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FIRST DIVISION

[G.R. No. L-49875. November 21, 1979]

SANDOVAL SHIPYARDS, INC., *petitioner*, *vs.* **HON. JACOBO C. CLAVE, As Presidential Executive Assistant, HON. MINISTER OF LABOR, AND SERGIO SINDAY**, *respondents*.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY; FACTUAL FINDINGS IN APPEALS BY *CERTIORARI*, GENERALLY BINDING ON THE SUPREME COURT.**— While as a rule the findings of fact in appeals by *certiorari* are binding on the Supreme Court, a finding of fact that is not supported by competent evidence should be disregarded. In the instant case, the finding that the private respondent, Sergio Sinday, was granted a vacation leave of one month from May 4, 1976 is not only not supported by substantial evidence except the lone testimony of private respondent Sinday but is contradicted by indubitable evidence consisting of the application of said private respondent Sergio Sinday for an indefinite vacation leave of absence from May 6, 1976. The biased testimony of the private respondent Sinday cannot prevail over his application for indefinite leave of absence which appears on its face to have been disapproved.

2. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; REINSTATEMENT; NOT JUSTIFIED IN CASE AT BAR.**— Concern for labor should not extend to allowing employees to abandon their work at will and then later demand that they be reinstated. There is a showing that Sergio Sinday left his work without leave for the purpose of seeking a better employment. It was only when he failed to find another employment that he sought reinstatement with the petitioner. Under the facts of record, the petitioner was fully justified in refusing to reinstate Sergio Sinday after he had abandoned his work to look for a better job.

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APPEARANCES OF COUNSEL

Alicia P. Mariño for petitioner.

Solicitor General Estelito P. Mendoza, Assistant Solicitor General Reynato S. Puno and Solicitor Jesus F. Castelo for respondents.

D E C I S I O N

FERNANDEZ, *J.*:

This is an original special civil action for *certiorari* to set aside the order in TFU Case No. 786 entitled "*Sergio Sinday vs. Sandoval Shipyards, Inc.*" of the Regional Director of the Department of Labor at Cebu City, dated March 16, 1977, directing the reinstatement of private respondent, Sergio Sinday, which order was affirmed by the Acting Secretary of Labor and by Presidential Executive Assistant Jacobo C. Clave in a decision dated November 27, 1978.[1]

The petition states that the Sandoval Shipyards, Inc. is engaged in the ship-building business in Tayud, Consolacion, Cebu and as such employs around 160 workers; that the private respondent, Sergio Sinday, was employed as carpenter by the petitioner in December 1974; that on May 4, 1976, the respondent Sinday applied to go on leave indefinitely from May 6, 1976; that because no justifiable reason was stated in the application and his services were vitally needed, the respondent Sinday was told by the petitioner's manager that the application for leave would be approved for only fifteen days; that the respondent Sinday arrogantly refused so that the petitioner disapproved the application for leave; that the respondent Sinday continued to work thereafter apparently abandoning his idea to obtain an indefinite leave of absence; that, however, on May 26, 1976, the respondent Sinday failed to show up and since then had not reported for work; that in view thereof, the petitioner filed on August 20, 1976 with the Department of Labor a Clearance

[1] *Rollo*, pp. 17-19.

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Application/Report of Dismissal as to respondent Sergio Sinday together with 38 other employees and workers; that the private respondent, Sergio Sinday, instituted a complaint for reinstatement against the petitioner before Region VII of the Department of Labor at Cebu City; that the action was docketed as TFU Case No. 786; that the private respondent, Sergio Sinday, alleged that he was wrongfully dismissed and asked for reinstatement and back wages; that after an *ex-parte* hearing, the Regional Director rendered a decision dated December 20, 1976 ordering the reinstatement of private respondent, Sergio Sinday, to his work as carpenter with full back wages from June 7, 1976 until actually reinstated without loss of seniority rights; that on motion of the petitioner, it was allowed to adduce its evidence which consisted partly of the affidavit of the shipyard manager, David Villono; that in an order dated March 16, 1977, the Regional Director directed anew the petitioner to reinstate the private respondent, Sergio Sinday, with full back wages; that the petitioner filed a motion for reconsideration and/or appeal; that the Regional Director forwarded the records of the case to the Department of Labor; that on November 24, 1977, the then Acting Secretary of Labor, Hon. Amado C. Inciong, in a one sentence order denied the appeal for lack of merit; that the order of Acting Secretary Inciong violated the constitutional right of the petitioner to due process of law in as much as said order did not contain the findings of fact and conclusion of law; that the petitioner appealed to the Office of the President; that Presidential Executive Assistant Jacobo C. Clave issued an order on April 11, 1978 directing the Secretary of Labor to hold in abeyance the execution of the decision appealed from; and that on November 27, 1978, the public respondent Jacobo C. Clave rendered a decision dismissing the appeal for lack of merit and lifting the order of April 11, 1978 staying the execution of the appealed order.[2]

In his comment,[3] the private respondent, Sergio Sinday, avers that the petitioner was never denied its constitutional right to

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[2] *Rollo*, pp. 2-4.

