

LUZON STEVEDORING CORPORATION, PETITIONER-APPELLANT VS. SALVADOR CELORIO AND COURT OF INDUSTRIAL RELATIONS, RESPONDENTS-APPELLEES.

G.R. No. L-22542. July 31, 1968

Ponente: ZALDIVAR. J.

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ZALDIVAR. J.:

Appeal by certiorari to review the decision of the Court of Industrial Relations.

Petitioner Luzon Stevedoring Co., Inc., a domestic corporation, owns, maintains and operates fleets of watercrafts or tugboats for river, bay, coastwise and overseas service of shifting and towing ships, lighters and barges.

Respondent Salvador Celorio had been employed with petitioner since July 19, 1948, rendering continuous service as engineer on board its different tugboats, until March 9, 1956, except for one month in 1951 and another month in 1954. He was aboard the M/T EEL, a river and bay tugboat from July, 1948 up to August 23, 1949; on board the M/T CABRILLA, an overseas tugboat, from August 24, 1949 to June, 1952, and when this vessel was drydocked for repairs at petitioner's branch office at Iloilo City in July, 1952, he was called to Manila and assigned as a night crew in several other river and bay tugboats of the company from July, 1952 to February 15, 1953; then he was assigned to the M/T SNAPPER, a coastwise tugboat, operated by the Visayan Stevedore Transportation Company, the branch of petitioner at Iloilo City, from February 16, 1953 up to May 15, 1954; and lastly, he was reassigned to the M/T CABRILLA on May 16, 1954 and worked on board said tugboat up to March 9, 1956 when he was temporarily relieved upon his request due to his illness and pursuant to the advice of the company physician.

From March 9, 1956 respondent Celorio continued to report to the company physician for treatment and physical check up. On or about March 24, 1956 he was asked by the petitioner through Mr. Federico Calero, in-charge of personnel in the maritime department, to sign the shipping articles for the M/T CABRILLA'S next voyage overseas but he requested deferment of some more days, which request was granted. Subsequently, in April, 1956, having fully recovered from his ailment, he went to Mr. Calero and Commander McClosky, marine superintendent of the petitioner, informing them that he was already fit for, and willing to, work, but both refused him further employment, and his repeated requests for reinstatement to his former position were of no avail.

Having been thus refused reinstatement by the petitioner, on May 23, 1956 respondent Celorio filed a complaint against the former before the Court of First Instance of Manila, docketed as Civil Case No. 29802, praying, among other things, for reinstatement, payment of overtime pay, additional compensation for Sundays and legal holidays, and nighttime differential pay. While Celorio was in the stage of proving his claims, the petitioner moved for the dismissal of the case upon the ground that it was the Court of Industrial Relations, not the Court of First Instance, that had jurisdiction over the claims. The Court of First Instance sustained the motion to dismiss, and the aforesaid complaint was dismissed on October 7, 1958 without prejudice to the filing of the same before the proper court. Before the order of dismissal became final, or on October 13, 1958, respondent Celorio filed

with the respondent Court of Industrial Relations (hereinafter referred to as the CIR) a petition containing the same causes of action he pleaded before the Manila Court of First Instance. Said petition was docketed as Case No. 1114-V — which is now the case before this Court.

Summoned to answer the petition before the CIR in Case No. 1114-V petitioner filed, on October 21, 1958, a motion to dismiss, alleging as grounds (1) the pendency before the Court of First Instance of Manila, Branch XII, of an action involving the same parties and for the same causes of action; (2) prescription of action; (3) waiver of right to vacation and sick leave privilege; and (4) lack of jurisdiction of the CIR with respect to separation pay. Resolution of said motion was deferred by the CIR, per order dated December 18, 1958, and herein petitioner was directed to file its answer.

On January 13, 1959, petitioner filed its answer, admitting some allegations of the petition and denying others, and as special and affirmative defenses alleged substantially that: (1) respondent had abandoned and/or had voluntarily resigned from the service; (2) the company being a public utility was not prohibited from requiring its employees to work on Sundays and legal holidays; (3) the contract of employment did not provide for payment of night differential and additional compensation for Sunday and legal holiday work; (4) the contract did not provide for the enjoyment by respondent of 15 days vacation leave and 15 days sick leave with pay; (5) there was a pending action before the Court of First Instance of Manila, Case No. 29802, between the same parties and for the same causes of action; and (6) the claims for overtime pay, night differential pay, and additional compensation for Sunday and legal holiday work were barred by the statute of limitation. As counterclaim, petitioner prayed for P10,000.00 damages and P2,000.00 attorney's fees.

