Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

MARK E. SAMILLANO,
Petitioner,

- versus -

VALDEZ SECURITY AND INVESTIGATION AGENCY, INC. / EMMA V. LICUANAN,
Respondent.

G.R. No. 239396

Present:

PERALTA, *C.J., Chairperson,*
CAGUIOA, *Working Chairperson*
REYES, J. JR.,
LAZARO-JAVIER, and
LOPEZ, *JJ.*

Promulgated:

JUN 23 2020

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DECISION

REYES, J. JR., *J.*:

This is a Petition for Review on *Certiorari*[1] seeking to reverse and set aside the Decision[2] dated December 20, 2017 and the Resolution[3] dated April 24, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 147502.

The Facts

On August 17, 2008, Valdez Security and Investigation Agency, Inc. (respondent company) hired Mark E. Samillano (petitioner) as a security

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1 *Rollo*, pp. 13-33.
2 Penned by Associate Justice Rosmari D. Carandang (now a Member of the Court), with Associate Justices Jane Aurora C. Lantion and Zenaida T. Galapate-Laguilles, concurring; id. at 34-42.
3 Id. at 44-45.

guard. He was required to work from 7:00 p.m. to 7:00 a.m. from Monday to Saturday at Mornesse Center of Spirituality (Mornesse) in Calamba, Laguna.

On December 3, 2013, petitioner was relieved from his post upon the request of Sister Christina Maguyo, a representative of Mornesse. The request was made after petitioner and his co-security guard Nilo Mamigo (Mamigo) impleaded Mornesse in the complaint for money claims against the respondent company and its president and general manager Emma V. Licuanan (Licuanan). On the same date, Mamigo was also relieved from his post due to abandonment of work when he went on absence without leave (AWOL).[4]

On September 17, 2014, petitioner and Mamigo filed a complaint for illegal dismissal with money claims, moral and exemplary damages and attorney's fees against the respondent company and Licuanan (collectively, respondents). On October 27, 2014, they filed an amended complaint excluding their money claims in view of a pending case between the parties involving the same subject matter.[5]

In their Position Paper, petitioner and Mamigo asserted that they were dismissed from service without just cause and that no valid reason was given to justify their unceremonious dismissal. Further, the respondent company did not furnish them a notice of termination in wanton disregard of law.[6]

For their part, the respondents maintained in their Position Paper that there was no dismissal, much less illegal dismissal, since petitioner and Mamigo went on AWOL, abandoned their work and refused to report to work without justifiable reason.[7] They averred that on December 3, 2013, their security inspector SO Romeo Francisco served the Relieve Order[8] on petitioner but he refused to sign and accept it. Petitioner was informed that he will be relieved from his post on account of a client's request and that he will be deployed or transferred to another client. The respondents stressed that petitioner's refusal to follow their lawful order to report to their head office for re-assignment or deployment constitutes insubordination.[9]

On September 15, 2015, the Labor Arbiter dismissed the case for lack of merit. Declaring that petitioner and Mamigo were not dismissed from service, the Labor Arbiter held:

> Based on the notice that was sent to complainants, they were merely relieved of their posts at the Mornesse Center for Spirituality on December 3, 2014 (sic) and that, shortly, on December 14, 2013

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4 Id. at 35.
5 Id.
6 Id. at 70.
7 Id. at 76-77
8 Id. at 94.
9 Id. at 78.

> (sic) they were sent return-to-work notices (See pp. 33 & 34, record) but they failed to comply. We note that in their position paper, complainants made a sweeping statement that they were dismissed outright by Licuanan without, however, explaining in detail how it was carried out. Under the circumstances, we are more inclined to believe that the client had indeed requested for their relief as it was dragged into a case that complainants filed against the agency and the client. Offhand, we note that it was only in complainants' reply that they alleged that they were "placed on floating status" thereby changing their theory which is an indication that the position of respondents is more accurate.[10]

