

EL CAMINO FOODS/ANNIE’S RESTAURANT, PETITIONER, VS. HON. SEC. PATRICIA A. STO. TOMAS, AS SECRETARY OF D.O.L.E., HON. MANUEL C. ROLDAN, REGIONAL DIRECTOR, D.O.L.E., RESPONDENTS.

Ponente: BERSAMIN, J.

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BERSAMIN, J.:

In this special civil action for certiorari, the employer assails the order promulgated on December 10, 2002 by respondent Secretary of Labor and Employment in Case No. ROII-0001-RI-112, OS-LS-07-024-00 entitled In Re: Routine Inspection, El Camino Foods/Annnies Restaurant–Ilustre cor. Gen. Luna Sts., Davao City,[1] denying its motion for reconsideration and upholding her decision dated May 16, 2002,[2] alleging that respondent Secretary thereby committed grave abuse of discretion amounting to lack or excess of jurisdiction.

The background follows.

On September 8, 1999, a labor inspector of the Department of Labor and Employment (DOLE) Regional Office No. IX conducted a routine inspection of the premises located in Davao City where the petitioner engaged in the restaurant and fast food business, and found that the petitioner committed the following violations:

- Underpayment of wages of 18 employees;
- Non-payment of cola;
- Non-payment of special holiday premium;
- No organized safety committee;
- No emergency medicines

The report of the labor inspector recommended the payment of wage differentials and holiday premium pay to the 18 employees, totaling P80,744.66.

On February 24, 2000, at the summary hearing, Atty. Manuel Nitorreda, the petitioner’s former counsel, was informed of the findings of the labor inspector. He contended at that time that the affected employees were granted their meal allowances, which formed part of their wages, and insisted that there was no violation of the Minimum Wage Law. He assured that the employees would execute a waiver of their entitlements as a result of the routine inspection within the month of March 2000.

Apparently, Atty. Nitorreda failed to submit the promised waivers on time. Thus, the Regional Office of DOLE proceeded with the matter in question.

On May 2, 2000, respondent Regional Director Manuel C. Roldan ordered the petitioner to pay the wage differential and COLA of the affected workers at double the amount and the holiday premium pay, totaling P176,651.86; and to submit a report on its duly organized safety committee and to provide emergency medicines in the workplace.[3]

On June 6, 2000, the petitioner filed a manifestation and motion, to which it attached the individual waivers and quitclaims of several employees.[4]

On June 8, 2000, the petitioner filed a motion to release the amounts garnished corresponding to the employees who had executed waivers and quitclaims.[5]

On June 27, 2000, the petitioner filed a petition for relief with respondent Secretary.[6]

On May 16, 2002, respondent Secretary issued an order denying its petition for relief, to wit:

From the records, respondent received the questioned Order on 12 May 2000 and filed this petition on 27 June 2000.

The rules on the disposition of labor standards cases in the Regional Offices prescribes the remedy of the aggrieved party from the adverse decision of the Regional Director. Section 1, Rule IV of the rules provides that the Order of the Regional Director shall be final and executory unless appealed to the Secretary of Labor and Employment within ten calendar days from receipt thereof.

Respondent, instead of filing its appeal within the reglementary period of ten days, filed this petition for relief more than a month from receipt of the copy of the Order. An appeal is the proper remedy for questioning the Order. A petition for relief, which is associated with judicial proceedings and not with administrative proceedings such as this case, is an inappropriate remedy. It is in fact a disguised appeal filed with the obvious purpose to circumvent the rules on appeal. In this respect, respondent is warned against trifling with the legal procedure in labor standards.

Treating now the petition as an appeal, we note that respondent not only failed to file it within the ten day period to appeal. It also failed to post the required bond for the perfection of the appeal in accordance with Article 128 (b) of the Labor Code. As such, the questioned Order dated 12 May 2000 is now final and executory.

WHEREFORE, the petition for relief filed by respondent is DENIED. Considering that the Order of the Regional Director is now final and executory, let the records of the case be remanded to the office of origin for the immediate implementation of the Regional Director's Order.

SO ORDERED.[7]

On June 10, 2002, petitioner filed a motion for reconsideration to the order of respondent Secretary of Labor and Employment.[8]

On December 10, 2002, respondent Secretary denied the motion for reconsideration, which was received by the petitioner on December 18, 2002, viz:

WHEREFORE, the Motion for Reconsideration is DENIED. The order of this Office dated May 16, 2002, which has become FINAL AND EXECUTORY is AFFIRMED. Let the entire records of this case be remanded to the Regional Office of origin for the immediate implementation of the Regional Director's order.[9]

Hence, this special civil action for certiorari.