The issues Raving been joined, trial on the merits was commenced. On July 3, 1959, petitioner filed a supplementary motion to dismiss alleging that the CIR lacks jurisdiction over cases for collection of overtime wages and other money claims. Resolution of said supplementary motion was deferred per order , of the CIR, dated August 3, 1959. But on July 8, 1960, petitioner filed a petition reiterating its motions to dismiss upon the grounds of prescription and lack of jurisdiction. Then in another motion filed on September 20, 1960, it prayed for the suspension of the trial on the merits pending final determination of the grounds set forth in its motions to dismiss. In an order dated November 18, 1960, the CIR denied the motions to dismiss, holding with respect to prescription, that "the present action under consideration being but a continuation, of the aforestated Civil Case No. 29802 comes within the purview of the saving clause of the amendatory provision of R.A. No. 1993" and with respect to jurisdiction over money claims, that the same is vested in the CIR under the doctrine laid down by the Supreme Court in the PRISCO case.[1] Petitioner moved for reconsideration of said order but the same was denied by the court en bane. The order of November 18, 1960, as well as the resolution of the CIR en bane dated January 28, 1961, was appealed by the petitioner to this Court on a petition for certiorari. This Court, however, dismissed said petition for lack of merit, per resolution dated February 20, 1961, in G.R. No. L-18037.

Consequently, trial on the merits before the CIR resumed. After trial, the CIR rendered its decision, dated October 26, 1963, finding for respondent Celorio and granting him the following reliefs:

- (a) Payment of overtime services (4 hours a day) in all days including Sundays and legal holidays, during the period from July 19, 1948 to August 23, 1949;
- (b) Payment of overtime services rendered on order of management, from 7:00 A.M. to 10:00 A.M. in all days, including Sundays and legal holidays, during the period from February 16, 1953 up to May 15, 1954; and another additional twenty five per centum (25%) extra pay for night work performed also for the same period;
- (c) Payment of twenty five per centum additional compensation for services performed at night from 12:00 midnight to 4:00 A.M. in all days of the week, including Sundays and legal holidays, during the periods from

August 24, 1949 up to June, 1952, and from May 16, 1954 to March 9, 1956, except for one month in 1954 when he underwent an appendectomy; and

(d) Reinstatement to his former position with back wages from April 10, 1956 until actually reinstated, without loss of seniority right and other privilege appertaining to his employment or position.

From the above-mentioned decision, as well as from the resolution of the CIR en banc dated December 11, 1963 denying its motion for reconsideration of the decision, petitioner brought the present appeal.

In seeking the reversal of the decision and the resolution appealed from, petitioner contends that

"1. The CIR erred in not inhibiting itself, for lack of jurisdiction, from taking cognizance of the instant case;

"2. Assuming arguendo that the CIR has jurisdiction over the case at bar it erred in holding that respondent Celorio is entitled to reinstatement and back wages without loss of seniority right and other privileges, appertaining to his employment.

"3. Assuming arguendo that the CIR has jurisdiction over the case at bar, it erred in not holding that respondent Celorio's money claims have prescribed; and

"4. The CIR erred in finding for respondent Celorio as regards the latter's claim for unpaid overtime compensation and night differential."

1. On the question of jurisdiction of the Court of Industrial Relations, this Court in the case of Campos, et al., vs. Manila Railroad Co., et al., G.R. No. L-17905, May 25, 1962, said:

"We may, therefore, restate, for the benefit of the bench and the bar, that in order that the Court of Industrial Relations may acquire jurisdiction over a controversy in the light of Republic act No. 875, the following circumstances must be present: (a) there must exist between the parties an employer-employee relationship or the claimant must seek his reinstatement; and (b) the controversy must relate to a case certified by the President to the CIR as one involving national interest, or must have a bearing on an unfair labor practice charge, or must arise either under the Eight-Hour Labor Law, or under the Minimum Wage Law. In default of any of these circumstances the claim becomes a mere money claim that comes under the jurisdiction of the regular courts." [2]

While petitioner admits that respondent Celorio, in his petition with the court below, claims, among other things, for payment of unpaid overtime wages under the Eight-Hour Labor Law, that the employer-employee relationship between them had been severed, and that the latter seeks reinstatement to his former position [3] — circumstances which satisfy the requirements of the aforequoted ruling in the Campos case — yet it maintains that the CIR did not acquire jurisdiction over the case, arguing that since the relief of reinstatement cannot be granted by said court under the Termination Pay Law, the prayer for reinstatement is a "sham", a "mere artifice" to bring the case within the jurisdiction of said court, and, as such, all the claims of respondent Celorio are mere money claims that fall under the jurisdiction of the regular courts. Petitioner further argues that the prayer for reinstatement is only an alternative relief, payment of severance pay being the primary relief sought by respondent Celorio.

