the employer's prerogative, based on its assessment and perception of its employees' qualifications, aptitudes, and competence, to move them around in the various areas of its business operations in order to ascertain where they will function with maximum benefit to the company. An employee's right to security of tenure does not give him such a vested right in his position as would deprive the company of its prerogative to change his assignment or transfer him where he will be most useful. When his transfer is not unreasonable, nor inconvenient, nor prejudicial to him, and it does not involve a demotion in rank or a diminution of his salaries, benefits, and other privileges, the employee may not complain that it amounts to a constructive dismissal.²⁵

As a privilege inherent in the employer's right to control and manage its enterprise effectively, its freedom to conduct its business operations to achieve its purpose cannot be denied.²⁶ We agree with the appellate court that the respondents are justified in moving the petitioner to another equivalent position, which presumably would be less affected by her habitual tardiness or inconsistent attendance than if she continued as a Category Buyer, a "frontline position" in the day-to-day business operations of a supermarket such as Robinsons.

If the transfer of an employee is not unreasonable, or inconvenient, or prejudicial to him, and it does not involve a demotion in rank or a diminution of his salaries, benefits and other privileges, the employee may not complain that it amounts to a constructive dismissal.

²³ Id. at 624-625.

²⁴ 253 Phil. 149 (1989).

²⁵ Id. at 153.

²⁶ *Blue Dairy Corporation v. NLRC*, 373 Phil. 179, 186 (1999).

As we have already noted, the respondents had the burden of proof that the transfer of the petitioner was not tantamount to constructive dismissal, which as defined in *Blue Dairy Corporation v. NLRC*,²⁷ is a quitting because continued employment is rendered impossible, unreasonable or unlikely, or an offer involving a demotion in rank and diminution of pay:

The managerial prerogative to transfer personnel must be exercised without grave abuse of discretion, bearing in mind the basic elements of justice and fair play. Having the right should not be confused with the manner in which that right is exercised. Thus, it cannot be used as a subterfuge by the employer to rid himself of an undesirable worker. In particular, the employer must be able to show that the transfer is not unreasonable, inconvenient or prejudicial to the employee; nor does it involve a demotion in rank or a diminution of his salaries, privileges and other benefits. Should the employer fail to overcome this burden of proof, the employee's transfer shall be tantamount to constructive dismissal, which has been defined as a quitting because continued employment is rendered impossible, unreasonable or unlikely; as an offer involving a demotion in rank and diminution in pay. Likewise, constructive dismissal exists when an act of clear discrimination, insensibility or disdain by an employer has become so unbearable to the employee leaving him with no option but to forego with his continued employment.

Thus, as further held in *Philippine Japan Active Carbon Corporation*,²⁸ when the transfer of an employee is not unreasonable, or inconvenient, or prejudicial to him, and it does not involve a demotion in rank or a diminution of his salaries, benefits and other privileges, the employee may not complain that it amounts to a constructive dismissal.²⁹

But like all other rights, there are limits to the exercise of managerial prerogative to transfer personnel, and on the employer is laid the burden to show that the same is without grave abuse of discretion, bearing in mind the basic elements of justice and fair play.³⁰ Indeed, management prerogative may not be used as a subterfuge by the employer to rid himself of an undesirable worker.³¹

Interestingly, although the petitioner claims that she was constructively dismissed, yet until the unfavorable decision of the LA on May 30, 2007, for seven (7) months she continued to collect her salary while also adamantly refusing to heed the order of Sarte to report to the Metroeast Depot. It was only on June 22, 2007, after the LA's decision, that she filed her "forced" resignation. Her deliberate and unjustified refusal to assume

²⁷ Id.

²⁸ Supra note 24.

²⁹ Id. at 153.

³⁰ *Blue Dairy Corporation v. NLRC*, supra note 26.

³¹ *Jarcia Machine Shop and Auto Supply, Inc. v. NLRC*, 334 Phil. 84, 93 (1997).

her new assignment is a form of neglect of duty, and according to the LA, an act of insubordination. We saw how the company sought every chance to hear her out on her grievances and how she ignored the memoranda of Sarte asking her to explain her refusal to accept her transfer. All that the petitioner could say was that it was a demotion and that her floating status embarrassed her before the suppliers and her co-employees.

The respondents have discharged the burden of proof that the transfer of the petitioner was not tantamount to constructive dismissal.

