Supreme Court E-Library

SECOND DIVISION

[G.R. No. L-46732. May 5, 1979]

MARIO Z. REYES, *petitioner, vs.* **HON. RONALDO B. ZAMORA as Presidential Assistant for Legal Affairs, Office of the President, MARSMAN and Co., Inc., and E. G. Vito,** *respondents.*

SYLLABUS

1. **ADMINISTRATIVE LAW; OFFICE OF THE PRESIDENT; JURISDICTION; SCOPE.** — The Office of the President has jurisdiction over an appeal from a decision of the Minister of Labor where the issue raised is a question of law, or where the appellant alleges "abuse of discretion." When one alleges that an order is contrary to law and jurisprudence, plain common sense dictates that the order is being attacked on question of law; and a statement that the order contains serious errors in the findings of facts and would cause grave or irreparable damage and injury to appellants is in the final analysis tantamount to alleging "abuse of discretion." Serious errors in the findings of facts may not per se be equated with abuse of discretion but where the main thrust of the argument is that under the circumstances of the case, a palpably erroneous conclusion was made, this is tantamount to ascribing to respondent an abuse of discretion.

2. **ID.; ID.; MAY CONDUCT ADDITIONAL HEARINGS IN AN APPEALED CASE; APPELLANT ESTOPPED FROM ATTACKING AUTHORITY OF PRESIDENT TO CONDUCT HEARING.** — Where appellant took part and cooperate in the new hearings conducted by the Office of the President, he is estopped from asserting that the Office of the President acted with grave abuse of discretion in conducting additional hearings in an appealed case.

4. **LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; LOSS OF CONFIDENCE; CONSTRUED.** — Loss of confidence is a valid ground for dismissing an employee, and proof beyond reasonable doubt of the employee's misconduct is not required to dismiss him of this charge. It is

Supreme Court E-Library

sufficient if there is "some basis" for such loss of confidence; or if the employer has reasonable grounds to believe, if not to entertain the moral conviction that the employee concerned is responsible for the misconduct and that the nature of his participation therein rendered him absolutely unworthy of the trust and confidence demanded by his position.

5. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *MANDAMUS*; NATURE OF.** — The office of the writ of *mandamus* is to direct "any tribunal . . ., board or persons" to perform "an act which the law specifically enjoins as a duty resulting from the office, trusty or station . . . " Such writ is not available to prevent the Office of the President from considering the evidence presented at the hearing conducted by it on appeal, especially where petitioner did not take legal steps to present said hearings but on the contrary participated in the same. There is, therefore, no duty that the Office of the President neglected do which would warrant the issuance of a writ mandamus.

APPEARANCES OF COUNSEL

Calanog & Associates Law Office for petitioner.
Wilfredo Y. Guevarra for private respondents.
Office of the Solicitor General for the Public respondent.

D E C I S I O N

SANTOS, *J.*:

Special civil action filed on August 24, 1977 for (1) *certiorari* to annul and set aside the decision dated November 12, 1976 of the Office of the President thru Deputy Executive Secretary Roberto V. Reyes, which granted respondent Marsman and Co., leave to terminate petitioner's employment, and reversed the decision of the Secretary of Labor dated August 22, 1974 ordering the reinstatement of petitioner with back wages, from the date of his preventive suspension on January 17, 1974, and (2) *mandamus* to compel the Office of the President to limit its review of the decision of the Secretary of Labor solely on the basis of the evidence presented and established during the hearing conducted at the mediation-fact finding stage.

Supreme Court E-Library

On October 7, 1977, private respondents Marsman and Co., Inc. (henceforth Company) and E.G. Vito filed their comment[1] to which petitioner filed his reply on October 26, 1977.[2] Respondent public official after extension, filed his comment on December 20, 1977.[3] On February 1, 1978, We gave due course to the petition, considered respondent's comments as answers, and required the parties to submit their respective memoranda.[4] The Solicitor General, in behalf of respondent public official, manifested on February 16, 1978 that he is adopting the comment he filed as his memorandum.[5] Petitioner, in turn, thru counsel, filed his memorandum on March 21, 1978.[6] Private respondents, Company and E.G. Vito, also after extension, adopted their comment filed on May 29, 1978 as their memorandum.[7] Thereafter, the case was submitted for decision on June 9, 1978.

