Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

DR. PHYLIS C. RIO,
Petitioner,

- versus -

COLEGIO DE STA. ROSA-MAKATI and/or SR. MARILYN B. GUSTILO,
Respondents.

G.R. No. 189629

Present:

CARPIO, *J.*,
Chairperson,
BRION,
DEL CASTILLO,
PEREZ, and
PERLAS-BERNABE, *JJ.*

Promulgated:

AUG 0 6 2014

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DECISION

PEREZ, *J.:*

Before us is a Petition for Review filed under Rule 45 of the Revised Rules of Court, assailing the Decision[1] dated 21 May 2009 and Resolution[2] dated 18 September 2009 by the Honorable Court of Appeals (CA) in CA-G.R. SP No. 89502 which ruled on the legality of the dismissal of petitioner Dr. Phylis C. Rio (petitioner).

The Facts

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1 *Rollo*, pp. 30-42; Penned by Associate Justice Romeo F. Barza with Associate Justices Josefina A. Guevara-Salonga and Magdangal M. de Leon concurring.

2 *Id.* at 44-46.

Petitioner was hired by respondent Colegio De Sta. Rosa-Makati as a part-time school physician in June 1993. Petitioner was required to report for work for four (4) hours every week with a salary of ₱12,640.00 per month.

In February 2002 or after almost ten (10) years of service, petitioner received a Contract of Appointment from Sr. Marilyn B. Gustilo (respondent Gustilo), Directress/Principal, requiring petitioner to report from Monday to Friday, from 8:00 a.m. to 3:00 p.m., with a salary of ₱12,500.00 per month. Due to the substantial change in the work schedule and decrease in her salary, petitioner declined the Contract of Appointment.

On 24 June 2002, through a Memorandum from respondent Gustilo, petitioner was informed of a new work schedule. The Memorandum required petitioner to report daily during the work week, to wit: Mondays, Wednesdays, Fridays from 8:00 a.m. to 11:00 a.m.; Tuesdays and Thursdays at 1:00 p.m. to 4:00 p.m.

In opposition, petitioner wrote respondent Gustilo a letter refusing the unilateral change in her work schedule. In response, respondent Gustilo revised the new work schedule to every Tuesdays from 7:00 a.m. to 11:00 a.m.

In a letter dated 30 July 2002, respondent Gustilo charged petitioner and Mrs. Neneth Alonzo (Alonzo), the school nurse, of "grave misconduct, dishonesty and/or gross neglect of duty detrimental not only to the school but, principally, to the health and well-being of the pupils based on the Manual of Regulations for Private Schools and Section 94 (a) and (b) and Article 282 (a), (b) and (c) of the Labor Code." In the same letter, petitioner and Alonzo were preventively suspended for a period of thirty (30) days, effective 30 July 2002.

Petitioner was made to answer for the following: (1) nine (9) students have medical records for school years during which they were not in the school yet, thus could not have been the subject of medical examination/evaluation; (2) seventy-nine (79) students of several classes/sections during certain school years were not given any medical/health evaluation/examination; and (3) failure to conduct medical/health examination on all students of several classes of different grade levels for the school year 2001-2002.[3]

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[3] *Id.* at 123.

Petitioner denied the charges through a letter to respondent on 2 August 2002. On 9 August 2002 petitioner filed a complaint for constructive dismissal and illegal suspension against respondents Colegio de Sta. Rosa-Makati and Gustilo before the Labor Arbiter.

Respondent Gustilo would later file a criminal complaint for falsification of private documents against petitioner before the Makati Prosecutors Office on 6 February 2003.

To investigate the charges against petitioner, respondent Gustilo created an investigation committee, which issued a Memorandum, instructing petitioner to appear before it on 30 August 2002.

On 8 October 2002, upon the recommendation of the investigation committee, the services of petitioner and Alonzo were terminated for their grave misconduct, dishonesty and gross neglect of duty.[4]

The Ruling of the Labor Arbiter

Upon the filing of the parties' respective Position Papers, Labor Arbiter Manuel Manansala ruled in favor of petitioner and Alonzo, declaring that they were illegally dismissed. The pertinent portion of the disposition reads:

> WHEREFORE, premises considered, judgment is hereby rendered:
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> 1. Declaring respondent Colegio de Sta. Rosa guilty of illegal dismissal for the reasons above-discussed.
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> 2. Directing respondent Colegio de Sta. Rosa to pay complainants Dr. Phylis C. Rio the sum of P259,836.27 and Neneth M. Alonzo the sum of P746,360.49 representing their backwages and severance pay for the reasons above-discussed as computed by the Examination and Computation Unit of this Arbitration Branch. x x x
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> 3. Directing respondent Colegio de Sta. Rosa to immediately reinstate complainant Ma. Corazon P. Cruz to her former position without loss of seniority right with full backwages from the time of her unjust dismissal up to the time of her

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4 *Id.* at 239; Letter/Notice of Termination.

