Supreme Court E-Library

accused-appellants Dominador Cierbo and Florentino Molina, but for lack of the required number of votes, the penalty is modified to *reclusion perpetua*, with costs against said accused-appellants.

SO ORDERED.

Teehankee, C.J., Yap, Fernan, Narvasa, Melencio-Herrera, Alampay, Gutierrez, Jr., and *Paras, JJ.*, concur.

Cruz, J., see concurring opinion.

CRUZ, *J., concurring*:

I concur in view of the overwhelming evidence against accused Cierbo and Molina but not without expressing this word of censure against their *de oficio* counsel, who was less than energetic in their defense. Lawyers, whether remunerated or not, should exert their best efforts for their clients, to the end that their rights are amply protected. The counsel *de oficio* in this case displayed a lackadaisical attitude in the defense of the accused that I for one find distasteful and unbecoming.

SECOND DIVISION

[G.R. No. 64048. August 29, 1986]

PETROPHIL CORPORATION, *petitioner, vs.* **NATIONAL LABOR RELATIONS COMMISSION, ANSELMO B. ENCARNACION AND GERSHER ENGINEERING WORKS,** *respondents.*

SYLLABUS

1. LABOR LAW; CONTRACT OF SERVICE WITH INDEPENDENT CONTRACTOR; DETERMINATION OF

Supreme Court E-Library

EMPLOYER-EMPLOYEE RELATIONSHIP.— We agree with the findings of the Labor Arbiter that respondent Encarnacion was the employee of respondent Gersher and not petitioner Petrophil Corporation. This fact was admitted by no less than Gersher in its position paper which it filed with the Labor Relations Division of the then Department of Labor. Thus, in the said position paper, respondent Gersher states — "2. That the *complainant started work with respondent Gersher Engineering Work* sometime on or about March 15, 1976 but that after March 31, 1977, the complainant left his work with the herein respondent and never came back; he has not notified the respondent herein that he was no longer reporting for work; that the said respondent herein only hired the said complainant on March 15, 1976 until the date mentioned above." "3. That sometime on or about March 1, 1976 respondent Gersher Engineering Work entered into a contract of services with respondent Petrophil Corporation, as an independent contractor x x x." "4. That after said contract was consummated, the *complainant Anselmo Encarnacion commenced work on or about* March 15, 1976 with said respondent with monthly salary of P340.00. x x x" The payrolls of respondent Gersher also show that respondent Encarnacion was its employee. For the period from March 15, 1976 and continuously up to March 31, 1977, respondent Encarnacion was receiving his salary from respondent Gersher. There was never an instance during this period that Encarnacion received his salary from Petrophil Corporation.

2. **ID.; CONDITIONS OF WORK; DEMOTION OR TRANSFER OF WORK; SUBJECT TO MANAGEMENT'S PREROGATIVE.**— "Anent the issue of illegal dismissal, respondent Gersher Engineering Works allege (sic) that Encarnacion was not separated from the service but was only demoted from the position of helper and transferred to the contract of respondent Gersher Engineering Works with Caltex Philippines Corporation without reduction in salary due to his failure to observe proper diligence in his work, habitual tardiness, habitual absences and indolence in his assigned work. "Time and again, this Office has sustained the view that it is management prerogative to transfer, demote, discipline and even to dismiss an employee to protect its business, provided it is not tainted with unfair labor practice. "The record, however, is bereft of any evidence to show that the demotion and transfer of

Supreme Court E-Library

Encarnacion was due to unfair labor practice acts defined under Article 249 x x x (third official edition of the Labor Code of the Philippines, as amended), hence the act of Gersher Engineering Works in transferring and demoting complainant Encarnacion is anchored on just and valid grounds."

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Linda P. Ilagan for private respondents.

D E C I S I O N

PARAS, *J.*:

The instant petition which seeks the review and reversal of the Decision dated January 25, 1983 of respondent National Labor Relations Commission in NLRC Case No. 246-LR-XI-77, raises the following questions —

1. Which was the employer of respondent Anselmo B. Encarnacion — petitioner Petrophil Corporation or respondent Gersher Engineering Works?