The following are the factual and procedural antecedents which gave rise to this petition. Petitioner Mario Z. Reyes is Credit and Collection Manager and Operations Coordinator of Marsman and Co., Inc. On January 17, 1974, the Company thru its Vice-President, E.G. Vito, herein private respondent, suspended him indefinitely for "misappropriation of company funds." At that time, petitioner has been with the Company for seven years, six months and twelve days.[8]

It appears that in December, 1973, the Company sponsored a sales promotional contest to advertise its *pondocillin* products. A certain Evangeline R. Tagulao, a nurse employed at Singer Industries Phil., Inc., won the first prize — a Volkswagen Beetle

---

[1] *Rollo*, p. 108.

[2] *Id.*, p. 121.

[3] *Id.*, p. 135.

[4] *Id.*, p. 185.

[5] *Id.*, p. 187.

[6] *Id.*, p. 195.

[7] *Id.*, p. 224.

[8] *Id.*, pp. 19 and 22, Petition, Annexes "A" & "B".

Supreme Court E-Library

1200. However, Miss Tagulao chose to receive the cash value of the car which was ₱24,000.00. Accordingly, the Company issued PCIB Check No. 416234 dated December 19, 1973 for ₱24,000.00 in favor of Miss Tagulao. The check was delivered to Miss Tagulao by petitioner Reyes, accompanied by his co-employee Victor Santos. Together, the three of them went to a bank[9] to cash the check.

On January 16, 1974, the Company received two handwritten letters from Miss Tagulao:

First Letter

"January 16, 1974

Marsman Co.
Leo Pharmaceutical Inc.

This is to certify that I only received ₱20,000 from Mr. Mario Reyes, and I expect to receive the balance of ₱4,000.

(Sgd.) E.R. Tagulao
Evangeline R. Tagulao"

Second Letter

"January 16, 1974
Marsman Co.
Leo Pharmaceutical, Inc.

The following are the circumstances surrounding the handling of the ₱20,000 to me:

Sometime December 20, 1973 Mr. Mario Reyes came to my clinic bringing the ₱24,000 check supposedly the equivalent of 1 (1200 Beetle VW) which I won in the *pondocillin raffle.*

From the clinic we proceeded to Rizal Commercial Bank (sic) at Buendia to cash the check. I was surprised when I received only ₱20,000, but Mr. Reyes explained that the remaining ₱4,000 will go

---

[9] Evidence is not clear as to what bank the check was cashed. In her letter of retraction, Tagulao says it is the Rizal Commercial Bank at Buendia. Before Mediator-Factfinder Mirasol Corleto of N.L.R.C. however, she says it is the PCI Bank, Tayuman. Victor Santos, however claims before the Mediator-Factfinder that it is PCI Bank, Makati.

Supreme Court E-Library

to the consolation prizes. I didn't complain at that time thinking that what Mr. Reyes told me was true and I found out later that the whole amount of ₱24,000 is due to me.

(Sgd.) E.R. Tagulao
Evangeline R. Tagulao"[10]

On the following day, January 17, 1974, respondent Company wrote to Miss Tagulao attaching RCBC Check No. 1363018 for ₱4,000.00, and indicating that the said check was in lieu of the amount withheld by petitioner Reyes. The Company thereafter advised petitioner Reyes that he was being placed on suspension starting January 18, 1974. It also filed with National Labor Relations Commission (NLRC) on January 21, 1974, an application for clearance to terminate complainant's services alleging that "(P)ending further investigation and considering that this constitutes misappropriation of company funds, and in accordance with existing policy as well as the applicable rules and regulations, Mr. Reyes has been placed under preventive suspension effective as of the close of office hours on January 17, 1974 pursuant to Section 2 of NLRC Implementing Instructions No. 1 issued on November 9, 1972 and Presidential Decree No. 21 issued on October 14, 1972." It added further that "the preventive suspension of Mr. Mario Z. Reyes is necessary in order to prevent further violation of the provisions of the Revised Penal Code and other statutes as well as the established employment policies and reasonable company rules and regulations, said violation being inimical to the interests of the company."[11]

Toward the latter part of January 1974, the Company received two letters from Miss Tagulao this time informing it that she was returning the check for ₱4,000.00 because she" . . . actually received the full amount of ₱24,000.00 . . ."[12] One of the letters reads:

---

[10] See Decision of the Office of the President, Annex "N", *Rollo*, p.78.

[11] *Rollo*, pp. 19-20, Petition, Annex "A".

[12] *Id.*, p. 27, Petition, Annex "D".

Supreme Court E-Library

"January 24, 1974

Mr. E.G. Vito
Exec. Vice Pres.
Marsman and Co. Inc.

