

DANDY V. QUIJANO, COMPLAINANT, VS. GEOBEL A. BARTOLABAC (LABOR ARBITER, NLRC-NCR SOUTH), AND ALBERTO R. QUIMPO (COMMISSIONER, NLRC-FIRST DIVISION), RESPONDENTS.

ADM. CASE NO. 5649. January 27, 2006

Ponente: TINGA, J.

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TINGA, J.:

On 19 March 2002, complainant Dandy Quijano filed before this Court a verified complaint [1] written in Pilipino against herein respondents Atty. Geobel A. Bartolabac (Bartolabac), Labor Arbiter of the National Labor Relations Commission (NLRC), and Commissioner Alberto R. Quimpo (Quimpo) of the same Commission for violating Canon 1 [2] and Rule 1.01 [3] of the Code of Professional Responsibility.

According to complainant, respondents violated his constitutional right to due process in failing to execute the final and executory judgment of this Court in G.R. No. 126561 entitled Quijano v. Mercury Drug Corporation. [4]

The antecedent facts are as follows:

Complainant was dismissed from service by the Mercury Drug Corporation (corporation). He filed a complaint for illegal dismissal before the NLRC. Eventually, the case was elevated to this Court. On 8 July 1998, the Court promulgated its Decision in favor of herein complainant ordering, among others, his reinstatement. [5] The corporation's motion for reconsideration was denied by this Court in its Resolution dated 5 July 1999.

Complainant relates that he filed with respondent Labor Arbiter Bartolabac a motion for execution on 9 December 1998 but despite the final resolution of his case, Bartolabac issued an order that in effect changed the tenor of the final judgment. [6] While the decision of this Court had mandated complainant's reinstatement, Bartolabac instead awarded backwages and separation pay.

The Court, upon learning this, issued a Resolution [7] on 17 November 1999 directing Bartolabac to fully comply with its Decision dated 8 July 1998 and Resolution dated 5 July 1999 within a non-extendible period of five (5) days from receipt thereof and to explain in writing why he should not be punished for indirect contempt for his actuations in handling the case and defiance of the Court's directives.

Pursuant to the Resolution of this Court, Bartolabac issued an alias writ of execution on 18 February 2000. However, respondent Bartolabac allegedly again unilaterally issued another order dated 5 April 2000, amending his previous order and assigning the complainant to the position of self-service attendant of the corporation instead of his original position of warehouseman. Subsequently, respondent Commissioner Quimpo overturned the above order of Bartolabac and directed the payment of separation pay rather than reinstatement to a substantially similar position as ordered by this Court.

Complainant adds that he had filed a motion to cite counsel for respondent corporation in contempt [8] and an answer to the order dated 5 April 2000, but these were disregarded by Bartolabac on the ground that an appeal was already underway at the NLRC by the corporation.

Further, he states that he was not given a copy of the appeal memorandum filed by the corporation with the NLRC; yet, the NLRC First Division headed by Quimpo disposed of the same. He also alleges that the corporation did not post a cash bond for the appeal nor did they give him a temporary reinstatement or payroll reinstatement, which according to complainant, is mandatory. Despite this, and without giving complainant any opportunity to comment on the appeal memorandum, Quimpo nonetheless issued a resolution dated 26 September 2000 which ordered the corporation to pay complainant separation pay plus backwages. Complainant asserts that Quimpo should have inhibited himself from deciding the case as he, or the NLRC First Division, was the public respondent in the Supreme Court case.

Complainant admits having received the monetary award in the amount of P449,062.98 from the corporation in satisfaction of this Court's ruling in G.R. No. 126561 but contends that the award cannot be considered a cash bond for the appeal memorandum before the NLRC as the same was computed until 24 November 1999 only and he has a right to the award because his case had long become final and executory.

Thus, complainant asserts that his constitutional right to due process has been seriously violated by Bartolabac and Quimpo.

On 22 April 2002, this Court issued a Resolution [9] requiring respondents to file their respective comments on the complaint within ten (10) days from notice.

In his comment [10] filed on 4 July 2002, Bartolabac states that the present complaint is a rehash of several complaints against him which complainant filed before different fora, including this Court and the Office of the Ombudsman.

