

CHRISTIAN THEOLOGICAL COLLEGE FOUNDATION INTERNATIONAL, INC., ITS MEMBERS OF THE BOARD OF TRUSTEES AND REV. CHON HYUN KIM, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION, EMILIANO...

Ponente: REYES, JR., J.C., J.

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REYES, JR., J.C., J.:

Before the Court is a Petition for Certiorari filed by the petitioners to assail the Resolutions dated December 29, 2011[1] and April 30, 2012[2] of the National Labor Relations Commission (NLRC) in LAC NO. 11-003087-11 (NLRC RABIII CASE NO. 07-15021-09) dismissing their appeal for non-perfection.

BACKGROUND

Christian Theological College Foundation International, Inc. (CTCFII) is a private educational institution catering to the academic needs of church workers, particularly pastors of bible-based evangelical churches. It is a non-stock, non-profit domestic corporation with its principal office located at Fraber Village, Manibuag, Porac, Pampanga.[3]

The private respondents, former teachers at CTCFII, are Emiliano A. David (David), Edwin C. Sula (Sula), Rolando Manlapaz (Manlapaz), and Joselito J. Milarpis (Milarpis). David, Sula and Manlapaz had been teaching at CTCFII for six (6) years; Milarpis had been teaching only for two (2) years. David, Manlapaz, and Milarpis were paid P130/hour, while Sula was paid P150/hour.[4]

Sometime in April 2009, the private respondents after hearing rumors that they were already terminated from their employment, spoke with petitioner Chon Hyun Kim, Director of CTCFII,[5] who told them that they were not terminated but were only allowed to “rest” without pay for the coming school year (first semester of the school year 2009-2010) and will be allowed to return to teach again. When asked about the reason for not giving them teaching loads, Chon Hyun Kim replied that “Long term teachers need rest.” The private respondents later on learned that five (5) new teachers were hired and that Pastor Tapnio who had been teaching for six (6) years continued to teach and was not asked to “rest”.

Private respondents thus filed their complaint for constructive dismissal and sought damages for besmirched reputation, social humiliation, sleepless nights, and wounded feelings. They also asked for exemplary damages and attorney's fees. On the other hand, the petitioners claimed that David, Milarpis, and Sula were employed as part-time teachers and that their contracts were for a fixed term of one year (May 16, 2008 to May 16, 2009). Their contracts were not renewed because they manifested “unchristian-like attitudes”. With respect to Manlapaz, they claimed that he failed to show himself to the school officials and never manifested his interest to teach in the coming school year.

On August 8, 2011, Labor Arbiter Reynaldo V. Abdon (LA Abdon) issued a decision finding CTCFII, the Members of its Board of Trustees, and Rev. Chon Hyun Kim, liable for a total sum of Php2,565,937.60

representing the backwages, separation pay and 13th month pay of the private respondents. LA Abdon held that although the private respondents were part-time teachers for a fixed one-year period, the petitioners failed to refute their claim that they had been working for six years on a full-time basis.[6] Regarding petitioners' argument that there was no illegal dismissal because the private respondents were under fixed-term contracts and that their term had expired, he ruled that almost all institutions of higher learning have fixed employment contracts with their teachers; but if such contracts are being renewed yearly, a teacher attains regular status and the provisions of Article 280 of the Labor Code will control.[7] Citing *Brent School Inc. v. Zamora*[8], he said that a contract of employment stipulating a fixed term, even if clear as regards the existence of a period, is invalid if it can be shown that the same was executed with the intention of circumventing an employee's right to security of tenure.[9]

LA Abdon further found that the private respondents have attained regular employee status at CTCFII. He said that the Manual of Regulations for Private Schools was not applicable in this case because CTCFII is a theological college, is not registered with the Department of Education or the Commission on Higher Education (CHED), and has no government recognition as an educational institution. Hence, what shall govern the employment status of CTCFII employees was the Labor Code that requires a teacher to finish six (6) months of teaching within the same institution after which he would be considered as a regular employee.

