Republic of the Philippines
Supreme Court
Manila

SPECIAL FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Special First Division, issued a Resolution dated **July 6, 2022** *which reads as follows:*

"G.R. No. 252822 (*Mercury Drug Corporation v. Manolito Q. De Guzman*). – Before the Court is Mercury Drug Corporation's (petitioner) motion for reconsideration[1] of the Court's December 9, 2020 Resolution[2] denying the Petition for Review on *Certiorari*[3] for failure to sufficiently show that the Court of Appeals (CA) committed a reversible error in rendering the challenged September 12, 2019 Decision[4] and July 3, 2020 Resolution[5] in CA-G.R. SP No. 159521.

To recall, the petition stemmed from a Complaint for Illegal Dismissal filed by Manolito Q. De Guzman (respondent) before the National Labor Relations Commission (NLRC). Respondent had been a regular employee of petitioner for 27 years until his dismissal sometime in June 2016. Respondent's last position in petitioner's Anabul-I Branch (Imus, Cavite) was Store Merchandiser. Respondent's dismissal was a result of petitioner's finding that respondent committed Serious Misconduct when he uttered invectives to his Branch Manager (BM), Connie Cadudu-an (Cadudu-an), on February 15, 2016. Petitioner claimed that on said date, respondent angrily shouted at BM Cadudu-an and uttered, "*Ano ba yan? Nananadya ka na ah! Ikaw lang ang tanging gumagawa sa akin ng ganyan. Si Mam Noeme pag nag check hindi naman ganyan ah! Paimportante!*" When BM Cadudu-an left the retail area, respondent continued screaming and further uttered, "*Putang Ina Mo! Bakit kailangan pang habulin pag nag papasign ng time card. Pati*

- over – eight (8) pages ...

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1 *Rollo*, Vol. II, pp. 718-753.
2 Id. at 705-716.
3 Id. at Vol. I, pp. 35-89.
4 Id. at 93-108; penned by Associate Justice Apolinario D. Bruselas, Jr., with Associate Justices Nina G. Antonio-Valenzuela and Louis P. Acosta, concurring.
5 Id. at 110-111.

nagpapa-check ng bag. Paantayin pa! Pa Importante! Putang Ina niyang manager na yan!" Prior to the February 15, 2016 incident, respondent, in numerous occasions, allegedly used offensive words like "*bobo*" and "*tanga*" in describing his superiors. When directed to explain, respondent denied the accusations against him and countered that his utterances were not specifically directed to BM Cadudu-an. Rather, he was merely releasing "emotional pressure" and his reaction was due to the numerous humiliating treatments he received from BM Cadudu-an in the past.[6]

After an administrative hearing, petitioner found respondent guilty of Serious Misconduct, which is a Type D offense under petitioner's employee's manual and punishable by dismissal. Petitioner officially terminated respondent's employment through a Notice of Termination dated June 7, 2016.[7]

Respondent then filed a complaint for illegal dismissal, which was decided in his favor by the Labor Arbiter (LA). The LA ruled that respondent's utterances were on-the-spur of the moment outbursts, respondent having reached his breaking point due to what he perceived as harassment and orchestrated actions on the part of his superior. There was only a lapse in judgment rather than a premeditated defiance of authority. The LA further held that the isolated February 15, 2016 incident could not overcome the Model Employee and Loyalty Awards received by respondent from petitioner.[8]

On appeal, the NLRC reversed the LA ruling. The NLRC held that while there was **insufficient** evidence to establish that respondent cussed at BM Cadudu-an, still, respondent's conduct is unacceptable. The NLRC noted that BM Cadudu-an's version of what transpired on February 15, 2016 was corroborated by the sworn statements of respondent's co-employees who also accused respondent of referring to his superiors as "*bobo*" and "*tanga*" and using the feminized names "Bertita" and "Martina" to refer to two (2) of his male superiors. In declaring respondent's dismissal as valid and lawful, the NLRC ruled that the use of insulting and abusive language, when directed towards a superior, is tantamount to Insubordination and Serious Misconduct.[9]

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6 Id., Vol. II, pp. 705-706.
7 Id. at 706.
8 Id. at 707.
9 Id. at 708.

Respondent elevated the case before the CA. The CA, through the challenged September 12, 2019 Decision, set aside the NLRC Decision and reinstated with modification the LA Decision. The CA awarded respondent attorney's fees equivalent to 10% of the total monetary award. Petitioner moved for reconsideration, but no avail.[10]

Petitioner sought recourse before this Court *via* a Rule 45 petition, which this Court denied outright through the December 9, 2020 Resolution.[11] The Court found no reversible error on the part of the CA in reinstating the ruling of the LA.

