

UNITED CMC TEXTILE WORKERS UNION, ALFONSO VINAS, RICARDO SEBASTIAN, FELIPE YU, JOEL CANARES, EDUARDO LIM, MANUEL BALDICANO, FERNANDO BALANA, JAIME DE VERA, CESAR PRESCILLA, PEDR...

G.R. No. L-57595. July 05, 1985

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

This petition for certiorari seeks to set aside the decision dated March 28, 1980 of public respondent Presidential Executive Assistant Jacobo C. Clave in NLRC Case No. RO4-8-6873-75, entitled "United CMC Textile Workers Union, complainant-appellee, versus Central Textile Mills, Inc., respondent-appellant", reversing and setting aside the decision of the then Secretary of Labor and dismissing the petitioners' complaint for unfair labor practice, and the resolution dated March 3, 1981 issued by Deputy Presidential Executive Assistant Joaquin T. Venus, Jr., denying the petitioners' motion for reconsideration.

Special Order No. 323 dated June 27, 1985 designated Justice B. S. dela Fuente and Nestor B. Alampay to sit in the Second Division to participate in the deliberation and resolution of this case, in lieu of Justices Ramon C. Aquino and Vicente Abad Santos who are taking no part.

The records show that on different dates in 1974, private respondent Central Textile Mills, Inc. placed thirty-five (35) of its employees under preventive suspension for alleged violation of company rules and regulations. Eventually, these 35 employees were dismissed by private respondent, invoking the Termination Pay Law and the collective bargaining contract covering these employees but without the necessary clearance for dismissal as required by Section 11 of P.D. 21 (p. 33, rec.).

On August 28, 1975, after discussing the dismissal through the grievance procedure provided by their collective bargaining agreement, and failing to arrive at a mutually acceptable solution, petitioner union, in behalf of the affected employees, filed a complaint for unfair labor practice with the then Department of Labor (p. 26, rec.).

On September 10, 1975, pursuant to Article VI, Section 5 of their collective bargaining agreement, the parties met in conference before Atty. Sagun of Regional Office No. IV, Department of Labor, where they agreed to choose Atty. George A. Eduvala as their voluntary arbitrator (p. 32, rec.).

On March 18, 1976, voluntary arbitrator Eduvala rendered a decision, the dispositive portion of which reads:

"PREMISES CONSIDERED, it is hereby ordered that the thirty-five employees above-named be immediately reinstated and be paid their back wages equivalent to one year of service, without deductions" (p. 35, rec.).

Private respondent's receipt of the voluntary arbitrator's decision is marked March 27, 1976 (p. 110, rec.).

On April 26, 1976, private respondent filed a motion for reconsideration of the aforesaid decision of the voluntary arbitrator.

On July 7, 1976, voluntary arbitrator Eduvala issued a resolution denying private respondent's motion for reconsideration, affirming the previous decision except with respect to the thirteen (13) employees mentioned therein who voluntarily resigned (p. 36, rec.).

On July 18, 1976, private respondent appealed to the National Labor Relations Commission (p. 84, rec.).

On November 2, 1976, the National Labor Relations Commission issued a resolution, en banc, dismissing private respondent's appeal. A pertinent portion of the said resolution reads:

"xx xx xx.

"It appearing that the said cases were submitted for voluntary arbitration in accordance with the provision of an existing collective bargaining contract between the parties whose decision is final, unappealable and executory; that the amount involved is only P60,000.00 and, further, that the decision of the arbitrator is merely an implementation of said CBA, the Commission, under the law and the rules, has no jurisdiction over the subject matter thereof.

"xx xx xx" (p. 39, rec.).

Private respondent received its copy of the National Labor Relations Commission's resolution denying its appeal on December 29, 1979 (pp. 13, 111, rec.).

On January 14, 1977, private respondent appealed the NLRC resolution to the then Secretary of Labor who issued an order dated November 23, 1977 dismissing private respondent's appeal for lack of merit (pp. 46, 84, rec.).

From the order of the then Secretary of Labor denying its appeal, private respondent appealed to the Office of the President.

On March 28, 1980, public respondent Jacobo C. Clave rendered a decision setting aside the decision of the then Secretary of Labor and dismissing the petitioners' complaint (p. 48, rec.).

Petitioners filed a motion for reconsideration, but the same was denied in a resolution dated March 3, 1981, issued by Deputy Presidential Executive Assistant Joaquin T. Venus, Jr. (p. 63, rec.).

Hence, this petition.

The decisive issue is whether or not the decision of voluntary arbitrator George A. Eduvala dated March 18, 1976, attained finality which public respondent Jacobo C. Clave had no authority to reverse.

