Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

N O T I C E

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **February 1, 2023** *which reads as follows:*

"G.R. No. 230398 ***(Comglasco Aguila Glass Corporation v. Rowena Villegas Frilles).*** — In this Petition for Review on *Certiorari* with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction[1] (Petition), petitioner Comglasco Aguila Glass Corporation (petitioner) seeks to reverse and set aside the Resolutions dated 23 November 2016[2] and 28 February 2017,[3] promulgated by the Court of Appeals (CA) in CA-G.R. SP No. 148038.

Antecedents

The case stems from a Complaint[4] filed by respondent Rowena Villegas Frilles (respondent) against petitioner, her employer, for unfair labor practice, illegal dismissal, non-payment of salary/wages and 13th month pay, and refund of cash bond, plus moral and exemplary damages, as well as attorney's fees.

Respondent alleged that she was hired by petitioner as a Senior Sales Manager on a probationary basis beginning 03 February 2014, for a period of six months, or until 02 August 2014, earning a salary of ₱40,000.00 per month.[5] She was also required to put up a cash bond of ₱30,000.00, to be periodically deducted from her salary.[6]

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1 *Rollo*, pp. 18-35.
2 Id. at 44-57; penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justices Carmelita Salandanan Manahan and Melchor Q.C. Sadang.
3 Id. at 58-59; penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justices Mario V. Lopez (now a Member of this Court) and Melchor Q.C. Sadang.
4 Id. at 204.
5 Id. at 101-102.
6 Id. at 123.

On 29 November 2014, respondent received a letter[7] designated as "End of Probationary Employment." The letter informed respondent of her gross inefficiency and failure to reach the standards set forth by petitioner. However, respondent argued that at that time, she was already a regular employee since her probationary period ended on 02 August 2014. As a regular employee, she may not be dismissed without compliance with the twin-notice requirement.[8] She also claimed that her supposed "gross inefficiency" had no basis because she was never made aware of the standards or criteria of her work.[9] Furthermore, she alleged that petitioner made unauthorized deductions on her salary in the accumulated amount of ₱26,662.62,[10] which appear to be periodic payments of her cash bond. Finally, she demanded payment of her 13th month pay.

In response, petitioner maintained that respondent was not illegally dismissed but failed to qualify for regularization. It pointed out that respondent agreed to extend her probationary period. Further, she acknowledged her unsatisfactory performance when she signed the "CONFORME" portion of the letter ending her probationary employment.[11] Petitioner also justified the condition of a cash bond given the sensitive nature of respondent's work. In fact, the bond should be applied to the damage she caused when she ordered expired sealants costing the company ₱500,000.00.[12] Lastly, petitioner claimed that respondent is not entitled to 13th month pay as a managerial employee.[13]

On 19 January 2016, the Labor Arbiter (LA) rendered a Decision[14] dismissing the complaint. The LA agreed with petitioner that: (1) respondent agreed to extend her probationary employment; and (2) she failed to qualify for regularization even after extension of her probationary period. The LA also denied the prayer for the refund of the amounts charged against respondent's cash bond.

The dispositive portion of the LA's Decision reads:

> **WHEREFORE**, a decision is hereby rendered dismissing the present complaint.
>
> **SO ORDERED**.[15]

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7 Id. at 104.
8 Id. at 109.
9 Id. at 108.
10 Id. at 107.
11 Id. at 124.
12 Id. at 127.
13 Id. at 125-126.
14 Id. at 157-161; penned by Labor Arbiter Romelita N. Rioflorido.
15 Id. at 161.

On appeal, the NLRC reversed the LA's ruling, thus:

> **WHEREFORE**, premises considered, complainant's appeal is hereby **GRANTED**. Accordingly, the Labor Arbiter's Decision is hereby **REVERSED AND SET ASIDE**.
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> This Commission rules that:
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> 1. The extension of Complainant's probationary employment is illegal;
>
> 2. Complainant, having become a regular employee, was illegally dismissed;
>
> 3. Complainant is entitled to the relief of immediate reinstatement and full backwages which include her 13th month pay as computed by the Labor Arbiter; and
>
> 4. Complainant is also entitled to the refund of cash bond and ten (10%) percent of the total monetary award as attorney's fees.
>
> **SO ORDERED**.[16]

The NLRC disagreed with the finding that the extension of respondent's probationary period was consensual. Moreover, the NLRC held that by the time she was served with the letter terminating her probationary employment, she was already a regular employee.[17] Having been illegally dismissed, she is entitled to reinstatement with full backwages, inclusive of allowances and other benefits. The NLRC also ordered petitioner to refund the amount of ₱26,000.00, representing the portion of the cash bond deducted from respondent's salary. It further ruled that respondent was entitled to her 13th month pay since the records indicate that she is a rank and file employee.[18] Finally, the NLRC denied respondent's plea for moral and exemplary damages, but awarded attorney's fees at the rate of ten percent (10%) of the total monetary award.[19]

Petitioner moved for reconsideration,[20] but the same was denied by the NLRC in its Resolution[21] dated 17 August 2016.