Sir:

In all conscience now that I know the truth and everything is clear to me, I'm voluntarily returning the check in the amount of ₱4,000.00. I would like to retract all the previous statement I have given.

I hope this statement of mine closes the case and clear Mr. Mario Reyes of whatever charges.

I don't expect to be bothered again about this matter. I hope this closes the case.

Yours truly,

(Sgd.) E.R. TAGULAO
EVANGELINE R. TAGULAO"[13]

On January 30, 1974, petitioner Reyes filed with the NLRC an "Opposition to Request for Clearance to Dismiss" which was docketed and considered as a complaint for illegal dismissal.[14] He alleged that "in spite of results of investigations tending to exculpate him from the charges, he has been placed under harassing situations to the prejudice of himself and his family . . . and prayed that respondent Company be ordered "to immediately reinstate (him) to his former position with full back salaries . . ."

The case was assigned to Mediator-Factfinder Mirasol Corleto for mediation and/or factfinding. After hearing, she submitted a "Mediation Report"[15] dated February 25, 1974 to the NLRC

---

[13] *Id.*, p. 82, Petition, Annex "N". The other letter does not appear in any of the pleadings.

[14] *Id.*, p. 22. The case was docketed as NLRC Case No. C-131-74 entitled "*Mario Z. Reyes, complainant vs. Marsman and Co. Inc. and E.G. Vito, respondents.*"

[15] *Id.*, p. 23, Petition, Annex "C".

Supreme Court E-Library

wherein she found petitioner innocent of the charge of misappropriation and recommended his reinstatement with backwages, thus:

xxx xxx xxx

"FINDINGS:

In order to shed light to this case, Miss Tagulao personally testified during the mediation stage and stated that without her knowledge, the amount of ₱4,000 was taken by Mr. Victor Santos from the envelope containing the cash prize. She was at that time, personally indebted to Mr. Victor Santos of the sum of ₱4,000 for a diamond ring which she purchased on installment basis on November 15, 1973 as evidenced by hereto attached promissory note. She further testified *that she did not have any intention of filing a complaint against Mr.* Mario Reyes were it not for the instigation and prodding of Mr. Romeo Henson.

The other witness Mr. Victor Santos also testified to the fact that he was the one who took the ₱4,000 as payment to him by Miss Tagulao for a diamond ring. When Mr. Santos explained the whole thing and after he had issued a receipt to Miss Tagulao for the ₱4,000, Miss Tagulao withdrew her complaint from Marsman and returned the check to respondent Co.

It is crystal clear from the evidences and testimonies presented by witnesses that complainant Mario Reyes was innocent of what had transpired to the sum of ₱4,000 and he was just a victim of an honest mistake.

Respondent company does not have any right to suspend complainant after Miss Tagulao had clarified the whole matter to them.

Respondent does not have any sound basis to lose their trust and confidence in complainant who had rendered service with the company for almost 8 years.

RECOMMENDATION:

In view of the foregoing, it is respectfully recommended that complainant be reinstated with backwages and request for clearance of respondent be denied."

Supreme Court E-Library

The NLRC[16] issued an Order[17] dated *February 4, 1974* adopting the "findings of Mediator-Factfinder Mirasol Corleto dated *25 February 1974* (sic)." Contrary to Corleto's recommendation, however, the NLRC ordered the Company to reinstate petitioner *without* backwages.

From the NLRC's order, both parties appealed to the Secretary, now Minister, of Labor. Respondent Company's, "Motion for Reconsideration"[18] dated April 2, 1974, which was denied, was considered as its appeal to the Minister of Labor. The Company based its appeal on the following grounds:

"1. Vital evidences were disregarded, which if otherwise considered would have substantially changed the nature of the Order.

"2. Assuming *arguendo* that substantial evidence on the whole had been considered, the circumstances of the case do not warrant the relief granted."

Petitioner on the other hand, on April 8, 1974, appealed that portion of the NLRC's order which denied him backwages.[19]

The Minister of Labor's "Decision"[20] dated August 22, 1974 ordered the reinstatement of petitioner with backwages. Pertinent portion of the decision reads:

xxx xxx xxx

"Based on the evidence, we hold complainant completely blameless from the imputation and charges which were the bases for respondent's application for clearance to dismiss complainant. Consequently, loss of trust may not be imputed to complainant. Also, the grounds in support of complainant's preventive suspension,

---

[16] Composed of Amado G. Inciong, as Chairman, Diego P. Atienza and Ricardo C. Castro as members.

