

**SAN MIGUEL CORPORATION (CAGAYAN COCA-COLA PLANT),
PETITIONER, VS. HON. AMADO G. INCIONG, DEPUTY MINISTER OF
LABOR AND CAGAYAN COCA-COLA FREE WORKERS UNION,
RESPONDENTS.**

G.R. No. L-49774. February 24, 1981

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

Petition for certiorari and prohibition, with preliminary injunction to review the Order[1] dated December 19, 1978 rendered by the Deputy Minister of Labor in STF ROX Case No. 009-77 docketed as "Cagayan Coca-Cola Free Workers Union vs. Cagayan Coca-Cola Plant, San Miguel Corporation," which denied herein petitioner's motion for reconsideration and ordered the immediate execution of a prior Order[2] dated June 7, 1978.

On January 3, 1977, Cagayan Coca-Cola Free Workers Union, private respondent herein, filed a complaint against San Miguel Corporation (Cagayan Coca-Cola Plant), petitioner herein, alleging failure or refusal of the latter to include in the computation of 13th-month pay such items as sick, vacation or maternity leaves, premium for work done on rest days and special holidays, including pay for regular holidays and night differentials.

An Order[3] dated February 15, 1977 was issued by Regional Office No. X where the complaint was filed requiring herein petitioner San Miguel Corporation (Cagayan Coca-Cola Plant) "to pay the difference of whatever earnings and the amount actually received as 13th month pay excluding overtime premium and emergency cost of living allowance."

Herein petitioner appealed from that Order to the Minister of Labor in whose behalf the Deputy Minister of Labor Amado G. Inciong issued an Order[4] dated June 7, 1978 affirming the Order of Regional Office No. X and dismissing the appeal for lack of merit. Petitioner's motion for reconsideration having been denied, it filed the instant petition.

On February 14, 1979, this Court issued a Temporary Restraining Order[5] enjoining respondents from enforcing the Order dated December 19, 1978.

The crux of the present controversy is whether or not in the computation of the 13th-month pay under Presidential Decree 851, payments for sick, vacation or maternity leaves, premium for work done on rest days and special holidays, including pay for regular holidays and night differentials should be considered.

Public respondent's consistent stand on the matter since the effectivity of Presidential Decree 851 is that "payments for sick leave, vacation leave, and maternity benefits, as well as salaries paid to employees for work performed on rest days, special and regular holidays are included in the computation of the 13th-month pay." [6] On its part, private respondent cited innumerable past rulings, opinions and decisions rendered by then Acting Labor Secretary Amado G. Inciong to the effect that, "in computing the mandatory bonus, the basis is the total gross basic salary paid by the employer during the calendar year. Such gross basic salary includes: (1) regular

salary or wage; (2) payments for sick, vacation and maternity leaves; (3) premium for work performed on rest days or holidays; (4) holiday pay for worked or unworked regular holiday; and (5) emergency allowance if given in the form of a wage adjustment."[7]

Petitioner, on the other hand, assails as erroneous the aforesaid order, rulings and opinions; vigorously contends that Presidential Decree 851 speaks only of basic salary as basis for the determination of the 13th-month pay; submits that payments for sick, vacation, or maternity leaves, night differential pay, as well as premium paid for work performed on rest days, special and regular holidays do not form part of the basic salary; and concludes that the inclusion of those payments in the computation of the 13th-month pay is clearly not sanctioned by Presidential Decree 851.

The Court finds petitioner's contention meritorious.

The provision in dispute is Section 1 of Presidential Decree 851 and provides:

"All employers are hereby required to pay all their employees receiving a basic salary of not more than P1,000 a month, regardless of the nature of the employment, a 13th-month pay not later than December 24 of every year."

Section 2 of the Rules and Regulations for the implementation of Presidential Decree 851 provides:

"a) Thirteenth-month pay shall mean one twelfth (1/12) of the basic salary of an employee within a calendar year;

"b) Basic salary shall include all remunerations on earnings paid by an employer to an employee for services rendered but may not include cost-of-living allowances granted pursuant to Presidential Decree No. 525 or Letter of Instructions No. 174, profit sharing payments and all allowances and monetary bene-fits which are not considered or integrated as part of the regular or basic salary of the employee at the time of the promulgation of the Decree on December 16, 1975."