As to the issue of monetary award and reinstatement due the complainant, Bartolabac argues that the records of G.R. No. 126561 reveal that the corporation had already released to complainant the sum of P297,930.75 as cash bond deposit. The amount of P449,062.98 had been deposited to the cashier of the NLRC. Out of the said remaining amount, Bartolabac directed the release of P250,660.62 to complainant. The remaining balance of P198,402.36 was to answer for complainant's MEDICARE and SSS contributions, withholding tax, loans, etc., which had yet to be determined at that time. Bartolabac gave both parties the opportunity to dispute or defend their respective claims but complainant failed to cooperate either by not attending the scheduled hearing called for that purpose on 27 March 2000, or by failing to file controverting evidence to dispute the claimed deductions by the corporation. [11]

Before Bartolabac could adjudicate the proper monetary award for complainant, the latter filed a complaint against him before the Office of the Ombudsman for oppression and grave misconduct. Due to this supervening event, Bartolabac's sense of propriety compelled him to inhibit himself from further participating in the adjudication of the remaining balance of P198,402.36. But most importantly, he adds, the case was re-raffled to Labor Arbiter Gaudencio P. Demaisip, Jr. who awarded the whole amount of P449,062.36 which complainant has already received.

Offering another perspective of the case at bar, Bartolabac avers that after the Supreme Court had rendered its decision in G.R. No. 126561 on 8 July 1998, the case was re-raffled to Labor Arbiter Renell Joseph R. Dela Cruz for the satisfaction of judgment. At that point, the exact monetary award and reinstatement aspects were raised. Both parties submitted conflicting computations on the monetary award. The corporation also asserted that they had abolished the position of warehouseman and there was no substantially equivalent vacant position. Labor Arbiter Dela Cruz then ordered the parties to submit their respective position papers but eleven (11) days thereafter, said labor arbiter issued an order inhibiting himself from handling the case as he allegedly could not bear with complainant dictating the rules of the proceedings. [12]

The labor case was re-raffled to Bartolabac on 20 April 1999. Unaware of the pending motion for reconsideration of the corporation in G.R. No. 126561 where the feasibility of reinstatement was at issue, he issued an order on 24 June 1999 ruling out complainant's reinstatement, awarding separation pay instead and the amount of P573,228.00 (less necessary deductions) as backwages.

As a consequence, this Court on 17 November 1999 reproached Bartolabac for completely disregarding the corporation's motion for reconsideration with this Court, directing him to order complainant's reinstatement and payment of backwages, moral damages, exemplary damages and attorney's fees, and requiring him to explain in writing why he should not be punished for indirect contempt for his handling of the case and defiance of the Court's directives. Bartolabac complied by filing his manifestation stating that his office was not furnished with a copy of the motion for reconsideration. His act of adjudicating the issue of reinstatement was impelled by the sense of urgency on the matter since he received a letter signed by complainant and a Memo from the NLRC Chairman referring the complainant's letter to him for appropriate action. [13] Both letters sought the immediate disposition of his labor case. [14]

Based on the foregoing, Bartolabac maintains that complainant engaged in forum-shopping for while complainant knew of the existence of the corporation's motion for reconsideration with this Court, he remained insistent that Bartolabac resolve the reinstatement issue. [15]

He also stresses that he did not incur delay in the disposition of the labor case. After he received the 17 November 1999 Resolution of this Court on 22 November 1999, he issued an alias writ of execution on 24 November 1999 directing the sheriff to garnish the amount of P449,062.98 and to cause the reinstatement of complainant to a substantially equivalent position. When the sheriff returned the writ unsatisfied for failure of the corporation to comply with the reinstatement aspect as the open positions were only for pharmacist, pharmacy assistant, cashier and self-service attendant, he lost no time in resolving that, while the first three positions need college graduates, the self-service attendant position may be sufficiently performed by complainant even though he is not a college graduate. [16]

Lastly, Bartolabac declares that with the filing of the appeal from the order of reinstatement with the NLRC, he lost jurisdiction over the issue.

