P10

Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

RAVENGAR G. IBON,
Petitioner,

- versus -

GENGHIS KHAN SECURITY SERVICES and/or MARIETTA VALLESPIN,
Respondents.

G.R. No. 221085

Present:

CARPIO,* *J.*,
PERALTA,** *Acting Chairperson,*
MENDOZA,
LEONEN, and
MARTIRES, *JJ.*

Promulgated:

19 JUN 2017

x - x

DECISION

MENDOZA, *J.*:

This petition for review on *certiorari* seeks to reverse and set aside the July 3, 2015 Decision[1] and October 13, 2015 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 125948, which affirmed the April 24, 2012 Decision[3] and the May 22, 2012 Resolution[4] of the National Labor Relations Commission *(NLRC)* in NLRC LAC No. 01-000503-12(8)/NLRC NCR CN. 05-07463-11, a case for illegal dismissal.

Ravengar G. Ibon *(petitioner)* was employed as a security guard by Genghis Khan Security Services *(respondent)* sometime in June 2008. He was initially assigned to a certain Mr. Solis in New Manila, Quezon City. In

* On Official Leave.
** Per Special Order No. 2445 dated June 16, 2017.
1 *Rollo*, pp. 39-44.
2 Id. at 46-47.
3 Penned by Commissioner Gregorio O. Bilog III, with Commissioner Pablo C. Espiritu Jr. concurring and Presiding Commissioner Alex A. Lopez on leave; id. at 158-164.
4 Id. at 176-177.

July 2008, he was transferred to the 5th Avenue Condominium in Fort Bonifacio, Taguig City, in September 2008 and was posted there until May 2009.[5]

In June 2009, petitioner was transferred to the Aspen Tower Condominium until his last duty on October 4, 2010. Thereafter, respondent promised to provide him a new assignment, which, however, did not happen.[6]

On May 10, 2011, petitioner filed a Complaint[7] against respondent for illegal dismissal, with claims for underpayment of wages, holiday and rest day premiums, service incentive leave pay, non-payment of separation pay, and reimbursement of illegal deductions.[8] He alleged that he was no longer assigned to a new post after his last duty on October 4, 2010; that he was merely receiving a daily salary of ₱384.00; and that in the course of his employment, respondent would deduct ₱200.00 per month as cash bond from September 2008 until September 2010.[9]

For his part, respondent denied that petitioner was placed on a floating status for more than six (6) months. It claimed that he was suspended on October 4, 2010 for sleeping on the job. Respondent added that petitioner was endorsed to another client for re-assignment, which the latter refused because his license was due for renewal. Since then, petitioner failed to report for work.[10]

Sometime in November 2010, petitioner went to respondent's office to claim his 13th month pay, but the same was not given to him because it was not yet due. Respondent then received a call from the Department of Labor and Employment *(DOLE)* regarding petitioner's claim for 13th month pay, which was later on settled during the proceedings before the DOLE. It then sent letters to petitioner requiring him to report for work, but he did not show up. Hence, respondent was surprised to receive summons regarding the complaint for illegal dismissal.[11]

The LA Ruling

In its November 29, 2011 Decision,[12] the Labor Arbiter *(LA)* declared petitioner to have been constructively dismissed because of respondent's

---

[5] Id. 74.
[6] Id.
[7] Id. at 70-71.
[8] Id. at 13.
[9] Id. at 14.
[10] Id.
[11] Id. at 15.
[12] Id. at 134-139.

failure to put him on duty for more than six (6) months. It ordered respondent to pay petitioner backwages from May 5, 2011, the effective date of the constructive dismissal. The LA also granted petitioner's prayer for separation pay in view of the parties' strained relationship, as well as his claims for wage differential, service incentive leave pay and reimbursement of his cash bond.

Aggrieved, respondent appealed to the NLRC.

The NLRC Ruling

In its April 24, 2012 Decision, the NLRC *reversed* and *set aside* the decision of the LA. It opined that there was no constructive dismissal because respondent did not intend to indefinitely place petitioner on a floating status. The NLRC noted that respondent sent letters to petitioner requiring him to report back to work within the six-month period. It added that respondent offered to reinstate petitioner during the proceedings before the LA, but the said offer was rejected by the latter.

Further, the NLRC pointed out that even if the letters were not received by petitioner, respondent's act of sending them showed that it did not wish to sever the employer-employee relationship. It, nevertheless, sustained the money claims awarded by the LA.

Petitioner moved for reconsideration, but his motion was denied by the NLRC in a Resolution dated May 22, 2012.

Undaunted, petitioner filed a petition for *certiorari* before the CA.

