

VILMA SO, DOING BUSINESS UNDER THE NAME AND STYLE, EUGENE INTERNATIONAL SERVICES, PETITIONER, VS. HON. NATIONAL LABOR RELATIONS COMMISSION (NLRC) SECOND DIVISION, QUEZON CITY; H...

Ponente: BERSAMIN, L.P., J.

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BERSAMIN, L.P., J.:

The petitioner, a duly recognized recruiter engaged in the recruiting and placement of Filipino overseas contract workers, commenced this special civil action for certiorari and prohibition against the National Labor Relations Commission (NLRC) to seek the nullification of the resolution promulgated on November 29, 2005 in NLRC CASE NO. RAB-CAR 07-0446-04,[1] denying her motion for reconsideration; and to restrain respondent Labor Arbiter Monroe C. Tabingan from further proceeding in NLRC CASE NO. RAB-CAR 07-0446-04, including implementing the resolution dated June 30, 2005 of the NLRC (dismissing her appeal of the Labor Arbiter's order dated December 15, 2004),[2] claiming that said public respondents were thereby acting or proceeding without or in excess of jurisdiction.

NLRC CASE NO. RAB-CAR 07-0446-04 was an appeal to the NLRC from the order of respondent Labor Arbiter Tabingan dated December 15, 2004 rendered by him in the original case docketed as NLRC Case NO. RAB-CAR-05-0313-04, a claim of private respondent Grace Domingo against the petitioner for alleged illegal dismissal, refund of placement fee, salaries for the unexpired portion of the contract and moral and exemplary damages.

In his order dated December 15, 2004, Labor Arbiter Tabingan disposed as follows:

WHEREFORE, all premises considered, respondent's Motion being among the prohibited pleadings, the same is hereby DENIED for utter lack of merit.

The Order dated 07 September 2004 stands.

SO ORDERED.[3]

On January 18, 2005, the petitioner appealed to the NLRC and submitted her appeal memorandum, wherein she assigned the following errors, namely:[4]

I.

THERE IS A PRIMA FACIE EVIDENCE OF ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION ON THE PART OF THE LABOR ARBITER MONROE C. TABINGAN IN NOT GIVING DUE COURSE TO RESPONDENT'S MOTION FOR RECONSIDERATION (TO THE ORDER DATED 07 SEPTEMBER 2004);

THAT THE ABOVE-MENTIONED ORDER DATED DECEMBER 15, 2004 OF THE HONORABLE LABOR ARBITER WAS MADE PURELY ON ASSUMPTIONS AND CONCLUSIONS BASED ON

UNFOUNDED FACTS;

FINALLY, THE DECISION RENDERED BY THE HONORABLE LABOR ARBITER PROMULGATED DECEMBER 5, 2004 IS CONTRARY TO LAW, RULES AND APPLICABLE DECISIONS OF THE SUPREME COURT, AND OR SAID ORDER CONTAINS SERIOUS ERRORS IN THE FINDING OF FACTS WHICH, IF NOT CORRECTED, WOULD CAUSE IRREPARABLE DAMAGE AND INJURY TO RESPONDENTS-APPELLANTS.[5]

On June 30, 2005, the NLRC issued its resolution,[6] viz:

WHEREFORE, premises considered, this appeal instituted by the respondents-appellants is hereby DISMISSED for lack of merit. Consequently, the findings and conclusion in the assailed Order are hereby AFFIRMED en toto.

SO ORDERED.[7]

On August 26, 2005, the petitioner filed her motion for reconsideration.[8]

On November 29, 2005, the NLRC denied the motion for reconsideration through the assailed resolution, as follows:[9]

WHEREFORE, the motion for reconsideration is denied for lack of merit.

No further motion of similar nature shall be entertained.

SO ORDERED.[10]

Hence, this special civil action for certiorari and prohibition, wherein the petitioner submits:

A.

