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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 **December 9, 2020** *which reads as follows:*

"G.R. No. 252822 – (MERCURY DRUG CORPORATION, *petitioner* v. MANOLITO Q. DE GUZMAN, *respondent*). – Filed before this Court is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court challenging the Decision[2] dated September 12, 2019 and Resolution[3] dated July 3, 2020 of the Court of Appeals (CA) in CA-G.R. SP No. 159521. The challenged Decision set aside the September 28, 2018 Decision[4] and Resolution[5] November 23, 2018 of the National Labor Relations Commission (NLRC) and reinstated the Labor Arbiter's (LA) Decision[6] dated March 15, 2018 declaring that Manolito Q. De Guzman (respondent) was illegally dismissed. The assailed CA Resolution denied Mercury Drug Corporation's (petitioner) motion for reconsideration.

Facts

Respondent was hired by petitioner on June 7, 1989 and had been a regular employee of the latter for 27 years until his dismissal sometime in June 2016.[7] Respondent's last position before his termination was as Store Merchandiser or Stock Analyst of petitioner's Anabul-1 Branch in Imus, Cavite, with a monthly salary of ₱63,933.00.[8]

1 *Rollo*, pp. 35-89.
2 Id. at 93-108; penned by Associate Justice Apolinario D. Bruselas, Jr. and concurred in by Associate Justices Nina G. Antonio-Valenzuela and Louis P. Acosta.
3 Id. at 110-11.
4 Id. at 174-197; penned by Presiding Commissioner Joseph Gerard E. Mabilog and concurred in by Commissioners Isabel G. Panganiban Ortiguerra and Agnes Alexis Lucero-De Grano.
5 Id. at 199-200.
6 Id. at 377-388; penned by Labor Arbiter Danna M. Castillon.
7 Id. at 93-94, 175.
8 Id.

Stripped of non-essentials, the following are the antecedents:

On February 27, 2016, respondent was served with a show cause with notice of preventive suspension[9] relative to an incident petitioner had with his Branch Manager (BM), Ms. Connie C. Cadudu-an (BM Cadudu-an), on February 15, 2016 where the latter allegedly delayed and/or refused to conduct a routine inspection of respondent's bags that resulted to respondent's uttering of invectives, which petitioner claims, are directed against BM Cadudu-an. According to petitioner, respondent threw his bags on the floor and angrily shouted these words at BM Cadudu-an, "*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! Pa Importante!*" Respondent left the retail area and continued screaming and cursing BM Cadudu-an, "*Putang Ina Mo! Bakit kailangan pang habulin pag nag papasign ng time card. Pati magpa-check ng bag. Paantayin pa! Pa Importante! Putang Ina niyang manager na yan!*"[10] Prior to the subject incident, respondent also, on numerous occasions, allegedly used offensive words like "*bobo*" and "*tanga*" in describing his superiors.[11] Respondent's acts, according to petitioner, constitute Serious Misconduct, which is a Type D offense under petitioner's employee's manual and punishable by dismissal.[12]

In response to the show cause letter, respondent submitted his answer and denied the accusations against him. He argued that the charges against him lack specifics. He further claimed that his utterances did not constitute misconduct because they were not directed at BM Cadudu-an. He was merely releasing "emotional pressure" when his request for inspection was denied twice and his reaction was due to the accumulation of humiliating treatments he received from BM Cadudu-an in the past. Justifying his utterances, respondent insisted that he was merely provoked by the branch manager.[13]

After an administrative hearing, respondent's employment was ultimately terminated by petitioner through the issuance of a notice of termination on June 7, 2016.[14]

Consequently, respondent filed a complaint for illegal dismissal before the NLRC.[15]

9 Id. at 208-209.
10 Id.
11 Id. at 208.
12 Id. at 209.
13 Id. at 101.
14 Id. at 211-212.
15 Id. at 94.

On March 15, 2018, the LA rendered a Decision,[16] the dispositive portion of which reads:

> WHEREFORE, premises considered, complainant is declared to have been illegally dismissed by respondent Mercury Drug Corporation. It is ordered to pay complainant the total amount of P4,037,113.19 representing his separation pay with full backwages and the amount of P9,962.89 representing proportionate 13th month pay.
>
> Respondent is also ordered to pay his salary during his thirty days preventive suspension which is hereby declared illegal in the amount of P63,933.00.
>
> All other claims are dismissed for lack of merit.
>
> SO ORDERED.[17]

