

PHILIPPINE COAL MINERS' UNION, PETITIONER, VS. CEBU PORTLAND CEMENT CO., HON. ARSENIO I. MARTINEZ, EMILIANO C. TABIGNE AND AMADO C. BUGAYONG, (THE LAST THREE AS JUDGES OF THE CO...*G.R. No. L-19007. April 30, 1964*

Ponente: PAREDES, J.

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On December 28, 1948, the Philippine Land-Air-Sea Labor Union, PLASLU for short, presented before the Court of Industrial Relations a petition (CIR Case No. 241-V), asking that the said Court order the Cebu Portland Cement Company, CEPOC, for short, to accept their demands, among which are the observance of the eight-hour labor law, increase in salaries, payment of overtime pay for work performed on Sundays and Holidays, and rights to vacation and sick leaves. The CIR rendered Judgment on April 27, 1951, in favor of the Union.

On October 12, 1956, the PLASLU, presented a petition; in said case No. 241-V, seeking that the benefits of the awards in the decision of April 27, 1951, be extended to all the employees of the CEPOC, including those in Vigan, Bauang, Dagupan, Baguio, Romblon, Iloilo, Bacolod, Davao, Bacnotan, Argao and Malangas. While this motion was pending resolution, the PLASLU in a petition dated December 23, 1958, prayed for the verification by the Court's Examiner of the computation made by the Accounting and Auditing Departments of the CEPOC, which amounted to P112,000.00, purportedly due to the employees and laborers of the Malangas Coal Mines, CEPOC, as salary differentials.

The motion of October 12, 1956, was opposed by the CEPOC on various grounds, foremost of which were the lack of basis to hold that the employees and laborers in the provincial branches were members of the PLASLU; and the Notice of Termination of Award, which rendered the Decision of April 27, 1951, without force and effect.

On November 3, 1959, the CIR, resolving the motions and opposition, stated—

"Considering that it has already been settled in this Order that the awards of the decision of April 27, 1951 may be extended to branch personnel, including those in Malangas, Zamboanga del Sur, the Court believes that the computation made by the Accounting and Auditing Departments of the Company for that branch is within the scope of the decision of April 27, 1951. However, in order to insure that the computation was done in accordance with the standard procedure, it is necessary that the same be submitted to the Court for verification by the Court's examiner, and based on the records of the Company.

In view of the foregoing, the Chief of the Examining Division of this Court, or any of his assistants, is hereby directed to include in his computations of the awards in the decision of April 27, 1951 the amount which may be due to the employees and laborers of respondent company in the branches mentioned in the motion dated October 12, 1956, and to submit a report thereof for further disposition by this Court.

"Respondent, on the other hand, is hereby directed to submit to this Court the computations made by its Accounting and Auditing Departments, while the Chief Examiner of this Court, or any of its assistants, is

hereby directed to verify from the records of the Company the said computations to find out if the same were done in accordance with the procedure being followed in computing the awards in the decision of April 27, 1951 and to submit a report thereof also for further disposition by this Court."

On February 9, 1959, before the promulgation of the above Resolution, the Philippine Coal Miner's Union, (PCMU, for short), in behalf of the employees and laborers of the Malangas Coal Mines in Zamboanga del Sur, owned and operated by the CEPOC, filed a petition (Case No. 6-V-DB, Davao Branch) with the CIR, asking that the CEPOC be adjudged to pay to said employees and laborers overtime pay for services rendered on Sundays and Holidays, from 1951 and additional overtime pay for Saturdays from July 1, 1957, pursuant to Republic Act No. 1880.

CEPOC, Answering the petition, after the usual Admissions and Denials, interposed the following defenses:

- (a) lack of jurisdiction of the CIR over claims for overtime pay, as well as the implementation of Rep. Act 1880;
- (b) prescription of the claim;
- (c) that all overtime services rendered, including Sundays and Holidays, "which were duly authorized have already been paid—those not paid were unauthorized services; and
- (d) under the facts and the law, petitioners are not entitled to the relief prayed for.

