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in fact, a result of a "long string of neglect and violations of company R & R (rules and regulations)." But this is beside the point. What is significant is that the employer bears the burden of proving that the dismissal of an employee is for a just cause, failing which the dismissal cannot be deemed justified thus entitling the latter to reinstatement.[9] The decision to dismiss must be in accord with the law and the evidence and not merely the whim or caprice of the employer.[10]

IN VIEW OF THE FOREGOING, the petition is DISMISSED for failing to show that respondent National Labor Relations Commission committed grave abuse of discretion in arriving at its assailed decision dated March 10, 1994, and order dated April 28, 1994.

SO ORDERED.

Regalado (Chairman), Puno, Mendoza, and *Torres, Jr., JJ.,* concur.

FIRST DIVISION

[G.R. No. 117097. March 21, 1997]

SAMAHAN NG OPTOMETRISTS SA PILIPINAS, ILOCOS SUR-ABRA CHAPTER, EDUARDO MA. GUIRNALDA, DANTE G. PACQUING and OCTAVIO A. DE PERALTA, *petitioners, vs.* **ACEBEDO INTERNATIONAL CORPORATION and the HON. COURT OF APPEALS,** *respondents.*

SYLLABUS

COMMERCIAL LAW; CORPORATION; NEITHER R.A. NO. 1998 (OLD OPTOMETRY LAW) NOR R.A. NO. 8050

[9] *Molave Tours Corporation vs. NLRC*, 250 SCRA 325 [1995].

[10] *Pampanga II Electric Cooperative, Inc. vs. NLRC*, 250 SCRA 31 [1995].

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(REVISED OPTOMERY LAW) PROHIBITS A CORPORATION FROM HIRING OPTOMETRISTS.— The fact that private respondent hires optometrists who practice their profession in the course of their employment in private respondent's optical shops, does not translate into a practice of optometry by private respondent itself. Private respondent is a corporation created and organized for the purpose of conducting the business of selling optical lenses or eyeglasses, among others. The clientele of private respondent, understandably, would largely be composed of persons with defective vision and thus need the proper lenses to correct the same and enable them to gain normal vision. The determination of the proper lenses to sell to private respondent's clientele entails the employment of optometrists who have been precisely trained for that purpose. Private respondent's business is not the determination itself of the proper lenses needed by person with defective vision. Private respondent's business, rather, is the buying and importing of eyeglasses and lenses and other similar or allied instruments from suppliers thereof and selling the same to consumers. For petitioners' argument to hold water, there need be a clear showing that R.A. No. 1998 prohibits a corporation from hiring optomerists, for only then would it be undeniably evident that the intention of the legislature is to preclude the formation of the so-called optometry corporations because such is tantamount to the practice of the profession of optometry which is legally exercisable only by natural persons and professional partnerships. We have carefully reviewed R.A. No. 1998 however, and we find nothing therein that supports petitioner's insistent claims. It is significant to note that even under R.A. No. 8050, known as the Revised Optometry Law, we find no prohibition against the hiring by corporations of optometrists. All told, there is no law that prohibits the hiring by corporations of optometrists or considers the hiring by corporations of optometrists as a practice by the corporation itself of the profession of optometry.

APPEAREANCES OF COUNSEL

Romero Lagman Valdecantos & Arreza Law Offices for petitioners.

Adriano Francisco B. Lecaros for private respondent.

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DECISION

HERMOSISIMA, JR., *J.*:

Before us is a petition seeking the review and ultimately the reversal of the decision[1] of the Court of Appeals[2] which rejected what petitioners vehemently claim to be a prohibition, under Republic Act (R.A.) No. 1998, popularly known as the old Optometry Law, against the employment by corporations, usually optical shops and eyeware stores, of optometrists, such practice, according to petitioners, being an indirect violation of the rule against corporations exercising professions reserved only to natural persons. Petitioners understandably did not welcome the herein assailed decision because they have, earlier, obtained a decision[3] favorable to them from the Regional Trial Court of Candon, Ilocos Sur, Branch 23, presided over by Judge Gabino Balbin, Jr. The said judge had, in the main, ruled that the operations of private respondent Acebedo International Corporation involves the practice of optometry which is precluded by R.A. No. 1998.

The undisputed facts of the case, as found by the respondent Court of Appeals and quoted by petitioners, are as follows:

"On February 22, 1991, x x x [private respondent] filed an application with the Office of the Mayor of Candon, Ilocos Sur, for the issuance of a permit for the opening and operation of a branch of the Acebedo Optical in that municipality.

The application was opposed by the x x x [petitioner] Samahan ng Optometrists sa Pilipinas (SOP) which contended that x x x [private respondent] is a juridical entity not qualified to practice optometry.