THAT THE HONORABLE PUBLIC RESPONDENT NATIONAL LABOR RELATIONS COMMISSION (NLRC), SECOND DIVISION, WITH DUE RESPECT, GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OF JURISDICTION IN PROMULGATING ITS RESOLUTION DATED 20 JUNE 2004 (Annex "C") DENYING PETITIONER'S APPEAL DATED 17 JANUARY 2005 (Annex "E") DENYING PETITIONER'S MOTION FOR RECONSIDERATION DATED 26 AUGUST 2005.

B.

THAT THE HONORABLE PUBLIC RESPONDENT NATIONAL LABOR RELATIONS COMMISSION (NLRC), SECOND DIVISION, WITH ALL DUE RESPECT, COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN NOT DECLARING NULL AND VOID THE ORDER DATED 15 DECEMBER 2004 OF HONORABLE PUBLIC RESPONDENT LABOR ARBITER MONROE C. TABINGAN (Annex "A") BECAUSE THE ORDER RENDERED BY ARBITER TABINGAN IS BASED PURELY AN ASSUMPTIONS, CONCLUSIONS AND UNFOUNDED FACTS AND CONSEQUENTLY, IF NOT CORRECTED, IT WILL CAUSE IRREPARABLE DAMAGE OR INJURY TO PETITIONER.

The petitioner insists that Labor Arbiter Tabingan should have dismissed respondent Domingo's complaint outrightly because she was guilty of forum shopping and that her cause of action was barred by prior judgment. The petitioner posits that Domingo's claim (NLRC Case NO. RAB-CAR-05-0313-04) was dismissed on June 30, 2004 and such dismissal became final; that by reason of such dismissal becoming final, the claim of Domingo was already barred under the principle of res judicata; and that her claim should also be dismissed because she was thereby committing forum shopping. Hence, the petitioner contends that the NLRC was guilty of grave abuse of discretion in rejecting her appeal from the Labor Arbiter's order of December 15, 2004.

We find the petition for certiorari and prohibition absolutely meritless and, accordingly, deny it due course.

Our review of the records submitted to us indicate that the petitioner's position is entirely unfounded and derives from her and her counsel's refusal to acknowledge the well-founded legal and factual rulings of the Labor Arbiter and the NLRC.

Firstly, in his order dated December 15, 2004, Labor Arbiter Tablingan denied the petitioner's motion to dismiss, explaining thus:

The respondent, and/or its counsel, seem to be well-versed with the Rules of the Commission. One wonders however why said parties failed to read the reason stated in said assailed Order, which clearly states: NLRC RAB-CAR Case No. 05-0313-04 was filed on May 03, 2004. On 30 June 2004, the case was dismissed WITHOUT PREJUDICE [emphasis ours] for failure of the complainant to file her Position paper within the period given.

Under common legal parlance, when a case is dismissed without prejudice, it means that the dismissal is not final. In labor cases, it means that the case can be revived or refilled within the prescriptive period. It is of general knowledge that illegal dismissal prescribes in four (4) years from the date of dismissal, and monetary claims prescribe in three (3) years. In the NLRC Rules of Procedure, as amended, RULE V, Sec. 16 provides: SECTION 16. REVIVAL/RE-OPENING OF RE-FILED OF DISMISSED CASE.* A party may file a motion to revive or re-open a case dismissed without prejudice, within ten (10) calendar days from receipt of notice of the order dismissing the same; otherwise, his only remedy shall be to re-file the case in the arbitration branch of origin.

The order dated 30 June 2004 was received by the complainant on 16 July 2004. The Motion to Admit Position paper with the same attached was filed on 27 July 2004. Clearly therefore, the same cannot be deemed to be revived as it was filed beyond the ten-day period as per rule above-quoted. The complainant therefore opted to re-file the same on 28 July 2004.

