

**DANIEL BENJAMIN CONSING AND JHON MANUEL DIMA ALA,
PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION,
SEVENTH DIVISION, DIANITO FUEGO, ARSENIO BORRES, AND
FEDERICO BORRES RESP...**

Ponente: INGLES, G. T., J.

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INGLES, G. T., J.:

THE CASE

Before this court is a petition for certiorari filed under Rule 65 of the 1997 Revised Rules on Civil Procedure, as amended seeking to annul and set aside the Resolution[1] dated January 31, 2013 of the National Labor Relations Commission, Seventh Division, Cebu City in VAC-11-000646-2012 which dismissed petitioners' appeal. Also assailed is the Resolution[2] dated April 30, 2013 which denied petitioners' Motion for reconsideration.

THE FACTS:

Private respondents Janito Fuego, Arsenio Borres and Federico Borres filed a Complaint for illegal dismissal, non-payment/underpayment of wages and overtime, holiday allowance, separation, retirement, service incentive pay, 13[th] month pay and attorney's fees against Consing Development Corp Biofuels Production, and petitioners Benjamin Consing and John Manuel Dima-ala with the National Labor Relations Commission, Sub-Regional Arbitration Branch No. VI, Iloilo City docketed as SRAB VI-06-50097-2012.

The parties thereafter submitted their respective Position Papers.

On October 15, 2012, the Labor Arbiter rendered a Decision[3] in favor of private respondents, the pertinent portion of which reads:

“WHEREFORE, premises considered, judgment is hereby rendered:

1. FINDING the respondents to have illegally dismissed the complainants.
2. HOLDING respondents solidarily liable to the complainants and ORDERING them to pay said three (3) complainants Dianito Fuego, Arsenio Borres and Federico Borres the amounts of Php 326,899.24, Php 310,429.24 and Php 297,867.99, respectively, comprising their individual separation pay, backwages (from the time of each complainant's dismissal up to the time of this Decision), wage/salary differentials due to underpayment of wages/salaries, holiday pay, 13[th] month pay (these three awards are all subject to the three-year prescriptive period) and service incentive leave pay (for the whole period of each complainants' employment), and ten percent (10%) attorney's fees equivalent to Php 93,519.65 or for the aggregate sum of Php 1,028,716.12.

Respondents are hereby held solidarily liable to each complainant in the afore-quoted three (3) amounts and they are directed to deposit the said amounts to the Cashier for this Arbitration branch within ten (10) days from receipt of this Decision.

All other claims are denied for complainants' failure to adduce substantial evidence therefor and/or for lack of

merit.”

Aggrieved, petitioners filed an appeal with the NLRC, Seventh Division, Cebu City.

On January 31, 2013, the NLRC, Seventh Division, Cebu City issued a Resolution[4], the pertinent portion of which reads as follows:

xxx xxx xxx

“In the case at bar, even if we deduct the amount of attorney's fees, the amount of P 50,000.00 in relation to the judgment award of almost One Million Pesos can hardly be considered reasonable by any standards. Besides, whether individual respondents are solidarily liable with the respondent corporation has nothing to do with respondent corporation's obligation to post the full amount of the bond in order to perfect the appeal. In a similar case, the Supreme Court said:

The Court reiterates the settled rule that an appeal from the decision of the Labor Arbiter involving a monetary award is only deemed perfected upon the posting of a cash or surety bond within ten (10) days from such decision.

xxx xxx xxx

WHEREFORE, PREMISES CONSIDERED, the appeal is DISMISSED for failure to post the full and correct amount of the appeal bond.

SO ORDERED.”

Dissatisfied, petitioners filed a Motion[5] for Reconsideration with the NLRC which was denied in a Resolution[6] dated April 30, 2013, ratiocinating thus:

“In our resolution, we said that whether individual respondents are solidarily liable with the respondent corporation has nothing to do with the respondent corporation's obligation to post the full amount of the appeal bond. Besides, whether or not employer-employee exists between the respondents and the complainants is a matter that goes into the crux of the appeal and should not be used as a justification for the reduction of the appeal bond. Needless to say, to discuss the issue before the appeal has been perfected would be premature.”

Hence, this petition for certiorari.