On March 6, 1991, x x x [private respondent] filed its answer, arguing it is not the corporation, but the optometrists employed by it, who would be practicing optometry.

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[1] In CA-G.R. SP No. 31656, promulgated on April 18, 1994 and penned by Associate Justice Vicente V. Mendoza, concurred in by Associate Justices Justo P. Torres, Jr. and Bernardo P. Pardo.

[2] First Division

[3] Dated December 16, 1992; *Rollo*, pp. 33-37.

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On April 17, 1991, the Mayor of Candon created a committee, composed of public respondents Eduardo Ma. Guirnalda, Dante G. Pacquing and Octavio de Peralta, to pass on [private respondent's] application.

On September 26, 1991 the committee rendered a decision denying [private respondent's] application for a mayor's permit to operate a branch in Candon and ordering x x x [private respondent] to close its establishment within fifteen (15) days from receipt of the decision. Acebedo moved for a reconsideration but its motion was denied on November 14, 1991. x x x [Private respondent] was ordered to close its establishment within ten (10) days from receipt of the order.

On December 9, 1991, x x x [private respondent] filed with the Court of Appeals a petition for *certiorari* (CA G.R. SP No. 26782), questioning the decision of respondent committee. Its petition, however, was referred to the court *a quo*, which on December 16, 1992, dismissed Acebedo's petition. Hence, x x x [the] appeal [to the respondent Court of Appeals]."[4]

The singular issue, admittedly extensively debated and intensely contested not only by the members of the optometry profession and the players in the business of selling optical ware, supplies, substances and instruments but also by the members of the Senate during the deliberations respecting R. A. 8050, otherwise known as Revised New Optometry Law, is this: May corporations, engaged in the business of selling optical wares, supplies, substances and instruments which, as an incident to and in the ordinary course of the business hire optometrists, be said to be practicing the profession of optometry which, by legal mandate, may only be engaged in by natural persons possessed of specific legal qualifications?

The trial court resolved this issue in the affirmative. In so finding, it explained, thus:

"The denial of the application of Acebedo rested on the grounds that it is operating an optical shop and it is practicing optometry where its charter does not grant to it authority to practice the former. Acebedo submits that the findings of the Commission have no basis both in law and in fact. It argues that the hiring of optometrists by the petitioner is merely incidental to its main business which is the

[4] Decision of the Court of Appeals dated April 18, 1994, pp. 1-2; *Rollo*, pp. 23-24.

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sale of optical products. Acebedo contends further that its employees have a personality separate and distinct from that of Acebedo which is a juridical entity, and it cannot therefore be considered as engaged in optometry.

The Court disagrees.

Quoted for the enlightenment of both parties is a portion of the contested Decision, to wit:

'The visit revealed the following:

1. The establishment was manned by three personnel: Dr. Salvador Pagarigan, optometrist; Miss Lilibeth Begonia, receptionist; and a laboratory technician, who refused to give his name;
2. There were several shelves containing eyeglasses;
3. There were benches where, according to Miss Begonia, would-be clients can sit while waiting for their turn to be examined;
4. An examination room complete with an optical chair and optical charts; and,
5. An optical laboratory.'

The Court is very much aware of the existence of several shops owned by Acebedo. They are operating up to the present. But the Court has to rely in this case on the findings of the Commission created by the Mayor of Candon in the absence of proof that the same was arrived at hastily and without regard for the rights of the parties. In fact, the contested Decision was issued only after an ocular inspection was conducted and the parties have submitted their respective memorandum.

The findings of the Commission reveal that the operation of Acebedo's local shop involves the practice of optometry. If indeed Acebedo is engaged in the sale of optical products, the absence of sales clerks more than demonstrate its real business. In the contested Decision, the floor plan of the shop was even commented on as that of an optical shop. As noted by the members of the Commission, there was also a banner in front of the shop prominently display advertising free consultations (libreng consulta sa mata). These facts, taken together, denote that Acebedo was operating in Candon an optical shop contrary to law.

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While it is also true that a corporation has a personality separate and distinct from that of its personnel, the veil of corporate fiction cannot be used for the purpose of some illegal activity. The veil of corporate fiction can be pierced, as in this case, and the acts of the personnel of the corporation will be considered as those of the corporation. Acebedo then is engaged in the practice of optometry."[5]

Disagreeing with the foregoing decision of the trial court, private respondent appealed therefrom and asked the respondent Court of Appeals to reverse the same on the ground that the court *a quo* erred in concluding that private respondent was engaged in the practice of optometry by operating an optical shop.