Be that as it may, for the further education of the respondent and/or its counsel about the NLRC Rules of Procedure, here is another one:

RULE III, SECTION 4. PROHIBITED PLEADINGS MOTIONS. The following pleadings, motions or petitions shall not be allowed in the cases covered by these Rules:

- a) Motion to Dismiss the complaint except on the ground of lack of jurisdiction over the Subject Matter, Improper Venue, Res Adjudicata, Prescription and forum shopping;
- b) Motion for a Bill of particulars;
- c) Motion for New Trial or Motion for Reconsideration of Judgment or Order of the Labor Arbiter;
- d) Petition for Relief of Judgment when filed with the Labor Arbiter;
- e) Petition for Certiorari, Mandamus or Prohibition;
- f) Motion to Declare Respondent in Default.

RULE V, Sec. 15, of the NLRC Rules which states:

SECTION 15. MOTIONS FOR RECONSIDERATION / PETITION FOR RELIEF FROM JUDGMENT.* No motions for reconsideration / petition for relief from judgment of any decision, resolution or order of a Labor Arbiter shall be allowed. However, when one such motion for reconsideration is filed, it shall be treated as an appeal provided that it complies with the requirements for perfecting an appeal. In the case of a petition for relief from judgment, the Labor Arbiter shall elevate the case to the Commission for disposition.

will not apply considering that what is being sought to be reconsidered is a mere Order, not a JUDGMENT, as contemplated in the above-quoted rule. If truly the respondent and/or its counsel are as well – versed with the NLRC Rules as they purport to be, then they should have availed of the remedy as prescribed by the same rules.

WHEREFORE, all premises considered, respondent's Motion being among the prohibited pleadings, the same is hereby DENIED for utter lack of merit.

The Order dated 07 September 2004 stands.

SO ORDERED.[11]

As found by Labor Arbiter Tabingan, supra, Domingo received on July 16, 2004 the order dated June 30, 2004 dismissing without prejudice her complaint (due to her failure file her position paper), but she filed her motion to admit position paper (with position paper attached) only on July 27, 2004, which was already beyond the 10 calendar days allowed in Sec. 16, Rule V, of the NLRC Rules of Procedure, as amended. Her motion to admit position paper was, therefore, ineffectual because her complaint could no longer be thereby deemed revived. She then refiled her complaint on July 28, 2004, which was her proper recourse, such refiling being within the prescriptive period of 4 years from date of illegal dismissal and within the prescriptive period of 3 years for monetary claims. The petitioner's insistence that Domingo's claim was already barred by res judicata and that it was also to be dismissed due to forum shopping has no substance.

Secondly, the NLRC dismissed on June 30, 2005 the petitioner's appeal from Labor Arbiter Tabingan's order of December 15, 2004, thuswise:

We find the Appeal not impressed with merit.

Firstly, the filing of a Motion for Reconsideration before a Labor Arbiter is not allowed as explicitly provided in the NLRC Rules of Procedure as amended which state:

No motions for reconsideration for relief from judgment of any decision, resolution or order of a Labor Arbiter shall be allowed. However, when one such motion for reconsideration is filed, it shall be treated as an appeal provided that it complies with the requirements for perfecting an appeal.... (Sec. 15 Rule V)

Upon a perusal of the records of this case, aside from the Motion for Reconsideration containing seven (7) pages. We find no other compliance on the requirements for perfecting an appeal, among which is the required verification by the party-movant and/or appellant, in accordance with Sec. 4 Rule 7 of the Rules of Court, proof of payment of the required appeal fee, and a certificate of non-forum shopping.

Secondly, the Order sought to be reconsidered in respondents-appellants Motion for Reconsideration is the Order dated September 07, 2004 of the Labor Arbiter below, denying its Motion to Dismiss the complaint in this instant case. Such being the case, Our Rules of Procedure is explicit in providing that:

An Order denying the motion to dismiss or suspending its resolution until the final determination of the case is not appealable. (last sentence, Sec. 3, Rule V)

Thus, notwithstanding any compliance on the requirements in order that the motion for reconsideration as filed by respondents-appellants be given due course, the same could nevertheless be denied by reason of the foregoing rule that an Order denying a motion to dismiss is inappealable.