There is no merit in petitioner's argument. The court's jurisdiction over the subject matter of a litigation is determined by the allegations of the complaint or petition, the truth of which is to be theoretically admitted. [4] The allegations in the petition of respondent Celorio in the lower court clearly make out a cause of action which under the aforequoted ruling in the Campos case, is within the jurisdiction of the CIR. There is the allegation that the employer-employee relationship between the parties has been severed; there is the prayer for reinstatement; and there is the claim for overtime compensation which necessarily involves the Eight-Hour Labor Law — all of which are admitted by the petitioner as present in the petition. There is also the charge of unfair labor practice on

the part of the petitioner.[5] In *Serrano vs. Serrano, et al.*, L-19562, May 23, 1964, this Court declared:

" . . . It being settled that the Court of Industrial Relations has jurisdiction over claims for overtime compensation when coupled with a prayer for reinstatement, it is clear that the satisfaction of the unpaid wages may likewise be ordered incidentally to said jurisdiction. (*Gomez vs. North Camarines Lumber Co., Inc.*, L-11945, August 18, 1958)"[6]

In another case,[7] this Court held:

"Whenever a claim for overtime compensation is made, and there exists an employer-employee relationship between the claimant and the respondent, or although such relationship no longer exists, yet the petition includes a prayer for reinstatement, the case comes within the exclusive jurisdiction of the Court of Industrial Relations."

Whether the relief of reinstatement could be granted by the lower court or not is of no moment in determining the jurisdiction of the court. The jurisdiction of the court is not dependent on the validity of the demands set forth in the complaint or petition, or upon plaintiff's right to the relief demanded.[8] Moreover, jurisdiction once acquired is not lost until the case is terminated.[9] The contention that jurisdiction had not been acquired by the lower court because the prayer for reinstatement is merely an alternative relief should also be brushed aside because a prayer for alternative relief is allowed under the Rules of Court which have supplementary application to proceedings before the CIR. In *Philippine Wood Products and Alfredo Uy vs. CIR*, L-15279, June 30, 1961, this Court sustained the jurisdiction of the CIR over the petition for recovery of overtime pay and minimum wage under the Eight-Hour Labor and Minimum Wage Laws and for recovery of separation pay or for reinstatement with backpay. It may not be amiss to add, in this connection, that the circumstances obtaining in this case belie the claim of petitioner that respondent Celorio is not interested in his reinstatement, but only in the payment to him of severance pay. In the complaint filed by Celorio with the Court of First Instance of Manila, against the petitioner, adverted to earlier, his first cause of action was for reinstatement, alleging that he was separated from the service without cause and without notice on March 24, 1956. In his petition before the CIR it is clear that he is seeking his reinstatement to his former position.

But petitioner insists that the court a quo lacked the authority to try and decide the instant case because there is an absence of unfair labor practice charge, and that the decision subject of this appeal makes no mention that the petitioner is guilty of an unfair labor practice. Stated differently, petitioner argues that a mere claim for reinstatement does not suffice to bring a case within the jurisdiction of the CIR; that for the CIR to have jurisdiction it is imperatively necessary that the claim must border on an unfair labor practice charge. This contention is untenable. First, the petition contains in paragraphs 10 and 15 a charge of unfair labor practice as hereinbefore stated; and second, it misses the import of the ruling in the *Campos* case, as well as the other rulings hereinbefore quoted, which state that for the CIR to acquire jurisdiction over a claim for overtime compensation it is sufficient that said claim is coupled with an allegation that there still exists an employer-employee relationship between the parties, or if such relationship no longer exists, there is a prayer for reinstatement. The rule does not require that there must also be an unfair labor practice charge. In the case of *Rheem of the Philippines Inc., vs. Zoilo R. Ferrer*, supra, this Court said —

"We start with the demand for additional pay for work performed on Sundays and legal holidays. Right to such pay is, by explicit articulation in Section 4 of the Eight-Hour Labor Law, guaranteed a workingman. Consequently, failure to give additional compensation for such work is a violation of the said law. Here, the principal respondents were dismissed from their employment. But they seek reinstatement. Hence, the case, on this score, is within the coverage of the prevailing rule enunciated in *Campos et al., vs. Manila Railroad Co., et al.*, L-17905, May 25, 1962, thus — ... And, the CIR has jurisdiction."