After due trial, the CIR, speaking thru Judge Baltazar M. Villanueva, rendered judgment ordering the respondent CEPOC:

- "1. To pay its employees and laborers at the Malangas Coal Mines, Zamboanga del Sur, the amount of P112,762.30 representing compensation for overtime services rendered and work performed on Sundays and legal holidays, covering the period July 1, 1951 to December 31, 1955;
2. To compute the same nature of services rendered for the period January 1, 1956 up to the present; and
3. To implement Republic Act No. 1880 as implemented by Executive Order No. 251, and to pay to the employees and laborers at the Malangas Coal Mines, Zamboanga del Sur, additional compensation for work performed on Saturdays, covering the period July 1, 1957 up to the present."

The Court en banc acting on the motion for reconsideration, presented by the CEPOC, voted for a partial reconsideration of the decision, by excluding the award consisting of the overtime wages for services rendered on Sundays and legal holidays from July 31, 1951 to December 31, 1955. The majority of the Court, explaining its action, said—

"* * *. It appears that the same award was already made by this Court in Case No. 241-V. Such amount was arrived at after the computation by the Examining Division of this Court, as ordered on November 3, 1959, by the Trial Court in Case No. 241-V.

* * * * *

According to this subdivision, a final judgment or order on the merits, rendered by a court having jurisdiction on the subject matter and of the parties, is conclusive in a subsequent case between the same parties and their successors in interest litigating upon the same thing and issue, regardless of how erroneous it may be (*Lanuza vs. Gonzales*, 17 Phil. 413; *Chearean vs. Fuentabella*, 43 Phil. 216; *Fernandez vs. de Castro*, 48 Phil. 123).

It is to be noted that Case No. 241-V is final as far as the basic rights of the workers in Malangas Coal Mines for overtime pay is concerned. In fact, under the order of the Court of January 19, 1960, the parties thereto were required to submit their respective versions of the computations made and/or to place them as ground as to the merits of their claims. Hearings were being conducted only in relation to the amount involved. It is true

as alleged by counsel for petitioner herein that the case at bar would just be an implementation of the order of the Court in Case No. 241-V. And it is so, but surely the whole proceeding in relation to claims should be under Case No. 241-V, at least prior to December 31, 1955."

A dissenting vote was registered by Judge Villanueva against the above order.

There are two dominant issues presented before Us for resolution, to wit:

First, whether or not *res adjudicata* has been properly alleged as a defense; and

Second, granting that it is alleged, whether there exists *res adjudicata* under the facts and circumstances obtaining in the present case.

The respondent, in its answer dated March 13, 1959, did not interpose the special defense of *res adjudicata*, relied upon in the majority resolution of the Court en banc. In said answer, the respondent alleged as its defense, in avoidance of petitioner's cause of action, four special and affirmative defenses, to wit: (1) lack of jurisdiction (2) prescription (3) payment and (4) "under the facts and the law, petitioners are not entitled to the relief prayed for" (*supra*). This notwithstanding, respondent contend the defense of *res adjudicata* was pleaded under the fourth averment. This contention is devoid of merit, because sec. 9, Rule 9 of the Rules provides that all such grounds of defense, as would raise issues of fact, must be specifically pleaded. The allegation "petitioner is not entitled to the relief prayed for" is vague, not specific and "comprehends almost all defenses under the sun". Not having interposed the defense of *res adjudicata*, either in a motion to dismiss or in its answer, respondent is deemed to have waived it (sec. 10, Rule 9). They can. not be pleaded for the first time at the trial or on appeal. The three exceptions to the rule are (a) lack of jurisdiction over the subject matter which may be alleged at any stage of the proceedings, even for the first time on appeal; (b) failure to state a cause of action which may also be asserted at any stage of the proceeding, but not later than the trial and (c) improper venue, which may be urged prior to trial (1 Moran's Rules of Court, pp. 168-69, and cases cited therein).