[17] *Rollo*, p. 34, Petition, Annex "E".

[18] *Id.*, p. 36, Petition, Annex "F".

[19] *Id.*, p. 7, Petition, par. 9. Copy of the appeal, however, does not appear in the petition's annexes.

[20] *Id.*, p. 51, Petition, Annex "G".

Supreme Court E-Library

namely: 'to prevent further violation of the provisions of the Revised Penal Code and other statutes as well as the established employment policies and reasonable company rules and regulations' would be gratuitious assertions devoid of factual foundation. On this basis, complainant's prayer to modify the Commission's Order to one of reinstatement with backwages deserves utmost consideration."

The Minister of Labor decided in favor of petitioner on the strength of the "diamond ring story" mentioned in Mediator-Factfinder Corleto's Report (*supra*), and sustained by the NLRC, thus:

"At the mediation-factfindings stage, Miss Evangeline Tagulao declared that she did not know that Mr. Victor Santos deducted the amount of ₱4,000 from the envelope containing her cash prize. She further declared that at that time she was indebted to Mr. Santos of the sum of ₱4,000 for a diamond ring she purchased from him on installment basis on November 15, 1973 as evidenced by a promissory note she executed in his favor. Further testimony reveals that she filed the complaint against Mr. Mario Reyes because of the instigation and prodding of Mr. Romeo Henson, Promotions Coordinator at Marsman & Company, Inc.

These facts were confirmed by Mr. Victor Santos who was presented as witness for complainant and further admitted that he took the amount of ₱4,000 from the envelope containing Miss Tagulao's cash prize as payment of the balance of the diamond ring he sold to her. It appears that after these circumstances were explained to her, on the basis of which she issued a receipt for ₱4,000 as full payment of the diamond ring by Mr. Victor Santos, Miss Evangeline Tagulao withdrew her complaint against complainant Mario Reyes and returned the check for ₱4,000 which was earlier issued to her by respondent company.

Despite these clarifications by both Miss Tagulao and Mr. Santos of an apparent misunderstanding of which complainant was the unsuspecting victim, respondents continued with their suspension *of complainant.*"

Respondents Company and E.G. Vito filed a Motion for Reconsideration[21] dated September 2, 1974 alleging that —

[21] *Id.*, p. 55, Petition, Annex "H".

Supreme Court E-Library

"1. The decision treated the evidence unfairly and with manifest subjectivity in favor of complainant;

xxx xxx xxx

"2. The consideration of complainants appeal has denied respondents their right to due process; and

xxx xxx xxx

"3. The reinstatement and backwages ordered in the decision of August 22, 1974 is without legal basis."

The Minister of Labor, Hon. Blas F. Ople, found the Motion for Reconsideration "lacking of merit" and denied the same in an Order[22] dated December 23, 1974.

A Second Motion for Reconsideration[23] dated January 16, 1975 filed by respondents was again denied "(F)or lack of merit" in an Order[24] dated March 22, 1975.

Respondents then appealed to the Office of the President, praying for the reversal of the Order of the Minister of Labor dated March 22, 1975 denying their motion for reconsideration, on the following "extraordinary grounds":[25]

"1. The Order is contrary to law and jurisprudence on the matter; and

"2. The Order contains serious errors in the findings of facts and would cause grave or irreparable damage and injury to the appellants."

Anent the first ground, respondents allege that reinstatement with payment of backwages cannot be ordered "in the absence of a finding of unfair labor practice (as in this case)," and that mere loss of confidence will suffice for the dismissal of a supervisory or managerial employee, such as petitioner in this

---

[22] *Id.*, p. 64, Petition, Annex "I".

[23] *Id.*, p. 65, Petition, Annex "J".

[24] *Id.*, p. 72, Petition, Annex "L".

[25] *Id.*, p. 73, Petition, Annex "M".

Supreme Court E-Library

case. As to the second ground, the main thrust of respondents' argument is that it was clear error for the Minister of Labor to hold petitioner Reyes ". . . blameless from the imputation and charges . . ." by the mere fact "that the complaint and previous statement of the winner, Evangeline Tagulao, had already been withdrawn or retracted by her. . ." They allege that in termination cases, direct and positive evidence of an employee's guilt of the charges, as required in criminal cases, need not be shown.