The CA Ruling

In its assailed Decision, dated July 3, 2015, the CA *affirmed* the NLRC finding that petitioner was not constructively dismissed. It wrote that the evidence on record showed that petitioner was required to report back to work and that on October 21, 2010, he was offered a new assignment, which he refused. The CA concluded that there was no dismissal to speak of as it was petitioner who manifested his lack of interest in going back to work.

Hence, this petition raising the following:

ISSUES

I

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE RULING OF THE NLRC THAT THE PETITIONER WAS NOT ILLEGALLY DISMISSED FROM EMPLOYMENT; AND

II

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE RULING OF THE NLRC THAT THE PETITIONER IS NOT ENTITLED TO HIS MONETARY CLAIMS DUE TO ILLEGAL DISMISSAL.[13]

Petitioner argues that he did not receive the letters requiring him to report back to work; that a perusal of the letters revealed that the same did not indicate a specific assignment; that respondent had no intention to reinstate him considering that he was placed on a floating status for a long period of time; and that he was entitled to moral damages, exemplary damages and attorney's fees.

In its Comment,[14] dated March 21, 2016, respondent averred that petitioner's claim of illegal dismissal could not overcome the evidence it presented to show that no dismissal took place; and that moral and exemplary damages could only be awarded only when there is a finding of illegal dismissal and such dismissal is borne out with malice and bad faith on the part of the employer.

In his Reply,[15] dated January 31, 2017, petitioner contended that the lack of service assignment for a continuous period of six (6) months is an authorized cause for the termination of the employee, who is then entitled to separation pay; and that respondent's offer of reinstatement was meant to negate an otherwise consummated act of illegal dismissal.

The Court's Ruling

The petition is meritorious.

---

[13] Id. at 20.
[14] Id. at 230-233.
[15] Id. at 245-255.

Only questions of law may be raised in a Rule 45 petition; exceptions

Generally, questions of fact are beyond the ambit of a petition for review under Rule 45 of the Rules of Court as it is limited to reviewing only questions of law. The rule, however, admits of exceptions wherein the Court expands the coverage of a petition for review to include a resolution of questions of fact. One of the exceptions is when the findings of fact are conflicting.[16] The present petition falls under this exception as the findings of fact by the NLRC, as affirmed by the CA, differed from those of the LA. The LA found that petitioner was constructively dismissed whereas, the NLRC and the CA opined that petitioner was never dismissed.

Security guard on floating status vis-à-vis constructive dismissal

Respondent refutes petitioner's constructive dismissal by arguing that the latter was not placed on a floating status for more than six (6) months because he was suspended on October 4, 2010 for sleeping on the job. Further, it asserts that it sent letters to petitioner requiring him to report back to work and that it offered reinstatement during the proceedings before the LA, which petitioner turned down. These arguments, notwithstanding, there is basis to hold that petitioner was constructively dismissed.

In *Reyes v. RP Guardians Security Agency*,[17] the Court held that temporary off-detail of a security guard is generally allowed, but is tantamount to constructive dismissal if the floating status extends beyond six (6) months, to wit:

> Temporary displacement or temporary off-detail of security guard is, generally, allowed in a situation where a security agency's client decided not to renew their service contract with the agency and no post is available for the relieved security guard. Such situation does not normally result in a constructive dismissal. **Nonetheless, when the floating status lasts for more than six (6) months, the employee may be considered to have been constructively dismissed.** No less than the Constitution guarantees the right of workers to security of tenure, thus, employees can only be dismissed for just or authorized causes and after they have been afforded the due process of law.[18] [Emphasis supplied]

---

[16] *Co v. Vargas*, 676 Phil. 463, 471 (2011).
[17] 708 Phil. 598 (2013).
[18] Id. at 603-604.

Relative thereto, constructive dismissal may exist if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it can foreclose any choice by him except to forego his continued employment[19] or when there is cessation of work because continued employment is rendered impossible, or unlikely, as an offer involving a demotion in rank and a diminution in pay.[20]

Security guard on floating status must be assigned to a specific posting

In the case at bench, petitioner was last deployed on October 4, 2010. Thus, it was incumbent upon respondent to show that he was redeployed within six (6) months from the said date. Otherwise, petitioner would be deemed to have been constructively dismissed.

A perusal of the records, however, reveals that aside from respondent's bare assertions that petitioner was suspended, which the latter had denied, there was no evidence of the imposition of said penalty. Respondent could have easily produced documents to support its contention that petitioner had been suspended, considering that employers are required to observe due process in the discipline of employees.