Granting for a moment, that the said averment is a sufficient allegation of *res adjudicata*, having reference to the requisites of this defense, We still hold that, factually, there is no prior final judgment at all to speak of. According to the trial court the final judgment which bars the present action was the order dated November 3, 1969 (Exh. 17) in case No. 241-V of the CIR, the pertinent portions of which were heretofore reproduced (*supra*). The CEPOC filed a motion for reconsideration (Exh. 8) of this Order on the ground that (a) it was void for lack of fair and full hearing (b) it deprived CEPOC of property without due process of law, for lack of evidence that the workers at CEPOC's subsidiaries were bona fide employees and laborers of CEPOC on April 27, 1951 (c) it "was contrary to law (d) the awards made in said decision of April 27, 1951 could not be extended to subsidiaries of the CEPOC acquired and organized after the rendition of the decision; with prayer that a day be set for reception of evidence as to the merits of PLASLU's claim. His Honor, Judge Martinez, in connection with said motion for reconsideration commented thus, "We believe that those matters can be very well taken up in a hearing after the examiner of the Court (CIR) shall have submitted his report in compliance with the Order of November 3, 1959." Even the trial Court believed that the said order of November 3, 1959, was interlocutory. The order was aimed at giving the parties a chance to adduce evidence in support of their respective contentions, such as the existence of bona fide employees and laborers at respondent's branch plant in Malangas, as of April 27, 1951, and the nature, extent and merits of their claim for extra compensation. It was not an order or judgment determinative of an issue of fact pending before the court. It was an interlocutory order, because it required the parties to perform certain acts for final adjudication of awards. It might be considered a void Order, because the court that issued it did no longer have authority or jurisdiction to entertain the subject-matter thereof, inasmuch as the decision of April 27, 1957 (in case No. 241-V), basis of the order in question, had ceased to have force and effect, upon the filing on July 11, 1956, of respondent "notice to terminate the award" (see. 17 of C.A. No. 103), and that it was

superfluous, as far as overtime compensation is concerned, because that right is provided by the Eight Hour Labor Law (Com. Act No. 444 and Rep. Act No. 1880). This being the case, no basic right of the workers in the Malangas Coal Mines, for overtime pay was decided. In fact, in the order of the Court of January 19, 1960, the parties were required and to make them as the basis of their claims. Hearings were being conducted only in relation to the amount involved.

There, is also no identity of parties, subject matter and cause of action between Case No. 241-V and the present case No. 6-V-Davao. Case No. 241-V was filed 13 years ago, on December 28, 1948, by the PLASLU against the CEPOC. The PLASLU's affiliates then comprised the employees and laborers of CEPOC at the latter's plant in Tinaan, Naga, Cebu. The PLASLU had its place of business in Cebu City. The subject matter and cause of action in said case relates to the demands of said labor union for concessions (the 12 traditional demands of labor), in favor of the employees and laborers of CEPOC which was decided by the CIR on April 27, 1951, granting said concessions. On October 12, 1956, the PLASLU commenced an incident in the case by asking for the extension of the benefits and awards in the decision of April 27, 1951, to other branches of CEPOC and for the Court examiner to go over the records of CEPOC for the purpose of determining the money value thereof. CEPOC opposed on the ground among others, that (1) the decision of April 27, 1951, ceased to be effective; (2) the PLASLU was not the proper party, since there was no showing that the branch personnel of CEPOC at Malangas were members of the PLASLU; and (3) the subject-matter of the motion was beyond the scope of and was not contemplated or embraced in the said decision of April 27, 1951. In case No. 6-V-Davao (present suit), the Philippine Coal Owner's Union (PCJIU) is a separate and distinct labor union, has its place of operation in Malangas, Zamboanga del Sur, and its affiliates comprised 255 employees and laborers of the CEPOC at Malangas; it was organized as a labor union in February, 1958, after the Malangas Coal mines became a unit of CEPOC in 1951. The subject matter and cause of action in this case, relate to the demand for the payment to the employees and laborers at Malangas Coal Mines additional compensation for overtime service covering the period July 1, 1951 up to the present and to implement Rep. Act No. 1880, as implemented by Executive Order No. 251, series of 1057, and to pay the same employees and laborers additional compensation for work rendered on Saturdays effective July 1, 1957. The present suit is an independent action prosecuted by a separate and independent union, composed of members exclusively employed by CEPOC at Malangas, which were not shown to be members of the PLASLU.

IN VIEW HEREOF, petition for certiorari is GRANTED and the resolution of the respondent Court en banc dated July 19, 1961 is reversed, insofar as it excluded therefrom the award of P112,762.20, contained in the trial court's decision dated June 20, 1960. Costs against the respondent Cebu Portland Cement Company.

Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, Dizon, Regala, and Makalintal, JJ., concur.

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