2. Was Anselmo B. Encarnacion illegally dismissed? and

3. What benefits, if any was he entitled to and from whom?

Private respondent, Anselmo B. Encarnacion, had been working as a casual employee of various job contractors in Petrophil's premises since 1963 when the firm was still under the ownership and management of Esso Standard Philippines. On December 21, 1973, Esso Standard Philippines was sold to Petrophil Corporation. At that time, Anselmo B. Encarnacion was working at the bulk plant as an employee of one Juanito Campos who had a job contract with Esso Standard Philippines. The said job contract was continued by Petrophil Corporation so respondent Encarnacion remained working at the bulk plant. In March 1976, respondent Gersher Engineering Works entered into a service contract with Petrophil and thereafter placed respondent Encarnacion in its payroll.

Supreme Court E-Library

Sometime in March 28, 1977, respondent Gersher received a letter from Petrophil Corporation complaining about the unsatisfactory performance of respondent Encarnacion. As a result, respondent Gersher decided to reassign Encarnacion to Caltex Phil. Inc. with whom said respondent Gersher had also a contract. Respondent Encarnacion refused to be reassigned to Caltex unless he was made to occupy the same position of warehouseman as in Petrophil Corporation and since the position available at Caltex was that of equipment maintainer, respondent Encarnacion refused to be transferred. Instead he filed a complaint for illegal dismissal against respondent Gersher and in the alternative, against petitioner Petrophil Corporation, before the Labor Relations Division of the then Department of Labor.

In a decision dated September 26, 1977, Labor Arbiter Modesto R. Rosales rendered judgment holding that respondent Encarnacion was the employee of respondent Gersher Engineering Works and not of petitioner Petrophil Corporation; that respondent Encarnacion was not illegally dismissed; but that he is entitled to receive from respondent Gersher the 13th month pay of P340.00 covering the year from March 15, 1976 to March 26, 1977 and the emergency monthly living allowance of P100.00 for the same period. The claim for holiday and vacation leave pay was dismissed for insufficiency of evidence. The judgment further ordered respondent Gersher to accept respondent Encarnacion back to work to be assigned as helper in any of its contractual jobs (except Petrophil Corporation) with the same salary and without loss of seniority and other benefits appurtenant to his position. Respondent Encarnacion was also ordered to report and present himself for work with respondent Gersher within five (5) days from notice, otherwise he would be considered to have abandoned his work. The case against Petrophil Corporation was dismissed.

Respondent Encarnacion appealed the decision to respondent National Labor Relations Commission. Respondent Gersher did not appeal from the said decision, neither did it file an answer to Encarnacion's appeal.

On January 25, 1985, the National Labor Relations Commission rendered judgment modifying the decision of the

Supreme Court E-Library

Labor Arbiter and holding that Encarnacion was the employee of Petrophil Corporation and not of respondent Gersher and that he had been illegally dismissed. The dispositive portion of the decision of the respondent Commission reads —

"WHEREFORE, respondent Petrophil is hereby ordered to:

1. Immediately reinstate the complainant in his former position without loss of seniority rights and privileges, with fixed backwages equivalent to three years, without qualification or deduction; and

2. Pay the complainant emergency cost-of-living allowances and 13th month pay both covering the period corresponding to backwages."

Hence, the instant petition which We find to be meritorious.

On the first issue raised, We agree with the findings of the Labor Arbiter that respondent Encarnacion was the employee of respondent Gersher and not petitioner Petrophil Corporation. This fact was admitted by no less than Gersher in its position paper which it filed with the Labor Relations Division of the then Department of Labor. Thus, in the said position paper, respondent Gersher states —

"2. That the *complainant started work with respondent Gersher Engineering Work* sometime on or about March 15, 1976 but that after March 31, 1977, the complainant left his work with the herein respondent and never came back; he has not notified the respondent herein that he was no longer reporting for work; that the said respondent herein only hired the said complainant on March 15, 1976 until the date mentioned above."

