OFFICIAL GAZETTE · SPECIAL THIRTEENTH DIVISION · MARCH 26, 2010

MIGUEL B. BINAG, SR. ACADEMY, INC. PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, ELISA MACAMOS, RLCHITA VLERNES, MLLAGROS TAMAYO, LUCIA B. PAGUIGAN AND TOMASA CARONGOY, R...

SP No. 112043, March 26, 2010

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Court of Appeals

Before Us is a Petition[1] for Certiorari under Rule 65 of the Rules of Court with Prayer for the Issuance of Temporary Restraining Order which seeks to annul the Resolution[2] dated July 22, 2009 of public respondent National Labor Relations Commission (NLRC) dismissing petitioner's appeal on the ground of non-perfection of appeal for failure to submit the required certification of non-forum shopping and post the required cash or surety appeal bond; and, the Resolution[3] dated October 12, 2009 denying the motion for reconsideration thereof.

THE FACTS

Herein petitioner Miguel B. Binag Sr., Academy, Inc. is an educational institution and a domestic corporation registered with the Securities and Exchange Commission. The school, which began its operations in the year 1945 when it was then known as the Manuel L. Quezon Memorial Academy, offers high school education to the local community in Cabagan, Isabela. In the year 2008, prior to the start of the school year 2008-2009, petitioner closed its operations.[4]

On the other hand, herein private respondents are the former employees who formed part of the teaching and non-teaching staff of petitioner. Their respective positions, monthly salary and length of tenure are as follows:

a.)

Private respondent Elisa Macamos formerly occupied the position of Classroom Teacher with a monthly salary of P7.835.00. she was employed with petitioner since 1996 until 2008;

b.)

Private respondent Richita Viernes formerly occupied the position of Classroom Teacher with a latest monthly salary of P7.160.00. she was employed with petitioner since 1976 until 2008;

c.)

Private respondent Tomasa Carongoy formerly occupied the position of Classroom Teacher with a latest monthly pay of P5,500.00 She was. employed with petitioner since 2004 until 2008;

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d.)

Private respondent Milagros Tamayo formerly occupied the position of School Principal with a latest monthly pay of P11,470.00 She was employed with petitioner from 1973 until 1984 as a Classroom Teacher. From 1985 to 2002, she occupied the position of Assistant Principal until her promotion as Principal until her promotion as Principal in 2002 until 2008; and,

e.)

Private respondent Lucia Paguigan formerly occupied the position of Office Clerk with a latest monthly pay of P4,050.00 She was employed with petitioner since 1978 until 2008.[5]

On October 10, 2008, private respondents filed before the Labor Arbiter in Tuguegarao City five (5) separate complaints[6] for illegal dismissal, payment of separation pay, unpaid salaries, 13th month pay, service incentive leave, as well as the payment of moral and exemplary damages.

In a Position Paper[7] dated December 10, 2008, private respondents alleged that from 1970 to 2000, petitioner had an enormous number of students enrolled therein which led to the school's acquisition of several real properties. However, during the recent years, the number of students enrolling in petitioner declined due to the mismanagement of its Board of Directors. This eventually led to the closure of the school in March 2008. Prior to the closure, private respondents made a claim of their unpaid salaries, separation pay and other benefits. Their claim was readily acknowledged by petitioners as obligations that will be paid before June 2008. But no payments were made by petitioner, thereby constraining private respondents in filing the instant complaint.

For its defense, petitioner essentially argued that private respondents were not illegally dismissed. Rather, their employment with the school ended because it ceased to operate due to its closure. It alleged that due to the corporate structure of the institution as a non-profit and non-stock educational corporation, it has been operating not for profit but for service. In fact, for a period of more than ten (10) years, it has been operating at a loss and whatever revenues it earned were spent for the salaries of its teachers. Further, in view of the scarcity of funds, no provisions in the school budget was made for repairs and maintenance of its facilities. The facilities became so dilapidated that the school received a warning from the Department of Education that by the school year 2008-2009, it would no longer qualify as beneficiary of the Educational Service Contracting Program. Before the end of the school year 2007-2008, private respondent Milagros Tamayo allegedly informed petitioner that the Department of Education ordered the closure of the school and that it could no longer operate by school year 2008-2009. The members of its Board of Trustees, who were all past seventy (70) years of age and were suffering from different ailments believed this information. Hence, it prayed for the dismissal of the complaints.[8]

In a Decision[9] dated April 23, 2009, the Labor Arbiter held that the dismissal of private respondents were ineffectual since there was no compliance with the "twin notice rule" under Article 282 of the Labor Code. Likewise, the required notice to the Department of Labor and Employment for authorized causes under Article 283 of the Labor Code was not done. Further, the Labor Arbiter found that the closure of petitioner was not due to serious business losses. While such closure is a recognized business prerogative and is allowed by law, however, the employer is required to pay its employees separation pay computed at one-month pay for every year of service with a fraction of six (6) months considered as one year. Hence, petitioner was directed to pay private respondents their respective separation pay equivalent to their respective one-month pay for every year of service. On the other hand, the claims for the payment of unpaid salaries, 13th month pay, service incentive leave as well as payment of moral and exemplary damages were dismissed. The dispositive portion of the said Decision reads:

IN VIEW THEREOF, the Miguel B. Binag, Sr., Academy, Inc. is hereby directed to pay the complainants their

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separation pay and attorney's fees computed as follows:

1. Eli[s]a D. Macamos

P 93, 973.44

2. Rich[i]ta B. Viernes

P229, 120.00

3. Milagros S. Tamayo

P401, 450.00

4. Tomasa B. Carongoy

P 27,500.00

5. Lucia B. Paguian

P121, 500.00

SO ORDERED.[10]

Petitioner elevated the matter on appeal to public respondent NLRC. However, the petitioner did not append to the notice[11] of appeal and memorandum[12] on appeal a certificate of non-forum shopping as required in Section 4, Rule VI of the NLRC Revised Rules of Procedure. Further, no cash or surety appeal bond was posted in violation of Article 223 of the Labor Code Sections 4 and 6, Rule VI of the 2005 Revised Rules of Procedure of the NLRC. Instead, petitioner filed a Manifestation with Moton[13] praying for the acceptance of the attached certificate of titles registered in its name in lieu of the required cash or surety appeal bond.

In the assailed Resolution[14] dated July 22, 2009, public respondent NLRC dismissed the appeal on the ground of non-perfection thereof for failure to attach the required certification of non-forum shopping and to post the required cash or surety appeal bond. The pertinent portions of the said Resolution read:

A careful examination of the records disclose that the appeal did not comply with jurisdictional requirements, such as 1) a certificate of non-forum shopping was not appended in the appeal and that 2) neither a cash nor surety bond was posted to guarantee the monetary award[.] Sections 4 and 6, Rule VI of the 2005 Revised Rules of Procedure of the NLRC provide -

"Section 4. Requisites For Perfection Of Appeal.—a) the appeal shall be: 1) filed within the reglementary period provided in the Section I of this Rule; 2) verified by the appellant himself in accordance with Section 4, Rule 7 of the Rules of Court, as amended; ***; iii) a certificate of non-forum shopping; ***. b) a mere notice of appeal without complying with other requisites aforestated shall not stop the running of the period for perfecting an appeal."

"Section 6. BOND.—In case the decision of the Labor Arbiter or the Regional Director involves a monetary

> award, an appeal by the employer may be perfected only upon the posting of a bond, which shall either be in the form of cash deposit or surety bond equivalent in amount to the monetary award, exclusive of damages and attorney's fees."
>
> Time and again, it has been held that the "right to appeal is not a natural [r]ight or a part of due process, it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provision of law. The party who seeks to avail of the same must comply with the requirements of the rules. Failing to do so, the right to appeal is lost." (Mariano Ong vs. Court of Appeals et. al.[,] G.R. 152494, September 22, 2004. Producers Bank of the Philippines vs. Court of Appeal[s][,] G.R. 126620, April 17, 2000)
>
> WHEREFORE, the appeal is DISMISSED for Non-Perfection.
>
> SO ORDERED.[15]

Petitioner filed a motion for reconsideration[16] but the same was denied in a resolution[17] dated October 12, 2009.

Hence, petitioner filed the instant petition raising the following grounds[18] for its allowance, to wit:

> I.
>
> THE DISMISSAL OF PETITIONER'S APPEAL AS WELL AS THE DENIAL OF ITS MOTION FOR RECONSIDERATION BY THE NLRC WERE TAINTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION;
>
> II.
>
> THERE IS NO LEGAL BASIS TO DENY THE ACCEPTANCE OF THE CERTIFICATE OF TITLE OFFERED BY PETITIONER AS SECURITY FOR THE MONETARY JUDGMENT;
>
> III.
>
> THERE WAS NO SUFFICIENT BASIS FOR THE DISMISSAL OF THE APPEAL; and,
>
> IV.
>
> IN DISMISSING THE APPEAL ON PROCEDURAL GROUNDS, THE NLRC CLEARLY IGNORED THE MERITS OF THE DISMISSED APPEAL.

THE ISSUE

The sole issue for resolution is whether or not public respondent NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it ordered the dismissal of petitioner's appeal on the ground of non-perfection of appeal for failure to attach the required certification of non-forum shopping and to post the required cash or surety appeal bond.

THE COURTS RULING

The petition is bereft of merit.