THE ISSUE:

“THE PUBLIC RESPONDENT ACTED WITHOUT OR IN EXCESS OF ITS JURISDICTION, OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION, COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT ISSUED THE TWO QUESTIONED RESOLUTIONS DIMISSING PETITIONERS' APPEAL AND DENYING THEIR MOTION FOR RECONSIDERATION FOR THE SOLE REASON THAT THEY FAILED TO POST THE FULL AND CORRECT AMOUNT OF APPEAL BOND.”

Petitioners' contentions:

Petitioners contend that public respondent summarily dismissed their appeal and never gave them an opportunity to post an additional appeal bond. Under Rule VI, Section 6 of the 2011 Rules of Procedure, no motion to reduce bond shall be entertained except on meritorious grounds, and only upon the posting of a bond in a reasonable amount in relation to the monetary award. Petitioners claim that there was never any employer-employee relationship between them and private respondents, that the former have nothing to do with Consing Development Company Biofuels Production and that they filed an appeal bond in a sum equivalent to 20% more or less of the judgment award - all meritorious grounds that constitute the exceptions to the rule that an appeal from a decision

involving a monetary award may be perfected only upon the posting of a cash or surety bond.

Petitioners aver that they posted a bond in the sum of P 200,000.00 on October 29, 2012 when they filed their notice of appeal with a motion for reduction of appeal bond on said date. Such amount constitutes 20% of the award in the sum of P1,028,716.12 which is a reasonable amount in relation thereto. Petitioners argue that a motion for reduction of appeal bond accompanied by a bond equivalent to 20% of the award is reasonable, and that public respondent committed grave abuse of discretion when it denied the motion to reduce bond peremptorily without considering evidence to justify the reduction. Petitioners add that the NLRC is not precluded from making a preliminary determination of the financial capability to post the required bond without necessarily passing upon the merits of the case.

Further, petitioners posit that private respondents never presented proof that they were their regular employees of the company. They claim that they do not have any connection with either Consing Development Company Biofuels Production, nor are they incorporators, stockholders, board members, officers or even employees thereof. And, granting arguendo, that petitioners are connected to Consing Devt. Biofuels Production, such fact will not automatically make them solidarily liable with said company. Petitioners aver that a corporate officer will not be held personally liable for the money claims of discharged corporate employees unless he acted with evident malice and bad faith in terminating their employment. There should be evidence that the officer acted in bad faith or with malice in carrying out the dismissal. According to petitioners, the wrongdoing must be established clearly and convincingly if the separate juridical personality of a corporation would be disregarded. Thus, herein petitioners cannot be held personally liable for the alleged illegal dismissal of private respondents.

Likewise, petitioners maintain that private respondents' allegation that they have been working for the former for almost twenty years is incredible. In relation thereto, petitioners assert that private respondents failed to prove that not all the four elements in determining the existence of an employer-employee relationship are present in this case. Thus, in the absence of an employer-employee relationship, the complaint for illegal dismissal must fail. Since the Labor Arbiter had no basis in ruling the private respondents were illegally dismissed, petitioners asseverate that the public respondent erred in dismissing the appeal for the sole reason that petitioners failed to post the full and correct amount of the bond.

THIS COURT'S RULING:

At the outset, we point out that the right to appeal is not a natural right or a part of due process; it is merely a statutory privilege, and may be exercised only in the manner prescribed by and in accordance with the provisions of law. The party who seeks to avail himself of the same must comply with the requirements of the rules. Failing to do so, he loses the right to appeal.[7]

Article 223 of the Labor Code, as amended mandates, thus:

"ART. 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:

(a)

If there is prima facie evidence of abuse of discretion on the part of the Labor Arbiter;

(b)

If the decision, order or award was secured through fraud or coercion, including graft and corruption;

(c)

If made purely on questions of law; and

(d)

If serious errors in the finding of facts are raised which would cause grave or irreparable damage or injury to the appellant.