"3. That sometime on or about March 1, 1976 respondent Gersher Engineering Work entered into a contract of services with respondent Petrophil Corporation, as an independent contractor. x x x"

"4. That after said contract was consummated, the *complainant Anselmo Encarnacion commenced work on or about* March 15, 1976 with said respondent with monthly salary of P340.00. x x x"

The payrolls of respondent Gersher also show that respondent Encarnacion was its employee. For the period from March 15, 1976 and continuously up to March 31, 1977, respondent Encarnacion was receiving his salary from respondent Gersher.

Supreme Court E-Library

There was never an instance during this period that Encarnacion received his salary from Petrophil Corporation.

Anent the issues of his alleged illegal dismissal and his entitlement to benefits from his employer, We likewise agree with the decision of the Labor Arbiter that respondent Encarnacion was not dismissed but was only demoted and transferred to Caltex Phil. Inc. because of his failure to observe proper diligence in his work, and also because of his indolence, habitual tardiness and absences. But following his demotion and transfer, Encarnacion refused to report for work anymore. As aptly ruled by the Labor Arbiter in this regard —

"Anent the issue of illegal dismissal, respondent Gersher Engineering Works allege (sic) that Encarnacion was not separated from the service but was only demoted from the position of helper and transferred to the contract of respondent Gersher Engineering Works with Caltex Philippines Corporation without reduction in salary due to his failure to observe proper diligence in his work, habitual tardiness, habitual absences and indolence in his assigned work.

"Time and again, this Office has sustained the view that it is management prerogative to transfer, demote, discipline and even to dismiss an employee to protect its business, provided it is not tainted with unfair labor practice.

"The record, however, is bereft of any evidence to show that the demotion and transfer of Encarnacion was due to unfair labor practice acts defined under Article 249 x x x (third official edition of the Labor Code of the Philippines, as amended), hence the act of Gersher Engineering Works in transferring and demoting complainant Encarnacion is anchored on just and valid grounds." (pp. 19-20, *Rollo*)

Considering the foregoing, reinstatement of respondent Encarnacion and payment of his money claims should be made by respondent Gersher Engineering Works, his employer which has evidently accepted the decision of the Labor Arbiter by not appealing therefrom. Petitioner Petrophil Corporation is absolved from any and all liability.

WHEREFORE, the appealed decision dated January 25, 1983 of the National Labor Relations Commission is hereby REVERSED and SET ASIDE and in lieu thereof, the decision

Supreme Court E-Library

dated September 26, 1977 of Labor Arbiter Modesto Rosales is ordered reinstated.

No pronouncement as to costs.

SO ORDERED.

Feria (Chairman), Fernan, Alampay, and *Gutierrez, Jr., JJ.*, concur.

SECOND DIVISION

[G.R. No. 66597. August 29, 1986]

LEONARDO TIOSECO, *petitioner, vs.* **HONORABLE COURT OF APPEALS JOSE P. VILLANUEVA and TIMOTEA P. VILLANUEVA,** *respondents.*

SYLLABUS

1. **CIVIL LAW; MORTGAGE; RIGHT OF MORTGAGOR TO REDEEM PROPERTY MORTGAGED; RULE.**— There is no question that the respondents have the right to redeem the subject property in view of the provision of Section 25, P.D. No. 694 (Revised Charter of PNB): "SEC. 25. *Right of redemption of property — Right of possession during redemption period.* — Within one year from the registration of the foreclosure sale of real estate, the mortgagor shall have the right to redeem the property by paying all claims of the Bank against him on the date of the sale including all the costs and other expenses incurred by reason of the foreclosure sale and custody of the property, as well as charges and accrued interests. x x x"

2. **ID.; ID.; ID.; MAY BE EXERCISED THROUGH FILING OF JUDICIAL ACTION; CASE AT BAR.**— When the respondents chose to enforce their right of redemption thru a court action on March 7, 1978 they were well within their right