Aggrieved thereby, petitioner filed an appeal before the National Labor Relations Commission (NLRC). In its Decision dated January 28, 2016, the NLRC held that petitioner and Mamigo were not dismissed from service when they were merely relieved from their posts upon the client's request. It enunciated that Mornesse has the right to demand petitioner's relief from his post for impleading it as a respondent in their complaint since under the contract, a client can request for the relief of the guard assigned to it even for want of cause.[11] Further, the NLRC stated that petitioner and Mamigo abandoned their work as shown by the following circumstances: (1) petitioner and Mamigo did not show up at the respondent company's office after they were relieved from their posts; 2) they were offered new posts but they refused the same and manifested that they are no longer willing to return to work; and 3) they only filed the instant complaint 10 months from the time they were relieved from their assignments.[12]

In its Decision dated December 20, 2017, the CA ruled that petitioner and Mamigo were dismissed from service for just cause. It enunciated that petitioner and Mamigo refused to report back to work despite having been served with return to work notices, an act that is tantamount to "grossly abandoning or neglecting your work."[13] The CA, however, found that they were not afforded due process prior to their dismissal since no evidence was presented to show that return to work notices were sent to them. Further, it stressed that the notices issued by the respondents "were hardly sufficient for them to adequately prepare and defend themselves."[14] The CA awarded petitioner and Mamigo the amount of ₱30,000.00 each as nominal damages for failure of the respondents to observe the twin notice rule in termination cases. The dispositive portion of the CA Decision states:

> **WHEREFORE,** premises considered, the instant petition is **AFFIRMED with MODIFICATION** that Private Respondent Valdez Security and Investigation Agency, Inc. is **ORDERED** to pay Mark

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10 Id. at 99
11 Id. at 122.
12 Id. at 123-124.
13 Id. at 38.
14 Id. at 40.

> Esconde Samillano and Nilo Tueres Mamigo the amount of ₱30,000.00 each as nominal damages for non-compliance with statutory due process.
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> **SO ORDERED.**[15]

Hence, this petition raising the issue of whether or not the CA erred in finding that there was just cause for petitioner's termination from employment.

Petitioner posits that he did not abandon his work as would amount to a just cause for his dismissal from the service. He reiterates that he was placed on floating status by the respondents and did not receive any actual notice of reassignment thereafter. Refuting the respondents' claim of abandonment of work, petitioner asseverates that the respondents did not present evidence that he failed to report back to work and that he abandoned his post. He further notes that the fact that he filed the instant complaint militates against the respondent's theory of abandonment.[16]

Respondents, on the other hand, counter that petitioner was not dismissed from service but abandoned his work after being validly relieved from his last post/assignment as security guard. They maintain that had petitioner reported to the head office as instructed, he would have a new assignment at Anaconda Metal Fastener. Still, petitioner chose to ignore the Relieve Order.[17]

We resolve.

As a rule, only questions of law may be raised in and resolved by the Court in a Rule 45 petition. The Court is precluded from inquiring into the veracity of the CA's factual findings especially when supported by substantial evidence. The findings of fact of the CA are final, binding, and conclusive upon us except when they are contrary to those of the administrative body exercising *quasi*-judicial functions from which the action originated. In such case, the Court may examine the facts only for the purpose of resolving allegations and determining the existence of grave abuse of discretion.[18] As held in *Montoya v. Transmed Manila Corporation/Mr. Ellena*,[19] the assailed CA Decision must be examined "from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it."[20]

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15 Id. at 41.
16 Id. at 20-24.
17 Id. at 216.
18 *Slord Development Corporation v. Noya*, G.R. No. 232687, February 4, 2019.
19 613 Phil. 696 (2009)
20 Id. at 707.