The LA ruled that respondent's utterances during the subject incident do not constitute Serious Misconduct to warrant his dismissal. Said 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 lapse in judgment rather than premeditated defiance of authority.[18] On this score, the LA noted that prior to the subject incident, respondent felt unusual treatment from BM Cadudu-an since she assumed her duties, which he tolerated until it came to the extent that respondent requested petitioner's District Manager for his (respondent's) transfer to avoid further conflict with BM Cadudu-an.[19] The LA further held that the isolated incident on February 15, 2016 was not reflective of a defiant and belligerent attitude on the part of respondent towards his superiors.[20] To be sure, that single incident for too short a period could not overcome the Model Employee Award and Loyalty Award bestowed upon respondent who presumably underwent rigid and strict standards and criteria of petitioner.[21]

Petitioner and respondent filed their separate appeals before the NLRC.[22]

On September 12, 2019, the NLRC reversed and set aside the LA Decision, *viz.*:

16 Id. at 377-388.
17 Id. at 387-388.
18 Id. at 383-384.
19 Id. at 384.
20 Id.
21 Id.
22 Id. at 94.

> WHEREFORE, premises considered, the DECISION of Labor Arbiter Danna M. Castillon dated 15 March 2018 is hereby REVERSED and SET ASIDE. The preventive suspension and subsequent dismissal of Complainant are hereby found valid and the Respondents are liable neither for reinstatement and backwages [sic] nor for damages and attorney's fees. The Complainant's claim for retirement pension and provident fund contributions are hereby dismissed without prejudice.
>
> SO ORDERED.[23]

In reversing the LA's Decision, the NLRC held that while there was insufficient evidence to establish that respondent cussed at his branch manager, still, respondent's conduct is unacceptable. BM Cadudu-an's account of what transpired was well-corroborated. In addition, several sworn statements of respondent's co-employees were presented by petitioner showing that aside from the February 15, 2016 incident, there were several instances when respondent was heard referring to his superiors as "*bobo*" and "*tanga.*" Also, evidence established that respondent actually referred to two of his male superiors using the feminized form of their names, *i.e.*, "Bertita" for Bertito and "Martina" for Martin. According to the NLRC, these acts of respondent are indicative of disdain, contemptuous attitude and utter lack of respect towards his superiors. Albeit conceding that the use of insulting or abusive language within the company premises is merely a Class "B" offense under petitioner's Employee's Manual, punishable only by warning on the first three instances, the NLRC nonetheless ruled that such act, when directed towards a superior, is no longer simply use of abusive or offensive language but is already tantamount to insubordination and serious misconduct which render the employee unfit to continue working for his employer.[24] The NLRC also upheld the validity of respondent's preventive suspension as an exercise of petitioner's management prerogative.[25]

Respondent unsuccessfully moved for reconsideration of the NLRC Decision.[26]

Aggrieved, respondent elevated the case before the CA *via* a special civil action for *certiorari*[27] under Rule 65 of the Rules of Court.

On September 12, 2019, the CA promulgated the challenged Decision,[28] the dispositive portion of which states:

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23 Id. at 197.
24 Id. at 191-192.
25 Id. at 193-196.
26 Id. at 174-197.
27 Id. at 145-172.
28 Id. at 93-108.

> WHEREFORE, the petition is GRANTED. The Decision of the NLRC dated 28 September 2018 is SET ASIDE and the Decision dated 15 March 2018 of the Labor Arbiter is hereby REINSTATED with MODIFICATION in that petitioner is entitled to attorney's fees at ten percent (10%) of the total monetary award.
>
> IT IS SO ORDERED.[29]

Petitioner moved for reconsideration but was denied by the CA through the assailed Resolution.[30]

Hence, the present petition under Rule 45 anchored on the following grounds:

> I.
> THE HONORABLE COURT OF APPEALS COMMITTED PALPABLE ERROR OF LAW AND ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING LACK OR EXCESS OF JURISDICTION IN DECLARING THAT RESPONDENT'S DISMISSAL WAS ILLEGAL UPON A FINDING THAT THE 15 FEBRUARY 2016 INCIDENT WAS AN ISOLATED CASE OF A MERE LAPSE OF JUDGMENT RATHER THAN A HABITUAL DEFIANCE OF AUTHORITY, DESPITE THE EXISTENCE OF SUBSTANTIAL EVIDENCE TO THE CONTRARY;
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> II.
> THE HONORABLE COURT OF APPEALS COMMITTED PALPABLE ERROR OF LAW AND ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING LACK OR EXCESS OF JURISDICTION IN DECLARING THAT THE PENALTY OF DISMISSAL IS TOO HARSH A PENALTY SIMPLY BECAUSE OF RESPONDENT'S LONG YEARS OF SERVICE, A RULING WHICH IS TOTALLY NOT IN ACCORD WITH PREVAILING JURISPRUDENCE;
>
> III.
> THE HONORABLE COURT OF APPEALS COMMITTED PALPABLE ERROR OF LAW AND ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING LACK OR EXCESS OF JURISDICTION IN RULING THAT RESPONDENT'S PREVENTIVE SUSPENSION WAS NOT VALID DESPITE THE PREVAILING SUPREME COURT RULINGS TO THE CONTRARY; AND
>
> IV.
> THE HONORABLE COURT OF APPEALS COMMITTED PALPABLE ERROR OF LAW AND ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING LACK OR EXCESS OF JURISDICTION IN ORDERING PAYMENT OF SEPARATION

29 Id. at 107.
30 Id. at 174-197.

PAY WITH FULL BACKWAGES, PROPORTIONATE THIRTEENTH (13TH) MONTH PAY AND ATTORNEY'S FEES WHICH CONTRADICTS THE SUPREME COURT PRONOUNCEMENTS ON THE MATTER.[31]

The Court's Ruling

The petition is bereft of merit.

Essentially reiterating its arguments before the labor tribunals and the CA, petitioner insists that it was able to establish by substantial evidence respondent's acts that constitute serious misconduct which warrants the imposition of the penalty of dismissal. Petitioner harps on the sworn statements executed by respondent's co-employees and asserts that prior to the February 15, 2016 incident, respondent has already committed several acts of misconduct that showed his habitual misbehavior at work. Petitioner further argues that while long years of service may generally be considered to mitigate the effects of termination, such rule does not apply to instances where an employee was shown to have exhibited regrettable lack of loyalty, or worse, betrayal of the company, as in the present case. Petitioner stresses that respondent's acts of maligning and disrespecting his branch manager inside the workplace, during working hours, and worse, in front of customers, amount to a regrettable lack of loyalty and even betrayal of the company. The NLRC therefore did not commit grave abuse of discretion when it reversed the LA's Decision and ruled that respondent's dismissal was valid. It is a reversible error on the part of the CA to set aside the NLRC Decision because the NLRC Decision was supported by substantial evidence of respondent's serious misconduct. Corollarily, petitioner maintains that respondent's preventive suspension was also lawful being a valid exercise of its management prerogative. In sum, petitioner is firm in its stance that respondent was dismissed for a just and valid cause and is not entitled to reinstatement and his money claims.[32]

Petitioner's arguments fail to persuade.

In reviewing the legal correctness of the CA Decision in a labor case made under Rule 65 of the Rules of Court, this Court examines the decision in the context that the CA determined the presence or the absence of grave abuse of discretion in the NLRC Decision before it and not on the basis of whether the NLRC Decision, on the merits of the

31 Id. at 54-55.
32 Id. at 55-85.

case, was correct.[33] Grave abuse of discretion may be ascribed to the NLRC when, *inter alia*, its findings and the conclusions reached thereby are not supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[34]

In the present case, the CA correctly set aside the NLRC Decision for want of substantial evidence to justify respondent's dismissal on the ground of serious misconduct.

