

**MANTRADE/FMMC DIVISION EMPLOYEES AND WORKERS UNION
(REPRESENTED BY PHILIPPINE SOCIAL SECURITY LABOR UNION
– PSSLU FED. – TUCP, PETITIONER, VS. ARBITRATOR
FROILAN M. BACUNGAN AND...**

G.R. No. L-48437. September 30, 1986

Ponente: FERIA, J.

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FERIA, J.:

This is a petition for Certiorari and Mandamus filed by petitioner against arbitrator Froilan M. Bacungan and Mantrade Development Corporation arising from the decision of respondent arbitrator, the dispositive part of which reads as follows:

"CONSIDERING ALL THE ABOVE, We rule that Mantrade Development Corporation is not under legal obligation to pay holiday pay (as provided for in Article 94 of the Labor Code in the third official Department of Labor edition) to its monthly paid employees who are uniformly paid by the month, irrespective of the number of working days therein, with a salary of not less than the statutory or established minimum wage, and this rule is applicable not only as of March 2, 1976 but as of November 1, 1974."

Petitioner questions the validity of the pertinent section of the Rules and Regulations implementing the Labor Code as amended on which respondent arbitrator based his decision.

On the other hand, respondent corporation has raised procedural and substantive objections. It contends that petitioner is barred from pursuing the present action in view of Article 263 of the Labor Code which provides in part that "voluntary arbitration awards or decisions shall be final, inappealable, and executory," as well as the rules implementing the same; the pertinent provision of the Collective Bargaining Agreement between petitioner and respondent corporation; and Article 2044 of the Civil Code which provides that "any stipulation that the arbitrators' award or decision shall be final, is valid, without prejudice to Articles 2038, 2039, and 2040." Respondent corporation further contends that the special civil action of certiorari does not lie because respondent arbitrator is not an "officer exercising judicial functions" within the contemplation of Rule 65, Section 1, of the Rules of Court; that the instant petition raises an error of judgment on the part of respondent arbitrator and not an error of jurisdiction; that it prays for the annulment of certain rules and regulations issued by the Department of Labor, not for the annulment of the voluntary arbitration proceedings; and that appeal by certiorari under Section 29 of the Arbitration Law, Republic Act No. 876, is not applicable to the case at bar because arbitration in labor disputes is expressly excluded by Section 3 of said law.

These contentions have been ruled against in the decision of this Court in the case of Oceanic Bic Division (FFW) vs. Romero, promulgated on July 16, 1984, wherein it stated:

"We agree with the petitioner that the decisions of voluntary arbitrators must be given the highest respect and as a general rule must be accorded a certain measure of finality. This is especially true where the arbitrator chosen by the parties enjoys the first rate credentials of Professor Florida Ruth Pineda Romero, Director of the

U. P. Law Center and an academician of unquestioned expertise in the field of Labor Law. It is not correct, however, that this respect precludes the exercise of judicial review over their decisions. Article 262 of the Labor Code making voluntary arbitration awards final, inappealable and executory, except where the money claims exceed P100,000.00 or 40% of the paid-up capital of the employer or where there is abuse of discretion or gross incompetence refers to appeals to the National Labor Relations Commission and not to judicial review.

"In spite of statutory provisions making 'final' the decisions of certain administrative agencies, we have taken cognizance of petitions questioning these decisions where want of jurisdiction, grave abuse of discretion, violation of due process, denial of substantial justice, or erroneous interpretation of the Law were brought to our attention. x x x

x x x x x x x x

"A voluntary arbitrator by the nature of her functions acts in a quasi-judicial capacity. There is no reason why her decisions involving interpretation of law should be beyond this Court's review. Administrative officials are presumed to act in accordance with law and yet we do not hesitate to pass upon their work where a question of law is involved or where a showing of abuse of discretion in their official acts is properly raised in petitions for certiorari." (130 SCRA 392, 399, 400-401)

In denying petitioner's claim for holiday pay, respondent arbitrator stated that although monthly salaried employees are not among those excluded from receiving such additional pay under Article 94 of the Labor Code of the Philippines, to wit:

ART. 94. Right to holiday pay. - (a) Every worker shall be paid his regular daily wage during regular holidays, except in retail and service establishments regularly employing less than ten (10) workers;

(b) The employer may require an employee to work on any holiday but such employee shall be paid compensation equivalent to twice his regular rate; and

(c) As used in this Article, "holiday" includes: New Year's Day, Maundy Thursday, Good Friday, the-ninth of April, the first of May, the twelfth of June, the fourth of July, the thirtieth of November, the twenty-fifth and the thirtieth of December, and the day designated by law for holding a general election.

they appear to be excluded under Sec. 2, Rule IV, Book III of the Rules and Regulations implementing said provision which reads thus:

SEC. 2. Status of employees paid by the month. - Employees who are uniformly paid by the month, irrespective of the number of working days therein, with a salary of not less than the statutory or established minimum wage shall be presumed to be paid for all days in the month whether worked or not.