[3] *Rollo*, pp. 40-42.

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due process of law because during the hearings held in the Office of the Regional Director on December 15, 1976, February 11, 1977, February 17, 1977 and February 25, 1977, the petitioner, represented by its lawyers, submitted position papers, affidavits of witnesses and documentary evidence; that this is admitted by the petitioner itself that it was allowed to adduce its evidence; that the public respondents never acted with grave abuse of discretion because they decided the case pursuant to the evidence and the law applicable; that according to P.D. 850, the Regional Director has original jurisdiction in termination cases with or without CBA and any party not satisfied with the decision of the Regional Director may appeal to the Secretary of Labor by filing an appeal with the Regional Director within ten (10) days from receipt of a copy of the adverse decision; that the public respondent, Hon. Jacobo C. Clave, should not be a respondent in this case because his decision rendered in this case was made for and by authority of the President and the proper party to be sued by the petitioner should be the President of the Philippines; and that *certiorari* will not lie in this case because the public respondents never acted with grave abuse of discretion and the petitioner was afforded due process of law.

The Solicitor General, as counsel for the public respondents, alleges in his comment that the private respondent, Sergio Sinday, per findings of the public respondent Presidential Executive Assistant in his decision dated November 27, 1976, was employed by the petitioner, a firm engaged in the shipbuilding business since 1968 as a carpenter with the daily wage of ₱8.75; that the respondent Sinday continuously worked with the firm until May 4, 1976 when he was granted a one month vacation leave; that on June 7, 1976, however, when private respondent Sinday reported back for work, he was refused admittance by the petitioner and was told to re-apply for the position previously held by him; that owing to the aforesaid refusal by the petitioner, the private respondent filed a complaint, docketed as TFU Case No. 786 with Regional Office VII of the Department, now Ministry, of Labor, at Cebu City for reinstatement with back

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wages claiming that he was wrongfully and illegally dismissed by the petitioner; that on December 20, 1976, Regional Director Francisco P. Arnado of Labor Regional Office No. VII held that private respondent's services were terminated without the required prior clearance and decreed his reinstatement to his former position with full back wages from June 7, 1976 until actually reinstated, without loss of seniority rights; that on motion of the petitioner for the reason that it was allegedly not properly notified of the hearing which resulted in the aforesaid order of December 20, 1976, the petitioner was allowed by Regional Director Arnado to adduce its evidence which consisted, among others, of the affidavit of the shipyard manager, David Villono, a self-serving document; that in an order dated March 16, 1977, the aforesaid named Regional Director directed anew the petitioner to reinstate the private respondent to his work as carpenter with full back wages from June 1977 until actually reinstated and without loss of seniority rights holding that the evidence submitted by the petitioner could not alter the findings stated in the order dated December 20, 1976; that on appeal, the Acting Secretary, now Minister, of Labor, in an order dated November 24, 1977, affirmed *in toto* the order of the aforementioned Labor Regional Director; that thereafter, the petitioner elevated the case to the Office of the President in an appeal dated March 18, 1978; that in an order dated April 11, 1978, the public respondent Presidential Executive Assistant directed the Secretary, now Minister, of Labor, to hold in abeyance the execution of the order appealed from pending resolution of the appeal by the Office of the President, as prayed for in petitioner's appeal; and that on November 27, 1978, the public respondent Presidential Executive Assistant rendered a decision dismissing petitioner's appeal for lack of merit and lifting the order of April 11, 1978 staying the execution of the appealed order.[4]

The main issue involved is whether the petitioner may be compelled to reinstate the private respondent, Sergio Sinday, as carpenter.

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[4] *Rollo*, pp. 59-65.

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Sergio Sinday alleges that he applied for leave for one month on May 4, 1976 which was granted and that when he reported for work on June 7, 1976, he was no longer admitted by the petitioner. The Regional Director and impliedly the Minister of Labor and the public respondent Presidential Executive Assistant, Jacobo C. Clave, sustained this contention of Sergio Sinday. However, the finding that Sergio Sinday was granted one month vacation leave on May 4, 1976 is not supported by substantial evidence except by the uncorroborated testimony of private respondent Sergio Sinday. On the contrary, an indubitable document appears of record that on May 4, 1976, private respondent, Sergio Sinday, requested for approval to incur absence from May 6, 1976 to an indefinite date but this request was disapproved because the private respondent Sinday could not give any justifiable reason for his application and that his services were vitally needed. The shipyard manager of the petitioner, David Villono, offered to grant the private respondent Sinday a leave for fifteen (15) days but the latter arrogantly refused the offer.

Annex "A" of the petition reads:

"SANDOVAL SHIPYARDS, INC.
CEBU DIVISION
AUTHORITY OF ABSENCE

5-4-76

Sir:

The undersigned hereby requests for an approval to incur absence(s) on/from *5-6-76* to *Indefinite Date*.

