

**NATIONAL SHIPYARDS AND STEEL CORPORATION (NASSCO),
PETITIONER, VS. COURT OF INDUSTRIAL RELATIONS (CIR),
NATIONAL SHIPYARDS EMPLOYEES & #038; WORKERS ASSOCIATION
(NASEWA) AND/OR MELANI...**

G.R. No. L-31852. June 28, 1974

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

The Court finds that respondent Capillan's right to reinstatement and backwages was properly sought to be enforced by the industrial court's questioned orders and resolutions in implementation of this Court's long final and executory decision of May 4, 1968 in a previous case involving exactly the same subject-matter, and that petitioner's contentions are palpably untenable and without support in the record.

The background of these two consolidated cases[1] dealing with the right to reinstatement and backwages of the union president respondent Melanio Capillan[2] goes back to a strike staged on November 5, 1956 by respondent National Shipyards Employees and Workers Association (NASEWA) which was certified by then President of the Philippines Ramon Magsaysay as one involving an industry indispensable to the national interest.[3]

The factual antecedents are recorded in this Court's decision of May 4, 1968 in *National Shipyards and Steel Corp. (NASSCO) vs. NASEWA and CIR*,[4] as follows:

"Labor and management later reached an amicable settlement on certain demands and conditions among which was the reinstatement of the union president, Melanio S. Capellan, and the payment of his backwages. The partial settlement was reduced to writing and submitted to the court and, on the basis thereof, the court rendered a partial decision on 29 July 1957 enjoining the parties to comply with the said agreement.

"The herein respondent union on 17 December 1957 moved for reinstatement of Capellan with backwages, and for con-tempt of court because of petitioner's refusal to do so, followed on 27 January 1958 by another motion for execution of the partial decision and for contempt of court (xxx xxx). The petitioner company opposed both motions. In an order on 13 November 1958, the court a quo directed the reinstatement of union president Capellan and the computation and payment of his backwages. But the writ issued pursuant thereto was returned unsatisfied. On 30 May 1959, the court denied the motion for contempt because the company's refusal to reinstate Capellan was found by the court to be justified by the latter's conviction for slight physical injuries, with a penalty of 20 days imprisonment, by the Court of First Instance of Bataan in its Criminal Case No. 4802. Capellan had appealed the judgment to the Court of Appeals, but was unsuccessful; the judgment became final in June 1959.

"On 6 July 1959, the court, on motion of Capellan, took the position that even if Capellan had lost his right to reinstatement by reason of his conviction, such loss did not include his backwages, and so, ordered the payment of said backwages up to 30 May 1959, when the Court below found the NASSCO justified in its refusal to reinstate Capellan. NASSCO duly complied and paid as ordered.

"On 1 March 1963, the President of the Philippines granted "an absolute and unconditional pardon' to Melanio Capellan for the crime committed by him and 'restored' him to 'full civil and political rights.' xxx xxx xxx

"On 7 May 1963, Capellan again moved for his reinstatement with backwages. This was denied by the court on 12 September 1963 xxx xxx xxx on the ground that the motion seeks to set aside, alter or modify the order of 30 May 1959 which the court, in its opinion, could no longer do under Section 17 of Commonwealth Act 103 since more than three years has elapsed from the date of the order.

"On 29 December 1963, the union filed again an urgent motion for execution of the order of 13 November 1958. The company again opposed the motion. This time, on 23 May 1964, the labor court granted the motion, and provided for Capellan's reinstatement with backwages from 1 March 1963 until actually reinstated. The order was affirmed en banc on 29 June 1964. "

Upon appeal on certiorari from the industrial court's order of May 23, 1964 and corresponding confirmatory en banc resolution, this Court in its said decision affirming the industrial court's order rejected as "an assumption that is neither true nor correct" NASSCO's contention that the industrial court's later orders of May 30, and July 6, 1959 had modified the questioned basic order of May 23, 1964 recognizing Capellan's right to reinstatement and backwages, and pointed out that on the contrary, the latter order of July 6, 1959 ordered NASSCO to pay Capellan "his backwages corresponding from the date of his dismissal to May 30, 1959" (the date his motion for contempt was denied because of his conviction for slight physical injuries, as above referred to).

After the finality of this Court's decision of May 4, 1968, Capellan moved for issuance of a writ of execution of the judgment in his favor for reinstatement and backwages, which was granted per order of November 7, 1968. NASSCO moved for reconsideration, claiming that it had already complied with the Supreme Court's decision for payment of backwages and that Capellan had refused to be reinstated in the last station of his employment. The industrial court en banc remanded the case to the trial judge for reception of evidence to determine the veracity of NASSCO's factual allegations.

In the trial judge's order of December 17, 1969, he found that "Melanio Capellan has received from the petitioner the sum of P12,111.60 representing his backwages from May 31, 1959 to July 25, 1968, as 'shown by Exhibit 'B'. Clearly, petitioner has complied with the Decision of the Supreme Court for the payment of Capellan's backwages for the period covered thereto, " and that "(I)t appearing on the record that Capellan has been paid his backwages from the period from May 31, 1959 up to July 25, 1968, when he was refused reinstatement by respondent company, he is therefore entitled to backwages from said date up to his actual reinstatement."

On the question of whether Capellan had refused reinstatement in the last station of his employment in Manila, the trial judge found, as follows:

"Regarding the ground that Melanio Capellan refused to be reinstated to the last station of his employment, the record indicates that as soon as the Decision of the Supreme Court in Case G. R. No. L-23458 was promulgated on May 4, 1968, Capellan was instructed by petitioner National Shipyard and Steel Corporation (Exh. 'C') to report for work to its Work Manager, Manila Area. He was likewise required to submit to a physical and mental examination which Capellan complied with as borne out by Annex 'B'. Similarly, he complied with the instruction of petitioner to report for work on July 16, 1968 as evidenced by a daily time record (Exh. 'E-S') showing that he punched in and out said daily time records on the dates appearing thereon.

"Furthermore, the claim of petitioner that Capellan surreptitiously obtained his daily time record at Mariveles, Bataan, is not supported by any sufficient evidence.

"Petitioner National Shipyard and Steel Corporation further claims that Melanio Capellan was suffering from tuberculosis. It presented Exhibit 'E' showing the findings of the National Chest Center of the results of the X-ray of Capellan. The findings, among others, and we quote: Suggestive of PTB, Minimal, Pro-bably

Inactive. A further scrutiny of such findings does not contain any report or recommendation that Capillan is unfit for work."

The trial judge's said order of December 17, 1969, directing the reinstatement of Capillan "to his regular and substantially equi-valent position at his last station in Manila with backwages from July 25, 1968 up to his actual reinstatement," and respondent court's confirmatory en banc resolution of March 7, 1970, are the subject of the petition for review in L-31852 filed on April 10, 1970.

Subsequently, on the matter of Capillan's reinstatement already decided with finality under this Court's decision of May 4, 1968, the industrial court in view of manifestations made by the parties of Capillan's readiness to be reinstated in his last station at the Manila office, issued its order of August 28, 1970 directing his reinstatement, as follows:

"At the hearing of this case on August 5, 1970, Melanio Capillan manifested to the Court his willingness to be reinstated back to work at the Manila office of the National Shipyard and Steel Corporation. Counsel for the NASSCO at the same hearing also stated that as early as July of 1968 the NASSCO was ready and willing to reinstate Capillan at the Manila Office, but that for reasons of his own Mr. Capillan had not made himself available for reinstatement. As things stand, therefore, both parties in this case are agreed on the reinstatement of Mr. Capillan at the Manila Office. In fact in a mani-festation filed on August 21, 1970, Capillan again rei-terated that same desire. In view, however, of the mani-fested readiness and willingness of the. NASSCO to reinstate Capillan, it is believed unnecessary to issue a writ of execution for his reinstatement and that a mere directive to the parties would suffice. "

NASSCO moved for reconsideration on the ground of the pendency in this Court of Case L-31852 questioning the previous order of December 17, 1969 ordering his reinstatement in NASSCO's Manila office and that "it would be more prudent and in keeping with justice and fair play" to await the decision therein. The industrial court denied reconsideration in its en banc resolution of September 23, 1970.

Said order August 28, 1970 and confirmatory en banc resolution of September 23, 1970 are in turn the subject of the petition for review in L-32724 filed on November 16, 1970. In L-31852, petitioner submitted the following questions:

"I. May respondent CIR legally order the reinstatement with backwages of Capillan when its order dated December 17, 1969 (Annex 'F') and resolution en banc dated March 7, 1970 (Annex 'H') are contrary to evidence?

"II. May respondent CIR validly order reinstatement with backwages of Capillan even if the said order dated December 17, 1969 (Annex 'F') and resolution en banc dated March 7, 1970 (Annex 'G') of respondent are not in accord with law or pertinent jurisprudence and appli-cable decisions of the Supreme Court?

"III. Does an absolute pardon restore to the grantee the office forfeited by reason of conviction even if said office is no longer existing and had been validly abolished? "

In L-32724, petitioner merely raised the same question that Capillan's reinstatement was "clearly contrary to evidence or not in accord with law or applicable jurisprudence" and that respondent court should not have issued the reinstatement directive based upon the purported agreement of the parties pending the outcome of NASSCO's appeal in L-31852.

The petitions are without merit.