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.

x x x x”

Too, Sections 4 (a) and 6 of Rule VI of the New Rules of Procedure of the NLRC, as amended, reaffirms the explicit jurisdictional principle in Article 223. The relevant provisions state as follows:

"SECTION 4. REQUISITES FOR PERFECTION OF APPEAL. — (a) The Appeal shall be filed within the reglementary period as provided in Section 1 of this Rule; shall be verified by appellant himself in accordance with Section 4, Rule 7 of the Rules of Court, with proof of payment of the required appeal fee and the posting of a cash or surety bond as provided in Section 6 of this Rule; shall be accompanied by a memorandum of appeal in three (3) legibly typewritten copies which shall state the grounds relied upon and the arguments in support thereof; the relief prayed for; and a statement of the date when the appellant received the appealed decision, resolution or order and a certificate of non-forum shopping with proof of service on the other party of such appeal. A mere notice of appeal without complying with the other requisites aforesaid shall not stop the running of the period of perfecting an appeal.

xxxx

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 cash or surety bond. The appeal bond shall either be in cash or surety in an amount equivalent to the monetary award, exclusive of damages and attorney's fees.

In case of surety bond, the same shall be issued by a reputable bonding company duly accredited by the Commission or the Supreme Court, and shall be accompanied by:

a)

a joint declaration under oath by the employer, his counsel, and the bonding company, attesting that the surety bond posted is genuine, and shall be in effect until final disposition of the case;

b)

a copy of the indemnity agreement between the employer-appellant and bonding company; and

c)

a copy of security deposit or collateral securing the bond. A certified true copy of the bond shall be furnished by the appellant to the appellee who shall verify the regularity and genuineness thereof and immediately report

to the Commission any irregularity.

Upon verification by the Commission that the bond is irregular or not genuine, the Commission shall cause the immediate dismissal of the appeal.

No motion to reduce bond shall be entertained except on meritorious grounds and upon the posting of a bond in a reasonable amount in relation to the monetary award.

The filing of the motion to reduce bond without compliance with the requisites in the preceding paragraph shall not stop the running of the period to perfect an appeal." (underlining ours)

The significance of the foregoing codal provision and Rules, is well-settled in *Santos vs. Velarde*,^[8] viz -

This Court has repeatedly ruled that the posting of a cash or surety bond is a requirement sine qua non for the perfection of an appeal from the labor arbiter's monetary award. The posting of a bond within the period provided by law is not merely mandatory but jurisdictional. Failure to perfect an appeal has the effect of rendering the judgment final and executory."

From the employer's standpoint, the purpose of the bond is to perfect one's appeal and stay the execution of monetary awards. From the standpoint of social justice, the rule in itself accords protection of the employee's monetary recovery during the period of appeal. Looking at it from either end, it is clear that the bond exists only during the appeal of the judgment. Without any appeal being perfected, there is also no appeal bond to speak of or to proceed against."^[9]

In *Ramirez vs Court of Appeals*, GR No. 182626, December 4, 2009, the Supreme Court opined that insufficient posting of bond is not sufficient to perfect the appeal, thus:

"In this case, although Ramirez posted an appeal bond, the same was insufficient, as it was not equivalent to the monetary award of the Labor Arbiter. Moreover, when Ramirez sought a reduction of the bond, he merely said that the bond was excessive and baseless without amplifying why he considered it as such.

Colby Construction and Management Corporation v. National Labor Relations Commission succinctly elucidates that an employer who files a motion to reduce the appeal bond is still required to post the full amount of cash or surety bond within the ten-day reglementary period, even pending resolution of his motion. Very recently, in *McBurnie v. Guanzon*, the respondents therein filed their memorandum of appeal and motion to reduce bond on the 10th or last day of the reglementary period. Although they posted an initial appeal bond, the same was inadequate compared to the monetary award. The Court found no basis for therein respondent's contention that the awards of the Labor Arbiter were null and excessive. We emphasized in that case that it behooves the Court to give utmost regard to the legislative and administrative intent to strictly require the employer to post a cash or surety bond securing the full amount of the monetary award within the 10-day reglementary period. Nothing in the Labor Code or the NLRC Rules of Procedure authorizes the posting of a bond that is less than the monetary award in the judgment, or deems such insufficient posting as sufficient to perfect the appeal.

By stating that the bond is excessive and baseless without more, and without proof that he is incapable of raising the amount of the bond, Ramirez did not even come near to substantially complying with the requirements of Art. 223 of the Labor Code and NLRC Rule of Procedure. Given that Ramirez is involved in taxi business, he has not shown that he had difficulty raising the amount of the bond or was unable to raise the amount specified in the award of the Labor Arbiter." (underlining ours)

It becomes apparent in the instant case that there was no substantial compliance by the petitioners with the pertinent Rules neither was there any earnest effort on their part to comply therewith. Noteworthy to mention, petitioners filed an appeal bond in the amount of P 200,000.00 which was hardly a reasonable amount in comparison with the judgment award of P 1,028,716.12 including attorney's fees.