> actual reinstatement. The initial backwages of complainant Cruz is P281,655.77 x x x.
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> x x x x
>
> 6. Reminding individual respondent Sr. Marilyn Gustilo in her capacity as Directress/Principal of respondent Colegio de Sta. Rosa to be cautious in matters involving dismissal and/or termination from employment of the personnel of the school.[5]

Both parties appealed to the National Labor Relations Commission (NLRC). Petitioner, however, filed an appeal only to correct the computation of the award from ₱259,836.27 to ₱323,036.27.

The Ruling of the NLRC

On 10 January 2005, the NLRC reversed the ruling of the Labor Arbiter and likewise denied petitioner's subsequent motion for reconsideration on 7 April 2005.[6] According to the NLRC, "[i]t must be stressed that complainants Rio and Alonzo were tasked with responsibilities vital to the health and safety of students. Their apparent lack of interest, concern and system in performing these tasks could very well earn dismissal from the service even if they had not preempted the school by filing charges prematurely."[7]

The Ruling of the Court of Appeals

Aggrieved, petitioner filed a Petition for *Certiorari* with the CA, which the CA denied. According to the CA, assuming *arguendo* that petitioner's failure to conduct medical examinations on the scheduled dates were due to disruptions of various school activities, it only shows that petitioner is incapable of performing the tasks required of her.[8]

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5 *Id.* at 335-336.

6 *Id.* at 373-389; Penned by Commissioner Angelita A. Gacutan with Presiding Commissioner Raul T. Aquino and Commissioner Victoriano R. Calaycay concurring.

7 *Id.* at 387.

8 *Id.* at 40-41.

Our Ruling

Hence, this Petition for Review, which, while it presents the need to look into the matter of petitioner's dismissal, goes into the question of whether or not the NLRC committed grave abuse of discretion in reversing the ruling of the Labor Arbiter, this being the issue in the petition for *certiorari* under Rule 65 before the CA. The ruling in *Mercado v. AMA Computer College-Parañaque City, Inc.*[9] citing *Protacio v. Laya Mananghaya & Co*.[10] is apropos:

> As a general rule, in *certiorari* proceedings under Rule 65 of the Rules of Court, the appellate court does not assess and weigh the sufficiency of evidence upon which the Labor Arbiter and the NLRC based their conclusion. The query in this proceeding is limited to the determination of whether or not the NLRC acted without or in excess of its jurisdiction or with grave abuse of discretion in rendering its decision. **However, as an exception, the appellate court may examine and measure the factual findings of the NLRC if the same are not supported by substantial evidence. The Court has not hesitated to affirm the appellate court's reversals of the decisions of labor tribunals if they are not supported by substantial evidence.** [Underscoring supplied]

In *Montoya v. Transmed Manila Corporation*,[11] We laid down the manner of review of the decisions of the CA in labor cases, as follows:

> In a Rule 45 review, we consider the correctness of the assailed CA decision, in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of questions of law raised against the assailed CA decision. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for certiorari it ruled upon was presented to it; **we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct.** In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it. This is the approach that should be basic in a Rule 45 review of a CA ruling in a labor case. **In question form, the question to ask is: Did the CA correctly determine whether the NLRC committed grave abuse of discretion in ruling on the case?** (Underscoring supplied)

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9 G.R. No. 183572, 13 April 2010, 618 SCRA 218, 232.
10 G.R. No. 168654, 25 March 2009, 582 SCRA 417, 427.
11 G.R. No. 183329, 27 August 2009, 597 SCRA 334, 342-343.

Our discussion on the meaning of grave abuse of discretion in *Yu v. Judge Reyes-Carpio*[12] citing *Beluso v. Commission on Elections*[13] and *J.L. Bernardo Construction v. CA*[14] is instructive:

> The term "grave abuse of discretion" has a specific meaning. An act of a court or tribunal can only be considered as with grave abuse of discretion when such act is done in a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." The abuse of discretion must be so patent and gross as to amount to an "evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility." Furthermore, the use of a petition for *certiorari* is restricted only to "truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void." From the foregoing definition, it is clear that the special civil action of certiorari under Rule 65 can only strike an act down for having been done with grave abuse of discretion if the petitioner could manifestly show that such act was patent and gross. x x x.