Aggrieved, petitioner filed a Petition for *Certiorari*[22] under Rule 65 of the Rules of Court before the CA. In a Resolution[23] dated 23 November 2016, the CA dismissed the petition and affirmed the NLRC Resolution. Petitioner

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16 Id. at 86.
17 Id. at 157.
18 Id.
19 Id. at 157-159.
20 Id. at 93-99.
21 Id. at 89-92.
22 Id. at 60-72.
23 Id. at 44-57

filed a motion for reconsideration, but this was likewise denied by the CA in its Resolution[24] dated 28 February 2017.

Hence, the present Petition.[25]

Issues

Petitioner argues that the CA committed the following errors:

1) The Honorable Court of Appeals did not follow existing laws and prevailing jurisprudence resulting in grave abuse of discretion when it declared that Respondent was illegally dismissed;

2) The Honorable Court of Appeals did not follow existing laws and prevailing jurisprudence resulting in grave abuse of discretion when it awarded full backwages and reinstatement in favor of Respondent;

3) The Honorable Court of Appeals did not follow existing laws and prevailing jurisprudence resulting in grave abuse of discretion when it awarded thirteenth-month pay in favor of Respondent, despite the fact that Respondent was holding a posistion of a managerial employee; and

4) The Honorable Court of Appeals did not follow existing laws and prevailing jurisprudence resulting in grave abuse of discretion when it required Petitioner to release Respondent's cash bond, notwithstanding the damages caused by the latter to Petitioner; and

5) The Honorable Court of Appeals did not follow existing laws and prevailing jurisprudence resulting in grave abuse of discretion when it awarded attorney's fees in the amount of ten percent (10%) of the supposed total monetary award.[26]

Ruling of the Court

The petition is denied. Petitioner has failed to establish that the CA committed grave abuse of discretion in its assailed Resolutions. After a thorough review of the questioned Resolutions, We find them to be in accord with the law and existing jurisprudence.

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[24] Id. at 58-59
[25] Id. at 13-35.
[26] Id. at 19-20.

Respondent was illegally dismissed from employment

Petitioner insists that respondent was never dismissed from employment but failed to qualify for regularization. We disagree. Respondent was hired on 03 February 2014, but only received the letter terminating her probationary employment on 29 November 2014. Clearly, this is beyond the six-month period for probationary employment allowed under Article 296 of the Labor Code, to wit:

> **Art. 296. Probationary employment.** Probationary employment shall not exceed six (6) months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. An employee who is allowed to work after a probationary period shall be considered a regular employee.

In addition, Section 6 (d) of the Implementing Rules of Book VI, Rule I of the Labor Code provides:

> Section 6. Probationary Employment. – There is probationary employment where the employee, upon his engagement, is made to undergo a trial period during which the employer determines his fitness to qualify for regular employment based on reasonable standards made known to him at the time of engagement.
>
> Probationary employment shall be governed by the following rules:
>
> x x x x
>
> (d) In all cases of probationary employment, the employer shall make known to the employee the standards under which he will qualify as a regular employee at the time of his engagement. Where no standards are made known to the employee at that time, he shall be deemed a regular employee.

From the foregoing, it is clear that the probationary period cannot exceed six months, otherwise the employee shall be regarded as a regular employee. The Court has recognized certain exemptions to his rule, such as when both the employer and employee mutually agree to extend the probationary period in order to give the employee a chance to improve his performance and qualify for regular employment.[27]

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[27] *Mariwasa v. Leogardo*, 251 Phil 417, 418 (1989).

Petitioner bases its case on this exact reason. It claims that respondent agreed to have her probationary period extended when she affixed her signature in the letter designated as "End of Probationary Employment." However, a perusal of the letter reveals that there is nothing in it to signify that respondent agreed to have her probationary period extended.

Since extension of the period is the exception, rather than the rule, the employer has the burden of proof to show that the extension is warranted and not simply a stratagem to preclude the worker's attainment of regular status. Without a valid ground, any extension of the probationary period shall be taken against the employer especially since it thwarts the attainment of a fundamental right, that is, security of tenure.[28]

In this case, the letter failed to indicate the date when the parties agreed to an extension. This is necessary to show that the agreement was made during the original period, as otherwise, respondent is deemed to have become a regular employee upon the expiration of that period.[29] There is also nothing in the letter that states the reason why an extension was necessary. Accordingly, the letter is insufficient to justify an exemption to the rule on probationary period. To Our mind, the letter is nothing but a ploy to conveniently dismiss respondent from employment, when she has long attained regularization.