Apropos to the issue of jurisdiction, it should be mentioned that since the CIR has jurisdiction over the claim for overtime pay, it has also the power to hear and decide the other money claims of respondent Celorio for they are matters which arose out of the same employment.[10] In this connection this Court said:

"... But considering that in this case, plaintiff-appellant's main claim is for the collection of overtime compensation, which comes within the jurisdiction of the Industrial Court, We see no reason for dividing the two causes of action involved herein and for holding that one falls within the jurisdiction of one court and the remaining cause of action of another court. Anyway, We believe that it is more in consonance with the ends of justice that both causes of action be cognizable and heard by only one court: the Court of Industrial Relations "[11]

2. The jurisdiction of the lower court over the present case having been shown, the next question to be resolved is whether said court erred in holding that respondent Celorio is entitled to reinstatement and back wages without loss of seniority right and other privileges appertaining to his employment. The pertinent portion of the decision appealed from reads:

"The Court, therefore, is of the opinion and so holds, that the failure of the petitioner to go with the M/T Cabrilla in its trip to Hongkong and return on March 10, 1956, and to sign up on March 24, 1956 the shipping articles for the vessel's next voyage to Hongkong and Singapore and return, were for a justifiable cause. The Court, likewise, finds that the separation of petitioner Salvador Celorio from the service was not valid and justified. Accordingly, the respondent company is hereby ordered to reinstate him to his former position with backwages from April 10, 1956 until actually reinstated, without loss of seniority right and other privileges appertaining to his employment or position."

The gist of petitioner's contention is that since the lower court found the separation of respondent Celorio "not valid and justified", without any mention that the company is guilty of unfair labor practice, the court is powerless to order the reinstatement of respondent Celorio. Upon the other hand, respondent Celorio argues that the broad power of the CIR to order reinstatement is not limited to cases involving unfair labor practice, and since the CIR has jurisdiction over this case where reinstatement is sought to reestablish the employer-employee relationship that was wrongfully severed, said Court has the power to grant the relief of reinstatement.

As stated earlier, the petition of respondent Celorio contains a charge of unfair labor practice. It is noted, however, that the decision in its entire breadth does not contain any finding that the petitioner is guilty of said charge. Neither is it shown that respondent Celorio had presented proofs to sustain his charge. Such being the case, the question that may be asked is: Does the CIR have authority to order reinstatement and award back wages when the dismissal is not entirely justified, but there is no proof of the existence of an unfair labor practice?

A similar question was raised in *National Labor Union vs. Insular-Yebana Tobacco Corporation*, G.R. No. L-15363, July 31, 1961,[12] and this Court's answer was in the negative. The reason for denying to the CIR said authority to order reinstatement and award back wages, is that the authority of the CIR to order reinstatement under Commonwealth Act 103 is confined to instances covered thereby, i.e., when the court is exercising its power of arbitration and conciliation.

More recently, this Court was faced with the issue of whether the dismissed employees could be reinstated with back salaries in view of the finding of the Court of Appeals that their dismissal was "unjust, unreasonable and unlawful." Said this Court:

"On the other hand, the dismissed employees have appealed on the ground that, since the Court of Appeals found that their dismissal was "unjust, unreasonable and unlawful", the Court of Appeals erred in not ordering their reinstatement and the payment of their back salaries.

"In support of the above contention, the appellant-employees cited the case of Gutierrez vs. Bachrach Motors Co., L-11298, and L-11603, 19 January 1959. While the holding that an action for reinstatement should be filed within a reasonable time, the said case did not precisely uphold the right to reinstatement of an unjustifiably dismissed employee. Nor have these appellants cited any specific statutory provision.

"On the contrary, Republic Act 1052, as amended by Republic Act 1787, impliedly recognizes the right of the employer to dismiss his employees (hired without definite period) whether for just cause, as therein defined or enumerated, or without it. If there be just cause, the employer is not required to serve any notice of discharge nor to disburse termination pay to the employee. If the dismissal be without just cause, the employer must serve timely notice to the employee; but if he fails to serve due notice, then, and only then, is the employer obliged to pay termination pay. Except where other applicable statutes provide differently, it is not the cause for the dismissal but the employer's failure to serve notice upon the employee that renders the employer answerable to the employee for terminal pay." [13]

In the case at bar, the CIR was not in the exercise of its power of mediation and conciliation as it was not acting on a labor case involving an industry indispensable to the national interest and certified by the President to the CIR. To such circumstance we add the fact that there is no finding that the petitioner had committed an unfair labor practice. It becomes clear, therefore, that the CIR has indeed no authority to order the reinstatement with back wages of respondent Celorio, although his dismissal was unjust and unlawful. Republic Act 1052, as amended by Republic Act 1787, better known as the Termination Pay Law, and the aforementioned ruling in the Philippine Refining Co. vs. Rodolfo Garcia case, *supra*, supports this view.