LA Abdon further held that the "deliberate act" of the petitioners in not giving the private respondents any teaching load for the school year 2009-2010 was tantamount to illegal dismissal. Thus, the private respondents became entitled to their backwages from the time they were dismissed until the finality of the decision, as well as to separation pay in lieu of reinstatement because of the strained relations between the parties. He did not grant the private respondents' claim of underpayment inasmuch as they only stated their hourly rates but failed to state the number of hours that they taught daily. He presumed that they received a total of P18,000.00 per month which was more than the minimum wage. The claim for damages had no basis.

The petitioners appealed this decision to the NLRC but the 6th Division of the NLRC dismissed the appeal for non-perfection. The NLRC said that the petitioners' counsel of record received a copy of the Labor Arbiter's Decision on October 21, 2011 but the appeal was mailed only on November 8, 2011, or eight (8) days after the end of the period to appeal. Thus, the Decision of the Labor Arbiter had become final and executory.[10]

In their Motion for Reconsideration, the petitioners alleged that the Registrar of CTCFII Ms. Carol Tagaro received a copy of the Decision by registered mail on October 26, 2011. She immediately called their counsel Atty. Regina Gopez Agustin to inform her about the Decision but nobody answered and it was only in the late afternoon that Atty. Agustin replied and asked Ms. Tagaro to come to her office the following morning, October 27th. The next morning, Atty. Agustin informed Ms. Tagaro that she could no longer handle the appeal and advised her to look for a new lawyer. It took some time to find a new lawyer and the new lawyer, Atty. Reydon Pangilinan Canlas, filed the Appeal by mail on November 8, 2011 on the contention that the petitioners received a copy of the decision only on October 26, 2011. Thus, for petitioners, the last day to file their appeal was November 8, 2011 since November 5th was a Saturday, November 6th was a Sunday, and November 7th, a Monday, was declared a special non-working day in deference to a major Muslim holiday. According to the petitioners, their appeal, filed on November 8th, was filed on time. The NLRC however, denied their motion for reconsideration in the assailed Resolution, thus:

"Respondents contend that the reckoning period for the receipt of the Labor Arbiter's decision should be October 26, 2011, hence, the Appeal was filed within the period required by the Rules.

We do not agree. It is not disputed that respondents' counsel received the Decision on October 21, 2011 but failed to inform respondents of such receipt. It is significant to note that notice to counsel is deemed notice to

his client. Because of counsel's failure to immediately notify respondents, they were not able to file their appeal on time. Clearly, there is negligence on the part of counsel, and this negligence binds respondents. Significantly, there was no explanation/justification made as to why counsel of record failed to notify respondents of her receipt of the decision especially that she had plans of not handling respondents' case in its appeal stage. Section 4 of Rule III of the 2011 NLRC Rules of Procedure instructs us that for purposes of appeal, the period shall be counted from receipt of such decisions, resolutions or orders by the counsel or representative of record.

WHEREFORE, premises considered, the Motion for Reconsideration is Denied for lack of merit.

No further motion for reconsideration shall be entertained.

SO ORDERED.”

Their motion for reconsideration having been denied by the NLRC, the petitioners filed this petition for certiorari.

THE ISSUES

The petitioners submitted these issues for our consideration:

“a. WHETHER OR NOT THE RESPONDENT NLRC HAS COMMITTED A GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DISMISSING THE APPEAL AND THAT THERE IS NO APPEAL, OR ANY PLAIN, SPEEDY AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW AVAILABLE TO THE AGGRIEVED PETITIONERS.

b. WHETHER OR NOT THE LABOR ARBITER HAS COMMITTED SERIOUS ERRORS IN HIS FINDINGS THAT THE PRIVATE RESPONDENTS (COMPLAINANTS THEREIN) WERE ILLEGALLY DISMISSED BY THE PETITIONERS (RESPONDENTS THEREIN) WHICH, IF NOT CORRECTED, WOULD CAUSE GREAT AND IRREPARABLE DAMAGE OR INJURY TO THE APPELLANTS.

THE LABOR ARBITER HAS ALSO COMMITTED SERIOUS ERRORS IN HIS FINDINGS THAT PETITIONERS (RESPONDENTS THEREIN) ARE ENTITLED TO MONETARY CLAIMS WHICH, IF NOT CORRECTED, WOULD CAUSE GRAVE AND IRREPARABLE DAMAGE OR INJURY TO THE APPELLANTS.

d. WHETHER OR NOT THE PRIVATE RESPONDENTS SHOULD BE HELD SOLIDARILY LIABLE FOR THE EXPENSES INCURRED BY THE PETITIONERS (RESPONDENTS THEREIN) SUCH AS ATTORNEY'S FEES AND OTHER DAMAGES.”

