

**BING PHARMACY/GABRIELA FUA LUMAPAS, PETITIONER, VS.
ROSALIE C. CALO, MARIEL J. ARANETA, LYNE T. PARADIANG,
MARSHA G. GOLEZ AND THE NATIONAL LABOR RELATIONS
COMMISSION, SEVENTH D...**

Ponente: QUIJANO-PADILLA, J.

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QUIJANO-PADILLA, J.:

Before Us is an Amended Petition for Certiorari[2] under Rule 65 of the Rules of Court assailing the Decision[3] promulgated on September 30, 2013 of the National Labor Relations Commission (NLRC) Seventh (7[th]) Division, Cebu City, as well as the Resolution[4] dated December 20, 2013 of the same NLRC in NLRC Case No. VAC-06-000398-13, which denied the Motion for Partial Reconsideration[5] of herein petitioner.

The Antecedents[6]

Version of the Petitioner

In gist, petitioner Bing Pharmacy is a pharmaceutical retailer, which is owned and managed by Gabriela Fua Lumapas. The family members of Gabriela Fua Lumapas also helped in running the business by acting as sales assistants and cashiers.

Bing Pharmacy has branches in Canduman Mandaue City, Guadalupe, Cebu City and Consolacion, Cebu. It is regularly employing an average of eight (8) employees.

Petitioner hired Mariel Araneta and Marsha Golez as sales assistants on January 2, 2012 and April 17, 2012, respectively. Like all the other workers these private respondents were given their salaries and benefits.

Suddenly, on February 18, 2013, these two private respondents did not report for work but, instead, went to the National Conciliation and Mediation Board (NCMB) in Cebu City. They alleged that they were terminated by herein petitioner and thus, sought the Board's assistance. During the first SENA conference, petitioner stressed that it never dismissed such employees. They were also welcome to report back for work, as their absence severely affected the business operation.

However, private respondents Mariel Araneta and Marsha Golez subsequently managed to convince their co-employees to support their cause. Thus, during the second NCMB held on February 20, 2013, the other employees also attended the conciliation meeting, which prejudiced the business of herein petitioner.

There were about eighteen complainants who appeared on the second NCMB meeting, but most of them were unknown to the petitioner. The NCMB hearing officer after learning the true personality of the other alleged complainants, ordered them to leave the hearing room. Moreover, when the other employees learned the reason for the NCMB hearing, all of them, except for Rosalie Calo and Lynn T. Paradiang, apologized to herein petitioner and were permitted to report back for work.

With regard to the two private respondents, Rosalie Calo and Lyne T. Paradiang, they were both hired as sales

assistants on January 2, 2012 and were assigned at the Canduman, Mandaue and Cansaga, Consolacion branches. Both were given all the benefits due them. It was on February 20, 2013 that they abandoned their posts and joined Mariel Araneta and Marsha Golez in instituting a complaint before the NCMB.

The last complainant, Jean A. Auxtero, is not known to the petitioner as she was never its employee.

Version of the Private Respondents

In sum, the private respondents assert that they were employees of the petitioner Bing Pharmacy/Gabriela Fua Lumapas who were paid below the minimum wage rate. In fact, there were certain periods that they were not paid of their salaries, overtime pay, holiday pay, holiday premium, 13th month pay, and service incentive leave pay. Private respondents also claimed for nominal, moral and exemplary damages, as well as attorney's fees.

Private respondent Rosalie Calo alleged that she was hired as sales clerk on July 10, 2008 and she received a salary of P180.00 each day. It was increased to P200.00 on January 2009, to P260.00 on January 2010, to P285.00 on January 2011 and finally to P330.00 on February 2012.

Private respondent Lyne T. Paradiang averred that she was hired on June 6, 2008 as sales clerk and was receiving a salary of P150.00 a day. On January 2009, it was increased to P170.00, then on January 2010 to P260.00, on January 2011 to P285.00 and on February 2012 to P330.00.