In labor cases, grave abuse of discretion may be imputed to the NLRC in the absence of substantial evidence to support its findings and conclusions. Suffice it to say that if the NLRC's determination is clearly in accord with the evidence and applicable law and jurisprudence, then no grave abuse of discretion exists and the CA should so declare and, accordingly, dismiss the petition.[21] In this case, the pivotal issue of whether the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in holding that petitioner was not dismissed from the service was not resolved in the assailed CA Decision. The CA entered a contrary ruling without expressly stating that the NLRC's Resolution was not supported by substantial evidence and is inconsistent with law and prevailing jurisprudence. Thus, while the jurisdiction of this Court is confined to questions of law, we are more constrained to make our own independent findings of facts in view of the conflicting findings of the labor tribunals and the CA.[22] To recall, the Labor Arbiter and the NLRC uniformly declared that petitioner was not dismissed from employment. On the other hand, the CA held that the respondents terminated petitioner's employment for gross and habitual neglect of duty under Article 297 paragraph (b) of the Labor Code.[23]

Petitioner was not dismissed from the service

Most contracts for services provide that the client may request the replacement of security guards assigned to it. In such setting, the security agency has the right to transfer or assign its employees from one area of operation to another subject to the condition that there is no demotion in rank or diminution of salary, benefits, and other privileges, and the transfer is not motivated by discrimination or bad faith, or effected as a form of punishment or demotion without sufficient cause. Known as placement "on floating or reserved status," *this industry practice does not constitute dismissal*, as the assignments primarily depend on the contracts entered into by the agency with third parties, and is *a valid exercise of management prerogative* provided it is carried out in good faith.[24]

Petitioner was relieved from his post on December 3, 2013 upon the request of the respondent company's client. A Memorandum/Relieve Order was issued informing him that he shall be reassigned or transferred to another post. He was instructed to report in complete uniform at the respondent company's head office on December 5, 2013 at 9:00 a.m. Clearly, petitioner was not dismissed from service but was merely placed on temporary "off-detail" or floating status. On December 5, 2013, petitioner did not report to work. In fact, when the Relieve Order was served upon him, petitioner refused to sign and accept the same. Petitioner's refusal to receive

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21 *Coca-Cola Femsa Philippines v. Macapagal*, G.R. No. 232669, July 29, 2019.

22 *Santos v. Integrated Pharmaceutical, Inc.*, 789 Phil. 447, 488 (2016).

23 Formerly Article 282 of the Labor Code.

24 *Soliman Security Services, Inc. v. Sarmiento*, 792 Phil. 708, 714-715 (2016).

the Relieve Order was witnessed by two other co-security guards, as reflected in that same order.

In *Tatel v. JLFP Investigation Security Agency, Inc.*, we held:

> Temporary "off-detail" or "floating status" is the period of time when security guards are in between assignments or when they are made to wait after being relieved from a previous post until they are transferred to a new one. It takes place when the security agency's clients decide not to renew their contracts with the agency, resulting in a situation where the available posts under its existing contracts are less than the number of guards in its roster. It also happens in instances where contracts for security services stipulate that the client may request the agency for the replacement of the guards assigned to it even for want of cause, such that the replaced security guard may be placed on temporary "off-detail" if there are no available posts under the agency's existing contracts. During such time, the security guard does not receive any salary or any financial assistance provided by law. It does not constitute a dismissal, as the assignments primarily depend on the contracts entered into by the security agencies with third parties, so long as such status does not continue beyond a reasonable time. **When such a "floating status" lasts for more than six (6) months, the employee may be considered to have been constructively dismissed.**[25] (Emphasis supplied)

It bears stressing that on December 14, 2013, the respondent company sent a Notice to petitioner notifying him that he has been on AWOL status since December 5, 2013. He was directed to report to the head office of the respondent company to determine if he is still interested to work for it. He was also informed of a new assignment at Anaconda Metal Fastener, Inc. in Pasig City, contrary to his claim that a new assignment was offered only during the mediation proceeding. The notice was sent to the address appearing on petitioner's 201 files via registered mail as evidenced by the registry receipt.

Jurisprudence teaches us that in illegal dismissal cases, it is imperative that the employee first establishes by substantial evidence that he was dismissed from the service. If there is no dismissal, then there can be no question as to the legality or illegality thereof.[26] This springs from the rule that the one who alleges a fact has the burden of proving it;[27] mere allegation is not evidence.[28] Considering that he has been assigned to another posting, even to a particular client, within six months from the time he was relieved from his post, petitioner cannot be said to have been dismissed, actually or constructively, from the service.

