

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. CESAREO DE LEON, IN HIS CAPACITY AS COMMISSIONER OF THE WORKMEN'S COMPENSATION COMMISSION, AND HILARIO ASENDIDO, RESPONDENTS.

G. R. No. L-9868. June 28, 1957

Ponente: FELIX, J.

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FELIX, J.:

Hilario Asondido was an emergency laborer employed in the Division of Ports and Harbors of the Bureau of Public Works from May 22, 1950, to December 31, 1952, and put to work on various assignments mixing cement, cleaning the pier deck and operating the jack-hammer, a hand-operated machine run by compressed air, used for boring holes in concrete pavements. It appears on record that on December 31, 1952, he coughed blood and a subsequent examination by a doctor of the Philippine-American Life Insurance Co. diagnosed his ailment as "active pulmonary tuberculosis affecting the 1st, 2nd and 3rd interspace of left lung", although previous to that occasion, or on October 12, 1952, a physical examination preparatory to being insured was conducted by a physician of the same Insurance Company who found him negative of said disease. Hilario Asendido filed on January 3, 1958, his resignation with the Bureau of Public Works, and went to Pila, Laguna, undergoing treatment at the Laguna Chest & Tuberculosis Demonstration Center where his condition was diagnosed as far advanced tuberculosis on February 2, 1953.

It is not clear from the evidence when Asendido filed his claim against the Bureau of Public Works, but there was such a claim filed with the Workmen's Compensation Commission as a result of which hearings were conducted by Referee Priscila Argonza Medina of said Office. Throughout the proceedings, the Bureau of Public Works was represented by an attorney of the Legal Division of said Bureau.

On February 14, 1955, Referee Argonza Medina rendered decision finding that the claimant Hilario Asendido might have had incipient tuberculosis at the time he first entered employment, but in such stage yet as to escape detection even by a physician. It went on further to say that this ailment must have been aggravated by the nature of his work, that is, the continuous operation of the jackhammer in the month of December, 1952, resulting in the appearance of blood in his coughings, and declared that such was compensable under section 2 of Act 3428, as amended. Hence, respondent Bureau of Public Works was ordered:

- To pay the claimant Hilario Asendido, thru this Commission the sum of One Thousand Six Hundred Twelve Pesos and 80/100 (P1,612.80) in lump sum. with no discount, as compensation corresponding to the period "from January 1, 1953, up to February 28, 1955, and Fourteen Pesos and Forty Centavos (P14.40) weekly thereafter until the pulmonary tuberculosis of the claimant is declared arrested and he can normally resume his former work or until the maximum compensation of P4,000.) is fully paid;
- To reimburse the claimant of the amount of One Hundred Ninety Five Pesos and 10/100 (P195.10) as medical expenses, and to pay for the medical and hospital expenses to be incurred in the future by the claimant as a

result of his illness; and

- To pay into the Workmen's Compensation Fund the amount of P17.00 as costs and the amount of P1.00 for every P100.00 to be paid as compensation, pursuant to section P5 of Act 3428, as amended".

A copy of said decision was received by the Bureau of Public Works on February 26, 1955, and was referred to the Director of Public Works on March 17, 1955, who forwarded the same to the Solicitor General for appeal or for such action as may be deemed appropriate on the matter. Pursuant thereto, the Solicitor General filed with the Workmen's Compensation Commission on March 24, 1955, a petition for relief from the decision of Referee Priscila Argonza Medina, stating that under section 1661 of the Revised Administrative Code, the Solicitor General is the counsel for the Republic of the Philippines; that as the judgment to be enforced will cause a financial liability of the Government, the proper party in this case should have been the Republic of the Philippines, (section 53, Republic Act No. 772); that as such party to this suit, the Government should have been notified through the Solicitor General's Office; that although the Bureau of Public Works was represented during the hearings, said counsel had no authority under the law to represent the Director before any board, commission or court requiring the services of a lawyer; that is the Republic of the Philippines, the real party in interest, was not notified, it was deprived of its day in court, and prayed that the decision of the referee be set aside and a new trial be held so as to give the proper party the opportunity to be heard and be duly represented by its legal counsel, and for such other relief as may be deemed proper and equitable.