True enough, the Supreme Court had, in many instances relaxed the rules on the filing of the appeal bond, but only when there is substantial compliance therewith. While the bond requirement on appeals involving a monetary award has been relaxed in certain cases, this can only be done where there was substantial compliance with the Rules; or where the appellants, at the very least, exhibited willingness to pay by posting a partial bond.”[10] None obtains in this case. The liberal interpretation and application of rules apply only to proper cases of demonstrable merit and under justifiable causes and circumstances which do not see in the case at bar.

To emphasize, Article 223, which prescribes the appeal bond requirement is a rule of jurisdiction and not of procedure. There is little leeway for condoning a liberal interpretation thereof, and certainly none premised on the ground that its requirements are mere technicalities. It must be emphasized that there is no inherent right to an appeal in a labor case, as it arises solely from grant of statute, namely, the Labor Code. For the same reason, the Supreme Court in Ramirez repeatedly emphasized that the requirement for posting the surety bond is not merely procedural but jurisdictional and cannot be trifled with. Non-compliance with such legal requirements is fatal and has the effect of rendering the judgment final and executory.

To emphasize, an insufficient appeal bond is tantamount to no appeal bond. The NLRC was, therefore, correct in dismissing petitioners' appeal for failure to post the required or full amount of the appeal bond. Sans any exceptional circumstances to justify a liberal interpretation of the Rules respecting the filing of appeal bond, the Labor Arbiter's decision had already become final and executory. Therefore, having attained finality, the decision of the Labor Arbiter became unappealable.

Further, petitioners' attempt to bolster their cause by asserting that private respondents are not their regular employees in the first place in the absence of the four elements does not sway this Court. And another, whether or not individual petitioners are solidarily liable with the corporation has no bearing with their obligation to post the full amount of the bond in order to perfect the appeal.

No grave abuse of discretion can therefore be imputed to public respondent when it issued the assailed Resolutions dismissing the petitioners' appeal on the ground of non-payment of the required amount of appeal bond. These were not attended by grave abuse of discretion, evasion of positive duty or a virtual refusal to perform a duty enjoined by law. Neither is there any showing that the Resolutions were issued in an arbitrary and despotic manner by reason of passion or personal hostility or in such whimsical and capricious exercise of judgment equivalent to lack of jurisdiction.[11]

WHEREFORE, the petition is DISMISSED. The Resolutions dated January 31, 2013 and April 30, 2013 of the National Labor Relations Commission, Cebu City in VAC-11-000646-2012 are AFFIRMED in toto. No pronouncement as to costs.

SO ORDERED.

Maxino, P.A.A., and [*]Lagura-Yap, M.B., JJ., concur.

[1] Rollo, p. 24

[*] Acting Junior Member in lieu of J. Renato C. Francisco's leave of absence as per Office Order No. 29-14-GTI dated 22 December 2014.

[2] Rollo, p. 40

[3] Rollo, p. 53

[4] Rollo, p. 24

[5] Rollo, p. 29

[6] Rollo, p. 40

[7] Colby Construction and Management Corporation v. National Labor Relations Commission, G.R. No. 170099, 28 November 2007, 539 SCRA 159, 168.

[8] Benjamin S. Santos vs. Elena Velarde, et. al., G.R. No. 140753, April 30, 2003. Citing *Peftok Integrated Services, Inc. vs. NLRC*, 293 SCRA 507 [1998] and *Unicane Workers Union-CLUP vs. NLRC*, 261 SCRA 573 [1996]; and *Philippine Airlines, Inc. vs. NLRC*, 263 SCRA 638 [1998].

[9] Kenji Okada vs. Security Pacific Assurance Corporation, G.R. No. 164344, November 23, 2008.

[10] Lolita A. Lopez, et. al. vs. Quezon City Sports Club, Inc., G.R. No. 164032, January 19, 2009. Citing *Colby Construction and Management Corporation, et. al. vs. National Labor Relations Commission, et. al.*, G.R. No. 170099, November 28, 2007, 539 SCRA 159.

[11] FEBTC vs Shemberg Marketing Corp, GR No. 163878, December 12, 2006

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