The Office of the President decided the appeal by a 1st Indorsement[26] dated November 12, 1975. The decision was arrived at after additional hearings were conducted by it on July 15, July 25 and October 22, 1975. It reversed the decision of the Minister of Labor dated August 22, 1974 ordering the reinstatement of petitioner with backwages, having found Tagulao's "diamond ring story" implausible, thus:

"At the factfinding proceedings of February 18, 1974, Miss Tagulao for the first time stated the reason for her retraction. According to her, she owed Victor Santos (the promotions supervisor with whom she and the complainant proceeded to the bank for the cashing of the prize money check) the balance of ₱4,000 for a diamond ring which she purchased from the latter on installment basis since *November 15, 1973*, as per a promissory note she executed in his favor. She testified that she filed the complaint against Mario Reyes because she was allegedly instigated by Romeo Henson, production coordinator of the respondent. Received for all and whatever it is worth, the promissory note allegedly executed by Tagulao in Victor Santos' favor sans the formalities ordinarily attendant to such undertakings exists as a document the truth of which can never really be ascertained except on the verbal testimony of the person supposedly its author. The existence of this note, however, was never revealed to the respondent at the time Miss Tagulao complained on January 16, 1974. If as alleged by Miss Tagulao the ₱4,000 deducted from the prize money on the very day the check was cashed represented payment of the promissory note, then Victor Santos, the supposed creditor, could have simply asked for the ₱4,000 balance

[26] *Id.*, p. 78, Petition, Annex "N".

Supreme Court E-Library

from her, the alleged debtor, and just demanded a receipt for the payment of such amount, nothing more. Instead, in her letter-complaint against Mario Reyes, Tagulao charged that she was made by the complainant herein to believe that the ₱4,000 deducted from her prize money was for consolation prizes. This contradictory allegations of Tagulao puts her credibility in serious doubt.

Moreover, a week or so had passed since the filing of her complaint on January 16, 1975, up to her retraction on January 24, 1975, and within this period, Miss Tagulao set up entirely different and opposite explanations. So also, during the entire period of time that passed from the encashment of the check in December 1973 to the filing of the complaint on January 16, 1974, the *₱4,000 was not delivered to the winner, Miss Evangeline Tagulao.* This leads this office to gravely doubt the integrity of her retraction and suspect that her letter of January 24, 1975 was, more than anything else, made to exculpate the complainant-appellee. Under the circumstances, this Office is inclined to hold that complainant's guilt as complained has not been satisfactorily erased."

On the finding of the Minister of Labor that the complaint against petitioner was due to "instigation and prodding of Mr. Romeo Henson, Promotions Coordinator at Marsman and Company, Inc.," the Office of the President made the following observations:

"For his part, Romeo Henson, testifying on oath before this Office on October 22, 1975, disclosed that as promotions manager of the respondent, he had to see to the proper and orderly disposition of awards in promotional contests, including that in which the complainant was allegedly irregularly involved and in which Evangeline Tagulao emerged winner.

Tipped off by one Romeo Real, promotions supervisor of the pharmaceuticals division of the respondent, on alleged anomalies attending the aforesaid contest, Henson accordingly proceeded to investigate the matter and visited Tagulao at the latter's residence. Whereupon he learned from the winner that she received ₱20.000, the complainant having allegedly told her that the ₱4,000 was allocated for consolation prizes. He therefore informed her that she should have received ₱24,000, and that the company shall forthwith remit to her the balance of ₱4,000, upon her proper notice to the respondent.

Supreme Court E-Library

Thereafter Tagulao drafted a handwritten letter to the company which Henson picked up at the winner's office the following day.

Henson, who admitted being a '*compadre*' and a personal friend of the complainant, averred that both he and Tagulao never discussed anything beyond the winner's desire to have the balance of her prize money remitted to her by Marsman & Company. He therefore expressed surprise at Tagulao's subsequent 'retraction.' Further, he vehemently denied having prodded or instigated Tagulao to file the complaint against Mario Reyes, and that his only purpose was to help Miss Tagulao recover the balance of the prize due her x x x

A circumspect consideration of the testimonies adduced in this case leads this Office to believe the version of Henson than Tagulao's. For in the natural course of things no amount of prodding by Henson could have moved Tagulao to make the complaint against anybody if she were not short-changed in the payment of the prize. And if there really was a private transaction between her and Victor Santos and/or Mario Reyes which accounted for the withholding or non-remittance to her of the ₱4,000, it is beyond comprehension why she would still file, as she did file, the complaint in question."