Petitioner failed to show that the NLRC exercised its judgment capriciously, whimsically, arbitrarily or despotically by reason of passion and hostility. Such a showing is needed for a reversal of the ruling of the CA here questioned.

In fact, the antecedents of the letter dated 30 July 2002 show that respondent Colegio de Sta. Rosa-Makati had enough reason to, as it did, terminate the services of petitioner.

Based on Article 282 of the Labor Code,[15] in relation to Section 94 of the 1992 Manual of Regulations for Private Schools,[16] petitioner was legally

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12 G.R. No. 189207, June 15, 2011, 652 SCRA 341, 348.

13 G.R. No. 180711, 22 June 2010, 621 SCRA 450, 456-457 citing *De Vera v. De Vera*, G.R. No. 172832, 7 April 2009, 584 SCRA 506, 514-515; *Fajardo V. CA*, G.R. No. 157707, 29 October 2008, 570 SCRA 156, 163; 2 JOSE Y. FERIA & MARIA CONCEPCION S. NOCHE, CIVIL PROCEDURE ANNOTATED 463 (2001).

14 381 Phil. 25, 36 (2000).

15 Art. 282. Termination by employer. An employer may terminate an employment for any of the following causes:

1. Serious misconduct or wilful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
2. Gross and habitual neglect by the employee of his duties;
3. Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
4. Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and

dismissed on the ground of gross inefficiency and incompetence, and negligence in the keeping of school or student records, or tampering with or falsification of records.

As we already held, gross inefficiency is closely related to gross neglect because both involve specific acts of omission resulting in damage to another.[17] Gross neglect of duty or gross negligence refers to negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to consequences insofar as other persons may be affected.[18]

As borne by the records, petitioner's actions fall within the purview of the above-definitions. Petitioner failed to diligently perform her duties. It was unrefuted that: (1) there were dates when a medical examination was supposed to have been conducted and yet the dates fell on weekends; (2) failure to conduct medical examination on all students for two (2) to five (5) consecutive years; (3) lack of medical records on all students; and (4) students having medical records prior to their enrollment.

As her defense, petitioner maintains that the discrepancies were due to the loss of the cabinet key, which was misplaced by Sr. Zenaida, the person-in-charge. Because the cabinet, which contains the official medical records, could not be opened, Alonzo had to record the medical examinations temporarily. Due to pressure and time constraints, Alonzo erroneously transferred the entries of the medical examinations to the official records.

However, petitioner waited for two (2) years to finally have the cabinet opened. As correctly found by the CA:

> x x x If petitioner had been attentive to her work as she claims, this cabinet could not have been left dormant for two years as she would have been

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> 5. Other causes analogous to the foregoing.

16 Section 94. Causes of Terminating Employment. x x x

> a. Gross inefficiency and incompetence in the performance of his duties, such as, but not necessarily limited to habitual and inexcusable absences and tardiness from his classes, wilful abandonment of employment or assignment;
>
> b. Negligence in keeping school or student records, or tampering with or falsification of the same;
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> x x x x

17 *Lim v. NLRC*, 328 Phil. 843, 858 (1996).

18 *Brucal v. Hon. Desierto*, 501 Phil. 453, 465-466 (2005).

> regularly updating her records and checking on them. x x x Assuming that the cabinet was indeed locked, the fact that she did not bother to have it opened for two years only showed that she had no need to use the files contained therein because she had not been maintaining and updating the medical records as she had not been performing her job actively conducting routine physical examination on the students as required of her.[19] x x x

The CA went further, stating, "even assuming that petitioner was telling the truth, the fact remains that she had been grossly inefficient and negligent for failing to provide a proper system of maintaining and updating the students' medical records over the years of her employment with respondent." Indeed, petitioner was grossly inefficient and negligent in performing her duties.

WHEREFORE, the petition is **DISMISSED** for lack of merit. The assailed Decision dated 21 May 2009 and Resolution dated 18 September 2009 of the Court of Appeals in CA-G.R. SP No. 89502 are **AFFIRMED** in *toto*.

SO ORDERED.

JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

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19 *Rollo*, p. 39

ARTURO D. BRION
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

ATTESTATION

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

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were 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