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25 755 Phil. 171, 183 (2015).

26 *Symex Security Services, Inc. v. Rivera, Jr.*, G.R. No. 202613, November 8, 2017.

27 *Machica v. Roosevelt Services Center, Inc.*, 523 Phil. 199, 209 (2006).

28 *Sarona v. National Labor Relations Commission*, 679 Phil. 394, 409 (2012).

Petitioner is not guilty of abandonment

Abandonment is defined as the "deliberate and unjustified refusal of an employee to resume his employment" and is a just cause for termination of employment under paragraph (b) of Article 282 [now Article 297] of the Labor Code on the ground of neglect of duty. The Court explained in *Symex Security Services, Inc.*:

> To constitute abandonment, however, there must be a clear and deliberate intent to discontinue one's employment without any intention of returning. In this regard, two elements must concur: (1) failure to report for work or absence without valid or justifiable reason, and (2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor and being manifested by some overt acts. Otherwise stated, absence must be accompanied by overt acts unerringly pointing to the fact that the employee simply does not want to work anymore. It has been ruled that the employer has the burden of proof to show a deliberate and unjustified refusal of the employee to resume his employment without any intention of returning.[29]

In this case, the respondents failed to establish the petitioner's deliberate and unjustified intent to abandon his employment. First, mere absence or failure to report for work is not tantamount to abandonment even when a notice to return to work has been served, as in this case.[30] Second, it is well to note that petitioner's complaint of illegal dismissal is coupled with a prayer for reinstatement which clearly negates the claim of abandonment. Settled is the rule that the act of filing an illegal dismissal complaint is inconsistent with abandonment of employment, moreso when it includes reinstatement as a relief prayed for.[31] The filing of the complaint even fortifies petitioner's desire to return to work. Third, petitioner has rendered five years of continuous service to the respondents which gives us no rational explanation as to why he would disrupt his tenure, abandon his work and forego the benefits to which he may be entitled.[32]

The CA stated that it is difficult to believe that petitioner did not receive the notice sent by the respondent company directing him to return to work because it was sent to a wrong address.[33] Records will show that petitioner's address in the return to work order is Alfonso, Cavite while his address in the complaint for illegal dismissal is Sto. Tomas, Batangas. The Court does not discount the possibility that during the period of his five-year employment with the respondent company, petitioner changed his address without updating his record in the 201 files. This could only be the plausible reason why petitioner did not receive a copy of the return to work notice. It is thus improper to readily conclude that petitioner intended to discontinue

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29 Supra note 26.
30 *Philippine Industrial Security Agency Corp. v. Dapiton*, 377 Phil. 951, 960 (1999).
31 *Pu-od v. Ablaze Builders, Inc.*, G.R. No. 230791, November 20, 2017.
32 Supra note 25, at 184.
33 Supra note 2, at 38.

his employment with the respondent company simply because he failed to report back to work.

Petitioner must be reinstated to his former position without payment of backwages

Time and again, we have held that where the parties failed to prove the presence of either the dismissal of the employee or the abandonment of his work, the remedy is to reinstate such employee without payment of backwages. This is in accord with our pronouncement in *Danilo Leonardo v. National Labor Relations Commission and Reynaldo's Marketing Corporation*[34] that "in a case where the employee's failure to work was occasioned neither by his abandonment nor by a termination, the burden of economic loss is not rightfully shifted to the employer; each party must bear his own loss." Accordingly, if petitioner chooses not to return to work, he must then be considered as having resigned from employment.[35]

WHEREFORE, the petition is **DENIED.** The complaint for illegal dismissal is **DISMISSED.** The Respondents are **ORDERED TO REINSTATE** petitioner Mark E. Samillano to his former position without payment of backwages, in accordance with this Decision.

SO ORDERED.

JOSE C. REYES, JR.
Associate Justice

WE CONCUR:

DIOSDADO M. PERALTA
Chief Justice
Chairperson

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34 389 Phil. 118, 128 (2000).
35 Id.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

MARIO V. LOPEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.

DIOSDADO M. PERALTA
Chief Justice