Private respondent Mariel Araneta claimed that she was hired as sales clerk on January 31, 2009 and was paid a salary of P150.00 per day. It was increased to P170.00 on January 2010, to P252.00 on January 2011, to P285.00 on January 2012 and to P330.00 on February 2012.

Meanwhile, private respondent Marsha Golez alleged that she was hired by the petitioner as sales clerk on July 17, 2011 and paid a salary of P150.00 a day. This rate was increased to P330.00 on February 2012.

Lastly, complainant Jean A. Auxtero averred that she was hired on July 24, 2012 as sales clerk and was paid P280.00 per day.

The private respondents further alleged that they were assigned to the Canduman or Mantuyong branches of the petitioner. During their employment, they were not issued identification cards and payslips. The only proof of their employment were the cashier's notebooks. They have also requested herein petitioner for their benefits, but their pleas fell on deaf ears. Left with no other recourse, they filed the instant case against the petitioner.

The Ruling of the Labor Arbiter

In a Decision^[7] dated May 14, 2013, Labor Arbiter Bertino A. Ruaya, Jr. ruled in favor of the private respondents. He found the evidence of the private respondents, including that of Jean A. Auxtero sufficient to prove their employment with herein petitioner. Moreover, he also found the award of salary differential, 13th month pay and service incentive leave proper. The decretal portion of the decision states:

"WHEREFORE, premises considered, judgment is hereby rendered finding that there is an employer-employee relationship between complainant Jean A. Auxtero and respondents.

Respondents BING PHARMACY AND GABRIELA FUA LUMAPAS are hereby ordered jointly and solidarily to pay the complainant their salary differentials, 13th month pay and service incentive leave pay in the aggregate amount of ONE HUNDRED EIGHTY-SIX THOUSAND FOUR HUNDRED EIGHTY NINE & 32/100 (186,489.32).

All other claims are dismissed for lack of merit.

SO ORDERED."^[8]

The Ruling of the National Labor Relations Commission

In its assailed Decision[9] dated September 30, 2013, the National Labor Relations Commission modified the findings of the Labor Arbiter in so far as to its finding of the presence of employer-employee relationship between the petitioner and the private respondent Jean A. Auxtero. Contrary to the ruling of the Labor Arbiter, the NLRC asseverated that the said employee was not able to substantially prove her employment with the petitioner. However, with respect to the remaining private respondents, the Commission affirmed the money claims granted to them. The dispositive portion of the decision reads, to wit:

“WHEREFORE, premises considered, respondents' appeal is PARTLY GRANTED and the Decision of the Labor Arbiter is MODIFIED. The Complaint of Jean A. Auxtero is, hereby, DISMISSED and the monetary award made in her favor DELETED. The monetary award in favor of complainants Rosalie C. Calo, Mariel J. Araneta, Lyne T. Paradiang, and Marsha G. Golez, as computed by the Labor Arbiter, is, hereby, AFFIRMED.

SO ORDERED.”[10]

Aggrieved, petitioner then filed a Motion for Partial Reconsideration.[11] However, such motion was also denied by the NLRC in a Resolution[12] dated December 20, 2013.

Undeterred, petitioner comes before Us raising the following issues, to wit:

WHETHER OR NOT THE NLRC ERRED AND GRAVELY ABUSED ITS DISCRETION IN A CAPRICIOUS, WHIMSICAL, ARBITRARY OR DESPOTIC MANNER IN THE EXERCISE OF ITS JURISDICTION AMOUNTING TO LACK OF JURISDICTION IN PARTLY DISMISSING AND/OR DENYING PETITIONER'S APPEAL OF THE DECISION OF THE LABOR ARBITER PROMULGATED ON MAY 14, 2013, AWARDING HEREIN PRIVATE RESPONDENTS THEIR MONEY CLAIMS.

The Ruling of this Court

The petition is not meritorious.

The core of the present controversy is the determination of whether or not the NLRC acted with grave abuse of discretion when it awarded the monetary claims of the private respondents.