For his part, Quimpo alleges that his inclusion in the present administrative case was due to his participation in disposing of the corporation's appeal on the issue of complainant's reinstatement as self-service attendant. He asserts that by law, the Commission has exclusive appellate jurisdiction to hear and decide all decisions, awards or orders rendered by the labor arbiter. [17] He adds that said authority was even tacitly recognized by the Court in its Resolution dated 7 June 2000 in relation to G.R. No. 126561. The pertinent portions of the resolution read:

"On the issue of reinstatement, the Labor Arbiter issued an Order on April 5, 2000, directing the private respondent to reinstate petitioner to the position of self-service attendant. The reinstatement order was impugned by the private respondent as the petitioner was allegedly not qualified for the position and there was already strained relations between the parties. The reinstatement order is now pending appeal before the NLRC.

As the NLRC has acquired jurisdiction over the issue of petitioner's reinstatement and the amount of deduction on petitioner's monetary award is subject to proof and/or dispute by the respective parties before the Labor Arbiter, the letter-complaints of the petitioner are thus hereby NOTED.

IN VIEW THEREOF, Labor Arbiter Geobel A. Bartolabac is hereby directed to determine with dispatch the amount still owing the petitioner, if any, and to see to it that no further delay would hamper the proceedings before him. Public respondent NLRC, on the other hand, is requested to expedite the proceedings before it on

the issue of petitioner's reinstatement. [18]

Hence, Quimpo adds, the NLRC did not abuse its discretion when it assumed jurisdiction over the corporation's appeal.

Quimpo likewise explains that in resolving the appeal, he took judicial notice of the various resolutions issued by this Court and with utmost good faith and fidelity tried to implement the directive to reinstate the complainant to his former position or to a substantially equivalent position. However, due to certain supervening events that transpired after the resolution of the labor case and up to the time of execution, reinstatement had become improbable and so it was the ruling of the Commission that separation pay instead of reinstatement would be the most logical, sensible and practical solution. [19]

As to complainant's claim that he was not furnished a copy of the corporation's appeal memorandum, records show that a copy of the appeal memorandum was furnished his counsel and in any event, complainant admitted his knowledge of the existing appeal when he filed a Reiteration of Motion to Release Monetary Award dated 20 June 2000, arguing that his monetary award should be released to him since only the issue of reinstatement is being appealed to the Commission. [20]

Furthermore, Quimpo states that complainant filed a similar complaint with the Office of the Ombudsman for neglect of duty but the same was dismissed. Complainant's motion for reconsideration was denied with finality on 21 February 2002. Complainant's act of re-filing another administrative complaint is designed primarily to harass and intimidate him. [21]

He also notes that complainant already received the full satisfaction of his monetary award which only shows that the Commission has complied in good faith with the directive to execute the judgment award in favor of complainant. [22]

Without waiting for this Court's action, complainant filed his Reply to Both Respondent[s'] Comments [23] on 23 July 2002. He substantially reiterates the arguments he made in his complaint.

On 19 August 2002, this Court resolved, among others, to refer this case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation. On 6 May 2003, the IBP submitted its resolution adopting and approving the report and recommendation of Investigating Commissioner Lydia A. Navarro dismissing the complaint against respondents. [24]

Complainant filed a motion for reconsideration with the IBP but it was subsequently denied since the matter had already been endorsed to this Court and the IBP no longer had jurisdiction over the case. [25]

We nonetheless resolve to treat the motion for reconsideration as a petition for review on certiorari of the IBP resolution. [26]

We now go to the main issue at bar, i.e., whether or not respondents are liable for their acts in deviating from the final and executory judgment of this Court in G.R. No. 126561.

The Court is unyielding in its adjudication that complainant must be reinstated to his former position as warehouseman or to a substantially equivalent position. This was stated in its Decision dated 8 July 1998, reiterated in the Resolution dated 5 July 1999, and again stressed in the Resolution dated 17 November 1999. In the latter resolution, it was particularly expressed that:

Indeed, private respondent's [Mercury Drug Corporation] contention, as erroneously upheld by the labor arbiter, that there is no substantially equivalent position for petitioner's reinstatement has been categorically discounted by this Court. We took judicial notice of the fact that private respondent Mercury Drug Corporation

operates nationwide and has numerous branches all over the Philippines. Petitioner, as warehouseman, occupied a clerical/rank and file position in said company and we find it highly inconceivable that no other substantially equivalent position exists to effect his reinstatement. [27]

Clearly, the Court is unwilling to accept the corporation and respondent labor arbiter's reason that reinstatement is no longer feasible because the position of warehouseman had already been abolished and there is no substantially equivalent position in the corporation.

