

AMALGAMATED MOTORS, PHILS., INC., PETITIONER, VS. GENEROSO GOMBAN AND NATIONAL LABOR RELATIONS COMMISSION (SECOND DIVISION), RESPONDENTS.

Ponente: BRUSELAS, JR. J.

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BRUSELAS, JR. J.:

Before us is a Petition for Certiorari filed by the petitioner pursuant to Rule 65 against the Resolution[1] of the National Labor Relations Commission (NLRC) which dismissed the appeal of the petitioner by reason of non-perfection due to its failure to post bond either in a form of cash or surety bond. The dispositive portion of the NLRC decision is herein quoted as follows:

“WHEREFORE, premises considered, respondents' appeal is hereby dismissed for non-perfection thereof.

SO ORDERED.”[2]

Likewise assailed is the Resolution[3] dated 27 March 2013 which denied the petitioner's motion for reconsideration for lack of merit.

The pertinent and relevant facts, as submitted by the parties, are as follows:

The respondent Generoso Gomban (“Gomban”) was hired by petitioner Amalgamated Motors Philippines, Inc. (“petitioner”) on 15 January 2007 as Executive Assistant to Ambassador Felimon R. Cuevas, who was then the president and chairman of the Cuevas Group of Companies to which the petitioner belonged as one of its subsidiaries. Due to his commendable service, Gomban was granted salary increases and was later assigned to supervise Bounty Hunters for Industrial Insurance, Co. He was likewise appointed in-charge of the hiring of personnel of Sulo Hotel.

Sometime in February 2010, Gomban was afflicted with Influenza and on 19 March 2010, he was diagnosed with community-acquired pneumonia. Consequently, his doctor advised him to take a long rest from work. On 25 March 2010, Gomban informed the petitioner's office and filed his leave of absence. On 23 April 2010 Gomban's condition progressed to Pulmonary Tuberculosis III and, thus, he was advised to extend his sick leave for six (6) months because he would undergo anti-tuberculosis treatment and isolation.[4]

On 17 May 2010, Gomban received a Memorandum[5] from the petitioner directing him to explain within forty (48) hours from receipt thereof why no disciplinary action should be taken against him for being absent from 12 April 2010. On 20 May 2010, Gomban submitted his written explanation stating therein the reason for his absences and asked that he be given a chance to personally explain in detail the circumstances regarding his extended leave.[6]

On 23 May 2010, Gomban attempted to report for work but was not allowed to pending an action of the management on his explanation letter. Thereafter, a Notice of Termination dated 25 May 2010[7] was issued stating that the company was not satisfied with Gomban's explanation for his absences. Consequently, Gomban

instituted a complaint for illegal dismissal and monetary claims against the petitioner.

For its part, the petitioner averred that Gomban failed to report for work since 12 April 2010 without filing any leave of absence and that he did not even inform the company of his whereabouts. Through a memorandum, Gomban was directed to explain why no disciplinary action should be taken against him for being on absence without official leave (AWOL). In Gomban's written explanation, he admitted that he did not secure any approval from the petitioner before taking several absences as he was advised by his physician to extend his sick leave. He even apologized for his transgression of the company rules. Because the petitioner found Gomban's explanation to be unsatisfactory and unacceptable, it issued a Memorandum dated 25 May 2010 dismissing Gomban from his employment.

Via the 15 October 2012 decision rendered by the Labor Arbiter, Gomban's complaint for illegal dismissal was dismissed but the petitioner was ordered to pay Gomban financial assistance, his unpaid wages, 13th month pay and service incentive leave pay. The Labor Arbiter ratiocinated as follows:

“Complainant's absence without authorization was lengthy. From the lapse of his official leave and the time he tried to enter work, 40 days had lapsed. Moreover, considering the nature of complainant's job, which includes the additional responsibilities given him in regards the Sulu Hotel and the Bounty Hunters For Industrial Insurance, respondents cannot reasonably wait for complainant to re-appear and resume work, if and when he does in the first place. Finally, and more importantly, complainant was afflicted by a very contagious disease. He himself has admitted that his doctors advised him to go on rest and to have an intensive six (6) month anti-TB treatment. His illness, therefore, could not be reasonably treated within a period of six (6) months as he had already used more than one (1) month even before commencing his treatment.

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Be that as it may, complainant's cause for dismissal is not reflective of his depraved frame of mind. He has not been dismissed for a criminal or malicious activity nor for a serious or grave offense. He should be granted financial assistance by way of separation pay.

On complainant's claim for unpaid wages, the same should be granted. Respondent company is in possession of complainant's time card. It could have easily presented the same to show that he did not render service from March 16-25, 2010. Having failed to do so, it cannot simply rely on its bare denial.