At the outset, it must be stressed that (f)actual findings of labor officials, who are deemed to have acquired expertise in matters within their respective jurisdiction, are generally accorded not only respect but even finality, and bind us when supported by substantial evidence.[13]

In the case at bench, We observed that the NLRC agreed with the Labor Arbiter in so far as to the award of money claims (salary differential, 13[th] month pay and service incentive leave) to the private respondents Rosalie Calo, Mariel Araneta, Lyne Paradiang and Marsha Golez. To support these findings, the Commission postulated as follows:

Anent the issue concerning the monetary award made by the Labor Arbiter in favor of the other four complainants. We affirm the validity of the same. Respondent's objection over the same is basically based on the following arguments: 1) complainants were paid the mandated minimum wage based on their own admission of having been paid PhP 330.00/day as of February 2012 and as shown in their monthly salary credit as reflected in their SSS record; and 2) respondent has been giving complainants Christmas gifts/tokens which answers for her obligation to pay them 13[th] month pay.

Respondent's assertions fail to persuade. Respondent has conveniently glossed over the fact that complainant's [sic] clamor for the correct wage includes the period, before February 2012. Their admission that they were paid a daily wage of PhP 330.00, starting February 2012, does not excuse respondent from her obligation to comply with the minimum wage law for the period before said date. Upon respondent's shoulder rests the burden of proving payment of the labor standard benefits and she has failed in this regard. She has presented

no substantial evidence to prove that complainants were paid the minimum wage all throughout the period of their employment. We also find no substantial evidence showing that complainants received the alleged cash gifts, that these alleged cash gifts were given as 13[th] month pay for the concerned workers or that the amount of said gift equals the benefit due each worker. Respondent's excuse of employing less than ten workers has not been indubitably established. As such, We find no basis to her claim that she is excused from compliance of the service incentive leave requirement.[14]

Indeed, We agree with the NLRC. As mandated by law, the payment of the minimum wage rate must begin at the inception of employment. Here, private respondents lament that from the start of their engagement, their salary was below the minimum wage rate, which claim the petitioner failed to refute. Hence, private respondents' admission of having received a rate of PhP 330.00 per day starting February 2012 is of no moment because it does not necessarily follow that they were paid the correct wage prior to such date. In fact, they consistently insist that they were underpaid by herein petitioner. Evidently, the onus of proving payment of the correct wage rate lies upon the petitioner, which the latter failed to discharge with the required quantum of evidence.

Jurisprudence explicitly states that (a)s a general rule, one who pleads payment has the burden of proving it. Even where the plaintiff must allege non-payment, the general rule is that the burden rests on the defendant to prove payment, rather than on the plaintiff to prove non-payment. The debtor has the burden of showing with legal certainty that the obligation has been discharged by payment.[15]

Again, taking guidance from the above-mentioned doctrine, the payment of the required salary differentials, 13[th] month pay and service incentive leave was also warranted. These labor benefits which must accrue to the employees' welfare were not substantially proven to have been paid by the petitioner to the private respondents.

In a foray to escape liability, petitioner also asseverated that private respondent Marsha Golez failed to prove her employment started as early as July 17, 2011, while the other private respondents also failed to prove that their employment commenced on February 25, 2010. Petitioner further submitted copies of the Company Rules and Regulations[16] signed by the private respondents in the year 2012. These allegedly prove that private respondents were only hired by the petitioner in 2012 and not in 2010 and 2011.

Such contention is futile.

First and foremost, private respondents' employment with herein petitioner is indisputable as shown by the Social Security System (SSS) records (print-outs)[17] which were even attached to petitioner's position paper. These print-outs showed that the private respondents were enrolled for social security under the name of the petitioner as employer. Two of the private respondents (Rosalie Calo and Lyne Paradiang) also received recognition[18] from the petitioner for the year 2010, clearly proving that their employment started prior to 2012.

Now, with regard to the signed copies of the Company Rules and Regulations, the same cannot be given credence. This is because such copies do not contain any information as to when the employment of the private respondents started. Thus, even if they were signed in 2012, it does not automatically mean that private respondents' employment only started in that year. What can be inferred from the signed copies is only the fact that the private respondents acknowledged to have read such Company Rules and Regulations at that given time. Verily, for purposes of determining the commencement of employment, such is nil of evidentiary weight. It is also interesting to note that in this case, the petitioner failed to provide credible and ample employment records such as the contracts of employment and payslips of her employees, which if presented could have shed more light and supported petitioner's allegations.

Still determined to further its stance, petitioner claimed to have given private respondents their corresponding 13[th] month pay in the form of cash gifts and tokens during their office Christmas Party. In addition, petitioner

also vehemently denied the allegation of underpayment. Petitioner averred that private respondents salary was already net of deductions, hence it would appear that private respondents were receiving an amount less than the minimum wage. Finally, petitioner would want to impress upon Us that it is regularly employing less than ten (10) employees and hence, pursuant to Article 95[19] of the Labor Code of the Philippines, it is exempted from paying service incentive leave. Petitioner to support this claim emphasized the fact that in its SSS records, it was shown that it is employing below ten (10) workers.

We find these explanations short of being persuasive.

The cash gifts and tokens allegedly given by the petitioner were not substantially proven. Other than mere allegations, there was no concrete proof that indeed the private respondents received the same. There was also no specification as to the amount of cash or token received by each employee and whether such amount is equivalent to the mandated 13[th] month pay. There was also paucity of evidence to petitioner's claim that the salaries of the private respondents were already net of deductions as there were no payslips submitted. Lastly, the SSS records are not conclusive as to petitioner's claim that it is employing less than ten (10) workers, as it only pertains to the number of employees enrolled with the System. Verily, this Court shares the opinion of the lower tribunals that herein petitioner failed to adduce proof to substantiate its defense.

Moreover, the conclusion reached by the NLRC is clearly a factual determination, which is beyond the scope of a petition for certiorari under Rule 65 especially since it was made after due evaluation of the evidence on hand. Furthermore, the findings of the NLRC are also consistent with that of the Labor Arbiter. Thus, We find instructive the ruling in *Malayang Manggagawa ng Stayfast Phils., Inc. v. NLRC*,[20] which states that:

For petitioner to question the identical findings of the Labor Arbiter and the NLRC is to raise a question of fact. However, it is settled that questions of fact cannot be raised in an original action for certiorari.[21] Only established or admitted facts can be considered.[22]

We also deemed it worthy to emphasize that (w)here a petition for certiorari under Rule 65 of the Rules of Court alleges grave abuse of discretion, the petitioner should establish that the respondent court or tribunal acted in a capricious, whimsical, arbitrary or despotic manner in the exercise of its jurisdiction as to be equivalent to lack of jurisdiction.[23] This is so because "grave abuse of discretion" is well-defined and not an amorphous concept that may easily be manipulated to suit one's purpose. In this connection, *Yu v. Judge Reyes-Carpio*[24] is instructive:

The term "grave abuse of discretion" has a specific meaning. An act of a court or tribunal can only be considered as with grave abuse of discretion when such act is done in a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." The abuse of discretion must be so patent and gross as to amount to an "evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility." Furthermore, the use of a petition for certiorari is restricted only to "truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void." From the foregoing definition, it is clear that the special civil action of certiorari under Rule 65 can only strike an act down for having been done with grave abuse of discretion if the petitioner could manifestly show that such act was patent and gross.
x x x. (Citations omitted.)

In addition, "grave abuse of discretion" does not encompass an error of law. Nor does it include a mistake in the appreciation of the contending parties' respective evidence or the evaluation of their relative weight.[25]

Finally, well-settled is the rule that if doubts exist between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the employee. Since it is a time-honored rule that in controversies between a laborer and his master, doubts reasonably arising from the evidence, or in the

interpretation of agreements and writings should be resolved in the former's favor.[26]

All told and after assessing the evidence at hand, We cannot attribute grave abuse of discretion on the part of the NLRC as it was not duly established that the assailed ruling was done in a capricious, arbitrary or whimsical manner.