From all the foregoing therefore, We find that the Order dated December 15, 2004, and sought to be reversed by herein respondents-appellants, is in accord with existing law, rules and applicable jurisprudence.

WHEREFORE, premises considered, this appeal instituted by the respondents-appellants is hereby DISMISSED

for lack of merit. Consequently, the findings and conclusions in the assailed Order are hereby AFFIRMED en toto.

SO ORDERED.[12]

The foregoing excerpt indicates that the dismissal of the petitioner's appeal was due to her failure to comply with the requirements for perfecting her appeal and to the fact that she had filed the prohibited motion for reconsideration vis-à-vis the denial of her motion to dismiss by the Labor Arbiter.

It is fundamental that a non-compliance with the requirements for perfecting an appeal was mandatory. Equally fundamental is that in labor adjudication, as the NLRC explicitly noted in its resolution of June 30, 2005, the denial of a motion to dismiss was not appealable.[13] Hence, the dismissal of the appeal upon that ground was warranted. We stress that appeal is not a natural right or a part of due process but a mere statutory privilege to be exercised only in the manner and in accordance with the provisions of the law granting the right.[14] As a purely statutory right, it is not an inherent right; it is not also a necessary element of due process of law.[15] The fundamental nature of appeal as a mere statutory right, therefore, requires the party seeking to avail himself of the right to faithfully comply with the rules granting and providing for it.[16] The privilege to appeal is established by the positive laws that prescribe the cases where appeal may be taken, the procedure to be followed, the courts from which appeal is taken, and the courts by which the appeal shall be proceeded with and decided.[17]

The NLRC, having acted correctly in the premises, did not commit any grave abuse of discretion amounting to lack or excess of jurisdiction. As pointed out in *Philippine Airlines v. Confessor*: [18]

xxx there is grave abuse of discretion amounting to lack of jurisdiction where the respondent board, tribunal or officer exercising judicial functions exercised its judgment in a capricious, whimsical, arbitrary and despotic manner. However, it has also been said that grave abuse of discretion is committed when the 'lower court acted capriciously, and whimsically or the petitioner's contention appears to be clearly tenable or the boarder interest of justice or public policy [so] require xxx

WHEREFORE, the PETITION FOR CERTIORARI AND PROHIBITION is DENIED DUE COURSE and the case is DISMISSED.

SO ORDERED.

Villarama, Jr., and Arevalo-Zenarosa, JJ., concur.

[1] Annex E, petition.

[2] Annex C, petition.

[3] Annex A, petition; rollo, p. 24.

[4] Annexes B and B-1, petition.

[5] Rollo, p. 25.

[6] Annex C, petition.

[7] Rollo, p. 41.

[8] Annex D, petition.

[9] Annex E, petition.

[10] Rollo, p. 47.

[11] Rollo, pp. 22-24.

[12] Rollo, pp. 40-41.

[13] Sec. 3, Rule V, NLRC Rules of Procedure.

[14] Tiatco v. Civil Service Commission, 216 SCRA 749; Villanueva v. Court of Appeals, 205 SCRA 537; Bello v. Fernando, 4 SCRA 135; Ker & Co., Ltd. v. CTA, 4 SCRA 160; Abarrientos Vda. de Capulong v. Workmen's Insurance Co., Inc., G.R. No. 30960, October 5, 1989

[15] United States v. Gomez Jesus, 31 Phil 218

[16] Almeda v. Court of Appeals, G. R. No. 121013, July 16, 1998; 292 SCRA 587, 595; J. Bellosillo (“[T]he right to appeal is a statutory right and one who seeks to avail of this right must strictly comply with the statutes or rules as they are interdictions against needless delays and for an orderly discharge of judicial business. In the absence of highly exceptional circumstances warranting their relaxation, they must remain inviolable.”); also, Tan v. Court of Appeals, 213 SCRA 316.

[17] Aragon v. Araullo, 11 Phil 7.

[18] 231 SCRA 41, 53 (1994).

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