Corollary to the foregoing consideration, it may be asked: Since respondent Celorio is not entitled to reinstatement with back wages, is he entitled to separation pay? Petitioner contends that he is not entitled to severance pay because his contract of employment (shipping articles) was for a definite period, expiring on March 9, 1956, and that his failure to sign the shipping articles for the M/T CABRILLA'S next voyage overseas amounted to abandonment of duty. To the claim of expiration of employment, the industrial court refuted the same as follows:

"Respondent likewise alleges in its answer that petitioner's employment as engineer aboard the motor tugboat Cabrilla was not continuous as his services were contracted on trip basis. According to Celorio, he had signed between 30 to 50 shipping articles for this vessel. Section 1 of the shipping articles provides that at the commencement of every voyage the master (respondent herein) shall post a copy thereof in such part of his vessel as shall be accessible to the crew. Evidently, it would appear that copies of such document are on file in the company and yet it did not present same in Court or the payrolls of its employees to substantiate the alleged broken period of employment of petitioner to the M/T Cabrilla. On the other hand, its own witness Bartolome Campos declared that from 1949 to 1956 Celorio and he were together board said tugboat, which bolsters petitioner's claim of continuity of employment thereat." [14]

Anent the charge of abandonment of duty, the same was rejected by the lower court in this wise:

"The records likewise disclose that on or about March 24, 1956, Calero asked him to sign a shipping articles for the M/T Cabrilla's next voyage overseas, but because he had not yet been fully cured of his ailments, he asked Mr. Calero for a deferment of some more days and the latter directed him to see the company physician. Having done so, he returned and informed Mr. Calero that it was hard for him to go on overseas service due to his physical condition and for the further fact that the M/T Cabrilla has no physician on board, and Mr. Calero said: "if that is what you mean it is okay." (t.s.n., p. 40, S. Celorio, May 16, 1961). Subsequently, having fully recovered from his ailments, petitioner went to Mr. Calero and Commander McClosky in April, 1956, informing them that he was already fit and willing to work but both refused him employment and his repeated requests for reinstatement to his former position were of no avail.

"No evidence was adduced by respondent to destroy the facts recited above nor has it presented proof justifying its refusal to reinstate petitioner to his former position in spite of its announcement made during the hearing of October 15, 1962, that it intended to present Mr. Calero or in his absence the chief of the medical department to testify on the medical records of illness of Salvador Celorio when he came ashore on March 9, 1956. Such failure to present said witnesses, including Commander McClosky, is fatal to its cause as it leaves petitioner's evidence justifying his claim for reinstatement unchallenged and un rebutted. There is, therefore, no reason for not giving it full weight and credit. It may also be presumed that those medical records of illness of Celorio, if presented in Court, would be adverse (sic) to the cause of respondent.

"The shipping articles, Exhibit T, covering the voyage of the M/T Cabrilla from Manila to Hongkong and return would be 'expiring on April 9, 1956', according to the handwritten notation at the back thereof. Petitioner was being asked on March 24, 1956 to sign up a shipping articles for the same boat for the next trip from Manila to Hongkong and Singapore and return. Apparently such trip would commence only on April 10, 1956, or thereabout. So that, besides the fact that petitioner was not fit for work when he was being required to sign the shipping articles on March 24, 1956, his request for some more days stay would not prejudice the company's interest for then the vessel was not yet then scheduled to leave for Hongkong and Singapore. Similarly, petitioner's application for readmission back to work was apparently made for the vessel's next scheduled overseas voyage on April 10, 1956. Considering that the relief of the petitioner as 3rd engineer was temporary in character and based upon the records of this case, it is believed that the refusal by the respondent company to reinstate him to his former position was for no valid and good reason."

The foregoing are findings of facts supported by the evidence on record. This Court will not disturb those findings. Therefore, as the facts now appear, respondent Celorio's employment was not for a definite period; he had not abandoned his office or position; and he was not served notice of his separation from the service in accordance with Republic Act 1052, as amended by Republic Act 1787. Accordingly, petitioner is answerable to respondent Celorio for separation pay.

