

DALMACIO PREPOTENTE, PETITIONER, VS. HON. JOSE SURTIDA, JUDGE, COURT OF FIRST INSTANCE OF CAMARINES SUR, PRIMO ALCID AND VICENTE MANALO, RESPONDENTS.

G. R. No. L-18420. May 24, 1962

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Petition for certiorari and mandamus to annul the orders of the Court of First Instance of Camarines Sur of March 24, 1961 and April 17, 1961, denying petitioner's appeal from the decision in Civil Case No. 4385 of said Court, and to give due course to his appeal.

Said civil case was a complaint filed by petitioner Dalmacio Prepotente for the recovery of overtime pay, differential pay, separation pay, damages, and attorneys' fees against respondents Primo Alcid and Vicente Manalo, petitioner claiming that he was hired by defendants as driver, that he was not paid the minimum wage nor overtime compensation during the period of his employment until his unlawful dismissal without notice and without just cause, and that he is entitled to recover from defendants the total amount of P4,047.00 representing differential pay, overtime pay, separation pay, damages, and attorney's fees.

On October 19, 1959, the lower court dismissed the complaint on the ground that it fell within the exclusive jurisdiction of the Court of Industrial Relations. Notice of the decision was received by petitioner on October 23, 1960. On October 27, 1960, he filed a motion for reconsideration. This motion was denied, copy of the denial having been received by him on February 15, 1961. On February 28, 1961, petitioner filed a notice of appeal, at the same time asking for the extension of the period for the filing of his record on appeal and setting the motion for hearing on March 14, 1961. Before said motion could be heard, however, petitioner filed his record on appeal and appeal bond on March 10, 1961.

On March 24, 1961, the lower court denied the appeal for having been filed out of time. Petitioner moved for reconsideration, calling attention to the fact that his appeal was perfected within the reglamentary period. But the court denied the motion for reconsideration on April 17, 1961, correcting its order of March 24, 1961 so as to add the following paragraph thereto:

"The motion for extension was set for hearing by the plaintiff on March 14, 1961. On the said date, the reglementary period of thirty days within which to perfect the appeal had already expired. Consequently, this Court has no power to extend a period which has already expired."

Whereupon, petitioner presented this petition before this Court.

The petition must be sustained.

What is necessary for the perfection of an appeal from a final order or judgment is that the appellant serve upon the adverse party and file with the trial court within 30 days from notice of said order or judgment a notice of appeal, an appeal bond, and a record on appeal, deducting, however, the time during which a motion to set aside

has been pending (Sec. 3, Rule 41, Rules of Court).

Petitioner received copy of the decision of the trial court on October 23, 1961. Four (4) days later, he filed his motion for reconsideration on October 27, 1961, and received denial thereof on February 15. Deducting the period during which his motion for reconsideration was pending, petitioner, therefore, still had 26 days or up to March 13, 1962 within which to perfect his appeal. He filed his notice of appeal on February 28, 1962, and his record on appeal and appeal bond on March 10, 1962. There is no question, then, that his appeal was perfected on time.

The reason given by the trial court for denying petitioner's appeal was that his motion to extend the period for the perfection thereof was set for hearing on March 14, 1962, or one day after his thirty-day period for the perfection of his appeal had already expired. But the motion to extend had become unnecessary when, on March 10, 1962, petitioner filed his record on appeal and appeal bond. Petitioner having thus complied with all the legal requirements for the perfection of his appeal before his statutory period expired, there was no need for the lower Court to hear or act upon his motion to extend said period, and all that was left for it to do was to approve the record and, thereafter, give due course to the appeal.

The orders complained of are, therefore, set aside, and the court a quo is instructed to set petitioner's record on appeal for hearing and if the same is found to be in order, to give due course to his appeal. Costs against respondents Primo Alcid and Vicente Manalo.

Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, Paredes and Dizon, JJ., concur.

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