Finally, the Office of the President concluded:

"There is, therefore, basis for the respondent to claim that it had lost confidence on the complainant employee, in the light of the fact that the complainant-appellee deliberately withheld the sum of ₱4,000 from Miss Tagulao, the latter receiving only ₱20,000 from the original prize money of ₱24,000. The turnabout of events as manifested in Tagulao's retraction fails to convince this Office of the innocence of the complainant-appellee from the irregularity. Verily, the complainant has sufficiently given his employer, the respondent, ground for loss of confidence.

xxx xxx xxx

"This Office (so) holds that the foregoing circumstances are sufficient for the respondent employer to terminate (the services of) the complainant employee. *It is not wise to tolerate the latter to remain in his position simply because of the questionable retraction by the winner of the sales promotional contest because the breach of trust has already been committed.* The interest not only of the respondent corporation, but of the public itself it involved, since promotional contests such as the one involved herein are advertised

Supreme Court E-Library

to the public at large. *The respondent was, therefore, justified in requesting the termination of the services of its managerial employee, the complainant herein. The decision of the Secretary of Labor dated August 22, 1974, is therefore hereby reversed, and the request for clearance to terminate complainant's employment is granted.*" (Italics supplied).

Petitioner filed a Motion for Reconsideration[27] dated December 29, 1975 of the decision of the Office of the President. It was however denied for lack of merit by said Office thru Presidential Assistant for Legal Affairs, Hon. Ronaldo B. Zamora, in a letter[28] dated February 8, 1977. Hence this petition.

Petitioner alleges that the Office of the President acted without or in excess of jurisdiction and/or with grave abuse of discretion amounting to lack of jurisdiction in issuing the questioned decision dated November 12, 1976 and the resolution dated February 8, 1977 denying his Motion for Reconsideration, on the grounds that the Office of the President —

1. Does not have any jurisdiction to entertain the appeal; and
2. Has no authority to conduct a new hearing on appeal for the purpose of fishing new or additional evidence.

With respect to the first ground, petitioner argues that the appeal of respondents does not fall under Section 13, Rule XIII of the Rules and Regulations Implementing the Labor Code, *infra*, since the grounds alleged in the said appeal are not those prescribed by the aforesaid provision.

Anent the second ground, petitioner insists that the Office of the President "committed grave abuse of discretion amounting to lack of jurisdiction when, apart from reviewing the case on the basis of the evidence on records, (it) went further by conducting a new hearing on appeal . . ."

Private respondents Marsman and Co. and E.G. Vito on the other hand contend that —

---

[27] *Id.*, p. 89, Petition, Annex "O".

[28] *Id.*, p. 99, Petition, Annex "P".

Supreme Court E-Library

". . . *The allegation of being contrary to law and jurisprudence is* really one such purely on questions of law which is therefore in keeping with par. (b) of Sec. 13, Rule XIII and, the allegation that serious errors in the findings of facts would definitely lead one to conclude as the *prima facie* evidence of abuse of discretion and therefore substantially in keeping with par. (a) of Sec. 13, Rule XIII."

On the allegation that the Office of the President does not have jurisdiction to conduct a new hearing on appeal, they maintain that a new hearing was necessary because of "patent inconsistencies" in the case for the complainant which must be clarified so that the Office of the President may render a "judicious decision."

The Solicitor General[29] postulates — similarly with the private respondents — that "serious errors in the findings of facts" relied upon by respondents may be considered as falling under "abuse of discretion" (par. [a], Sec. 13, Rule XIII), whereas the avernment that "the order is contrary to law and jurisprudence on the matter" may be considered as a ground raising a question of law (par. [b], Sec. 13, Rule XIII).

On the propriety/legality of the new hearings conducted by the Office of the President, the Solicitor General maintains that "(T)here is no law which prohibits the Office of the President *from conducting additional hearings in an appealed case.* Furthermore, it is by itself an administrative body and as such is possessed with factfinding prerogatives, especially so when the purpose thereof is necessary, nay indispensable, to the proper adjudication of the case. In the case at bar, public respondent found the evidence on record wanting in some important factual aspects as to be able to *determine whether or not petitioner's* suspension and/or dismissal was justified. Thus it could not be said that public respondent abused its discretion in conducting additional hearings prompted as it was by its desire to render a correct and just decision."

---

[29] Sol. Gen. Estelito P. Mendoza was assisted by Assistant Solicitor General Reynato S. Puno and Solicitor Ramon A. Barcelona.