3. Coming now to the third issue, let it be noted that the lower court granted only the claims of respondent Celorio for overtime and night differential compensations. The contention of the petitioner that the money claims of Celorio have already prescribed should, therefore, be limited to the claims for overtime pay and night differential pay, which come under the provisions of Commonwealth Act No. 444, known as the Eight-Hour Labor Law. The pertinent provision of said law is its Section 7-A, which is an amendment embodied in Republic Act 1993 that added this new section to Commonwealth Act No. 444. This section reads:

"Section 7-A.— Any action to enforce any cause of action under this Act shall be commenced within three years after such cause of action accrued, otherwise, such shall be forever barred; Provided, however, That actions already commenced before the effective date of this Act, shall not be affected by the period herein prescribed." [15]

Petitioner contends that since the claim for unpaid overtime pay of respondent Celorio covers the period from July, 1948 to March 9, 1956, (exclusive of the period from February 16, 1953 to April 30, 1954), and the present case was filed only on October 13, 1958 with the CIR, the same was not presented within the reglementary period of three (3) years from the time the cause of action accrued. Petitioner adds that the filing of the claim with the Court of First Instance of Manila did not have the effect of tolling or suspending the prescriptive period because the claim was dismissed, citing in support of that contention the cases of *Conspecto vs. Fruto*, 36 Phil. 144; *Peralta, et al. vs. Alipio, et al.*, L-8273, Oct. 24, 1955; and *Ongsiaco, et al., vs. Ongsiaco, et al.*, L-7510, March 30, 1957, wherein it was ruled that the dismissal of an action leaves the parties in exactly the same position as though no action had been commenced.

On the other hand, respondent Celorio contends that his action to recover overtime pay and night differential pay

had not prescribed because he had filed a complaint with the Court of First Instance of Manila on May 23, 1956, or before the approval of Republic Act 1993, so that his case falls under the saving clause of the afore-quoted provision of Section 7-A which says "That actions already commenced before the effective date of this Act shall not be affected by the period herein prescribed." On June 22, 1957 when Republic Act 1993 took effect the action filed by respondent Celorio — Civil Case No. 29802 — was pending in the Court of First Instance of Manila, it is the stand of respondent Celorio that the action that he filed with the CIR is merely a continuation of the action that he had filed with the Court of First Instance of Manila.

We find that respondent Celorio had been vigilant and assertive in the prosecution of his claims against the petitioner. Immediately after he was denied reinstatement he filed a complaint against the petitioner for reinstatement, for payment of overtime pay, etc., before the Court of First Instance of Manila, on May 23, 1956. The case dragged on for more than two years, and it was only after the decision in the case of Gomez vs. North Camarines Lumber Co., Inc.[16] was promulgated that said complaint was dismissed upon the ground that the Court of First Instance did not have jurisdiction over the causes of action contained therein.[17] But before the order of dismissal became final respondent Celorio filed the present case with the CIR. The efforts displayed by respondent Celorio in prosecuting his claims against the petitioner negate prescription of action. The purpose of the law on prescription and the statute of limitations is to protect the person who is diligent and vigilant in asserting his right, and conversely to punish a person who sleeps on his right.[18]

Before the approval of Republic Act 1993, there was no provision in Commonwealth Act 444 limiting the period for the filing of an action to enforce a right under said law. It is our view, therefore, that when respondent Celorio filed his complaint before the Court of First Instance of Manila, on May 23, 1956, to recover overtime pay and night differential pay during the period starting from July 19, 1948 and ending on March 9, 1956, his action was filed well within the period provided for in Article 1144, paragraphs (1) and (2) of the Civil Code of the Philippines because it was an action based, either upon a written contract of employment (the shipping articles), or upon an obligation created by law — the employer's obligation to pay his employees overtime compensation and night differential pay being an obligation created by law.[20] Before the amendment of Commonwealth Act 444 by Republic Act 1993 the provisions of the Civil Code relating to prescription of actions governed the filing of actions to enforce a right under Commonwealth Act 444.

It is urged by petitioner, however, that the filing of the case before the Court of First Instance of Manila did not toll the running of the prescriptive period as provided in Section 7-A of Commonwealth Act 444, as amended by Republic Act 1993, because the Court of First Instance had no jurisdiction over the same in view of the ruling in the Gomez case, so that the determination of whether or not the action had prescribed must be reckoned from the date of the filing of the present case with the CIR.

We hold the view that the dismissal of the case by the Court of First Instance of Manila upon the ground of lack of jurisdiction should not be taken against respondent Celorio. In May, 1956 when he filed his claim with the Court of First Instance of Manila there was yet no clear and definite ruling on the scope of the jurisdictional competence of the CIR over claims for overtime compensation, night differentials, etc. The first attempt at defining the scope of the jurisdiction of the CIR under Republic Act 875 was made in PAFLU vs. Tan[21] promulgated on August 31, 1956. But the PAFLU vs. Tan case needed clarification. Then on August 18, 1958, in the Gomez case, supra, it was held that the CIR has jurisdiction over claims for overtime services, minimum wage and separation pay.[22] This ruling conflicted with the decision in PAFLU vs. Tan and the cases subsequent thereto.[23] It was only on May 23, 1960 in Price Stabilization Corp. vs. CIR, et al., L-13806, that a more definite ruling or doctrine was laid down regarding the CIR's jurisdiction under Republic Act 875.

It will thus be seen that respondent Celorio could not be blamed for filing his original complaint with the Court of

First Instance of Manila, a court of general jurisdiction. Even the petitioner itself then believed that the Court of First Instance of Manila had jurisdiction over the causes of action in the complaint because it did not raise the question of jurisdiction when the court took cognizance thereof. On the contrary, petitioner also invoked the jurisdiction of the court in the same action when it filed its answer with counterclaim.[24] Only on September 29, 1958, after the decision in the Gomez case was promulgated that the petitioner moved for the dismissal of the complaint upon the ground of lack of jurisdiction in the light of said ruling.[25] To make respondent Celorio suffer for the effects of the delay in the termination of the case in the Court of First Instance of Manila, to which delay the petitioner was also privy, would not be in keeping with the rudimentary tenets of fair play.

The rulings cited by the petitioner to the effect that the commencement of the action, by reason of its dismissal or abandonment, takes no time out of the period of prescription, cannot apply in this case. The dismissal of the case in the Court of First Instance of Manila was not at the instance of respondent Celorio. The principles laid down in the case of *Conspecto vs. Fruto*, supra, and others cited by the petitioner, refers to cases where the complaint or petition was dismissed at the plaintiff's instance or voluntary abandonment of the case by him.[26]

In the cases of *Manuel Tiberio vs. Manila Pilots Association*,[27] and *A.L. Ammen Transportation Co., Inc. vs. Jose Borja*,[28] this Court has held that the filing of the claim for overtime pay with the Regional Office of the Department of Labor — which was later declared to be without jurisdiction over money claims arising from violation of labor standards on working conditions, including unpaid overtime pay, separation pay, etc. when Section 25 of Reorganization Plan No. 25-A was declared unconstitutional[29] by this Court — had interrupted the running of the period of prescription provided for in Section 7-A of Commonwealth Act No. 444, as amended by Republic Act No. 1993. Thus in the Ammen case, supra, this Court said:

"On the question of prescription, petitioner claims that respondent's action was commenced only in December 1958; that in accordance with Republic Act 1993, amending Commonwealth Act No. 444, any action to enforce a cause of action under said act shall be commenced within three (3) years after its accrual; that respondent's cause of action having accrued more than three years before December 1958, his action was filed too late.

"We find petitioner's contention to be untenable. The Court of Industrial Relations made a finding of fact to the effect that respondent had commenced action against petitioner before June 22, 1957 — the effective date of Republic Act No. 1994, amending Commonwealth Act No. 444. This finding is not now reviewable.

"But even on the merits, petitioner's contention is without merit. Respondent itself admitted in its answer dated May 6, 1959, filed in the above-mentioned case No. 6-V Bicol, that petitioner had originally filed his complaint with the Department of Labor, Regional Office No. 4 on May 29, 1957. It is clear therefore that his action had already been commenced before the effective date of Republic Act 1993, and is covered by the exception provided for therein.

"But petitioner contends in this regard that the phrase 'actions already commenced' employed in the statute should be construed as meaning only actions filed in a regular court of justice. With this limited and narrow interpretation, we can not agree. The statute under consideration is undoubtedly a labor statute and, as such, must be liberally construed in favor of the laborer concerned. (Art. 1702, New Civil Code). Consequently the term 'actions' should include every judicial and administrative proceeding intended to enforce a right or secure redress for a wrong already committed. Since respondent admittedly first filed his claim against petitioner with the Department of Labor on May 29, 1957, in accordance with laws then in force, it seems clear that, as already stated, it is covered by the exception provided for in Republic Act No. 1993, whose date of effectivity was June 22, 1957."

It will be noted that Ammen case was decided after this Court had declared null and void the provision of Section 25 of Reorganization Plan No. 25-A which conferred to the regional offices of the Department of Labor original

and exclusive jurisdiction over money claims of laborers or employees.[30] It is clear, therefore, as ruled by this Court, that although the regional offices of the Department of Labor did not have jurisdiction over money claims, such as overtime pay, etc., the filing in said offices of said claims interrupted the running of the prescriptive period, or had placed the cause of action within the exception, as provided in Section 7-A of Commonwealth Act No. 444 as amended by Republic Act 1993.[31] And so, by parity of circumstance, the filing by respondent Celorio of his complaint with the Court of First Instance of Manila had thereby commenced his action for recovery of overtime pay and said action falls within the exempting proviso of Section 7-A of Commonwealth Act 444, as amended, even if said court subsequently dismissed the action for lack of jurisdiction.