In the December 9, 2020 Resolution,[12] the Court ruled that while the utterance of obscene, insulting or offensive words by an employee against a superior constitutes gross misconduct, nonetheless, the Court found such ruling not squarely applicable in respondent's case.[13]

First, the evidence established that respondent's utterances during the February 15, 2016 incident were not brought about by wrongful intent, insubordination, or utter disrespect to his superior. Notably, prior to said incident, there had already been unpleasant encounters between BM Cadudu-an and respondent. Respondent felt that he was being treated unfairly by BM Cadudu-an. When the latter refused/delayed the routine inspection of respondent's bag on the date of the incident,[14] respondent reached his breaking point. The Court sustained the finding of the CA and the LA that respondent's misbehavior was an error in judgment and not a premeditated defiance of authority. Second, respondent had been in the employ of petitioner for 27 years with no previous infractions. The February 15, 2016 incident was the first ever reported case against respondent. Respondent was even merited by petitioner with yearly salary increases on account of his outstanding performance. He was also a recipient of the Model Employee and Loyalty Awards from petitioner. Although respondent's misbehavior was not totally excusable, still, the penalty of dismissal is too harsh considering the given circumstances. That respondent purportedly committed similar acts of misbehavior in the past will not justify the imposition of the ultimate penalty of dismissal. There was no showing that respondent was charged or disciplined for said prior infractions. Hence, petitioner cannot consider said previous infractions in terminating respondent's employment.[15]

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10 Id. at 708-709.
11 Id. at 705-716.
12 Id. at 705-716.
13 Id. at 711-712.
14 Id. at 706.
15 Id. at 712-713.

Dissatisfied, petitioner filed the present motion for reconsideration essentially reiterating the arguments alleged in the petition.

The Court resolves to deny the motion.

As already stated, the arguments in petitioner's motion for reconsideration are mere rehash of those averred in the petition that were already considered by the Court.

Petitioner stubbornly insists that respondent's misbehavior and offensive utterances on February 15, 2016, along with his numerous infractions in the past, constitute serious misconduct that justified the imposition of the penalty of dismissal. Petitioner further asserts that "[i]t is unfathomable how the justices of this Honorable Court could justify such unquestionably contemptuous and public humiliation of respondent's Manager as not constituting gross misconduct."[16]

The CA's discussion in denying petitioner's motion for reconsideration is relevant, *viz.*:

> We ruled that the 15 February 2016 incident was an isolated case of a lapse in judgment rather than a premeditated defiance of authority. We never said that the action of [respondent] was justifiable. We only held that the dismissal from employment, when viewed in the over-all context of 27 long years of service punctuated with merit increases, model employee and loyalty awards, and unblemished behavior, for which [respondent] was disciplined was too harsh a penalty. x x x[17]

Indeed, this is not the first time that the Court did not apply its previous rulings on abusive and insulting utterances of an employee to a superior as tantamount to gross misconduct.

In *Maula v. Ximex Delivery Express, Inc.*,[18] the Court ratiocinated:

> While this Court held in past decisions that accusatory and inflammatory language used by an employee to the employer or superior can be a ground for dismissal or termination, the circumstances peculiar to this case find the previous rulings inapplicable. The admittedly insulting and unbecoming language

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16 Id. at 719.
17 Id. at Vol. I, p. 111.
18 804 Phil. 365 (2017).

> uttered by petitioner to the HR Manager on April 3, 2009 should be viewed with reasonable leniency in light of the fact that it was committed under an emotionally charged state. We agree with the labor arbiter and the NLRC that the on-the-spur-of-the-moment outburst of petitioner, he having reached his breaking point, was due to what he perceived as successive retaliatory and orchestrated actions of respondent. Indeed, there was only lapse in judgment rather than a premeditated defiance of authority.[19]

In the present case, records established that respondent and BM Cadudu-an's work relationship was marred by previous unpleasant encounters and disagreements. This is confirmed by BM Cadudu-an's own sworn statement.[20] The Court agrees with the CA and the LA that respondent's offensive utterances on February 15, 2016 were emotional outbursts on what respondent felt was another unfair treatment from BM Cadudu-an when the latter supposedly delayed inspection of respondent's bag. Respondent's misbehavior was only a lapse in judgment and not a deliberate defiance of authority.