It seems that this petition was denied and the Solicitor General filed with the same Commission a petition to review the decision of Referee Medina. On May 31, 1955, an order was issued by said Referee denying the petition for review on the ground that the same was not sufficient in form and substance for failure to comply with the requirement of section 3 of Rule 38 regarding the attachment of an affidavit of merit to the petition, at the same time maintaining that the Commission acquired jurisdiction over the person of the respondent and that said party was given its day in court, and in accordance with Section 49 of Republic Act 773, the record of the case was elevated to the Workmen's Compensation Commissioner for review. As the Commissioner issued on October 12, 1955, an order affirming the judgment rendered by the Referee in favor of claimant Hilario Asendido, the Solicitor General representing the Republic of the Philippines, brought the matter to this Court and in this instance assails the order of the respondent Workmen's Compensation Commissioner affirming the order of Referee Medina as devoid of basis in law and in fact. The order appealed from was based on the premise that the petition for review filed by therein petitioner, the Republic of the Philippines, was defective and it is now the contention of the Solicitor General that affidavits of merits are not necessary where the Court or body has no jurisdiction over the person of a party or of the subject matter. Herein petitioner further asserts that the claim being one involving financial liability of the Government, the proper party should have been the Republic of the Philippines and as the latter was not notified, the proceedings held before Referee Medina were null and void in so far as the Republic of the Philippines is concerned. It is, therefore, prayed that the decision and order of respondent Workmen's Compensation Commissioner be declared erroneous and the case be set for new trial.

From the foregoing recital of facts, We can glean that the Solicitor General, in representation of the Republic of the Philippines, questions the jurisdiction of the Workmen's Compensation Commission to adjudge the Bureau of Public Works liable and to require it to pay the claim of the laborer who had rendered services in said Bureau. It is the petitioner's consistent stand that the case, which necessarily involves a liability to the national funds, is an action against the Government and the proper party should have been the Republic of the Philippines. The main issue raised by this appeal is whether or not the Republic of the Philippines is an indispensable party in the case at bar and, consequently, whether the order appealed from was issued in excess of jurisdiction.

The Bureau of Public Works is an agency of the Executive branch, the appropriation for its operation and

maintenance being provided for by the National Government. Although the various functions of said Bureau are executed under the direction of the Director, as contended by counsel for respondent claimant, it is obvious that said Director is subject to the control of the Department Head, who in turn falls under the supervision and control of the President. In contemplation of the Workmen's Compensation Act, this Bureau cannot be considered as the employer of those working thereunder, for it is merely a part of the machinery of the Government, the services or works rendered to said Office being designed for the good and welfare of the public the said Office not being in business but engaged in the performance of functions which are the proper concern of the Government.

Moreover, in a recent ruling this Court held that cases involving financial liability that may be proved against the Government are actions against the Government (See Araneta et al. vs. Gatmaitan et al., supra, p. 328).. which strengthens petitioner's contention that the action at bar should have properly been brought against the Republic of the Philippines. And that the law intended the National Government to be liable for compensation arising under the Workmen's Compensation Act is clearly embodied in sections 3 and 53 of Republic Act 722, amending Act No. 3428, which read as follows:

Sec. 3. APPLICABLE TO GOVERNMENT.—This Act shall also be applicable to mounted messengers in the service of the National Government and all its political subdivisions and to the employees and laborers employed in public works and in the industrial concerns of the Government and to all other persons performing manual labor in the service of the National Government and its political subdivisions and instrumentalities ;

* * * * *

Sec. 53. DEPOSITS OF GOVERNMENT ENTITIES TO GUARANTEE PAYMENT OF COMPENSATION.—The National, provincial, and municipal government, as well as government-owned or controlled corporations employing laborers and employees comprised within the provisions of this Act, shall deposit with the office of the Workmen's Compensation Commissioner an amount to be determined by said Commissioner to guarantee payment of compensation. The said deposits shall be received by the Commissioner and disbursed, thru the authority of the Commissioner or his deputy, as compensation payments to injured laborers of the government entities making the contribution or the laborers' dependents in cases of death whenever the said laborers or their dependents are entitled to compensation under the provisions of this Act.