Respondent could not rely on its letter requiring petitioner to report back to work to refute a finding of constructive dismissal. The letters, dated November 5, 2010 and February 3, 2011, which were supposedly sent to petitioner merely requested him to report back to work and to explain why he failed to report to the office after inquiring about his posting status. More importantly, there was no proof that petitioner had received the letters.

In *Tatel v. JLFP Investigation (JFLP Investigation),*[21] the Court initially found that the security guard was constructively dismissed notwithstanding the employer's letter ordering him to report back to work. It expounded that in spite of the report-to-work order, the security guard was still constructively dismissed because he was not given another detail or assignment. On motion for reconsideration, however, the Court reversed its ruling after it was shown that the security guard was in fact assigned to a specific client, but the latter refused the same and opted to wait for another posting.

---

[19] *Central Azucarera de Bais, Inc. v. Siason*, G.R. No. 215555, July 29, 2015, 764 SCRA 494, 501.
[20] *MegaForce Security and Allied Services, Inc. v. Lactao*, 581 Phil. 100, 107 (2008).
[21] G.R. No. 206942, February 25, 2015, 752 SCRA 55.

A holistic analysis of the Court's disposition in *JFLP Investigation* reveals that: [1] an employer must assign the security guard to another posting within six (6) months from his last deployment, otherwise, he would be considered constructively dismissed; and [2] the security guard must be assigned to a specific or particular client. A general return-to-work order does not suffice.

In *Exocet Security and Allied Services Corporation v. Serrano (Exocet Security)*,[22] the Court absolved the employer even if the security guard was on a floating status for more than six (6) months because the latter refused the reassignment to another client, to wit:

> In the controversy now before the Court, there is no question that the security guard, Serrano, was placed on floating status after his relief from his post as a VIP security by his security agency's client. Yet, there is no showing that his security agency, petitioner Exocet, acted in bad faith when it placed Serrano on such floating status. What is more, **the present case is not a situation where Exocet did not recall Serrano to work within the six-month period as required by law and jurisprudence. Exocet did, in fact, make an offer to Serrano to go back to work.** xxx
>
> Clearly, Serrano's lack of assignment for more than six months cannot be attributed to petitioner Exocet. On the contrary, records show that, as early as September 2006, or one month after Serrano was relieved as a VIP security, Exocet had already offered Serrano a position in the general security service **because there were no available clients requiring positions for VIP security.** Notably, even though the new assignment does not involve a demotion in rank or diminution in salary, pay, or benefits, **Serrano declined the position because it was not the post that suited his preference, as he insisted on being a VIP Security.** xxx
>
> Thus, it is manifestly unfair and unacceptable to immediately declare the mere lapse of the six-month period of floating status as a case of constructive dismissal, without looking into the peculiar circumstances that resulted in the security guard's failure to assume another post. This is especially true in the present case where the security guard's own refusal to accept a non-VIP detail was the reason that he was not given an assignment within the six-month period. The security agency, Exocet, should not then be held liable.[23] [Emphases supplied]

---

[22] 744 Phil. 403 (2014).
[23] Id. at 418-419.

Applying the foregoing to the present controversy, respondent should have deployed petitioner to a **specific** client within six (6) months from his last assignment. The correspondences allegedly sent to petitioner merely required him to explain why he did not report to work. He was never assigned to a particular client. Thus, even if petitioner actually received the letters of respondent, he was still constructively dismissed because none of these letters indicated his reassignment to another client. Unlike in *Ecoxet Security* and *JFLP Investigation*, respondent is guilty of constructive dismissal because it never attempted to redeploy petitioner to a definite assignment or security detail.

Further, petitioner's refusal to accept the offer of reinstatement could not have the effect of validating an otherwise constructive dismissal considering that the same was made only after petitioner had filed a case for illegal dismissal. Further, at the time the offer for reinstatement was made, petitioner's constructive dismissal had long been consummated.[24] Such belated gesture does not absolve respondent from the consequences of petitioner's dismissal.

WHEREFORE, the July 3, 2015 Decision and October 13, 2015 Resolution of the Court of Appeals in CA-G.R. SP No. 125948 are **REVERSED and SET ASIDE.** The November 29, 2011 Decision of the Labor Arbiter is **REINSTATED**.

SO ORDERED.

JOSE CATRAL MENDOZA
Associate Justice

[24] *Hantex Trading Co., Inc. v. CA*, 438 Phil. 737, 747 (2002).

WE CONCUR:

(On Official Leave)
ANTONIO T. CARPIO
Associate Justice

DIOSDADO M. PERALTA
Associate Justice
Acting Chairperson

MARVIC M.V.F. LEONEN
Associate Justice

SAMUEL R. MARTIRES
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

DIOSDADO M. PERALTA
Associate Justice
Acting Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice