

**NATIONAL WATERWORKS AND SEWERAGE AUTHORITY,
PETITIONER, VS. KAISAHAN AT KAPATIRAN NG MGA
MANGGAGAWA AT KAWANI NG NWSA (PAFLU), AND COURT OF
INDUSTRIAL RELATIONS, RESPONDENTS.**

G.R. No. L-25328. October 11, 1968

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

This case is before us on a "petition for review by writ of certiorari" of an order of the Court of Industrial Relations, dated August 14, 1965, the dispositive part of which reads:

"IN VIEW THEREOF, this Court, hereby, orders respondent NAWASA, to pay cost of living allowance to the employees entitled thereto as indicated in the payrolls marked as Exhs. "B" to "CC", involving the total amount of P769,546.24, covering the period from February 1, 1961 to June 30, 1965. To be deducted, however, from this total amount are the sums corresponding to Dorotea Cruz, Jesus Dayto, Rufina B. Guinto, David Cortez and Jose Gonzalez as shown in the same payroll and the 30% attorneys fees under the order of the Court of February 4, 1965 and April 22, 1965 which shall be deposited in Court for further disposition.

"SO ORDERED."

The record shows that on December 1, 1964, the Court of Industrial Relations issued, in Case No. 45-IPA, entitled "Kaisahan at Kapatiran ng Mga Manggagawa at Kawani ng NAWASA" (PAFLU) - hereinafter referred to as the Union - vs. the National Waterworks and Sewerage Authority - hereinafter referred to as NAWASA - an order, the last two (2) paragraphs of which read:

"WHEREFORE, respondent NAWASA is hereby ordered to pay an amount not to exceed P228,000.00 per annum, which shall be distributed equally regardless of rank and position, to all the employees in the entire firm as their wage or salary increases effective as of May 1963, the month petitioner went on strike, except employees with less than one year of service from the date of this order, and to pay also cost of living allowance to all the employees of the Wells and Springs Unit stationed in Manila and the suburbs, chargeable against the Manila and Suburbs Fund in the same way the other employees of respondent were granted and paid cost of living allowance to take effect as of February 1961, the month the collective bargaining agreement embodying this particular agreement was signed by the parties (Exh. "F"). In other words payment of cost of living allowance shall be effected in this manner: Beginning February 1961, P30.00 monthly; starting January 1962, P25.00 shall be added making the monthly payment to P55.00; and effective August 1962, another amount of P12.00 shall be added making the total payment to P67.00 monthly, without prejudice to any increases which may be granted voluntarily by respondent or by court order.

"Furthermore, it has been noted that during the past few years frequent strikes have been declared by the union arising from the issues involved herein, which not only strained the relations between the employees and the management, but also caused untold inconvenience on the part of the public considering the nature of the business of respondent. Now that said issues have already been decided, to forestall a similar occurrence in the

future, this Court pursuant to Sections 13, 17 and 19 of Commonwealth Act No. 875, enjoins the officers and members of petitioning union and management that any alteration, modification or change thereon which the parties may desire should be brought to the attention of the court for resolution under its compulsory or voluntary arbitration. In this way industrial peace shall reign within the firm and respondent could be given sufficient time to adjust its finances and to attend to a more vital matter, the expansion of its business operation which as heretofore mentioned involves national interest."[1]

After this order had become final and executory, the union filed a motion for the execution thereof, which the Court of Industrial Relations granted - in its appealed order of August 14, 1965 - despite NAWASA's opposition thereto. NAWASA filed a motion for reconsideration, alleging that the order of December 1, 1964, had been modified by an agreement between the parties, entered into on July 1, 1965, paragraph I of which provided that:

"The amount of about P5 million which NWSA owes to its workers and employees pursuant to several CIR decisions, Cabinet Resolution of 1954 and Collective Bargaining Agreement of 1956, shall be paid by NWSA in five (5) yearly installments, the first installment to be due and payable on or about July 1, 1966. The longevity pay amounting to approximately P225,000 awarded in CIR Case No. 52-IPA as well as the amount of P288,000 awarded in CIR Case No. 45-IPA, are not included in this deferment."[2]