Both respondents labor arbiter and commissioner do not have any latitude to depart from the Court's ruling. The Decision in G.R. No. 126561 is final and executory and may no longer be amended. It is incumbent upon respondents to order the execution of the judgment and implement the same to the letter. Respondents have no discretion on this matter, much less any authority to change the order of the Court. The acts of respondent cannot be regarded as acceptable discretionary performance of their functions as labor arbiter and commissioner of the NLRC, respectively, for they do not have any discretion in executing a final decision. The implementation of the final and executory decision is mandatory.

As held in *Siy v. National Labor Relations Commission and Embang*: [28]

Once the case is decided with finality, the controversy is settled and the matter is laid to rest. The prevailing party is entitled to enjoy the fruits of his victory while the other party is obliged to respect the court's verdict and to comply with it. We reiterate our pronouncement in *Salicdan v. Court of Appeals*: [29]

"well-settled is the principle that a decision that has acquired finality becomes immutable and unalterable and may no longer be modified in any respect even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court of the land.

The reason for this is that litigation must end and terminate sometime and somewhere, and it is essential to an effective and efficient administration of justice that, once a judgment has become final, the winning party be not deprived of the fruits of the verdict. Courts must guard against any scheme calculated to bring about that result and must frown upon any attempt to prolong the controversies.

The Court recognizes Bartolabac's efforts to adjudicate and advance the cause of complainant, albeit erroneously. In his desire to settle the issue of reinstatement, he determined that complainant, a high school graduate, be appointed to the position of self-service attendant which requires the appointee to hold a college degree, since the corporation "failed to rationalize the need for a college graduate for the position of self-service attendant.. and...complainant has exhibited before [the NLRC] that he has a reasonable degree of comprehension to understand and perform the functions of a self-service attendant." [30] Complainant had pointed out several job openings [31] in the corporation to which he would be qualified, but respondent made no effort to verify it. Instead, he took at face value the corporation's representation that there were limited vacancies. It is inconceivable that a company as large as the corporation, operating nationwide, could not accommodate complainant and appoint him to one of its numerous rank and file positions.

Again, we are unceasing in emphasizing that the decision in the labor case has become final and executory since 1999. There can be no justification for the overturning of the Court's reinstatement order by the NLRC First Division and full satisfaction of the monetary award of only three (3) years after the finality of the judgment.

The Court is not wont to compel the corporation to instantly restore the position of warehouseman if it has been already abolished. Indeed, the Court granted that complainant could be reinstated to a substantially equivalent or similar position as a viable alternative for the corporation to carry out.

Our Constitution mandates that no person shall be deprived of life, liberty, and property without due process of law. [32] It should be borne in mind that employment is considered a property right and cannot be taken away

from the employee without going through legal proceedings. In the instant case, respondents wittingly or unwittingly dispossessed complainant of his source of living by not implementing his reinstatement. In the process, respondents also run afoul of the public policy enshrined in the Constitution ensuring the protection of the rights of workers and the promotion of their welfare. [33]

As a final word, we note that the IBP's report and recommendation falls far short of the Court's expectations. After a lengthy account of the allegations of the parties, the investigating commissioner concluded its report with a two-paragraph uncommendably bare exoneration, thus:

A detailed examination and evaluation of the evidence submitted by the parties showed that respondents Labor Arbiter Geobel A. Bartolabac and Commissioner Alberto R. Quimpo only performed the duties required of them under the Rules and Procedure of Law particularly that pertaining to the NLRC Rules and Procedures and the Labor Code; as Labor Arbiter and Commissioner.

In fact, complainant's complaints against them before the Ombudsman relative to the same case were dismissed with finality which office has jurisdiction over respondents relative to the performance of their duties as Labor Arbiter and Commissioner and not on a lawyer-client relationship nor on the practice of the professions as lawyer or members of the Bar. [34]

How the IBP investigating commissioner arrived at that supposition or in what manner were the acts of herein respondents regularly done cannot be extracted from its scanty determination.

WHEREFORE, premises considered, the Court finds respondents liable for violating Canon 1 and Rule 1.01 of the Code of Professional Responsibility. Respondents Labor Arbiter Geobel A. Bartolabac and Commissioner Alberto R. Quimpo are hereby **SUSPENDED** from the practice of law for a period of **THREE (3) months**.

Let a copy of this Resolution be furnished the Bar Confidant for appropriate annotation on the records of the respondents.

SO ORDERED.

Quisumbing, (Chairman), Carpio, and Carpio-Morales, JJ., concur.

[1] Rollo, pp. 1-5.

[2] Canon 1—A lawyer shall uphold the Constitution, obey the laws of the land and promote respect for law and for legal processes.

[3]Rule 1.01—A lawyer shall not engage in unlawful, dishonest and deceitful conduct.

[4] 354 Phil. 112 (1998).

[5]The dispositive portion of the decision states:

"IN VIEW WHEREOF, the petition is **GRANTED**. Private respondent **MERCURY DRUG CORPORATION** is ordered to: (1) reinstate petitioner **DANDY V. QUIJANO** to his former or substantially equivalent position; (2) to pay backwages from the time of petitioner's illegal dismissal until his reinstatement in the payroll on May 1, 1995, and from the time petitioner's salary based on payroll reinstatement was stopped on June 16, 1996 until his actual reinstatement; (3) to pay moral and exemplary damages in the amount of fifty thousand (P50,000.00) pesos and twenty-five thousand (P25,000.00) pesos, respectively, and; (4) to pay ten percent (10%) of the total amount due to petitioner, as attorney's fees. Cost against private respondent.

SO ORDERED."

[6] On 24 June 1999, respondent labor arbiter issued an Order awarding backwages and separation pay, in lieu of the Supreme Court's order of reinstatement. Rollo, pp. 47-49.

[7]Id. at 6-8.

[8] Motion to Cite Atty. Corazon Agustin-Counsel for Respondent for Contempt or Indirect Contempt dated 10 April 2000; id. at 307-308.

[9]Id. at 9.

[10] Id. at 14-112, including Annexes "1" to "27."

[11] Id. at 16.

[12] Id. at 20, the Order of Labor Arbiter Dela Cruz dated 16 April 1999 is attached as Annex "6" of respondent Bartolabac's Comment.

[13] Id. at 62, Annex "12" of respondent Bartolabac's Comment.

[14] Id. at 80-83, Annex "17" and "18" of respondent Bartolabac's Comment.

[15]Id. at 26.

[16]Id. at 27.

[17] Id. at 128.

[18]Id. at 129.

[19]Id. at 130.

[20]Id. at 132.

[21]Id. at 132-134.

[22]Id. at 134.

[23] Id. at 160-208.

[24]Id. at 211-224.

[25] In accordance with Sec. 12 (c) of Rule 139 of the Rules of Court. Id. at 226.

[26]Per Resolution dated 10 November 2003. Id. at 232.

[27] Id. at 56. Emphasis in the original.

[28] G.R. No. 158971, 25 August 2005.

[29] G.R. No. 128967, 20 May 2004, 428 SCRA 586, 599 citing Philippine Veterans Bank v. Estrella, G.R. No. 138993, 27 June 2003, 405 SCRA 168 and Salva v. Court of Appeals, 364 Phil. 284 (1999).

[30] Order dated 5 April 2000 by Labor Arbiter Bartolabac. Rollo, p. 95.

[31] In his Comment dated 20 September 1999 in G.R. No. 126561, he specified some job vacancies such as: preparer-packager, displayer, tagger, bulker, delivery man, fork lift operator, tospro monitoring, warehouse clerk, and driver. Id. at 198.

[32] Const., Art. III, Sec. 1.

[33] Id., Art. II, Sec. 18.

[34] Rollo, pp. 223-224.

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