Misconduct is generally defined as "a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment." In labor cases, misconduct, as a ground for dismissal, must be serious — that is, it must be of such grave and aggravated character and not merely trivial or unimportant. In addition, the act constituting misconduct must be connected with the duties of the employee and performed with wrongful intent.[35]

Hence, for an employee's termination to be justified on the ground of serious misconduct, the following requisites must concur:

(a) the misconduct must be serious;

(b) it must relate to the performance of the employee's duties, showing that the employee has become unfit to continue working for the employer; and

(c) it must have been performed with wrongful intent.[36]

We 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.[37] Indeed, the Court has consistently ruled that the utterance of obscene, insulting or offensive words against a superior is not only destructive of the morale of his co-employees and a violation of the company rules and regulations, but also constitutes gross misconduct.[38] Nonetheless here, We agree with the CA and the LA that respondent's act of uttering invectives and offensive words do not constitute misconduct of serious or grave character to justify the imposition of the penalty of dismissal. Differently stated, the peculiar

33 *Tri-C General Services v. Matuto*, 770 Phil. 251, 260-261 2015.
34 *Felicilda v. Uy*, 795 Phil. 408, 414 (2016).
35 *Stanfilco - A Division of DOLE Philippines, Inc. and Casino v. Tequillo and/or National Labor Relations Commission – Eighth Division*, G.R. No. 209735, July 17, 2019.
36 Id.
37 *Maula v. Ximex Delivery Express, Inc.*, 804 Phil. 365, 379 (2017).
38 *Sterling Paper Products Enterprises, Inc. v. KMM-Katipunan and Raymond Z. Esponga*, 815 Phil. 425, 436 (2017).

circumstances of the present case find Our previous rulings inapplicable.[39]

Records reveal that respondent's misbehavior was rooted from instances of what he felt as unfair treatment from BM Cadudu-an. When first asked to explain, respondent narrated the circumstances that led to his sudden fit of anger on February 15, 2016.[40] Apparently, prior to the subject incident, there had already been unpleasant encounters between respondent and BM Cadudu-an. In fact, BM Cadudu-an's *Sinumpaang Salaysay*,[41] albeit with a different version of the factual antecedents, nonetheless confirmed that bad blood was already seemingly boiling between her and respondent even prior to February 15, 2016.[42] We thus agree with the CA that respondent's utterances were just on-spur-of-the-moment outbursts[43] of respondent when he reached his breaking point, and were not brought about by a wrongful intent, insubordination, or utter disrespect to his superior. As correctly held by the CA and the LA, the incident on February 15, 2016 was a case of an error in judgment and not a premeditated defiance of authority.[44] Moreover, respondent, prior to his termination, had been in the employ of petitioner for 27 years and there was no showing that he had committed or was disciplined for previous infractions during his entire employment with petitioner. Again, as aptly observed by the CA, the subject incident was the first ever reported case against respondent.[45] On the contrary, respondent was even merited with yearly salary increases on account of his outstanding performance.[46] In this regard, it is worthy to stress that petitioner also failed to sufficiently show that respondent had become unfit for work because of the February 15, 2016 incident with BM Cadudu-an. Verily, the elements of serious misconduct are not present in the instant case.

Parenthetically, while an employer may consider the totality of infractions or the number of violations committed by the employee in the imposition of penalties,[47] still, such principle of totality of infractions cannot be applied in the case at bench. That respondent allegedly committed similar acts of misbehavior in the past as shown by the several sworn statements of respondent's co-employees will not justify the imposition of the ultimate penalty of dismissal. As already stated, respondent was never charged nor disciplined for these alleged previous acts of misbehavior. Notably also, these prior acts of respondent were

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39 See *Leo T. Maula v. Ximex Delivery Express, Inc.*, supra at 379.
40 *Rollo*, pp. 238-241.
41 Id. at 302-303.
42 Id.
43 See *Maula v. Ximex Delivery Express, Inc.*, supra note 37 at 379.
44 *Rollo*, pp. 103, 383.
45 Id. at 103.
46 Id. at 202, 384.
47 See *Maula v. Ximex Delivery Express, Inc.*, supra at 380.

not sufficiently alleged or stated in the show cause letter dated February 27, 2016.[48] To be exact, the accusations of his co-employees only surfaced after respondent had submitted his answer to the show cause letter.[49] To consider these alleged previous infractions[50] of respondent in the imposition of the penalty of dismissal not only violates the principles of due process and fair play, but also undermines the constitutionally guaranteed[51] and statutorily protected[52] right of a worker to security of tenure. Thus, the Court cannot countenance.