WHEREFORE, in view of the foregoing, the Petition is DENIED. The assailed Decision and Resolution in NLRC Case No. VAC-06-000398-13 dated September 30, 2013 and December 20, 2013 respectively of the National Labor Relations Commission (NLRC), Seventh Division, Cebu City are hereby AFFIRMED.

SO ORDERED.

Delos Santos, Chairperson and Azcarraga-Jacob, JJ., concur.

[1] See Amended Petition for Certiorari (With Prayer for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction), rollo, p. 261.

[2] See Amended Petition for Certiorari (With Prayer for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction), rollo, pp. 261-509; Petition for Certiorari (With Prayer for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction), rollo, p. 3-256.

[3] Rollo, pp. 26-35, 283-292.

[4] Rollo, pp. 36-37, 293-294.

[5] Rollo, pp. 244-256, 497-509.

[6] Refer to the NLRC Decision, Statement of Facts, rollo, pp. 27-31.

[7] Rollo, pp. 208-224, 462-478.

[8] Rollo, p. 216, 470.

[9] Rollo, pp. 26-35, 283-292.

[10] Rollo, pp. 34-35, 291-292.

[11] Rollo, pp. 244-256, 497-509.

[12] Rollo, pp. 36-37, 293-294.

[13] New City Builders, Inc. v. NLRC, G.R. No. 149281, June 15, 2005, citing Stamford Marketing Corporation, et al. vs. Julian, et al, G.R. No. 145496, 24 February 2004 citing Abalos vs. Philex Mining Corporation, 441 Phils. 386, 395 [2002].

[14] Rollo, pp. 33-34, 290-291.

[15] See Sevilla v. I.T. (International) Corp., G.R. No. 99047, April 16, 2001, citing Pacific Maritime Services, Inc. v. Ranay, 275 SCRA 717,725-726 (1997). (quotation marks omitted)

[16] Rollo, pp. 114-136, 370-391.

[17] Rollo, pp. 85-98, 342-355.

[18] Rollo, pp. 195-196, 449-450.

[19] Art. 95. Right to service incentive leave.

x x x

2. This provision shall not apply to those who are already enjoying the benefit herein provided, those enjoying vacation leave with pay of at least five days and those employed in establishments regularly employing less than ten employees or in establishments exempted from granting this benefit by the Secretary of Labor and Employment after considering the viability or financial condition of such establishment.

[20] G.R. No. 155306, August 28, 2013.

[21] *Malayang Manggagawa ng Stayfast Phils., Inc. v. NLRC*, G.R. No. 155306, August 28, 2013, citing *Korea Technologies Co., Ltd. v. Lerma*, 566 Phil. 1, 35 (2008).

[22] *Malayang Manggagawa ng Stayfast Phils., Inc. v. NLRC*, G.R. No. 155306, August 28, 2013, citing *Ramcar, Inc. v. Hi-Power Marketing*, 527 Phil. 699, 708 (2006).

[23] *Malayang Manggagawa ng Stayfast Phils., Inc. v. NLRC*, G.R. No. 155306, August 28, 2013, citing *Abedes v. Court of Appeals*, 562 Phil. 262, 276 (2007).

[24] *Malayang Manggagawa ng Stayfast Phils., Inc. v. NLRC*, G.R. No. 155306, August 28, 2013, citing G.R. No. 189207, June 15, 2011, 652 SCRA 341, 348.

[25] See *Malayang Manggagawa ng Stayfast Phils., Inc. v. NLRC*, G.R. No. 155306, August 28, 2013.

[26] *Prangan v. NLRC*, G.R. No. 126529, April 15, 1998, citing *L.T. Datu and Co., Inc. v. NLRC*, 253 SCRA 440 (1996); *Soriano v. Offshore Shipping and Manning Corp.*, 177 SCRA 513 (1989).

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