Dismissal of regular employees by the employer requires the observance of substantive and procedural due process. Petitioner failed to observe both when it dismissed respondent.

Substantive due process means that the dismissal must be for any of the: (1) just causes provided under Article 297[30] of the Labor Code or the company rules and regulations promulgated by the employer; or (2) authorized causes under Article 298[31] and 299[32] thereof. None of these causes exist in the case at bar.

Respondent claims that she was not informed of the criteria or standards by which her performance would be rated by petitioner.[33] Upon perusal of the the records of the case, We agree. Petitioner has not presented the document containing the standards for evaluating respondent's performance. Notably, her contract that contains only broad standards of her duties and responsibilities, to wit:

- Diligently perform your assigned functions and areas of

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28 *Umali v. Hobbywing Solutions, Inc.*, 828 Phil. 320, 335 (2018).
29 See id. at 334.
30 Termination by Employer; Formerly, LABOR CODE, Article 282.
31 Closure of Establishment and Reductiom of Personnel; Formerly, LABOR CODE, Article 283.
32 Disease as Ground for Termination; Formerly, LABOR CODE, Article 284.
33 *Rollo*, p. 216.

responsibility.
- Perform other work that may be assigned from time to time by your immediate Superior.[34]

Petitioner also failed to present any of respondent's performance evaluations, or any other document, to prove that she was indeed found to have been grossly inefficient such as to warrant disciplinary measures.

On the other hand, procedural due process means that the employee must be accorded due process required under Article 292(b) of the Labor Code, the elements of which are the twin-notice rule and the employee's opportunity to be heard and to defend himself.[35] In respondent's dismissal, neither of these elements was satisfied. The only notice of dismissal that respondent received was the termination letter dated 29 November 2016. She was not initially informed that there were findings on her poor performance or gross inefficienty, nor was she given the opportunity to contest the grounds in the termination letter.

Respondent is entitled to backwages and 13th month pay

Considering that respondent was dismissed without any just or authorized cause, she is entitled to: (1) reinstatement without loss of seniority rights and other privileges; (2) full backwages, inclusive of allowances; and (3) other benefits or their monetary equivalent, as provided in Article 294 of the Labor Code, as renumbered:

> Art. 294. Security of tenure. In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

Next, We determine whether respondent is entitled to 13th month pay. The law mandates the payment of 13th month pay to all rank-and-file employees who has worked for at least one month during a calendar year.[36] Managerial employees are not entitled to 13th month pay.

To be considered a managerial employee, the following conditions must be satisfied: (1) their primary duty consists of the management of the

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[34] Id. at 203.
[35] See *Lima Land, Inc. v. Cuevas*, 635 Phil. 36, 44 (2010).
[36] PRESIDENTIAL DECREE NO. 851.

establishment in which they are employed or of a department or sub-division thereof; (2) they customarily and regularly direct the work of two or more employees therein; and (3) they have the authority to hire or fire employees of lower rank; or their suggestions and recommendations as to hiring and firing and as to the promotion or any other change of status of other employees, are given particular weight.[37]

In this case, petitioner claims that respondent is a managerial employee because she was hired as a Senior Sales Manager. However, it is the actual work performed, and not the job title, that is controlling.[38]

Respondent stated that she handled corporate accounts of insurance companies. She did not have salesmen or subordinates under her, but had to periodically report to their National Sales Manager, and the Sales and Marketing Head.[39] Thus, her title as a Senior Sales Manager is a misnomer since she does not take part in the management of the establishment in which she works. Neither does she not customarily and regularly direct the work of two or more employees, nor does she have the authority to hire or fire employees of lower rank. Clearly, petitioner failed to demonstrate how respondent qualifies as a managerial employee. Thus, We agree with both the CA and NLRC that she is entitled to a 13th month pay like any other rank and file employee.

The cash bond is an unauthorized deduction on respondent's salary

Anent the cash bond periodically deducted from respondent's salary totaling ₱26,662.62, this appears to be an unauthorized deduction, despite the fact that respondent may have signed a form allowing such deduction at the time she was employed.

In general, employers are prohibited to make deductions from the wages of their employees except: (1) where the worker is insured with his consent by the employer, and the deduction is to recompense the employer for the amount paid by him as premium on the insurance; (2) for union dues, in cases where the right of the worker or his union to check-off has been recognized by the employer or authorized in writing by the individual worker concerned; and (3) the employer is authorized by law or regulations issued by the Secretary of Labor and Employment.[40]

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37 OMNIBUS RULES IMPLEMANTING THE LABOR CODE, Book III, Sec. 2(b), Book III.
38 *Ramil v. Stoneleaf Inc.*, G.R. No. 222416, 17 June 2020.
39 *Rollo*, p. 134.
40 LABOR CODE, Article 113.