It is disputed by both parties whether it is the New Labor Code or Presidential Decree No. 21 that governs private respondent's appeal.

Respondents contend that since the cause of action accrued in the year 1974, at the latest on October 29, 1974, before the New Labor Code took effect on November 1, 1974, the law applicable is P.D. 21 dated October 14, 1972, which allows an appeal from the decision of a voluntary arbitrator (pp. 86, 122, rec.).

On the other hand, petitioners maintain that since the decision of the voluntary arbitrator was rendered on March 18, 1976 when the New Labor Code was already in force, the law applicable is the New Labor Code which provides that decisions or awards of voluntary arbitrators are final, unappealable, and executory (Art. 263, New Labor Code) [p. 8, rec.].

WE find that the decision of voluntary arbitrator Eduvala dated March 18, 1976, is final and executory under both the New Labor Code and Presidential Decree No. 21.

I

To start with, the law that must govern private respondent's appeal is the New Labor Code.

The right to appeal is merely a statutory privilege as held in *Bello vs. Fernando*, 4 SCRA 138 (January 30, 1962), where this Court declared that "(T)he right to appeal is not a natural right nor a part of due process; it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law (*Aguila v. Navarro*, 55 Phil. 898; *Santiago vs. Valenzuela*, 78 Phil. 397)." Thus, appeal is simply a procedural remedy wherein there can be no vested right. But as long as the law provides for an appeal, the right to appeal is part of due process.

In a similar case where the issue is whether or not the provisions of the New Labor Code relating to appeals can be retroactively applied, this Court held, thus:

"x x x Procedural laws, unlike substantive laws, may be applied retroactively as there can be no vested right in a rule of procedure. In the case at bar, when the company appealed the decision of the NLRC to the Secretary of Labor on April 18, 1975, the New Labor Code, as well as its implementing rules, were already in force. Hence its provisions relating to appeals would apply to the instant case. x x x" (*Central Textile Mills Employees Welfare Union-PFL vs. Zamora*, 79 SCRA 150 [September 28, 1977]).

Considering that the decision of voluntary arbitrator Eduvala was rendered on March 18, 1976, long after the New Labor Code took effect on November 1, 1974, the said decision is final and unappealable pursuant to Article 263 of the same Code which provides that "(V)oluntary arbitration awards or decisions shall be final, unappealable, and executory."

II

It is true that under Presidential Decree No. 21, an appeal may be brought to the National Labor Relations Commission from any award or decision of a voluntary arbitrator. But, as in all appeals, certain procedures must be followed in order to avail of such a privilege.

Section 2 of Supplementary Rules and Regulations No. 1 of Presidential Decree No. 21, dated January 26, 1973, provides that an appeal to Commission must be filed within ten (10) days from receipt of the award of the aggrieved party.

The records show that on March 27, 1976, private respondent received its copy of the decision of voluntary arbitrator Eduvala dated March 18, 1976. Thereafter, on April 26, 1976, instead of resorting to an appeal, private respondent filed a motion for reconsideration of the decision of the voluntary arbitrator (pp. 110, 121, rec.).

Obviously, the decision of voluntary arbitrator Eduvala had already become final and executory when the private respondent filed its motion for reconsideration on April 26, 1976, which is almost a month after its receipt of the said decision, and long after the ten (10) day period for filing such an appeal had lapsed.

Furthermore, private respondent's appeal from the National Labor Relations Commission to the then Secretary of Labor was perfected out of time. Section 6 of the rules implementing Presidential Decree No. 21 provides that the appeal to the Secretary of Labor should be made within a period of five (5) days upon receipt of the award or decision of the Commission.

The resolution of the National Labor Relations Commission was received by private respondent on December 29, 1976 (p. 111, rec.). Private respondent filed its appeal to the Secretary of Labor on January 14, 1977, beyond the reglementary period of five (5) days provided by the rules implementing Presidential Decree No. 21 (p. 121, rec.).

There is, therefore, no question that the decision of voluntary arbitrator Eduvala dated March 18, 1976 is final and executory under Presidential Decree No. 21, including its implementing rules and regulations.

III

WE find that the decision of public respondent Clave ignored the evidence adduced by the petitioners to warrant a review by this Court.

Contrary to the findings of public respondent Clave, WE find no error in the decision of voluntary arbitrator Eduvala to call for its reversal and the dismissal of petitioners' complaint.

The following are the pertinent portions of voluntary arbitrator Eduvala's decision, and WE quote:

"xxx xxx xxx.

"Pursuant to the authority vested in this arbitrator on October 15, 1975, he shall now dwell on the issues involved in the case.