The foregoing being said, We find the penalty of dismissal too harsh in the present case. Under Article 279[53] of the Labor Code and as settled in jurisprudence, an employee who is dismissed without just cause and without due process is entitled to backwages and reinstatement, or payment of separation pay in lieu thereof.[54] When that happens, the finality of the illegal dismissal decision becomes the reckoning point instead of the reinstatement that the law decrees. In allowing separation pay, the final decision effectively declares that the employment relationship ended so that separation pay and backwages are to be computed up to that point.[55] Consequently, remand of the case to the LA for recomputation of respondent's monetary benefits is proper. A recomputation (or an original computation, if no previous computation has been made) is a part of the law — specifically, Article 279 of the Labor Code and the established jurisprudence on this provision — that is read into the decision. By the nature of an illegal dismissal case, the reliefs continue to add on until full satisfaction, as expressed under Article 279 of the Labor Code.[56] That the amount the petitioner shall now pay has greatly increased is a consequence that it cannot avoid as it is the risk that it ran when it continued to seek recourses against the labor arbiter's decision.[57]

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48 *Rollo*, pp. 208-209.

49 Id. at 244-247, see respondent's letter dated March 2, 2016; id. at 302-321, *vis-à-vis* the sworn statements of respondent's co-employees, Annexes "4" to "16" of petitioner's position paper with the LA, that were all executed after respondent submitted his answer to the Show Cause letter.

50 Id. at 211-212.

51 See *Leo T. Maula v. Ximex Delivery Express, Inc.*, supra at 377.

52 Id.; see also Art. 279 of the Labor Code, which reads:
Art. 279. *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.

53 Id.

54 *Tri-C General Services v. Matuto*, supra note 33 at 263.

55 *University of Pangasinan, Inc. et al., v. Fernandez et al.*, 746 Phil. 1019, 1038 (2014), citing *Session Delights Ice Cream and Fast Foods v. Hon. CA (6th Div.), et al.*, 625 Phil. 612, 630 (2010).

56 Id. at 629.

57 Id.

We likewise uphold the CA and LA rulings insofar as they declared respondent's preventive suspension as illegal. Preventive suspension is justified where the employee's continued employment poses a serious and imminent threat to the life or property of the employer or of the employee's co-workers. Without this kind of threat, preventive suspension is not proper.[58] Here, apart from invoking its management prerogative, petitioner failed to adduce concrete evidence to support its general allegations that respondent's presence in the workplace and his continued employment posed serious threat or danger to the life or property of his co-workers or of petitioner.

All told, We find no reversible error on the part of the CA in setting aside the NLRC Decision and reinstating the LA Decision. The award of attorney's fees is likewise sustained. We nonetheless modify the CA Decision by imposing legal interest at the rate of six percent (6%) *per annum* on the total amount of monetary awards in favor of respondent.[59]

On a final note:

> It is true that an employer is given a wide latitude of discretion in managing its own affairs. The broad discretion includes the implementation of company rules and regulations and the imposition of disciplinary measures on its employees. But the exercise of a management prerogative like this is not limitless, but hemmed in by good faith and a due consideration of the rights of the worker. In this light, the management prerogative will be upheld for as long as it is not wielded as an implement to circumvent the laws and oppress labor.
>
> 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.
>
> 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,

58 *Maula v. Ximex Delivery Express, Inc.*, supra note 37 at 388.

59 When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest shall be 6% *per annum* from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit; see *Nacar v. Gallery Frames*, 716 Phil. 267, 281 (2013); see also *University of Pangasinan, Inc. et al., v. Fernandez, et al.*, supra at 1043.

> 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.[60]

WHEREFORE, the petition is **DENIED**. The challenged Decision dated September 12, 2019 and Resolution dated July 3, 2020 of the Court of Appeals in CA-G.R. SP No. 159521 are **AFFIRMED with MODIFICATION** in that the total monetary awards in favor of respondent shall earn legal interest at the rate of six percent (6%) *per annum* from finality of this Resolution until full payment.

The case is **REMANDED** to the Labor Arbiter for recomputation of the monetary awards and benefits due respondent.

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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60 *Dongon v. Rapid Movers and Forwarders Co., Inc., et al.*, 716 Phil. 533, 545- 546 (2013).

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