Respondent arbitrator further opined that respondent corporation does not have any legal obligation to grant its monthly salaried employees holiday pay, unless it is argued that the pertinent section of the Rules and Regulations implementing Section 94 of the Labor Code is not in conformity with the law, and thus, without force and effect.

This issue was subsequently decided on October 24, 1984 by a division of this Court in the case of Insular Bank of Asia and America Employees' Union (IBAAEU) vs. Inciong, wherein it held as follows:

"WE agree with the petitioner's contention that Section 2, Rule IV, Book III of the implementing rules and Policy Instruction No. 9 issued by the then Secretary of Labor are null and void since in the guise of clarifying the Labor Code's provisions on holiday pay, they in effect amended them by enlarging the scope of their exclusion (p. 11, rec.).

"Article 94 of the Labor Code, as amended by P. D. 850, provides:

'Art. 94. Right to holiday pay.- (a) Every worker shall be paid his regular daily wage during regular holidays, except in retail and service establishments regularly employing less than ten (10) workers. x x x'

"The coverage and scope of exclusion of the Labor Code's holiday pay provisions is spelled out under Article 82 thereof which reads:

'Art. 82. Coverage.- The provision of this Title shall apply to employees in all establishments and undertakings, whether for profit or not, but not to government employees, managerial employees, field personnel, members of the family of the employer who are dependent on him for support, domestic helpers, persons in the personal service of another, and workers who are paid by results as determined by the Secretary of Labor in appropriate regulations.'

xxx xxx xxx

"From the above-cited provisions, it is clear that monthly paid employees are not excluded from the benefits of holiday pay. However, the implementing rules on holiday pay promulgated by the then Secretary of Labor excludes monthly paid employees from the said benefits by inserting under Rule IV, Book III of the implementing rules, Section 2, which provides that: 'employees who are uniformly paid by the month, irrespective of the number of working days therein, with a salary of not less than the statutory or established minimum wage shall be presumed to be paid for all days in the month whether worked or not.'" (132 SCRA 663, 672-673)

This ruling was reiterated by the Court en banc on August 28, 1985 in the case of Chartered Bank Employees Association vs. Ople, wherein it added that:

"The questioned Sec. 2, Rule IV, Book III of the Integrated Rules and the Secretary's Policy Instruction No. 9 add another excluded group, namely 'employees who are uniformly paid by the month'. While the additional exclusion is only in the form of a presumption that all monthly paid employees have already been paid holiday pay, it constitutes a taking away or a deprivation which must be in the law if it is to be valid. An administrative interpretation which diminishes the benefits of labor more than what the statute delimits or withholds is obviously ultra vires." (138 SCRA 273, 282. See also CBTC Employees Union vs. Clave, January 7, 1986, 141 SCRA 9.)

Lastly, respondent corporation contends that mandamus does not lie to compel the performance of an act which the law does not clearly enjoin as a duty. True it is also that mandamus is not proper to enforce a contractual obligation, the remedy being an action for specific performance (Province of Pangasinan vs. Reparations Commission, November 29, 1977, 80 SCRA 376). In the case at bar, however, in view of the above-cited subsequent decisions of this Court clearly defining the legal duty to grant holiday pay to monthly salaried employees, mandamus is an appropriate equitable remedy (Dionisio vs. Paterno, July 23, 1980, 98 SCRA 677; Gonzales vs. Government Service Insurance System, September 10, 1981, 107 SCRA 492).

WHEREFORE, the questioned decision of respondent arbitrator is SET ASIDE and respondent corporation is ordered to GRANT holiday pay to its monthly salaried employees. No costs.

SO ORDERED.

Fernan, Alampay, Gutierrez, Jr., and Paras, JJ., concur.

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