"There can be no doubting that a dismissed employee may question his dismissal on the ground that it is not legally justified. This the employee can do even if a clearance for his dismissal is issued. More so if, as in the case at bar, no clearance is issued at all.

"When the employee raises an issue on his dismissal, it becomes incumbent at once for the employer to prove that just causes exist to legalize the dismissal or, in cases of dismissal before PD 442, that separation pay has been given to the employee. In the case at bar, the employer has not satisfied this burden.

"There is therefore no recourse left to the arbitrator but to rule that the dismissed employees are entitled to their tenure. So the arbitrator will do in this case.

"But before drawing this order to a close, the arbitrator will tarry awhile on an argument advanced by complainant union. The union contends that as the recognized collective bargaining agent of the employees (Art. 1, sec. 1 CBA), it is entitled to notice and hearing on any case involving the employees, including the instant case. When a disciplinary action on employees is done behind it, the union contends that unfair labor practice is committed.

"The arbitrator is inclined to accept this view. Indeed, even as the law provides for clearance before dismissal, an employer is not excused from its duty to bargain collectively on all matters covered by a collective agreement. It cannot be over-emphasized that the duty includes faithful observance of the terms of collective agreement. Considering that the agreement provides for an adequate grievance machinery, it is incumbent upon the employer to avail of this machinery before seeking recourse to government authorities, that is to say, before applying for clearance to dismiss its employees. Failing in this obligation, the employer gives the union a cause for complaint.

"xxx xxx xxx.(pp. 33-34, rec., underscoring supplied).

The foregoing logical analysis made by voluntary arbitrator Eduvala of the issues presented by the petitioners' complaint is supported by the evidence and the law on the matter.

In view thereof, WE find that public respondent Jacobo C. Clave committed grave abuse of discretion in setting aside the order of the then Secretary of Labor and dismissing petitioners' complaint. Hence, the petitioners are entitled to reinstatement and back wages.

In computing the petitioners' back wages, WE are guided by the policy laid down by this Court in the case of Mercury Drug Co., Inc. vs. Court of Industrial Relations (56 SCRA 694), which is to award a maximum of three (3) years back wages without qualification and deduction. WE adopted this policy to do away with the attendant delay in awarding back wages because of the extended hearing to prove the earnings elsewhere of each and every employee (Philippine Airlines, Inc. vs NLRC, 126 SCRA 223; Litex Employees Association, et al. v. CIR, et al., 116 SCRA 459; Liberty Cotton Mills Workers Union v. Liberty Cotton Mills, Inc., 90 SCRA 391; L. R.

Aguinaldo, Inc. v. CIR, et al., 82 SCRA 309; Danao Development Corporation v. NLRC, et al., 81 SCRA 489; Monteverde, et al. vs. CIR, et al., 79 SCRA 259; Insular Life Insurance Co., Ltd. Employees Association- NATU vs. Insular Life Assurance Co., Ltd., 76 SCRA 50; People's Bank and Trust Company, et al. v. People's Bank and Trust Company Employees Union, et al., 69 SCRA 10; Feati University Faculty Club (PAFLU) v. Feati University, 58 SCRA 395).

As to the question of reinstatement, since this case has been pending for almost ten (10) years, it is presumed that most, if not all, of the petitioners have found other lucrative jobs.

WHEREFORE, THE DECISION OF PUBLIC RESPONDENT JACOBO C. CLAVE IS HEREBY SET ASIDE, AND THE PRIVATE RESPONDENT IS HEREBY DIRECTED:

1. TO PAY THE PETITIONERS THEIR CORRESPONDING BACK WAGES EQUIVALENT TO THREE (3) YEARS WITHOUT QUALIFICATION AND DEDUCTION TO BE COMPUTED ON THE BASIS OF THEIR RESPECTIVE RATE OF EARNINGS AS OF AUGUST 28, 1975; AND
2. TO REINSTATE THOSE PETITIONERS WHO WANT TO RETURN TO THE PRIVATE RESPONDENT'S EMPLOYMENT WITHOUT LOSS OF SENIORITY RIGHTS.

COSTS AGAINST RESPONDENT CENTRAL TEXTILE MILLS, INC.

SO ORDERED.

Concepcion, Jr., Escolin, Dela Fuente, Cuevas, and Alampay, JJ., concur.

Aquino and Abad Santos, JJ., no part.

[*] Special Order No. 323 dated June 27, 1985 designated Justice B. S. dela Fuente and Nestor B. Alampay to sit in the Second Division to participate in the deliberation and resolution of this case, in lieu of Justices Ramon C. Aquino and Vicente Abad Santos who are taking no part.

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