Supreme Court E-Library

From the foregoing discussions/arguments the following issued emerge for Our resolution, *i.e.* —

1. Whether or not the Office of the President has jurisdiction to entertain the appeal of private respondents, under Rule XXI Sec. 13 of the Rules and Regulations Implementing the Labor Code of the Philippines;

2. Whether or not the Office of the President acted without or in excess of its jurisdiction and/or with grave abuse of discretion in conducting new hearings on appeal; and

3. Whether or not petitioner's dismissal on the ground of loss of confidence is justified.

Now to resolve the foregoing in *seriatim.*

1. We perceive no difficulty in sustaining respondents' claim on the first issue. They relied in their appeal to the Office of the President on the following:

"(a) The Order is contrary to law and jurisprudence on the matter; and

xxx xxx xxx

"(b) The Order contains serious errors in the findings of facts and would cause grave or irreparable damage and injury to the appellants";

whereas, the grounds provided under Rule XIII, Section 13 of the Rules and Regulations Implementing the Labor Code, are;

"(a) If there is *prima facie* evidence of abuse of discretion;

"(b) If made purely on questions of law; and

"(c) If there is a showing that the national security or social and economic stability is threatened."

Petitioner's allegation that the grounds relied upon are not those provided for is more apparent than real. For the truth is, as the Solicitor General and the private respondents point out, the allegation that "(T)he order is *contrary to law and jurisprudence* on the matter" raises a question of law and hence can be subsumed under paragraph (b), aforequoted. Indeed

Supreme Court E-Library

when one alleges that an order is *contrary to law* and *jurisprudence*, plain common sense dictates that the order is being attacked *on question of law*.

Again, the second ground — that "the order contains serious errors in the findings of facts and would cause grave or irreparable damage and injury to appellants" — is in the final analysis tantamount to alleging "*abuse of discretion*," and may be subsumed under paragraph (a), *supra*. Serious errors in the findings of facts may not *per se* be equated with abuse of discretion. Under Rule XIII, Section 7[30] of the Rules and Regulations providing for appeals from the decision of the Labor Arbiter or compulsory arbitrator to the NLRC, "abuse of discretion" and "serious errors in the findings of facts" are two separate and distinct grounds, *i.e.* (a) and (d) thereof. In this case, however, a careful perusal of private respondents' appeal will show that they are raising principally grave abuse of discretion on the part of the Minister in rendering his decision. As previously stated, the main thrust of respondents' argument is that under the circumstances of the case, the Minister made a palpably erroneous conclusion in holding that petitioner did not commit a breach of respondents' trust and confidence. This is tantamount to ascribing to him an abuse of discretion.

In any event, the first ground, which raised a question of law, already conferred jurisdiction in the Office of the President to entertain the appeal.

---

[30] Rule XIII, Sec. 7. "When to appeal. — The aggrieved party may appeal the decision of the Labor Arbiter or compulsory arbitrator to the National Labor Relations Commission within ten (10) working days from receipt of the decision on any of the following grounds:

(a) If there is *prima facie* evidence of *abuse of discretion* on the part of the Labor Arbiter or compulsory arbitrator;

(b) If the decision, order, or award was secured through fraud or coercion, including graft and corruption;

(c) If made purely a question of law; and

(d) If *serious errors in the findings of facts* are raised which would cause grave or irreparable damage or injury to the appellant" (italics supplied).

Supreme Court E-Library

2. Petitioner's bare allegation that the Office of the President acted without or in excess of its jurisdiction and/or with grave abuse of discretion in conducting a new hearing on appeal is devoid of merit. Firstly, if that were his belief, he should not have taken part in the hearing, and testified therein.[31] He should have taken proper legal steps to raise his objection at the earliest opportunity. With his participation and cooperation in said new hearing, he is now estopped from complaining that the Office of the President conducted new hearings on appeal. Secondly, petitioner can cite no law or jurisprudence to support his argument. For the truth is, as pointed out by the Solicitor General, "(T)here is no law which prohibits the Office of the President from conducting additional hearings in an appealed case"* and that the said Office "is by itself an administrative body and as such is possessed with factfinding prerogative, especially so when the purpose thereof is necessary, nay indispensable, to the proper adjudication of the case." Further, the Solicitor General observed that the new hearing was necessary because "public respondent found the evidence on record wanting in some important factual aspects as to be able to determine whether or not petitioner's suspension and/or dismissal was justified."

---

[31] See Petitioner's Motion for Reconsideration, *Rollo*, pp. 91-92.

* Under Sec. 2, Pres. Dec. No. 1367, effective May 1, 1978 amending Art. 223 of the Labor Code, "(T)he decision of the Secretary of Labor shall be *immediately executory*: Provided, that the President of the Philippines may assume jurisdiction over any cases which he considers national interests cases." (Italics supplied.)

