

ELIZALDE PAINT & OIL FACTORY, INC., PETITIONER VS. HON. JOSE S. BAUTISTA, ET AL., RESPONDENTS.

G.R. No. L-15904. November 23, 1960

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is a petition for certiorari and prohibition with preliminary injunction praying this Court to reverse the resolution en banc of the Court of Industrial Relations dated August 14, 1959 and to dismiss the case filed before it on the ground that the industrial court lacks jurisdiction to try the same.

It appears that Pedro Basaysay was formerly employed by the Elizalde Paint & Oil Factory, Inc. during the period from May 30, 1949 to January 2, 1958. Pursuant to a collective bargaining agreement entered into between said company and the Elizalde Paint & Oil Factory Labor Union of which Basaysay was a member providing for gratuity to any deserving laborer who may retire, the company tendered him a check in the amount of P1,051.90 as payment of any and all kinds of services he may have rendered requiring him at the same time to sign a release and quitclaim form. Believing, however, that he was entitled to more compensation, he refused to take the check or sign the quitclaim form and instead he, together with the union, filed the present action before the industrial court on June 20, 1959 praying that the company be ordered to pay him, the amount of P1,101.80 as retirement pay, plus moral damages and attorney's fees.

Within the reglementary period the company filed its answer alleging, among others, that the industrial court has no jurisdiction to take cognizance of the case, and on July 9, 1959, it moved to dismiss the case on the same ground. After Basaysay and the union had filed their opposition, Judge Bautista issued an order deferring resolution on the motion to dismiss until after the evidence of both parties had been submitted intimating that the ground alleged therein was not indubitable. Thereupon, on July 29, 1959, the company filed a motion for reconsideration, but the court en banc denied the same on August 14, 1959 stating that the order sought to be reconsidered is interlocutory.

The only issue posed by petitioner is whether or not the Industrial court has jurisdiction to take cognizance of this case involving as it does merely the recovery of certain retirement pay under the collective bargaining contract entered into between the company and respondent union.

We are inclined to hold the negative. Firstly, since this case involves merely the recovery of certain retirement pay after the employer-employee relationship between petitioning company and respondent Basaysay had ceased, on account of the latter's separation from the service on January 2, 1958, and he is not seeking his reinstatement, said case is merely for a money claim cognizable by the regular courts.[1] Secondly, although we held in one case[2] that the industrial court has jurisdiction to enforce a collective bargaining contract, such ruling only applies if the subject matter of the contract sought to be enforced refers to a labor dispute affecting an industry certified by the President, or when it involves minimum wage, hours of employment, or unfair labor practice.[3] Here, the issue refers to retirement pay, and not to any of the matters mentioned above.

With regard to the claim that this petition should be dismissed because the order sought to be reversed is only interlocutory, suffice it to quote the following authorities:

"If the question of jurisdiction were not, the main ground for this petition for review by certiorari, it would be premature because it seeks to have a review of an interlocutory order. But as it would be useless and futile to go ahead with the proceedings if the court below had no jurisdiction this petition was given due course." (*San Beda College vs. Court of Industrial Relations, et al.*, 97 Phil., 787; 51 Off. Gaz., No. 11, 5636, 5638.)

"Although an order denying a motion to dismiss a complaint on the ground of lack of jurisdiction is interlocutory, still if it is clear that the trial court lacks jurisdiction a higher court of competent-jurisdiction would be justified in issuing a writ of certiorari and prohibition, for the proceedings in the court below would be a nullity and waste of time." (*Philippine International Fair, Inc. et al. vs. Hon. Fidel Ibanez, et al.*, 94 Phil., 424; 50 Off. Gaz., No. 3, 1036.)

Wherefore, petition is granted. The order appealed from is reversed without costs. The writ of preliminary injunction issued by this Court is declared permanent.

Paras, C.J., Bengzon, Padlla, Labrador, Reyes, J.B.L., Barrera, Gutierrez David, Paredes and Dizon, JJ., concur.

Petition granted.

[1] *Price Stabilization Corporation vs. Court of Industrial Relations, et al.*, 108 Phil., 134; *Sampaguita Pictures, Inc. et al. vs. Court of Industrial Relations, et al.*, 109 Phil., 316; 60 Off. Gaz. [52] 8583.

[2] *Benguet Consolidated Mining Company vs. Coto Labor Union (N1AJ)* 105 Phil., 915.

[3] *Philippine Sugar Institute vs. CIR, et al.*, 106 Phil., 401; *Dee Cho Lumber Workers Union (NLU) vs. Dee Cho Lumber Company*, 101 Phil., 417; 55 Off. Gaz., [3] 434.

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