So too must complainant's claim for 13th month pay and service incentive leave pay be granted. These are benefits granted by law to employees like complainant. Having the burden of proving payment, respondent should have presented evidences of payment, such as payrolls, vouchers or even copies of pay slips showing proper payment. As there is none, no payment can be presumed.”[8]

On appeal, the petitioner asseverated that, the two-notice rule had been properly observed before Gomban was terminated from his employment with valid cause. The petitioner argued that because Gomban was terminated on a valid ground by reason of his unauthorized absences for almost two months, the Labor Arbiter erred in awarding him financial assistance. It further asseverated that Gomban was terminated not because of mere transgression of company rules but because his acts or omissions constituted serious misconduct. As to the monetary award, the petitioner asserted that Gomban failed to substantiate his claim that he was entitled thereto.

In the assailed decision, the NLRC dismissed the appeal because the petitioner failed to post the required appeal bond as prescribed by the NLRC Rules of Procedure. Thus, the NLRC ruled in this wise:

“The mandatory filing of a bond for the perfection of an appeal is evident from the aforequoted provision that the appeal may be perfected only upon the posting of a cash or surety bond. It is obvious that since no appeal bond was posted by respondents, no appeal was perfected from the decision of the Labor Arbiter, for which

reason the decision sought to be appealed to the NLRC has become final and executory and therefore immutable (*Biogenics Marketing Research Corporation vs. NLRC*, GR No. 122725, September 8, 1999).”[9]

Aggrieved, the petitioner comes to us via a petition for certiorari[10] and raises the following issues for resolution, to wit:

“I.

WHETHER OR NOT PUBLIC RESPONDENT NLRC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT DISMISSED THE APPEAL SOLELY ON THE BASIS OF PURE TECHNICALITY.

II.

WHETHER OR NOT PUBLIC RESPONDENT NLRC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR IN EXCESS OF ITS JURISDICTION IN AWARDING MONETARY CLAIMS DESPITE THE LACK OF SUBSTANTIAL EVIDENCE TO SUPPORT THE SAME.”

In this petition, the petitioner fundamentally assails the dismissal of its appeal due to its failure to post an appeal bond. It further assails the award of separation pay as financial assistance as well as the other monetary claims adjudicated in favor of Gomban.

The petition is devoid of merit.

The appellate court’s jurisdiction to review a decision of the NLRC in a petition for certiorari 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.[11] Likewise, errors of judgment, as distinguished from errors of jurisdiction, are not within the province of a special civil action for certiorari. It is thus incumbent upon the petitioner to satisfactorily establish that the NLRC acted capriciously and whimsically in order that the extraordinary writ of certiorari will lie.[12]

Foremost, it is a well-entrenched doctrine that an appeal is not a matter of right, but is a mere statutory privilege. It may be availed of only in the manner provided by law and the rules. Thus, a party who seeks to exercise the right to appeal must comply with the requirements of the rules; otherwise, the privilege is lost.[13]

In appeals from any decision or order of the labor arbiter, the posting of an appeal bond is required under Article 223 of the Labor Code, which reads:

“Article 223. APPEAL. — Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. Such appeal may be entertained only on any of the following grounds:

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In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from.”

The 2011 NLRC Rules of Procedure (“NLRC Rules”)[14] incorporates this requirement in Section 6, Rule VI, which provides:

“SECTION 6. Bond. — In case the decision of the Labor Arbiter or the Regional Director involves a monetary award, an appeal by the employer may be perfected only upon the posting of a bond, which shall either be in the form of cash deposit or surety bond equivalent in amount to the monetary award, exclusive of damages and

attorney's fees.”

Further, it is a clear mandate under Section 4, Rule VI of the NLRC Rules[15] that an appeal is perfected upon compliance with the requisites set forth including the posting of a bond particularly when the decision subject of the appeal involves a monetary award. Non-compliance, therefore, will not toll the running of the period for perfecting an appeal.[16] The presence of the word “shall” in the requisites for perfection of appeal underscores the mandatory character of the provision. Procedural rules are not to be belittled or dismissed simply because their non-observance may have prejudiced a party's substantive rights; like all rules, they are required to be followed.

There are, however, exceptional cases in which the Supreme Court has liberally applied the NLRC Rules and the Labor Code provisions on the posting of an appeal bond. These are: (a) the appellant relied on the notice of the decision but, while the notice enumerated all the other requirements for perfecting an appeal, it did not include a bond in the list; (b) the failure of the appellant to post a bond was partly caused by the labor arbiter's failure to state the exact amount of monetary award due, which would have been the basis of the amount of the bond to be posted; (c) appellant was an association of Negritos performing trash-sorting services in the American naval base in Subic Bay; thus, the plea of the association that its appeal be given due course despite its non-posting of a bond, on account of its insolvency and poverty, was granted; and (d) the appellant-employer was allowed to post a property bond in lieu of a cash or surety bond because the assailed judgment involved more than P17 million; thus, its execution could adversely affect the economic survival of the appellant-employer, which was a medical center.[17]

In the instant case, it is undisputed that the petitioner did not post an appeal bond in any form nor asked the labor tribunal to reduce the bond to accompany its appeal before the NLRC. There is also no showing that the appeal was attended by any of the exceptional circumstances enumerated above. The petitioner's failure to post a bond equivalent in amount to the labor arbiter's monetary award was consequently fatal to the appeal. Hence, the NLRC did not acquire jurisdiction of the appeal and thus could not have taken cognizance of the same.