1. Petitioner NASSCO in asserting that respondent court's or-der of December 17, 1969 ordering the reinstatement of Capillan to his regular and substantially equivalent position at his last station in Manila with

backwages from July 25, 1968 up to his actual reinstatement was "contrary to evidence" and to the law and pertinent jurisprudence completely ignored the self-evident fact that the matter of Capillan's reinstatement with backwages was long resolved under this Court's cited decision of May 4, 1968 and may no longer be reopened, it being the law of the case.[5]

The matter being *res judicata*, when this Court in its decision upheld the industrial court's previous orders of May 23, 1964 and June 29, 1964 for execution of its partial decision as early as July 29, 1957 approving the parties' amicable settlement providing *inter alia* for reinstatement of the union president Capillan and the payment of his backwages, petitioner NASSCO can no longer at this stage raise the question all over again for a second time. More so is this in the case at bar where the records show that notwithstanding the amicable settlement providing for Capillan's reinstatement with backwages which should have been effected years back with just a small payment for backwages, NASSCO has obstinately and tenaciously resisted and blocked Capillan's reinstatement with an almost pathological aversion, resulting in its being made to pay years and years of backwages.

2. The record amply supports the industrial court's rejection of NASSCO's claim that Capillan had refused to be reinstated in the last station of his employment. In fact, the questioned order of August 28, 1970 (in L- 32724) quoted above, expressly makes of record Capillan's willingness to be reinstated back to work at the Manila office, as expressed in open hearing on August 5, 1970 and reiterated in his manifestation filed on August 21, 1970, leading respondent court to issue a mere directive for reinstatement, since NASSCO had previously also reiterated on several occasions its willingness to reinstate Capillan - which would have rendered moot the present cases.

The record thus likewise amply supports respondent court's finding that Capillan had been refused reinstatement on July 25, 1968 when it turned down Capillan's reporting for work at Mariveles, Bataan and that he is therefore entitled to backwages from said date. NASSCO's contention that Capillan by first reporting at Mariveles, Bataan instead of Manila should be deemed to have refused or waived reinstatement as ordered by the final judgment in his favor can in no way prevail, for it is axiomatic that a waiver must be express and cannot be inferred from such a flimsy premise in the face of Capillan's repeated and insistent motions for execution of the judgment for his reinstatement.

Petitioner NASSCO's contentions are therefore palpably untenable and without support in the record.

3. NASSCO's contention that the presidential absolute pardon granted Capillan did not restore to him the office (of semi-skilled laborer at the scrap metal section at the Manila office) which should have been deemed forfeited by virtue of his conviction (for slight physical injuries) and that at any rate the said position had long been abolished and was therefore no longer existing is likewise manifestly without merit.

The matter of non-forfeiture of Capillan's right to his office and the removal of all doubts as to reinstatement by virtue of his pardon were squarely raised and ruled upon in this Court's decision of May 4, 1968 and are now barred by *res judicata*. The matter of the alleged abolition of Capillan's position as a matter of defense and blocking his reinstatement was likewise a matter that should have been raised as a defense in the first case, and it is much too late to raise the question for the first time now. Besides, it is over-taxing the Court's credibility that out of hundreds of positions, Capillan's position (as mere semi-skilled laborer in the metal scrap section) would be the very one abolished'.

This Court's pronouncements in its decision of May 4, 1968 ruling out petitioner's contention that the pardon did not restore to Capillan his forfeited office bear repeating here to show the futility of petitioner's cause:

"There is this flaw in the foregoing arguments of the petitioner; it is assumed that by Capellan's conviction, his office was forfeited. It was not. Capellan was convicted of the crime of slight physical injuries, with the penalty of 20 days imprisonment. The penalty, which is *arresto menor*, carries the accessory penalty of

suspension of the right to hold office and the right of suffrage during the term of the sentence.' (Rev. Penal Code, Art. 44). Capellan, by reason of his 20-day sentence was therefore, merely suspended for the said period of time from the right to hold office. Upon serving the sentence, his suspension was lifted, even without the grant of executive clemency.

"The limitation upon the effects of a pardon, as mentioned in the Lontok case, *supra* (decided before the adoption of the Constitution) and the American cases cited by the petitioner xxx xxx xxx that the power does not restore offices forfeited does not apply, since the present case does not involve a forfeited office, but a suspended right to hold office.

"We may, however, consider the presidential pardon as a reiteration of the termination of the suspension of the union president's right to hold office. As such, it has erased all doubts as to Capellan's reinstatement, for it had expressly provided for the restoration of his political rights, and this includes his right to hold office. (Cf. *Flora vs. Oximana*, L-19745, 31 Jan. 1964). "

4. In the light of the foregoing, and since Capellan's right to reinstatement was already decreed by final and executory judgment of this Court's decision of May 4, 1968 and the granting of due course to the petition in L-31852 could in no way alter or remove Capellan's right to reinstatement, no error could be attributed to respondent court's order of August 28, 1970 (challenged in L-32724) directing NASSCO to immediately reinstate Capellan at its Manila office pursuant to Capellan's formal manifestations of his readiness to be so reinstated and NASSCO's like manifestations of its readiness to so reinstate him.