In *Jarcia Machine Shop and Auto Supply, Inc. v. NLRC*,³² a machinist who had been employed with the petitioner company for 16 years was reduced to the service job of transporting filling materials after he failed to report for work for one (1) day on account of an urgent family matter. This is one instance where the employee's demotion was rightly held to be an unlawful constructive dismissal because the employer failed to show substantial proof that the employee's demotion was for a valid and just cause:

In case of a constructive dismissal, the employer has the burden of proving that the transfer and demotion of an employee are for valid and legitimate grounds such as genuine business necessity. Particularly, for a transfer not to be considered a constructive dismissal, the employer must be able to show that such transfer is not unreasonable, inconvenient, or prejudicial to the employee; nor does it involve a demotion in rank or a diminution of his salaries, privileges and other benefits. Failure of the employer to overcome this burden of proof, the employee's demotion shall no doubt be tantamount to unlawful constructive dismissal. x x x.³³
(Citation omitted)

In the case at bar, we agree with the appellate court that there is substantial showing that the transfer of the petitioner from Category Buyer to Provincial Coordinator was not unreasonable, inconvenient, or prejudicial to her. The petitioner failed to dispute that the job classifications of Category Buyer and Provincial Coordinator are similar, or that they command a similar salary structure and responsibilities. We agree with the NLRC that the Provincial Coordinator's position does not involve mere clerical functions but requires the exercise of discretion from time to time, as well as independent judgment, since the Provincial Coordinator gives appropriate recommendations to management and ensures the faithful implementation of policies and programs of the company. It even has influence over a Category Buyer because of its recommendatory function

³² 334 Phil. 84 (1997).

³³ Id. at 95.

that enables the Category Buyer to make right decisions on assortment, price and quantity of the items to be sold by the store.³⁴

We also cannot sustain the petitioner's claim that she was not accorded due process and that the respondents acted toward her with discrimination, insensibility, or disdain as to force her to forego her continued employment. In addition to verbal reminders from Sarte, the petitioner was asked in writing twice to explain within 48 hours her refusal to accept her transfer. In the first, she completely remained silent, and in the second, she took four (4) days to file a mere one-paragraph reply, wherein she simply said that she saw the Provincial Coordinator position as a demotion, hence she could not accept it. Worse, she may even be said to have committed insubordination when she refused to turn over her responsibilities to the new Category Buyer, Padilla, and to assume her new responsibilities as Provincial Coordinator and report to the Metroeast Depot as directed. This was precisely the reason why the petitioner was kept on floating status. To her discredit, her defiance constituted a neglect of duty, or an act of insubordination, per the LA.

Neither can we consider tenable the petitioner's contention that the respondents deliberately held her up to mockery and ridicule when they cut off her email access, sent memoranda to her clients that she was no longer a Category Buyer, and to the various Robinsons branches that she was now a Provincial Coordinator on floating status and that Padilla was taking over her position as the new Category Buyer. It suffices to state that these measures are the logical steps to take for the petitioner's unjustified resistance to her transfer, and were not intended to subject her to public embarrassment.

Judicial review of labor cases does not go beyond the evaluation of the sufficiency of the evidence upon which labor officials' findings rest.

Finally, as reiterated in *Acebedo Optical*,³⁵ this Court is not a trier of facts, and only errors of law are generally reviewed in petitions for review on *certiorari* criticizing decisions of the CA. Questions of fact are not entertained, and in labor cases, this doctrine applies with greater force. Factual questions are for labor tribunals to resolve.³⁶ Thus:

³⁴ See CA Decision; *rollo*, p. 530.

³⁵ Supra note 20.

³⁶ Id. at 541.

Judicial Review of labor cases does not go beyond the evaluation of the sufficiency of the evidence upon which its labor officials' findings rest. As such, the findings of facts and conclusion of the NLRC are generally accorded not only great weight and respect but even clothed with finality and deemed binding on this Court as long as they are supported by substantial evidence. This Court finds no basis for deviating from said doctrine without any clear showing that the findings of the Labor Arbiter, as affirmed by the NLRC, are bereft of substantiation. Particularly when passed upon and upheld by the Court of Appeals, they are binding and conclusive upon the Supreme Court and will not normally be disturbed.

x x x x

As earlier stated, we find no basis for deviating from the oft espoused legal tenet that findings of facts and conclusion of the labor arbiter are generally accorded not only great weight and respect but even clothed with finality and deemed binding on this Court as long as they are supported by substantial evidence, without any clear showing that such findings of fact, as affirmed by the NLRC, are bereft of substantiation. More so, when passed upon and upheld by the Court of Appeals, they are binding and conclusive upon us and will not normally be disturbed; x x x.³⁷ (Citations omitted)

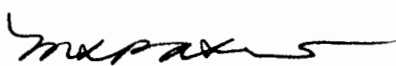
It is our ruling, that the findings of fact and conclusion of the LA, as affirmed by the NLRC, are supported by substantial evidence, as found by the CA.

WHEREFORE, the premises considered, the Decision of the Court of Appeals dated June 8, 2011 in CA-G.R. SP No. 109604 is **AFFIRMED**.

SO ORDERED.


BIENVENIDO L. REYES
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

Lucas P. Bersamin
LUCAS P. BERSAMIN
Associate Justice

Martin S. Villarama, Jr.
MARTIN S. VILLARAMA, JR.
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
MARIA LOURDES P. A. SERENO
Chief Justice