Supreme Court E-Library

SECOND DIVISION

[G.R. Nos. L-48235-36. July 30, 1979]

FAUSTINO M. MERACAP, *petitioner, vs.* **INTERNATIONAL CERAMICS MFG. CO., INC. (SECURITY INDUSTRIAL CO., INC.) and HONORABLE RONALDO ZAMORA,** *respondents.*

SYLLABUS

LABOR AND SOCIAL LEGISLATIONS; TERMINATION OF EMPLOYMENT; DISMISSAL OF EMPLOYEE; TOO SEVERE FOR CONSISTENT ABSENCES AS THE PENALTY SHOULD BE LIMITED TO SUSPENSION.— From a reading, however, of the dismissal of the appeal from the decision of the Acting Secretary of Labor by respondent Zamora, reference was made to "consistent absences" resulting in respondent company requiring him to report for work within two days. The failure to obey was followed by an application for clearance for dismissal. It would thus appear that the penalty is much too severe. There is an allegation which is not denied that petitioner had been in the service of respondent company for a continuous period of eighteen years without any adverse record. The resolution of the Labor Arbiter showed that petitioner was transferred by the company from the Fire Tender Kiln Section to the Pan Grinding Section on August 15, 1974; thereafter, on August 19, 1974, a complaint for unreasonable transfer equivalent to demotion was filed with the respondent company. It does appear that management took umbrage with this particular exercise of the constitutional right to petition, for immediately it filed an application for the dismissal of petitioner for abandonment with the Department of Labor on August 30, 1974. There is almost an indecent haste characterizing the effort of respondent company to terminate the services of petitioner. The mere fact, therefore, that there was no showing of such a move being prompted by his union activities would not justify such a penalty out of proportion to the offense committed. Accordingly, disciplinary action should be limited to suspension.

Supreme Court E-Library

APPEARANCES OF COUNSEL

Salvador R. Rola, Jr. for petitioner.
Ramos, Agag & Associates for private respondents.
The Solicitor General for the public respondent.

D E C I S I O N

FERNANDO, *C.J.*:

In a number of decisions, *Philippine Air Lines, Inc. v. Philippine Airlines Employees Association*,[1] *Almira v. B.F. Goodrich Philippines*,[2] *Central Textile Mills v. National Labor Relations Commission*,[3] and *Genconsu Free Workers Union v. Inciong*,[4] this Court has sought to vitalize the constitutional mandate of security of tenure as an aspect of the protection accorded labor.[5] In this suit for *certiorari* to review the dismissal of an appeal from a decision of the then Acting Secretary of Labor Amado G. Inciong by respondent Ronaldo Zamora, Presidential Assistant on Legal Affairs, ordering the dismissal of petitioner Faustino Meracap, the relevance of such a provision becomes apparent. It was alleged by petitioner that while the termination of his services was based on his unauthorized absences, the real reason was due to his union activities. Respondent Zamora ruled otherwise. Such a finding of fact must be accorded deference. Nonetheless, considering that

---

[1] L-24626, June 28, 1974, 57 SCRA 489.

[2] L-34974, July 25, 1974, 58 SCRA 120.

[3] L-50150, May 3, 1979.

[4] L-48687, July 2, 1979.

[5] According to Article II, Section 9 of the Constitution. "The State shall afford protection to labor, promote full employment and equality in employment, ensure equal work opportunities regardless of sex, race or creed, and regulate the relations between workers and employers. The State shall assure the right of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work. The State may provide for compulsory arbitration."

Supreme Court E-Library

petitioner Meracap has been in the employ of the International Ceramics Manufacturing Company, Inc. for eighteen years, it would appear that the punishment was much too severe. Dismissal was not warranted. Suspension would suffice. To that extent, *certiorari* lies.

The order of respondent Presidential Assistant Zamora insofar as pertinent, reads as follows: "The issue raised in the instant case is whether or not respondent company is guilty of unfair labor practice for having demoted or transferred complainant-appellant from the Fire Tender Kiln Section to the Pan Grinding Section and whether the dismissal is legal under Article 294(f) of the New Labor Code, as amended. After a study of the case, this Office finds the decision of the Acting Secretary of Labor in order. The evidence shows that because of complainant-appellant's consistent absences, respondent company was prompted to write him a letter of August 23, 1974, requiring him to report for work within 2 days from receipt of said letter (Annexes D and D-1), which, however, was not complied with by complainant; that in view thereof, respondent was constrained to file an application for clearance to terminate complainant's services for abandonment of work; and that during the hearing, respondent again requested complainant to report for work, but still to no avail. Complainant's allegation that his transfer from the Fire Tender Kiln Section amounted to a demotion and that the main reason for his transfer was due to his activities in starting to organize a union, lacks factual basis. The evidence shows that complainant's suspension and subsequent transfer were justified due to his previous unauthorized absences; that his transfer did not entail any reduction of wages; and the transfer was effected by respondent company to promote the efficiency of the service and to avoid disruption of the operation of respondent's business occasioned by complainant's frequent absences. Evidence also indisputably shows that after the lapse of complainant's suspension, he did not report for work, notwithstanding respondent's verbal and written appeal for him to return to work."[6]

[6] 1st Indorsement dated June 20, 1977 of respondent Presidential Assistant for Legal Affairs Ronaldo B. Zamora, 2-3.