Likewise, an employer cannot require a worker to make deposits from which deductions shall be made for the reimbursement of loss of or damage to tools, materials, or equipment supplied by the employer, except when the employer is engaged in such trades, occupations, or business where the practice of making deductions or requiring deposits is a recognized one, or is necessary or desirable as determined by the Secretary of Labor and Employment in appropriate rules and regulations.[41] Deductions for cash bonds are authorized under Article 114 of the Labor Code. However, these deductions cannot be done on a whim.

In *Niña Jewelry Manufacturing of Metal Arts, Inc. v. Montecillo,*[42] the Court ruled that to justify the imposition of a cash bond, the employer must first establish that the making of deductions from the salaries is authorized by law or regulations issued by the Secretary of Labor. Further, the posting of cash bonds should be proven as a recognized practice in the business, or alternatively, the employer should seek the determination by the Secretary of Labor through the issuance of appropriate rules and regulations that the policy the former seeks to implement is necessary or desirable in the conduct of business.[43]

Here, petitioner failed to justify the requirement of a cash bond for respondent's position and that effecting deductions thereto is a recognized practice in its business. Neither did it secure the determination of the Secretary of Labor through the issuance of appropriate rules and regulations that the policy of requiring a cash bond and effecting deductions thereto are necessary or desirable in the conduct of its business.

Petitioner insists that the deductions were made to answer for the damages caused by respondent in ordering unusable expired sealants without its authorization. Thus, the deductions are amounts that respondent owes to petitioner due to her negligence.[44] We note, however, that petitioner started deducting for the cash bond within the first three months of her employment, when she had not been found to have caused any loss, damage or debt.[45] Clearly, petitioner cannot offset an amount against a supposed debt that has not yet been incurred. Thus, We agree with the CA when it held:

> Aside from [Comglasco's] bare allegation that [respondent] without its authorization, ordered the purchase of sealants, the former merely submitted the Cost & Inventory of Dai-Ichi Sealants as of 16 June 2015, which indicated the estimated worth of expired sealant in the amount of [₱]173,408.20. [Comglasco] failed to controvert the allegation of [respondent] regarding the long process of discussion and approval before the latter could place the order from the supplier, and to substantiate its

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41 LABOR CODE, Article 114.
42 677 Phil. 447 (2011).
43 Id. at 470.
44 *Rollo*, p. 28.
45 Id. at 107.

> claim that [respondent] was indeed the one responsible for the alleged damage it sustained. Hence, [respondent] is entitle[d] to the refund of her cash bond. As keenly observed by [the NLRC], *"(w)hile [Comglasco] claim[s] that the cash bond was supposed to answer for the damages that they may sustain by reason of [respondent's] performance of her tasks, [Comglasco] failed to establish that [respondent] had actually caused them damage. Thus it would be unfair to deprive [respondent] of her hard-earned salary when it was not clearly established by substantial evidence that the alleged damages can be attributed to her."*[46]

From the foregoing, it is clear that petitioner miserably failed to justify the deductions it made to respondent's salary; thus a refund is in order.

Award of attorney's fees; denial of Temporary Restraining Order (TRO) and/or writ of preliminary injunction; imposition of legal interest

The CA did not act with grave abuse of discretion in holding that respondent is entitled attorney's fees at the rate of ten percent (10%) of the monetary award. In this case, aside from the fact that she was illegally dismissed from employment, the non-payment of her 13th month pay and the unauthorized deductions on her salary forced her to litigate and engage the services of counsel. We have ruled that when lawful wages are withheld without justification, compelling the employee to litigate, even if the employer did not act in bad faith, attorney's fees may be awarded. Considering that petitioner withheld portions of respondent's salary, including her 13th month pay, then attorney's fees may be awarded.[47]

On the other hand, the dismissal of the Petition renders moot and academic the issuance of a TRO and injunctive relief.

Finally, the total monetary awards should bear interest at the rate of six percent (6%) per *annum* computed from the date of finality of this Resolution until fully paid. [48]

WHEREFORE, the foregoing premises considered, the petition is hereby **DENIED**. The Resolutions of the Court of Appeals dated 23 November 2016 and 28 February 2017 are **AFFIRMED with**

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[46] Id. at 56.

[47] *Joselito A. Alva v. High Capacity Security Force, Inc.*, 820 Phil. 677, 686-687 (2017), citing Kaisahan *at Kapatiran gn mga Manggagawa at Kawani sa MWC-East Zone Union v. Manila Water Co., Inc.*, 676 Phil. 262, 275 (2011); *PCL Shipping Philippines, Inc. v. NLRC*, 540 Phil. 65, 84 (2006).

[48] *Nacar v. Gallery Frames*, 716 Phil. 267, 282-283 (2013).

MODIFICATION in that the total monetary awards are subject to legal interest at the rate of six percent (6%) per *annum* from date of finality of this Resolution until fully paid.

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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