Pres. Dec. No. 1391, dated May 29, 1978 *eliminates* appeals from the National Labor Relations Commission (NLRC) to the Minister of Labor, "but the President x x x may continue to exercise his powers under P.D. No. 442, as amended." Sec. 7 of the Rules Implementing Pres. Dec. No. 1391, effective September 15, 1978 provides that "(T)here shall henceforth be no appeal from such decisions (of the Commission *en banc*) to the Minister of Labor except as provided in P.D. No. 1367 and its implementing rules concerning appeals to the Prime Minister. The decisions of the Commission *en banc* or any of its Divisions shall be final and executory."

This is because the membership of the NLRC has been increased by Pres. Dec. No. 1391, *supra*, from 7 to 10, including the Minister of Labor, who acts as chairman.

Supreme Court E-Library

3. Is petitioner's dismissal on the ground of loss of confidence justified?

Loss of confidence is a valid ground for dismissing an employee, and proof beyond reasonable doubt of the employee's misconduct — apparently demanded by the Minister of Labor — is not required to dismiss him on this charge.[32] It is sufficient if there is "some basis" for such loss of confidence;[33] or if the employer has reasonable grounds to believe, if not to entertain the moral conviction that the employee concerned is responsible for the misconduct and that the nature of his participation therein rendered him absolutely unworthy of the trust and confidence demanded by his position.[34]

In the case at bar, it is an admitted fact that petitioner is a managerial employee, one in whom respondent Company has given its complete trust and confidence.[35] He was, at the time of the anomaly, per his own claim, "concurrent Acting Manager of Leo Pharmaceutical (a division of respondent Company) and Credit and Collection Manager."[36] The Company, therefore, was justified in expecting that his actuations should be above suspicion. Because of petitioner's involvement in the raffle anomaly, *i.e.*, having withheld from the winner Miss Tagulao, ₱4,000 of the ₱24,000 prize money, which withholding he was not able to explain convincingly much less disprove, "it is not," in the words of the decision of the Office of the President, "wise to tolerate the latter (petitioner) to remain in his position . . . because the breach of trust has already been committed."[37]

---

[32] See *National Organization of Laborers and Employees vs. Roldan*, L-6888, August 31, 1954, 95 Phil. 727; *Phil. Refining Co. vs. Garcia*, L-2-871, Sept. 27, 1966, 18 SCRA 107; *Gatmaitan vs. MRR*, L-19892, Sept. 25, 1977, 21 SCRA 191.

[33] *Galsim vs. PNB*, L-23921, August 29, 1969, 29 SCRA 293.

[34] *Nevans vs. CIR*, L-21510, June 29, 1968, 23 SCRA 1321.

[35] See "Second Motion for Reconsideration," *Rollo*, p. 65, and "Opposition to Second Motion for Reconsideration," *Rollo*, p. 69.

[36] See Opposition to Second Motion for Reconsideration, *supra* at p.70.

[37] *Rollo*, p. 87, Petition, Annex "N"; *supra*, p. 18.

Supreme Court E-Library

The petitioner would also pray that the writ of *mandamus* issue against the Office of the President, directing said Office to confine its review of the decision of the Minister of Labor solely on the evidence presented and established during the hearing conducted at the mediation-factfinding stage. Petitioner would, in effect, request this Court to prevent said Office from considering the evidence presented at the hearings conducted by the said Office, in its resolution of the appeal.

This petition also lacks merit. In the first place, the office of the writ of *mandamus* is to direct "any tribunal x x x, board or person" to perform "an act which the law specifically enjoins as a duty resulting from an office, trust, or station x x x."[38] In the instant case, there is no duty that the Office of the President neglected to do which would warrant the issuance of a writ of mandamus. Secondly, as has been observed earlier, the petitioner did not take legal steps to prevent said hearings. On the contrary, he participated in the same. He is therefore now estopped from questioning the said proceedings through a request for the issuance of a writ of mandamus which, obviously, is not the proper remedy.

WHEREFORE, let this Petition be as it is hereby DISMISSED. The decision of the Office of the President dated November 12, 1975 — granting respondent company's application for clearance to terminate petitioner's employment is hereby AFFIRMED. Costs against petitioner. This decision is immediately executory.

SO ORDERED.

Antonio (Actg. Chairman), Aquino, Concepcion Jr., and *Abad Santos, JJ.*, concur.

---

[38] See Sec. 3, Rule 65, Rules of Court.