Supreme Court E-Library

As set forth at the outset, the allegation that the termination of his services was the result of his upon activities cannot be justified. The only question left, therefore, again as mentioned earlier, was the conformity or lack of it with the security of tenure provision when, on the above facts, he was dismissed. To repeat, the penalty of dismissal should be modified to one of suspension.

1. There is relevance to this excerpt from *Genconsu Free Workers Union v. Inciong*,[7] promulgated earlier this month: "There is no occasion to pass upon the allegation in the petition that certain discriminatory acts, anti-union in character, could be attributed to private respondent. Respondent Deputy Minister of Labor and the National Labor Relations Commission absolved it from such a change. That is a finding of fact to which deference must be paid. That norm has invariably been followed by this Court."[8] As it was then, so it should be now. The determination by the then Acting Secretary of Labor as well as the Presidential Assistant on Legal Affairs is entitled to respect — and not merely out of courtesy due to a coordinate branch.

2. From a reading, however, of the dismissal of the appeal from the decision of the Acting Secretary of Labor by respondent Zamora, reference was made to "consistent absences" resulting in respondent company requiring him to report for work within two days. The failure to obey was followed by an application for clearance for dismissal. It would thus appear that the penalty is much too severe. There is an allegation which is not denied that petitioner had been in the service of respondent company for a continuous period of eighteen years without any adverse

---

[7] L-48687, July 2, 1979.

[8] The following cases were cited: *Antipolo Highway Lines v. Inciong*, L-38532, June 27, 1975, 64 SCRA 441; *Jacqueline Industries v. National Labor Relations Commission*, L-37034, Aug. 29, 1975, 66 SCRA 397; *Federacion Obrera v. Noriel*, L-41937; July 6, 1976, 72 SCRA 24; *Kapisanan ng mga Manggagawa v. Noriel*, L-45475, June 20, 1977, 77 SCRA 414; *Monark International, Inc. v. Noriel*, L-47570-71, May 11, 1978, 83 SCRA 114; *National Waterworks and Sewerage Authority v. Court of Industrial Relations*, L-33496, June 19, 1979.

Supreme Court E-Library

record.[9] The resolution of the Labor Arbiter showed that petitioner was transferred by the company from the Fire Tender Kiln Section to the Pan Grinding Section on August 15, 1974; thereafter, on August 19, 1974, a complaint for unreasonable transfer equivalent to demotion was filed with the respondent company.[10] It does appear that management took umbrage with this particular exercise of the constitutional right to petition, for immediately it filed an application for the dismissal of petitioner for abandonment with the Department of Labor on August 30, 1974. There is almost an indecent haste characterizing the effort of respondent company to terminate the services of petitioner. The mere fact, therefore, that there was no showing of such a move being prompted by his union activities would not justify such a penalty out of proportion to the offense committed. Accordingly, disciplinary action should be limited to suspension.

3. In the aforesaid *Philippine Air Lines, Inc. v. Philippine Air Lines Employees Association*, the earliest case in point, the admission by the employee in the company that he was apprehended by a company security guard with a piece of lead material he intended to take home for his personal use, something he ought not to have done, amounting as it did to a breach of trust as well as violation of the rules and regulations of his company, the fact that he had been in the service for seventeen years was deemed a mitigating circumstance that precluded his dismissal. The concern shown for the termination of service even on the assumption that conduct far from exemplary was indulged in was made even more evident in another case referred to in the first paragraph of this opinion, *Almira v. B.F. Goodrich Philippines*: "It would imply at the very least that where a penalty less punitive would suffice, whatever missteps may be committed by labor ought not to be visited with a consequence so severe. It is not only because of the law's concern for the workingman. There is, in addition, his family to consider. Unemployment brings untold hardships and sorrows on those

---

[9] Petition, Discussion, par. 7.

[10] *Ibid.*, Annex B.

Supreme Court E-Library

dependent on the wage-earner. The misery and pain attendant on the loss of jobs then could be avoided if there be acceptance of the view that under all the circumstances of this case, petitioners should not be deprived of their means of livelihood. Nor is this to condone what had been done by them. For all this while, 'since private respondent considered them separated from the service, they had not been paid. For the strictly juridical standpoint, it cannot be too strongly stressed, to follow Davis in his masterly work, Discretionary Justice, that where a decision may be made to rest on informed judgment rather than rigid rules, all the equities of the case must be accorded their due weight. Finally, labor law determinations, to quote from Bultmann, should be not only *secundum rationem* but also *secundum caritatem*.[11]

WHEREFORE, the order of respondent Presidential Assistant on Legal Affairs, Ronaldo Zamora, dated June 20, 1977, dismissing the appeal is modified in the sense that the penalty to be imposed on petitioner Faustino M. Meracap should be limited to suspension for a period of one year from August 30, 1974. Thereafter, he is entitled to backwages for three years. This decision is immediately executory. No costs.

Barredo, Antonio, Aquino, and *Concepcion Jr., JJ.*, concur.

Santos and *Abad Santos, JJ.*, are on leave.

---

[11] 58 SCRA 120, 131. This excerpt was cited in the aforesaid Genconsu Free Workers Union decision.