Petitioner mainly argues that public respondent NLRC gravely abused its discretion when it dismissed petitioner's appeal on the ground of non-perfection for failure to attach the required certification of non-forum shopping and to post the required appeal bond. Besides, petitioner substantially complied with the rule on the posting of appeal bond when it offered the certificates of title registered in its name as security for the monetary award. Further, it pointed out that the said requirements are mere procedural infirmities which should not have stopped public

respondent NLRC from resolving the substantial issue raised, that is, whether or not the closure of its business operations was due to severe business losses.

We are not persuaded.

It is well-settled that the decisions or finding of public respondent NLRC are reviewable by this Court by way of a petition for certiorari under Rule 65 of the Rules of Court. However, this extraordinary writ of certiorari may issue only when tribunal has acted without or in excess of its jurisdiction, or with grave abuse of discretion.[19] By the grave abuse of discretion is meant such capricious and whimsical exercise of judgment equivalent to lack of jurisdiction. Mere abuse of discretion is not enough. It must be grave, as when it is exercised arbitrarily or despotically by reason of passion or personal hostility; and such abuse must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in the contemplation of law.[20] This is not present in the case at bench.

Section 4, Rule VI of the 2005 Revised Rules of Procedure of the NLRC provides that one of the requisites for the perfection of an appeal from the decision of the Labor Arbiter to the NLRC is the submission of a certificate of non-forum shopping. The failure to comply with such requirement will not stop the running of the period of perfecting an appeal.

In Maricalum Mining Corp. vs. NLRC et al.,[21] the Supreme Court stressed that the rule on the submission of a certificate of non-forum shopping is mandatory and should accompany initiatory pleadings filed before the NLRC. Further, the rule will be liberally construed so long as there is a substantial compliance with the said requirement.

In this instance, petitioner failed to attach the required certification of non-forum shopping to the notice of memorandum of appeal filed before public respondent NLRC. There was also no substantial compliance because even after petitioner became aware of the lack thereof, it did not do anything to cure such infirmity.

By the same token, Article 223 of the Labor Code expressly provides that when a decision of the Labor Arbiter is appealed to public respondent NLRC and the judgment involves a monetary award, the posting of a cash or surety bond is a requirement sine qua non for the perfection of such an appeal. We quote:

> ART 223. Appeal.—Decisions, awards or orders of the Labor Arbiter or compulsory arbitrators are final and executor unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders.***
>
> ***
>
> In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from. (Emphasis supplied)

In the implementation of the above regulations, Section 6, Rule VI of the 2005 Revised Rules of Procedure provides that an appeal from the employer of the decision of the labor Arbiter may be perfected only upon the posting a cash or surety bond. In connection therewith, Section 5 of the Rules provides that the posting of the said appeal bond is one of the requisites for the perfection of appeal. If not complied with, the running of the period within which to perfect an appeal is not tolled.

In Mary Abigails Food Services, Inc., et al, vs. Court of Appeals, et al.,[22] the Supreme Court, in upholding the NLRC's decision which dismissed therein petitioners' appeal due to non-perfection thereof in view of their failure to post the required cash or surety bond, has ruled that the posting of a cash or surety bond is a jurisdictional and

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mandatory requirement for the perfection of an appeal from the labor arbiter's monetary award. We quote:

> The posting of a cash or surety bond is a requirement sine qua non for the perfection of an appeal from the labor arbiter's monetary award. Notably, the perfection of an appeal within the period and in the manner prescribed by law is jurisdictional and non-compliance with the requirements therefore is fatal and has the effect of rendering the judgment sought to be appealed final and executory. Such requirement cannot be trifled with. Here, white it is true that petitioners seasonably filed their notice of appeal and memorandum of partial appeal, they admittedly posted the required bond three (3) days late. Hence, their appeal from the decision of the labor arbiter to the NLRC was never perfected. (Emphasis supplied)

The indispensable requirement of posting a cash or surety bond for the perfection of an appeal is clearly demonstrated in the legislatures' use of the word "only" in Article 223 of the Labor Code. The Supreme Court, in Viron Garments Manufacturing Co., Inc., vs. NLRC[23], as reiterated in Mary Abigails Food Services, Inc., et al, vs. Court of Appeals, et al.[24], raciocinated that:

> The intention of the lawmakers to make the bond an indispensable requisite for the perfection of an appeal by the employer is clearly limned in the provision that an appeal by the employer may be perfected "only upon the posting of a cash or surety bond". The word "only" makes it perfectly clear, that the lawmakers intended that the posting of cash or surety bond by the employer to be the exclusive means by which an employer's appeal may be perfected. (Emphasis supplied)

The case at bench is one which clearly involves a monetary award since the Labor Arbiter ordered petitioner to pay private respondents the total amount of P873,543.44 as separation pay because the institution's closure of business operations was not due to losses. Necessarily, petitioner should have posted the required cash or surety bond to perfect the appeal to public respondent NLRC. The failure to do so rendered the appeal as not having been perfected, thereby rendering the Labor Arbiter's Decision dated April 23, 2009 final and executory.