Moreover, the circumstances in *Sterling Paper Products Enterprises, Inc. v. KMM-Katipunan*,[21] and *St. Luke's Medical Center v. Quebral*,[22] cited by petitioner in its motion for reconsideration,[23] are not on all fours with the present case. In *Sterling*, Raymond Esponga (Esponga), the employee, was found guilty of serious misconduct not only on account of his act of uttering foul and abusive language to his superior, **but also because of his defiance to perform his duties**, as it was established that immediately after the incident, Esponga refused to perform his duties and spent the remaining work hours just talking to his co-employees.[24] In *St. Luke's*, the employment record of the employee, Daniel Quebral (Quebral), showed that he had committed several violations of company rules for the preceding twelve (12) months prior to his dismissal. **And for said violations, petitioner St. Luke's extended consideration to Quebral by lowering the penalty imposed on him.** Had Quebral valued the **considerations extended to him by his employer in the past**, he would have been more careful in his actions. Thus, the Court held that the penalty of dismissal was commensurate to the offense Quebral committed, *i.e.,* dishonesty.[25]

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19 Id. at 379. Citation omitted.
20 *Rollo*, Vol. I, pp. 238-241, 244-247, and 302-304.
21 815 Phil. 425 (2017).
22 739 Phil. 542 (2014).
23 *Rollo*, Vol. II, pp. 727-729 and 742-743.
24 See *Sterling Paper Products Enterprises, Inc. v. KMM-Katipunan*, supra.
25 See *St. Luke's Medical Center v. Quebral*.

Here, apart from the February 15, 2016 incident, there was no clear showing of any other similar incident or previous infraction for which respondent was charged or disciplined. Petitioner's claim of habitual gross misconduct[26] on the part of respondent cannot therefore be sustained. Neither can the Court subscribe to petitioner's invocation of the "totality of infractions" rule to justify the imposition of the supreme penalty of dismissal. To stress, respondent's alleged previous acts of misbehavior were not supported by substantial evidence as the affidavits of respondent's co-employees lack the necessary details on how and when respondent committed the infractions. As aptly found by the CA, name-calling and using the words "*bobo*" and "*tanga*" were not established in accordance with the requirements of procedural due process. The incidents (stated in the affidavits) were mere general statements, with no accompanying details as to date of occurrence and other specificities, which rendered it impossible for respondent to properly refute the allegations or defend himself.[27]

More importantly, herein respondent, unlike the dismissed employees in the *Sterling* and *St. Luke's* cases,[28] had been in the employ of petitioner for 27 years, without any record of prior infractions or misbehavior. The Court cannot turn a blind eye to such untainted length of service, which was even merited with service awards and salary increases by petitioner.[29] Again, this is not to say that respondent's misbehavior is justifiable or excusable; only that the penalty of dismissal is too harsh given the circumstances of the instant case.

In *Dongon v. Rapid Movers and Forwarders, Co., Inc.*,[30] the Court held:

> To us, dismissal should only be a last resort, a penalty to be meted only after all the relevant circumstances have been appreciated and evaluated with the goal of ensuring that the ground for dismissal was not only serious but true. **The cause of termination, to be lawful, must be a serious and grave malfeasance to justify the deprivation of a means of livelihood.** This requirement is in keeping with the spirit of our Constitution and laws to lean over backwards in favor of the working class, and with the mandate that every doubt must be resolved in their favor.

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26 *Rollo*, Vol. II, p. 730.
27 Id. at Vol. I, p. 24.
28 Esponga had been employed for 12 years, while Quebral had been employed for 7 years.
29 *Rollo*, Vol. II, p. 712.
30 716 Phil. 533 (2013).

> **Although we recognize the inherent right of the employer to discipline its employees, we should still ensure that the employer exercises the prerogative to discipline humanely and considerately, and that the sanction imposed is commensurate to the offense involved and to the degree of the infraction. The discipline exacted by the employer should further consider the employee's length of service and the number of infractions during his employment. The employer should never forget that always at stake in disciplining its employee are not only his position but also his livelihood, and that he may also have a family entirely dependent on his earnings.**[31] (Emphasis supplied)

The above pronouncement of this Court finds more significance now that the world is in a pandemic. To unjustly deprive the respondent of his employment – his means of livelihood for 27 years – and the statutory benefits appurtenant thereto is simply inhumane and runs counter to the State's commitment to promote social justice and afford protection to the working class.[32]

WHEREFORE, premises considered, petitioner's motion for reconsideration is **DENIED with FINALITY**.

SO ORDERED."

By authority of the Court:

LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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31 Id. at 545-546.

32 See 1987 PHILIPPINE CONSTITUTION, Article XIII, Section 3 and Article II, Sections 10 and 18.

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