We already found occasion to pass upon this matter squarely in another case involving practically the same set of facts. In G. R. No. L-9252, Republic of the Philippines vs. Hernando et al.,[*] promulgated July 31, 1956, this Court, speaking through Mr. Justice Bautista, made "the following pronouncement:

"While it is true that the Director of Public Works or the Commissioner of Public Highways can be sued on matters covering their official functions or activities, the situation varies when it refers to a claim for death benefit or compensation, for, as already adverted to the proper party in interest is the national government because the money to be applied to the payment of the compensation belongs to it under section 53 of the Workmen's Compensation Act. This is the situation obtaining in the present case. And as it appears that the national government was not given its day in court, the decision of the referee cannot stand, since it was rendered in excess of jurisdiction.

* * * * *

On this score alone, the present appeal by the Government is clearly meritorious, but we desire to pass upon the question invoked by respondents, that the petition for relief filed by the Solicitor General to review the decision of Referee Medina was defective for failure to comply with the requirements of section 3 of Rule 38 of the Rules of Court regarding submission of an affidavit of merit. Said section prescribes the following:

Sec. 3. WHEN PETITION FILED; CONTENTS AND VERIFICATION.— A petition provided for in either of

the preceding sections of this rule must be verified filed within sixty days after the petitioner learns of the judgment, order, or other proceedings to be set aside, and not more than six months after such judgment or order was entered, or such proceeding was taken; and must be accompanied with, affidavits showing the fraud, accident, mistake, or excusable negligence relied upon, and the facts constituting the petitioner's good and substantial cause of action or defense, as the case may be, which he may prove if his petition be granted.

The requirement of this section is similar to that of section 2 of Rule 37 concerning motions for new trial, and although the rulings of this Court advocate strict compliance "with the same, the view setting exceptions to the general rule was laid down in the cases of Coombs vs. Santos, 24 Phil. 451; McGrath vs. Del Rosario, 49 Phil. 330; and Gonzales vs. Francisco, 49 Phil. 747, cited in I Moran's Comments on the Rules of Court, 1952 ed. p. 780. It was thus held that failure to accompany a motion to set aside judgment with an affidavit of merit is irreversible error "except where there was no jurisdiction over the defendant or of the subject matter of the action, where a judgment was taken by default before defendant's time to answer had expired, where it was entered by mistake, or was obtained by fraud, and other similar case". This seems to be a sound rule on the matter, for in a petition directly assailing the jurisdiction of the court, an affidavit of merit has no practical value. An affidavit of merit is one setting forth that the defendant has a meritorious defense (substantial and not technical) and stating the facts constituting the same (Black's Law Dictionary, 4th ed., p. 80). An attack on the jurisdiction of the court is given such primary recognition in our jurisprudence that this defense can properly be raised for the first time even on appeal. Certainly, an affidavit of merit which essentially deals with facts constituting petitioner's defense and/or basis of such defense has no place in a pleading that advances an argument that goes down to the very root of the proceedings.

Wherefore, the decision rendered in W.C.C. Case No. 2594 by Referee Priscila Argonza Medina dated February 14, 1955, and all other orders issued by her in connection therewith, as well as the order of the respondent Commissioner Cesareo de Leon of October 12, 1955, affirming the judgment rendered by said Referee, are set aside and respondent Commissioner is hereby ordered to set the case for new trial after giving notice to all parties concerned, so as to give herein petitioner, the Republic of the Philippines, its day in court. Without pronouncement as to costs. It is so ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

[*] 90 Phil., 683.

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