Under Presidential Decree 851 and its implementing rules, the basic salary of an employee is used as the basis in the determination of his 13th-month pay. Any compensations or remunerations which are deemed not part of the basic pay is excluded as basis in the computation of the mandatory bonus.

Under the Rules and Regulations Implementing Presidential Decree 851, the following compensations are deemed not part of the basic salary:

a) Cost-of-living allowances granted pursuant to Presidential Decree 525 and Letter of Instructions No. 174;

b) Profit sharing payments;

c) All allowances and monetary benefits which are not considered or integrated as part of the regular basic salary of the employee at the time of the promulgation of the Decree on December 16, 1975.

Under a later set of Supplementary Rules and Regulations Implementing Presidential Decree 851 issued by the then Labor Secretary Blas Ople, overtime pay, earnings and other remunerations are excluded as part of the basic salary and in the computation of the 13th-month pay.

The exclusion of cost-of-living allowances under Presidential Decree 525 and Letter of Instructions No. 174, and profit sharing payments indicate the intention to strip basic salary of other payments which are properly considered as "fringe" benefits. Likewise, the catch-all exclusionary phrase "all allowances and monetary benefits which are not considered or integrated as part of the basic salary" shows also the intention to strip basic salary of any and all additions which may be in the form of allowances or "fringe" benefits.

Moreover, the Supplementary Rules and Regulations Implementing Presidential Decree 851 is even more emphatic in declaring that earnings and other remunerations which are not part of the basic salary shall not be included in the computation of the 13th-month pay.

While doubt may have been created by the prior Rules and Regulations Implementing Presidential Decree 851 which defines basic salary to include all remunerations or earnings paid by an employer to an employee, this cloud is dissipated in the later and more controlling Supplementary Rules and Regulations which categorically, exclude from the definition of basic salary earnings and other remunerations paid by employer to an employee. A cursory perusal of the two sets of Rules indicates that what has hitherto been the subject of a broad inclusion is now a subject of broad exclusion. The Supplementary Rules and Regulations cure the seeming tendency of the former rules to include all remunerations and earnings within the definition of basic salary.

The all-embracing phrase "earnings and other remunerations" which are deemed not part of the basic salary includes within its meaning payments for sick, vacation, or maternity leaves, premium for works performed on rest days and special holidays, pays for regular holidays and night differentials. As such they are deemed not part of the basic salary and shall not be considered in the computation of the 13th-month pay. If they were not so excluded, it is hard to find any "earnings and other remunerations" expressly excluded in the computation of the 13th-month pay. Then the exclusionary provision would prove to be idle and with no purpose.

This conclusion finds strong support under the Labor Code of the Philippines. To cite a few provisions:

"Art. 87 - overtime work. Work may be performed beyond eight (8) hours a day provided that the employee is paid for the overtime work, additional compensation equivalent to his regular wage plus at least twenty-five (25%) percent thereof."

It is clear that overtime pay is an additional compensation other than and added to the regular wage or basic salary, for reason of which such is categorically excluded from the definition of basic salary under the Supplementary Rules and Regulations Implementing Presidential Decree 851.

In Article 93 of the same Code, paragraph

"c.) work performed on any special holiday shall be paid an additional compensation of at least thirty percent (30%) of the regular wage of the employee."

It is likewise clear that premium for special holiday which is at least 30% of the regular wage is an additional compensation other than and added to the regular wage or basic salary. For similar reason it shall not be considered in the computation of the 13th-month pay.

WHEREFORE, the Orders of the Deputy Labor Minister dated June 7, 1978 and December 19, 1978 are hereby set aside and a new one entered as above indicated. The Temporary Restraining Order issued by this Court on February 14, 1979 is hereby made permanent. No pronouncement as to costs.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Fernandez, Guerrero and Melencio-Herrera, JJ., concur.

[1] p. 24, Rollo.

[2] pp. 22-23, Rollo.

[3] p. 20, Rollo.

[4] Supra.

[5] p. 28-A, Rollo.

[6] Stated in its Order dated June 7, 1978, supra.

[7] L/q. Rizal Rubber Company, Inc., 4 February 1976, p. 44, Rollo; L/q. Makati Supermarket, January 12, 1976, p. 44, Rollo; etc. Rollo, pp. 44-46.

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