Certainly, this Court is not unmindful of the numerous instances when the Supreme Court had allowed a liberal interpretation of the rules on appeal in the interest of substantial justice.[25] However, in such instances, there were at least efforts to comply with the requirement by the posting of a partial bond or the filing of a motion for the reduction of the bond all within the ten-day period.[26] Such relaxation of the rules on appeal has no application in the instant case since what petitioner offered are certificates of titles of realties registered in its name, it must be stressed that the rule on the posting of a cash or surety bond is to assure the workers that if they finally prevail in the case, the monetary award will be given to them upon the dismissal of the employer's appeal.[27] Logically, if certificates of titles will be considered as sufficient compliance with the said rule, it would render nugatory its purpose since the real properties considered will still have to undergo the long and tedious process of foreclosure proceedings, which is not sanctioned by the Labor Code and the NLRC Rules of Procedure.

The Supreme Court has repeatedly ruled that the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but jurisdictional, and the failure to perfect an appeal has the effect of rendering a judgment final and executory.[28]

This notwithstanding, even if We are to close Our eyes and disregard petitioner's procedural and jurisdictional lapses, We find no compelling reason to deviate from the findings of the Labor Arbiter.

Petitioner asseverates that it should not be made to pay separation pay to private respondents since the closure of its business operations was due to serious business losses.

We are not convicted.

Closure or cessation of operation of the establishment is an authorized cause for terminating an employee under Article 283 of the Labor Code, to wit:

> ART. 283. Closure of establishment and reduction of personnel.—-The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Department of Labor and Employment at least one (1) month before the intended date thereof. ... In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or to at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

In this instance, it is undisputed that petitioner has already closed the operations of the school before the school year 2008-2009 could begin. However, except for petitioner's bare allegations, no concrete evidence was presented to prove that the closure was due to serious business losses. A perusal of the records reveals that not a single documentary evidence was submitted in support of the alleged business losses. On the other hand, as succinctly observed by the Labor Arbiter, petitioner's closure was not due to business reverses. While this is a recognized management prerogative, the employer is still mandated by Article 282 of the Labor Code to pay the employees separation pay computed at one (1) month or one-half (1/2) month pay for every year of service, whichever is higher. Hence, it was only proper for the Labor Arbiter to award private respondents their respective separation pay equivalent to one (1) month pay for every year of service.

Based on the foregoing discussion, this Court finds no compelling reason to annul the assailed Resolutions of public respondent NLRC.

WHEREFORE, premises considered, the instant Petition for Certiorari is hereby DISMISSED.

SO ORDERED.

Asuncion-Vicente and Ybañez[*], JJ., concur.

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[*] Court of Appeals Reports Annotated, vol. 48.

[1] Rollo pages 3-20.

[2] Rollo pages 21-26.

[3] Rollo, pages 27-30

[4] Rollo, page 53.

[5] Rollo pages 53-54

[6] Rollo, pages 31-35

[7] Rollo, pages 36-40

[8] Rollo, Petitioner's Position Paper dated December 15, 2008, pages 41-50.

[9] Rollo, pages 51-60.

[10] Supra, page 60

[11] Rollo, page 61

[12] Rollo, pages 62-72.

[13] Rollo, pages 73-74.

[14] Supra at note 2

[15] Supra, pages 24-25

[16] Rollo, pages 75-78.

[17] Supra at note 3.

[18] Rollo, pages 8-11.

[19] Reno Foods, Inc., vs. NLRC, G.R. No. 116462, October 18, 1995.

[20] Eastern Assurance & Surety Corporation vs. LTFRB, G.R. No. 149717, October 7, 2003.

[21] G.R. No. 124711, November 3, 1998.

[22] G.R No. 140294, May 9, 2005.

[23] 207 SRCRA 339, 342 [1992]

[24] G.R. No. 140294, May 9, 2005.

[25] 245 SCRA 211, 216 [1996], as cited in Mary Abigails Food Services, Inc., et al vs. Court of Appeals, et al, G.R. No. 140294, May 9, 2005.

[26] Mary Abigails Food Services, Inc., et al vs. Court of Appeals, et al, G.R. No. 140294, May 9, 2005, citing Gensoli & Company vs. NLRC, 289 SCRA 407 [1998], Rosewood Processing, Inc., vs. NLRC, 290 SCRA 408 [1998], and Star Angel Handicraft vs. NLRC, 236 SCRA 580 [1994].

[27] Coral Point Development Corporation vs. NLRC, et al., G.R. No. 129761, February 28, 2000. September 3, 2012

[28] R & E Transport, Inc., et al vs. Latag, G.R. 155214, February 13, 2004.

[*] Acting Junior Member per Office Order No. 23-10-ABR dated March 12, 2010.

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