(SGD) SINDAY, SERGIO
Employee

ACTION TAKEN:

Approved: From _____
Disapproved: _____ (SGD) DAVID VILLONO"[5]

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[5] *Rollo*, p. 11.

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The genuineness and due execution of this document was not denied by private respondent, Sergio Sinday. Hence the genuineness and due execution of said document is deemed admitted.[6] It is clear from the application for leave signed by the private respondent Sergio Sinday that said application for indefinite leave was disapproved.

It is noteworthy that the private respondent Sinday has not presented any document showing that he was granted a leave of absence of one month. The affidavit of the petitioner's shipyard manager is that he disapproved the application of respondent Sergio Sinday and said respondent left his work without leave on May 26, 1976 to look for another job and did not show up any more on the succeeding days.

It also appears to record that on August 20, 1976, the petitioner filed an application for clearance to terminate the services of Sergio Sinday, together with 38 others.[7]

While as a rule the findings of fact in appeals by *certiorari* are binding on the Supreme Court, a finding of fact that is not supported by competent evidence should be disregarded.[8]

In the instant case, the finding that the private respondent, Sergio Sinday, was granted a vacation leave of one month from May 4, 1976 is not only not supported by substantial evidence except the lone testimony of private respondent Sinday but is contradicted by indubitable evidence consisting of the application of said private respondent Sergio Sinday for an indefinite vacation leave of absence from May 6, 1976. The biased testimony of the private respondent Sinday cannot prevail over his application for indefinite leave of absence which appears on its face to have been disapproved.

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[6] Section 8, Rule 8, Revised Rules of Court.

[7] Annexes "B" and "B-1", *Rollo*, pp. 11-12.

[8] *Duran vs. Court of Appeals*, 71 SCRA 608; *Tagumpay Minerals & Mining Association vs. Masangkay*, 46 SCRA 608. *Baptista vs. Carullo*, 72 SCRA 314; *Sotto vs. Teves*, 86 SCRA 154.

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The private respondent Sinday did not specifically deny the following allegations of the petition:

"4. On May 5, 1976 Sinday applied to go on leave indefinitely from May 6, 1976. Inasmuch as no justifiable reason was stated and his services were vitally needed, Sinday was told by the petitioner's manager that the application for leave would be approved for only fifteen (15) days. Sinday arrogantly refused so that the petitioner disapproved the application for leave. Copy of the application with the disapproval is hereto attached as Annex 'A'.

"5. The respondent Sinday continued to work thereafter apparently abandoning his idea to obtain an indefinite leave of absence.

However, on May 26, 1976 the respondent Sinday failed to show up and since then had not reported to work.

In view thereof, the petitioner filed on August 20, 1976 with the Department of Labor a Clearance Application/Report of Dismissal as to respondent Sergio Sinday together with thirty eight (38) other employees and workers. Copies of said application and the list of employees are attached hereto as Annexes 'B' and 'B-1'."[9]

Material averments in the complaint not specifically denied are deemed admitted.[10]

The petitioner did not arbitrarily dismiss Sergio Sinday. It filed the required application for clearance to terminate on August 20, 1976 not only Sinday but 38 other employees.[11] The reason given in said application is that Sergio Sinday and the other thirty-eight (38) employees had quit their jobs.

Concern for labor should not extend to allowing employees to abandon their work at will and then later demand that they be reinstated. There is a showing that Sergio Sinday left his work without leave for the purpose of seeking a better employment. It was only when he failed to find another employment that he sought reinstatement with the petitioner.

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[9] *Rollo*, pp. 2-3.

[10] Section 1, Rule 9, Revised Rules of Court.

[11] Annexes "B" and "B-1", *Rollo*, pp. 11-12.

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Under the facts of record, the petitioner was fully justified in refusing to reinstate Sergio Sinday after he had abandoned his work to look for a better job.

WHEREFORE, the petition for *certiorari* is hereby GRANTED and the decision of the public respondent, Hon. Jacobo C. Clave, and the order of the Regional Director dated March 16, 1977, ordering the reinstatement of Sergio Sinday, are set aside and the complaint of Sergio Sinday for reinstatement in TFU Case No. 786 against Sandoval Shipyards, Inc. is hereby DISMISSED.

SO ORDERED.

Teehankee (Chairman), Makasiar, Guerrero, De Castro, and *Melencio-Herrera JJ.*, concur.

FIRST DIVISION

[G.R. No. 50542. November 21, 1979]

ANA BAYOT, *petitioner*, *vs.* **HON. IRENEO V. MENDOZA, as Presiding Judge, Branch III, COURT OF FIRST INSTANCE OF MASBATE, and ALFONSO LEGAL, JR.**, *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEAL BONDS; RULES THEREON; CASE AT BAR.— In *Espartero and Espartero vs. Juan Ladaw, et al.*, 92 Phil. 704, the rule was laid that "there is nothing in the Rules which imposes upon the party appealing the duty of securing from the court the approval of the appeal bond. This is an act which the court should attend to once said bond is filed with the appealing party. This is a duty imposed upon the court by Section 5 of