Respondent appellate court found that private respondent's contentions merited the reversal of the court *a quo*'s decision. The respondent court, speaking through Court of Appeals Presiding Justice, now Supreme Court Associate Justice Vicente V. Mendoza, ratiocinated in this wise:

"First. x x x [Private respondent] maintains that it is not practicing optometry nor is it operating an optical clinic. The contention has merit. The amended Articles of Incorporation of x x x [private respondent] in part states:

PRIMARY PURPOSES

1. To own, maintain, conduct, operate and carry on the business of dispensing opticians and optical establishments, and in the course of the business, to buy, sell, ship, store and otherwise use, deal in, acquire and dispose of every kind of optical, ophthalmic and scientific instrument, glass, lens, optical solutions or equipment necessary or convenient to the operation and conduct of the general business of dispensing opticians.

SECONDARY PURPOSES

x x x x x x x x x

3. To do all and everything necessary, suitable or proper for the accomplishment of any of the purposes, the attainment of any of the objects, or in the exercise of any of the powers herein set forth, either alone or in conjunction with other

[5] Decision of the Regional Trial, Court dated December 16, 1992, pp. 2-4; *Rollo*, pp. 34-36.

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> corporations, firms or individuals and either as principal or agents and to do every other act or acts, thing or things, incidental or appurtenant to or growing out of or connected with the abovementioned objects, purposes or powers.

Clearly, the corporation is not an optical clinic. Nor is it —- but rather the optometrists employed by it who are -— engaged in the practice of optometry. Petitioner-appellant simply dispenses optical and ophthalmic instruments and supplies.

Indeed, the Optometry Law (Rep. Act No. 1998), which x x x [petitioners] cite, does not prohibit corporations, like x x x [private respondent] from employing licensed optometrists.

What it prohibits is the practice of the profession without license by those engaged in it. This is clear from Sec. 2 of the law which provides:

> No person shall practice or attempt to practice optometry as defined in this Act, without holding a valid certificate of registration as optometrist issued to him by the Board of Examiners in Optometry herein created and in accordance with the provisions hereof: Provided, that valid certificates of registration as optometrists shall be issued to optometrists of good moral character now registered in accordance with the provisions of chapter thirty-three of the Revised Administrative Code, who shall, by application within a period of one year from the effectivity of this Act, be exempt from the provisions of sections eleven, twelve and twenty-three of this Act. . .

The prohibition is thus addressed to natural persons who are required to 'have a valid certificate of registration as optometrist' and who must be of 'good moral character'. The prohibition can have no application to x x x [private respondent] which is not itself engaged in the practice of optometry. As the Professional Regulation Commission said, 'Acebedo Optical, Acebedo Optical Clinic, Acebedo Optical Co., Inc. and Acebedo International, Inc. are not natural persons who can take the Optometrist licensure examinations. They are not, and cannot be registered as Optometrist under RA 1998 [The Optometry Law].' "[6]

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[6] Decision of the Court of Appeals dated April 18, 1994, pp. 3-5; *Rollo*, pp. 25-26b.

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Petitioners filed a Motion for Reconsideration of the aforegoing decision. It was, however, denied by respondent appellate court. Hence, this petition anchored on the following sole ground:

"ISSUE

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN DECLARING THAT PRIVATE RESPONDENT ACEBEDO INTERNATIONAL CORPORATION DOES NOT VIOLATE THE OPTOMETRY LAW (R. A. NO. 1998) WHEN IT EMPLOYS OPTOMETRISTS TO ENGAGE IN THE PRACTICE OF OPTOMETRY UNDER ITS NAME AND FOR ITS BEHALF

The herein petitioner most respectfully submits that the private respondent Acebedo International Corporation flagrantly violates R. A. No. 1998 and the Corporation Code of the Philippines when it employs optometrists to engage in the practice of optometry under its name and for its behalf."[7]

We hold that the petition lacks merit.

Private respondent does not deny that it employs optometrists whose role in the operations of its optical shops is to administer the proper eye examination in order to determine the correct type and grade of lenses to prescribe to persons purchasing the same from private respondent's optical shops. Petitioners vehemently insist that in so employing said optometrists, private respondent is in effect itself practicing optometry. Such practice, petitioners conclude, is in violation of R.A. No. 1998, which, it must be noted at this juncture, has been repealed and superseded by R.A. 8050.

Petitioners' contentions are, however, untenable. The fact that private respondent hires optometrists who practice their profession in the course of their employment in private respondent's optical shops, does not translate into a practice of optometry by private respondent itself. Private respondent is a corporation created and organized for the purpose of

[7] Memorandum of Petitioner dated September 6, 1995, p. 4; *Rollo*, p. 86.