Anent the claim of the petitioner that Gomban is not entitled to be paid his wages for the period March 16 to 25, 2010; service incentive leave pay; and 13[th] month pay, the determination would entail a factual issue of whether or not there is evidence on record to support the claim of the petitioner. This will call for a re-examination of the evidence, which the Court cannot entertain generally in certiorari actions. Determinations of fact are beyond the ambit of a Rule-65 certiorari petition. When supported by substantial evidence, factual findings of the labor tribunals which have acquired expertise in matters within their jurisdictions, when sufficiently supported by evidence on record, are accorded respect if not finality, and are considered binding on the Court.[18]

Finally, we are in accord with the labor arbiter's justification to the award of financial assistance in favor of Gomban. In exceptional cases, the Highest Tribunal supports the grant of financial assistance to legally dismissed employees as an act of “social justice” or based on “equity” so long as the dismissal was not for serious misconduct, does not reflect on the employee's moral character, or would involve moral turpitude.[19] In *Pharmacia and Upjohn, Inc. vs. Albayda, Jr.*,[20] the Supreme Court held that an award to the employee of separation pay by way of financial assistance, equivalent to one-half (1/2) month's pay for every year of service, is equitable.

In the case of Gomban, he has served the petitioner with commendable service and has been assigned important tasks in the petitioner's subsidiary companies. But because Gomban's unauthorized absences were considerably lengthy, his actions and omissions constituted a valid ground to terminate his services. His absences, however, are not so reprehensible as to warrant complete disregard of his effective performance in the company. The Court, in keeping with equity and social justice, agrees with the award of financial assistance to Gomban equivalent to

one-half (1/2) month's wage for every year of service rendered with the petitioner.

On the whole, the NLRC may not be faulted for dismissing the petitioner's appeal due to its non-posting of an appeal bond. We find no grave abuse on the part of the NLRC in its exercise of discretion because we see that the labor tribunal's conclusion is in accord with the law, rules and jurisprudence on the matter. In dismissing the appeal, the NLRC did not conclude out of thin air. Therefore, the petition failed to establish that the NLRC exercised its power arbitrarily or despotically, by reason perhaps of passion, prejudice, or personal hostility.

WHEREFORE, the petition is DENIED DUE COURSE and consequently DISMISSED.

IT IS SO ORDERED.

Bueser and [*]Reyes Carpio, JJ., concur.

[*] Acting Junior Member per Office Order No. 81-15-ABR dated 16 March 2015.

[1] Dated 30 January 2013 in NLRC LAC No. 01-000328-13, rollo, p. 22.

[2] Rollo, p. 25.

[3] Rollo, p. 14.

[4] Rollo, p. 42.

[5] Rollo, p. 43.

[6] Rollo, p. 44.

[7] Rollo, p. 59.

[8] Rollo, pp. 65-67.

[9] Rollo, pp. 24-25.

[10] Rollo, p. 3.

[11] Kaisahan at Kapatiran ng mga Manggagawa at Kawani sa MWC-East Zone Union vs. Manila Water Company, Inc., GR No. 174179, 16 November 2011, 660 SCRA 263.

[12] Leonis Navigation Co., Inc. and World Marine Panama, S.A. vs. Catalino U. Villamater, et al., GR No. 179169, 03 March 2010, 614 SCRA 182.

[13] BPI Family Savings Bank, Inc., vs. Pryce Gases, Inc., GR No. 188365, 29 June 2011, 653 SCRA 42.

[14] Took effect sometime in August 2011.

[15] Rule VI. Appeals

Section 4. Requisites for Perfection of Appeal. - a) The appeal shall be:

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(5) accompanied by:

- i) proof of payment of the required appeal fee and legal research fee;
- ii) posting of a cash or surety bond as provided in Section 6 of this Rule; and

iii) proof of service upon the other parties.

b) A mere notice of appeal without complying with the other requisites aforestated shall not stop the running of the period for perfecting an appeal.

[16] Id, paragraph b, Rule VI of the 2011 NLRC Rules of Procedure.

[17] See Lepanto Consolidated Mining Corporation vs. Icao, GR No. 196047, 15 January 2014.

[18] Pharmacia and Upjohn, Inc. (now Pfizer Phils., Inc.), et al. vs. Albayda, Jr., GR No. 172724, 23 August 2010, 628 SCRA 544 citing Ignacio vs. Coca-Cola Bottlers Phils., Inc., GR No. 144400, 19 September 2001, 417 Phil. 747.

[19] Villaruel vs. Yeo Han Guan, GR No. 169191, 01 June 2011, 650 SCRA 64; Philippine Airlines, Inc. vs. NLRC, GR No. 123294, 20 October 2010, 634 SCRA 18.

[20] Supra note 18.

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