The petitioner states 2 grounds to support its petition, to wit:

- The Honorable Public Respondents acted with grave abuse of discretion amounting to lack or excess of jurisdiction in rendering the said Orders;
- Questions of law and serious errors in findings of fact which caused grave and irreparable damage to the Petitioners.

The petitioner contends that its petition for relief was the proper remedy because an adherence with legal technicalities would cause grave injustice to the petitioner and because the petition for relief is not prohibited under the Rules on the Disposition of Labor Standards Cases in the Regional Office; that the Rules of Court are applicable in the absence of appropriate rules of procedure in administrative proceedings before the DOLE; that its petition for relief was not filed to delay the proceedings, but to exhaust possible administrative remedies; that it should not be penalized for not adhering to the technicalities of law; that the petitioner only asks to be given a chance to present evidence; that when its former counsel did not present the waivers, respondent Regional Director could have provided it an opportunity to present the waivers; that it should not be prejudiced by the omission of its former counsel; and that it was due to mistake, accident and excusable negligence of its former counsel why no appeal was taken within the period provided for.

The petitioner further contends that respondent Secretary could not sustain the order of respondent Regional Director because it was not supported by sufficient evidence; that the order was based on the routine inspection conducted on February 24, 2000; that the petitioner, through its former counsel, informed that the affected employees were granted meal allowances as part of their wages and manifested that the affected employees would voluntarily execute a waiver; that said waivers were executed, ready to be presented as evidence; that respondent Regional Director denied it the opportunity to present its evidence and based his decision on the mere testimonies of the employees; and that he thereby violated substantial justice and the rules of fair play.

In contrast, the respondents counter that respondent Secretary did not abuse her discretion in upholding the Regional Director and in denying the petitioner's appeal; that the petitioner received the order on May 12, 2000 but did not take an appeal within the reglementary period of 10 days from the receipt of the order, pursuant to Sec. 19, Rules on the Disposition of Labor Standard Cases in the Regional Offices; and that what the petitioner filed on June 27, 2000 was its petition for relief, leaving respondent Secretary no choice but to deny the petition because the proper procedure against the order was appeal in due time.

They further point out that the findings and conclusions of the Regional Director were supported by substantial evidence obtained from the routine inspection and from witnesses; that the petitioner was required to attend the hearing and to simultaneously bring evidence to exculpate it from the discovered violations, but it failed to do so; that respondent Regional Director had no choice but to decide the matter upon the available evidence; that the petitioner was not deprived of due process, being given adequate time and opportunity to present evidence and defend itself; and that the petitioner even filed several motions and papers indicating the ample opportunity to defend itself.

The petition for certiorari cannot be given due course.

The indispensable elements of a petition for certiorari are: (a) that it is directed against a tribunal, board or officer exercising judicial or quasi-judicial functions; (b) that such tribunal, board or officer has acted without or in excess of jurisdiction or with grave abuse of discretion; and (c) that there is no appeal nor any plain, speedy and adequate remedy in the ordinary course of law.[10]

A writ of certiorari is a prerogative writ, never demandable as a matter of right, never issued except in the exercise of judicial discretion. Hence, he who seeks a writ of certiorari must apply for it only in the manner and strictly in accordance with the provisions of the law and the Rules of Court.[11]

A perusal of the petition indicates the abject failure of the petitioner to comply with the requirements for the remedy of certiorari.

To begin with, the special civil action for certiorari should be based on lack of jurisdiction, excess of jurisdiction,

or grave abuse of discretion amounting to lack or excess of jurisdiction.[12] The petitioner relies on grave abuse of discretion allegedly committed by public respondents. Yet, we do not see how the public respondents were guilty of grave abuse of discretion amounting to lack or excess of jurisdiction, for there is no question that the denial of the appeal was by virtue of the petitioner losing its right to appeal from the decision of the Regional Director through its own neglect by not taking the appeal within the period of 10 working days from receipt of the decision. Thus, respondent Secretary's rejection of the appeal because the petition for relief was not a proper remedy - being founded on the applicable law and rules of procedure - was not arbitrary, capricious or whimsical. It was, in reality, correct.