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conducting the business of selling optical lenses or eyeglasses, among others. The clientele of private respondent understandably, would largely be composed of persons with defective vision and thus need the proper lenses to correct the same and enable them to gain normal vision. The determination of the proper lenses to sell to private respondent's clientele entails the employment of optometrists who have been precisely trained for that purpose. Private respondent's business is not the determination itself of the proper lenses needed by persons with defective vision. Private respondent's business, rather, is the buying and importing of eyeglasses and lenses and other similar or allied instruments from suppliers thereof and selling the same to consumers.

For petitioners' argument to hold water, there need be clear showing that R.A. No. 1998 prohibits a corporation from hiring optometrists, for only then would it be undeniably evident that the intention of the legislature is to preclude the formation of the so-called optometry corporations because such is tantamount to the practice of the profession of optometry which is legally exercisable only by natural persons and professional partnerships. We have carefully reviewed R.A. No. 1998 however, and we find nothing therein that supports petitioner's insistent claims.[8]

It is significant to note that even under R.A. No. 8050, known as the Revised Optometry Law,[9] we find no prohibition against the hiring by corporations of optometrists. The pertinent provisions of R.A. No. 8050, regarding the practice of optometry, are reproduced below for ready reference:

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[8] Section 2 of R.A. No. 1998 provides that "no person shall practice or attempt to practice optometry x x x without holding a valid certificate of registration as optometrists issued to him by the Board of Examiners x x x." This prohibition against the practice of optometry, however cannot be read as to enlarge its scope and extrapolate therefrom a prohibition against hiring of optometrists by corporations such as private respondent in the instant case.

[9] R.A. No 8050 is a consolidation of House Bill No. 14100 and Senate Bill No. 1998 which were reconciled by the Bicameral Conference Committee. The Reconciled Bill was then separately ratified by both the Senate and the House of Representatives and applied into law by the President on June 7, 1995.

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"THE PRACTICE OF OPTOMETRY

SEC. 4. *Acts Constituting the Practice of Optometry.* Any of the following acts constitute the practice of optometry:

a) The examination of the human eye through the employment of subjective and objective procedures, including the use of specific topical diagnostic pharmaceutical agents or drugs and instruments, tools, equipment, implements, visual aids, apparatuses, machines, ocular exercises and related devices, for the purpose of determining the condition and acuity of human vision to correct and improve the same in accordance with subsections (b), (c) and (d) hereof; vision to correct and improve the same in accordance with subsections (b), (c) and (d) hereof;

b) The prescription and dispensing of ophthalmic lenses, prisms, contact lenses and their accessories and solutions, frames and their accessories, and supplies for the purpose of correcting and treating defects, deficiencies and abnormalities of vision.

c) The conduct of ocular exercises and vision training, the provision of orthoptics and other devices and procedures to aid and correct abnormalities of human vision, and the installation of prosthetic devices;

d) The counseling of patients with regard to vision and eye care and hygiene;

e) The establishment of offices, clinics, and similar places where optometric services are offered; and

f) The collection of professional fees for the performance of any of the acts mentioned in paragraphs (a), (b), (c) and (d) of this section.

SEC. 5. Prohibition *Against the Unauthorized Practice of Optometry.* — No person shall practice optometry as defined in Section 3 of this Act nor perform any of the acts, constituting the practice of optometry as setforth in Section 4 hereof, without having been first admitted to the practice of this profession under the provisions of this Act and its implementing rules and regulations: *Provided*, That this prohibition shall not apply to regularly licensed and duly registered physicians who have received post-graduate training in the diagnosis and treatment of eye diseases: *Provided, however*, That the examination of the human eye by duly registered physicians in connection with the physical examination of patients

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shall not be considered as practice of optometry: *Provided, further*, That public health workers trained and involved in the government's blindness prevention program may conduct only visual acuity test and visual screening.

SEC. 6 *Disclosure of Authority to Practice.* — An optometrist shall be required to indicate his professional license number and the date of its expiration in the documents he issues or signs in connection with the practice of his profession. He shall also display his certificate of registration in a conspicuous area of his clinic or office."

All told, there is no law that prohibits the hiring by corporations of optometrists or considers the hiring by corporations of optometrists as a practice by the corporation itself of the profession of optometry.

WHEREFORE, the instant petition is hereby DISMISSED.

Costs against the petitioners.

SO ORDERED.

Padilla (Chairman), Bellosillo, Vitug, and *Kapunan, JJ.*, concur.

SECOND DIVISION

[G.R. No. 118436. March 21, 1997]

HEIRS OF MANUEL A. ROXAS and TRINIDAD DE LEON VDA. DE ROXAS (in substitution of original petitioner), *petitioners, vs.* **COURT OF APPEALS and MAGUESUN MANAGEMENT & DEVELOPMENT CORPORATION,** *respondents.*

SYLLABUS

1. **CIVIL LAW; LAND REGISTRATION; PRESIDENTIAL DECREE NO. 1529; REOPENING AND REVIEW OF THE**