THE COURT'S RULING

A petition for certiorari is an extraordinary remedy whose aim is to keep an inferior court or tribunal within its jurisdiction. Therefore, only questions of jurisdiction or grave abuse of discretion can be raised in a petition for certiorari. The writ of certiorari issues for the correction of errors of jurisdiction only or grave abuse of discretion amounting to lack or excess of jurisdiction. The writ of certiorari "cannot legally be used for any other purpose." In terms of its function, the writ of certiorari serves "to keep an inferior court within the bounds of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to excess of jurisdiction" or to relieve parties from arbitrary acts of courts — acts which courts have no power or authority in law to perform.[11] As well, a petition for certiorari is not and cannot be a substitute for a lost appeal.

In the present case, after the petitioners failed to file their appeal within the 10-day period allowed by the Rules, the decision of the Labor Arbiter lapsed into finality. It became final and executory. Thus, when the petitioners filed their appeal on November 8, 2011, the NLRC had lost its jurisdiction to review the Labor Arbiter's decision.

But, even assuming that the present petition for certiorari is a proper action, we find that the NLRC did not act with grave abuse of discretion amounting to lack or excess of jurisdiction. Grave abuse of discretion has been defined as such capricious and whimsical exercise of judgment tantamount 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 a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, such as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[12] We find that the assailed Resolutions of the NLRC were rendered in accordance with the evidence, the law, and jurisprudence.

A petition for certiorari is not a substitute for a lost appeal because a Rule 65 petition for certiorari lies only where there is "no appeal", and "no plain, speedy and adequate remedy in the ordinary course of law".[13] It is well settled in our jurisprudence that the perfection of an appeal within the reglementary period is not only mandatory but also jurisdictional. This rule is founded upon the principle that the right to appeal is not part of due process of law but is a mere statutory privilege to be exercised only in the manner and in accordance with the provisions of the law. Failure to interpose a timely appeal renders the appealed decision, order, or award final and executory and this deprives the appellate body of any jurisdiction to alter the final judgment, more so, to entertain the appeal.[14]

Nor can the petitioners invoke the doctrine that rules of technicality must yield to the broader interest of substantial justice because, while every litigant must be given the amplest opportunity for the proper and just determination of his cause free from constraints of technicalities, the failure to perfect an appeal within the reglementary period is not a mere technicality. It raises a jurisdictional problem as it deprives the appellate court of jurisdiction over the appeal.[15] We find no compelling reason to relax the rule that the negligence of counsel binds his client.[16]

WHEREFORE, premises considered, the instant petition for certiorari is DENIED for lack of merit.

SO ORDERED.

Lopez, M.V., and Inting, S.B., JJ., concur.

[1] Rollo, pp. 28-30.

[2] Ibid., pp. 14-16.

[3] Rollo, Petitioners' Memorandum, p. 208.

[4] Ibid., Labor Arbiter's Decision, p. 17.

[5] Ibid., p. 119.

[6] Rollo, Labor Arbiter's Decision, p. 131.

[7] Article 280. Regular and Casual Employment. — The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.

An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That any

employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

[8] G.R. No. 48494, February 5, 1990.

[9] Rollo, Labor Arbiter's Decision, p. 134.

[10] Article 223 of the Labor Code and Section VI, Rule VI of The 2011 NLRC Rules of Procedure mandate that "Decisions, resolutions or orders of the Labor Arbiter shall be final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt thereof."

[11] Silverio v. Court of Appeals, G.R. No. L-39861, March 17, 1986.

[12] Francisco v. Desierto, G.R. No. 154117, October 2, 2009.

[13] Rondina v. Court of Appeals, et al., G.R. No. 172212, July 9, 2009.

[14] Aguilar v. Court of Appeals, et al., G.R. No. 172986, October 2, 2009.

[15] David v. Cordova, G.R. No. 152992, July 28, 2005.

[16] Friend v. Union Bank of the Philippines, G.R. No. 165767, November 29, 2005.

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