"Basically, there is grave abuse of discretion amounting to lack of jurisdiction. " according to *Philippine Airlines v. Confessor*,[13] "where the respondent board, tribunal or officer exercising judicial functions exercised its judgment in a capricious, whimsical, arbitrary and despotic manner. However, it has also been said that grave abuse of discretion is committed when the 'lower court acted capriciously, and whimsically or the petitioner's contention appears to be clearly tenable or the boarder interest of justice or public policy [so] require xxx." Where the assailed issuance was firmly based on the law and the facts, there can be no grave abuse of discretion, for, as expounded in *Republic v. Sandiganbayan*:[14]

The term "grave abuse of discretion" connotes capricious and whimsical exercise of judgment as is equivalent to excess, or a lack of jurisdiction. The abuse 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 as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility. Sadly, this is completely absent in the present case. For, at bottom, the assailed resolutions of the Sandiganbayan did no more than to direct PCGG to comply with its part of the bargain under the compromise agreement it freely entered into with private respondent Benedicto. Simply put, the assailed resolutions of the Sandiganbayan have firm basis in fact and in law.

Secondly, the function of a writ of certiorari is to correct errors of law shown to have been committed by a judicial or quasi judicial body, where the errors are of such a nature that, if allowed to stand, they will result in a substantial injury to the petitioner to whom no other remedy is available.[15] For the extraordinary writ to issue, therefore, the petitioner must clearly establish that there is no appeal or other plain, speedy, and adequate remedy in the ordinary course of law.[16] It follows that before a petition for certiorari can be instituted, all remedies available in the tribunal or office below must have first been exhausted.[17] That is not so in the petitioner's situation because it had the right to appeal but lost its right through neglect. It should suffer the consequence of its own neglect. Thus, the petitioner cannot invoke our certiorari jurisdiction as a substitute for its lost right of appeal or where there are other remedies available.[18]

And, thirdly, the petitioner's remedy of a petition for relief was impermissible. It is only in civil procedure,[19] not in administrative adjudication, that such an exceptional remedy is available. By no stretch of interpretation may the remedy relieve the petitioner from its self-inflicted predicament in the DOLE Regional Office.

We reject the recourse of the petitioner without needing to discuss at length the merits and circumstances obtaining in its case in the DOLE Regional Office. This proceeding is brought to us under Rule 65, not through an appeal. Accordingly, the precept, that the sole office of a writ of certiorari is the correction of errors of jurisdiction, precludes a review of the evaluation of the evidence and factual findings by a tribunal or body which is competent to do so.[20]

WHEREFORE, the PETITION FOR CERTIORARI is DENIED DUE COURSE and this case is DISMISSED.

SO ORDERED.

Villarama, Jr., (Chairman) and Arevalo-Zenarosa, JJ., concur.

[1] Annex A, petition.

[2] Annex B, petition.

[3] Annex D, petition.

[4] Annex E, petition.

[5] Annex F, petition.

[6] Annex G, petition.

[7] Annex B, petition.

[8] Annex H, petition.

[9] Annex A, petition.

[10] Sec. 1, Rule 65; Cochingyan, Jr. v. Cloribel, 76 SCRA 361; Ruiz v. Castro, 220 SCRA 490; Salas v. Castro, 216 SCRA 198; Zagada v. Civil Service Commission, 216 SCRA 114.

[11] Santos v. Cruz:, G. R. Nos. 170096-97, March 3, 2006; 484 SCRA 66; Cervantes v. Court of Appeals, G .R. No. 166755, November 18, 2005; 475 SCRA 562.

[12] Sec. 1, Rule 65.

[13] 231 SCRA 41, 53 (1994).

[14] G.R. No. 129406, March 6, 2006; 484 SCRA 119.

[15] Worcester Gas Light Co. v. Commissioners of Woodland Water Dist. in Town of Auburn, 49 N.E.2d 447, 448, 314 Mass. 60.

[16] Tan vs. Director of Forestry, 125 SCRA 302, 322; Jose v. Zulueta, 2 SCRA 574.

[17] Gelindon v. Judge Dela Rama, 228 SCRA 322 (1993); Telephone Engineering & Service Co., Inc. vs. Workmen's Compensation Commission., 104 SCRA 354, 360; De Gala-Sison vs. Maddela, 67 SCRA 478.

[18] Felizardo v. Court of Appeals, 233 SCRA 220; Yap v. IAC, 220 SCRA 245; Antonio v. IAC, 216 SCRA 214; Aqualyn Corporation v. Court of Appeals, 214 SCRA 307; People v. Cuaresma, 172 SCRA 415.

[19] Rule 38, Rules of Court.

[20] Oro v. Diaz, 361 SCRA 108 (2001); Building Care Corporation v. NLRC, 268 SCRA 666 (1997); Flores v. National Labor Relations Commission, 253 SCRA 494 (1996); Sajonas v. NLRC, 183 SCRA 182 (1990); Special Events and Central Shipping Office Workers Union v. San Miguel Corporation, 122 SCRA 557 (1983).

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