As stressed by the Court in *East Asiatic Co. Ltd. vs. CIR*,^[6] "it is implicit in the law that what the court should have done as the initial step was to order immediate implementation of the ordered reinstatement, without prejudice to resolving the question of backwages afterwards. In that manner, all of these questions vexing the parties and the court could have been avoided or at least minimized. After all, it is the long lay-off that creates problems not only for the employer, with regard to how much has to be paid in backwages but also, and this is worse, for the discharged employee or worker, as to whom naturally the damage is always bound to be beyond complete repair since during the uncertain period of lay-off, he and his family have to undergo the difficulties, hardships and vicissitudes of un-employment until he can have some kind of earning elsewhere. On the other hand, with immediate reinstatement upon the court's finding of just and legal ground therefor no injury is caused to either employer or employee, for the former gets the benefit of the latter's work and the latter receives due compensation therefor. The obvious advantages of this arrangement in terms of industrial peace and economic and social progress, and the larger interest of the nation as a whole, are incalculable. "

5. With regard to the additional backwages adjudicated to Capellan from July 25, 1968 up to his actual reinstatement under respondent court's order of December 17, 1969 ordering the issuance of a writ of execution therefor but which was suspended *motu proprio* by the industrial computation court pending determination of these cases and which has computation not been questioned in this Court, the actual computation under said court's order of May 25, 1970^[7] shows that the previous payment of P12,111.60 for Capellan's backwages covered up to July 15 (not July 25) 1968 and that the additional amount of backwages due him from July 16, 1968 through February 21, 1970 is P2,868.00.

Considering all the circumstances at bar, the record backwages already paid by NASSCO to and collected heretofore by Capellan without his reinstatement having been effected up to now due to NASSCO's obstinacy (amounting to P7,913.60 from October 6, 1952 to May 31, 1959 and P12,111.60 from June 1, 1959 to July 15, 1968 or a total of almost sixteen years' backwages in the sum of P20,025.20^[8], and in lieu of any deduction from other compensation earned during the interval, (following the precedent recently set by the Court in *Mercury Drug Co. vs. CIR*^[9] of fixing the amount of backwages at a reasonable level without qualification or deduction so

as to relieve the employee from the protracted process of proving his earnings during his lay-off and the employer from submitting counter-proofs), this additional amount of P2,863.00 shall forthwith be paid to Capillan in full satisfaction and no further backwages shall be paid Capillan, provided that his reinstatement shall be effected within fifteen (15) days from date of notice of this decision upon his passing the physical examination which should be given him within the same period; otherwise, execution shall issue without prejudice to availing of the coercive and punitive processes under Rule 71 on contempt of court. Should Capillan fail the medical examination due to permanent physical incapacity and he could therefore no longer do his work, he shall be deemed an employee of NASSCO up to such date of determination of permanent physical incapacity for purposes of all retirement and other privileges and benefits provided by law; it being understood that should his physical illness be not of a permanent but curable character, he shall be entitled to reinstatement to and all the benefits of medical care and work-men's compensation (if applicable) and all other benefits provided by law as any other regular employee.

ACCORDINGLY, the orders and resolutions under review are hereby affirmed, subject to the modification and conditions stated in paragraph 5 of the body of the opinion which is hereby reproduced by reference. With costs against petitioner.

In view of the length of time that respondent Capillan's right to reinstatement decreed since 1957 has been pending enforcement and since this is the second time that such right has been upheld by this Court, this decision shall be immediately executory upon its promulgation.

SO ORDERED.

Makalintal, C.J., Castro, Makasiar, Esguerra, and Muñoz Palma, JJ., concur.

[1] As per resolution of November 23, 1970, Rollo in L-32724, p. 95.

[2] Capillan's name is at times spelled in the body of this opinion as Capellan with an e, particularly in and with reference to this Court's previous decision of May 4, 1968 hereinafter referred to.

[3] Docketed as Case No. 12-IPA.

[4] L-23459, reported in 23 SCRA 552 (1968).

[5] Dy Pac Pakiao Workers Union vs. Dy Pac & Co., Inc., 38 SCRA 263

[6] 40 SCRA 521, 533, per Barredo, J.

[7] Rollo in L-32724, Annex F, p. 31.

[8] Rollo in L-31852, p. 36.

[9] L-23357, April 30, 1974.

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