The motion for reconsideration was, on August 28, 1965, denied by the CIR sitting en banc. Thereupon, NAWASA filed its notice of appeal and, then, filed the petition herein, against the Union and the Court of Industrial Relations, alleging that the latter had erred in ordering NAWASA "to pay to employees in the Wells and Springs Unit stationed in Manila and suburbs their cost of living allowance despite the express agreement of the parties that the same be paid in five (5) yearly installments, the first installment to be due and payable on July 1, 1966."

It appears that both parties had introduced testimonial evidence on whether or not the aforementioned agreement of July 1, 1965 was entered into with the intent to modify the order of December 1, 1964, insofar as the payment of the cost of living allowance is concerned. Referring to said evidence, the appealed order of August 14, 1965, had the following to say:

"In support of respondent's stand on the fourth question, Atty. Lorenzo Mosqueda, testified that in the negotiations for the settlement of the recent strike staged by the union, he acted as counsel for respondent and was responsible for the preparation of the agreement signed between the parties. He said that the monetary award in Case No. 45-IPA regarding payment of cost of living allowances is included in the amount of about P5 million referred to in the agreement which respondent is held liable under the several decisions of this Court and shall be paid in five yearly installments. He stated that this matter was brought to the attention of Donato Lopez president of the union who willingly agreed and in fact signed the agreement in behalf of petitioner. Mosqueda further said that it is shown in the statement of finances of the NAWASA (Exh. 5, 5-A [1]) prepared by the Labor Department Panel and used as basis in the preparation of the agreement that the cost of living allowance of the Wells and Springs Personnel is included in the P5 million obligation of the firm to its employees.

"The testimony of Mosqueda was denied by Donato Lopez. He also declared in Court that there is no truth in the statement that he agreed to the proposition of including the payment for cost of living allowance in the P5 million payable in installment basis by respondent. He contended that he could not have done so because he is always conscious that a motion for execution on such claim is pending consideration by the Court and that the very judgment in this case enjoins the parties from altering or in any manner modifying the decision without the same being resolved by the Court. There is merit to this contention."[3]

This is a finding of fact which we cannot review, not only because there is substantial evidence in support thereof but, also, because the determination of the factual issue raised by NAWASA depended upon the relative

credibility of the opposing witnesses. Moreover, it is only natural and logical that payment of the cost of living allowance be not deferred, since the right to live and the increase in the cost of living is not subject to deferment by agreement between the parties.

Again, as the CIR had aptly observed:

"The agreement in question here was signed by the contracting parties on July 1, 1965. At that time the instant motion for execution was already filed before the Court for consideration. If it is true that the union agreed through its president to include the cost of living allowance of the employees among the obligations to be paid on installment basis by respondent, it is hard to understand why the motion for execution was not mentioned in the contract and neither did the union take efforts to have the said motion withdrawn from the Court, as what should have been done under such condition. On the contrary the union insisted on having the motion resolved by the Court despite the signing of the said contract. Based on the contemporaneous and subsequent acts of petitioner, it is apparent that the provisions on cost of living allowance was inadvertently included in the said contract. The element therefore of consent is absent. Under the law an agreement of this nature is void from the beginning and the same is not binding upon the parties." [4]

At any rate, by explicit provision of the order of December 1, 1964, the provisions thereof were not subject to "alteration, modification or change" by the parties unless submitted to "the court for resolution", and, hence, approved by the CIR, neither of which has taken place.

WHEREFORE, the order appealed from is hereby affirmed, with costs against herein petitioner, National Water-works and Sewerage Authority.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Sanchez, Ruiz Castro, Angeles, Fernando, and Capistrano, JJ., concur.
Zaldivar, J., did not take part.

[1] Underscoring ours.

[2] Underscoring ours.

[3] Underscoring ours.

[4] Underscoring ours.

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