

MA-AO SUGAR CENTRAL CO., INC., PETITIONER, VS. SINFOROSO CAÑETE, RESPONDENT.*G.R. No. L-26361. March 18, 1967*

Ponente: CASTRO, J.

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On May 8, 1963 Sinforoso Cañete filed a claim for compensation for his sickness of pulmonary tuberculosis with the regional office no. VII, Bacolod City (WCC Case 1286), against the Ma-ao Sugar Central, a corporation duly organized and existing under the laws of the Philippines, with principal offices at Ma-ao, Bago City, Negros Occidental. He alleged that he acquired his sickness as a direct result of not only his employment with the corporation as a locomotive brakeman and later as an operator thereof, but also other odd jobs that he was required to perform. This claim was controverted by the corporation in its Employer's Report and Physician's Report.

After due hearing, the acting referee of the said regional office rendered a decision, holding that the claim is not compensable under the Workmen's Compensation Act. Not satisfied with the decision, Cañete elevated the case to the Workmen's Compensation Commission for review (W.C. Case R07-1286).

The Commission found that the claim is compensable under section 3 of the Workmen's Compensation Act upon the theory of "aggravation of pre-existing illness". It likewise found that having controverted the claim for compensation after the period required under section 45 of the same Act, in spite of knowledge of the claimant's illness as early as September 8, 1961, the corporation is deemed to have waived its right to contest the claim for compensation; and that under section 14 likewise of the same Act, the claimant is entitled to 60% of his average weekly wage for the period he was disabled for work, from October 3, 1961, "when he stopped working and became totally disabled, up to the present" (May 24, 1966), or a total of 1,676 days. The Commission, therefore, reversed the decision of the regional office, and ordered the corporation (1) to pay Cañete in lump sum the amount of P4,000 as compensation; (2) to provide him with such further medical, surgical and hospital services and supplies as the nature of his sickness may require, until his tuberculosis shall have been arrested and cured, pursuant to section 13 of the same Act; and (3) to pay the Workmen's Compensation Fund the amount of P41 as fees, pursuant to section 55 of the Act.

The corporation on August 1, 1966 appealed the decision to this Court after its motion for reconsideration thereof was denied by a resolution of the Commission en banc. Before it could file a petition for certiorari against the Commission and Cañete,[1] the latter on August 20, 1966 moved for the execution of item (1) above, alleging that because of his present critical and almost futile physical condition he might die any-time, and, if compelled to await the final outcome of the appeal, might not be able to receive, much less enjoy, the said award. The petitioner opposed the motion on the grounds (1) that the appealed decision faces "inevitable reversal", since the decision itself "negates causal connection between employment and sickness," and in that event the movant will have no way of reimbursing the petitioner for any payment the latter may make pending the appeal; (2) that the special reason submitted by the claimant is not supported by competent evidence and exists only in his

imagination; and (3) that counsel for the petitioner is of the belief that the claimant "will not die yet before the decision of this Honorable Court * * * be handed down in due time."

The motion for execution of the judgment pending appeal having been denied on the ground that it does not contain sufficient verified precise data on the actual number of days of disability during the period of his regular seasonal work in the Ma-ao Sugar Central corresponding to the period from October 3, 1961 up to May 24, 1966 when the decision of the Workmen's Compensation Commission was promulgated, upon which to base an order of execution,[2] the claimant moved to have the resolution reconsidered, attaching to his motion for reconsideration his affidavit of merit in support of his physical and economic conditions, the affidavit of his personal physician, Dr. Napoleon A. Cordova, and that of Lolina Sison in whose house he has stayed since he stopped working with the corporation up to the present.

By resolution of October 20, 1966 we required Cañete to submit verified data on the number of days that he actually worked with the petitioner during the years 1956 thru 1961, "specifying the number of days of work corresponding to each of the years enumerated;" likewise required him to serve a copy of said verified data to the petitioner, who, in turn, was required to comment thereon within 15 days from receipt of the verified data. The petitioner filed an opposition to the motion for reconsideration, contending that the contents thereof are a mere repetition of the averments of the claimant's previous motion for execution which had already been denied. Raised in the same opposition is the question of "inaccurate and erroneous computation of award", allegedly made by the Commission, in that the claimant is not entitled to receive compensation for the entire period from August 31, 1961 to May 24, 1966 because the number of holidays embraced within the said period and the number of off-milling days, considering that the claimant worked only intermittently and during the milling season, should have been deducted from the said period.

Cañete filed the required verified data on December 6, 1966. The petitioner on the following December 27 asked for a 10-day extension within which to comment thereon, but this was opposed by Cañete on the ground that such extension cannot be had, since the 15-day period within which the required comment should have been filed had already expired,[3] and that the motion for extension is purposely dilatory. On January 3, 1967 the petitioner filed a motion with opposition, alleging that the data are "not actually verified" as required by section 6, Rule 7, new Rules of Court, and for this reason the period required in the Resolution of October 20, 1966 had not yet lapsed for it "does not commence to run as a logical consequence;" petitioner, therefore, argues that it is excused from commenting on the data as required.

Under section 2, Rule 39, new Rules of Court, the issuance of an order for the execution of a judgment pending appeal is within the sound discretion of the courts. Aside from the power conferred on this Court by section 10, Rule 43, of the same Rules, governing the effect of an appeal from the Commission to this Court, which provides that this Court may "direct otherwise upon such terms as it may deem just," it is conceded that this court has authority to order execution pending appeal. (*Velasco & Co. vs. Gochuico & Co.*, 28 Phil. 39, 43; see also 2 Moran, *Comments on the Rules of Court* [1963 ed.] p. 243, note 41.)

Said section 2 of Rule 39 provides that before the expiration of the time to appeal, or pending appeal, execution may issue, in the discretion of the court, on motion of the prevailing party with notice to the adverse party, upon good reasons to be stated in a special order. Present in this case is the first requisite that there must be a written motion by the prevailing party, with notice to the adverse party. The second requisite, namely, that there exist "good reasons" for the issuance of the order of execution pending appeal, is in issue, the petitioner contending that no good reasons exist.

After a careful review of the pleadings, namely, the motion for execution together with its annexes, the

opposition thereto as well as the supplemental petition filed by the petitioner, the respondent Cañete's motion for reconsideration of our Resolution of September 20, 1966 and the annexes thereof, and of the opposition thereto, together with the motion with opposition filed by the petitioner, we are more than satisfied that there are indeed superior reasons and urgent circumstances calling for the immediate execution of the award of compensation pending appeal, which far outweigh the objections interposed by the petitioner.

We find that from October 3, 1961, when Cañete was ordered by the petitioner to stop working, he has been afflicted with "active pulmonary tuberculosis, moderately advanced;" that he has been and is under the personal care of Dr. Napoleon A. Cordova to whose office he has reported three times a week since then up to the present; that said sickness has prevented him from performing any manner of work and has left him a destitute; and that because of his critical and deteriorated physical condition he is in constant danger of death.

We are more than convinced that Cañete's present physical condition and situation in life indeed are "compelling reasons of urgency or justice"[4] which justify immediate execution of the award of compensation.

The petitioner of course opposes the Commission's award as being "inaccurate and erroneous" allegedly on the ground that the holidays and the off-milling periods when Cañete did not perform any work for the company should have been deducted from the total number of days from August 31, 1961 to May 24, 1966. On this point, we observe that the petitioner has been rather uncooperative. Being in the best position to submit competent and trustworthy data on the matter of the service of Cañete, the petitioner has not submitted any, apparently with intention of obstructing this Court in the performance of its duties under the law. That is not all. When required to comment on the verified data submitted by Cañete, the petitioner, instead of submitting its comment, merely contented itself in stating that the data submitted by Cañete at the behest of this Court are not verified.

In this posture, this Court perforce must consider the pleadings submitted by Cañete to this Court as correct and as providing a sufficient basis for the computation of the compensation that the law entitles him to receive. According to his verified data, Cañete worked for an average of 335 days a year. From August 31, 1961 to May 24, 1966, at the rate of 335 working days a year, he would have worked for more than 1,580 days or more than 220 weeks. Pursuant to section 14 of the Workmen's Compensation Act, as amended, he is therefore entitled to the maximum compensation equivalent to a period of 208 weeks.

It is thus our view that the computation made by the Workmen's Compensation Commission, upon the foregoing premises and tested on the basis of the verified data submitted by Cañete, is not erroneous. To paraphrase the Commission, sixty percentum of Cañete's average weekly wage of P32.30 equals P19.32. This amount multiplied by 208 weeks equals P4,018.56. Cañete is therefore entitled to the maximum compensation of P4,000 authorized by law.

ACCORDINGLY, the motion of the respondent Sinforoso Cañete of August 15, 1966, for execution of item (1) of the dispositive portion of the decision of the Workmen's Compensation Commission of May 24, 1966, is hereby granted, and the petitioner Ma-ao Sugar Central Co., Inc. is hereby ordered to pay the respondent Cañete, without delay, the sum of Four Thousand Pesos (P4,000).

Concepcion, C.J., Reyes, Dizon, Regala, Makalintal, Bengzon, Zaldivar, and Sanchez, JJ., concur.

[1] The petition for certiorari, filed on August 25, 1966, was given due course under Resolution dated September 1966.

[2] Resolution dated October 20, 1966.

[3] The petitioner actually received the verified data on December 5, 1966, and, under Resolution of October 20, 1966, was required to comment thereon within 15 days from receipt thereof.

[4] Caragao, et al. vs. Maceren, et al., 92 Phil. 121, 124-125; see also De Leon, et al. vs. Soriano, et al., 75 Phil. 806, 812-815.

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