4. Since we have shown that the action of respondent Celorio to recover overtime and night differential compensations had not prescribed, the next question to be determined is whether he is entitled to such compensations. In this connection, it may be well to quote the pertinent findings of the lower court. Regarding the payment for overtime services from July 19, 1948 to August 23, 1949, the CIR said:

"It has been established that petitioner worked as engineer on board the M/T Eel in the Manila area and at Guagua, Pampanga, towing lighters and barges at which latter area they stayed and worked for about nine(9) to ten (10) months. ... He had to maintain, operate, and watch the machineries of the vessel in continuous operation from 6:00 A.M. to 6:00 P.M. every day in all days of the week, i.e., including Sundays and legal holidays, during the whole period he was aboard the said tugboat. He did not enjoy rest periods because he was the only engineer and no one among the crew members could relieve or replace him and for the further fact that even meal time they were busy towing barges and lighters. He demanded from management the payment for overtime compensation and extra pay for services rendered on Sundays and legal holidays but of no avail. Respondent, in its answer, alleges that 'petitioner was paid to his entire satisfaction and in accordance with law for any and all overtime services which he was required to perform from time to time and for work rendered on Sundays and legal holidays during all the period that he was employed in the M/T 'Eel'. Clearly, such allegation confirms the assertion of petitioner that he worked twelve hours, or four (4) hours overtime, every day of the week. It must be emphasized that respondent did not adduce oral or documentary evidence of the alleged payment of such overtime services."

Regarding the payment of overtime and night services from February 16, 1953 to May 15, 1954, the CIR said:

"We will now discuss the employment of petitioner in the motor tugboat M/T Snapper from February 16, 1953 up to May 15, 1954. During the said period he worked as third engineer receiving a monthly salary of P200.00 and P60.00 'chow' allowance. The vessel was performing coastwise towing, salvaging and shifting of barges in harbors. His regular tour of duty was from 12:00 o'clock noon to 4:00 P.M. and from 12:00 o'clock midnight to 4:00 A.M. every day, including Sundays and legal holidays. Before his day shift, on order of management, he rendered extra work from 7:00 A.M. to 10:00 A.M. operating and checking the auxiliary machines, sounding of oil and water pressure and as consumption, and helping the second engineer. For such overtime and night services he was not paid extra remuneration in spite of demands. The records disclose that respondent did not adduce any iota of proof to discredit or rebut this claim. This being so, there is no reason for not giving full credit and merit to petitioner's evidence justifying his claim, and accordingly, approves the same. It has long been settled in this jurisdiction that laborers performing work at night time are entitled to at least twenty-five per centum extra pay and public utilities, like the respondent herein, are not exempted from the requirement of paying their employees such additional premium for services done at night. (Manila Railroad Company vs. CIR, et al., G.R. No.L-3868, August 28, 1951) "

Regarding the payment for night services from August 24, 1949 to June 1952 and from May 16, 1954 to March 9, 1956, the CIR said:

"Both evidence for the petitioner-and the respondent are agreed that engineers aboard the M/T Cabrilla had the following tour of duty, whether the vessel was in navigation or in port:

1st shift - 4:00 A.M. to 8:00 A.M. and from 4:00 P.M. to 8:00 P.M.

2nd shift - 8:00 A.M. to 12:00 noon and from 8:00 P.M. to 12:00 midnight.

3rd shift - 12:00 noon to 4:00 P.M. and from 12:00 midnight to 4:00 A.M.

An oiler is assigned in the main engine room to work with each engineer. Chief Engineer Bartolome Campos had the first shift. There is no dispute that during the whole employment of Salvador Celorio on board this vessel, he was assigned to the third shift, i.e., working four (4) hours in the day shift and four (4) hours at night or a total of eight (8) hours a day in all days of the week, including Sundays and legal holidays. There is no showing, oral or documentary, on the part of respondent that petitioner herein was given or paid additional pay for services performed at night. . . . The Court, therefore, finds, that except for one month in 1951 when petitioner was on leave when he took the marine examination and another month in 1954 when he was operated of appendectomy, he worked at night from 12:00 midnight to 4:00 A.M. in all days of the week, including Sundays and legal holidays, during the period from August 24, 1949 up to June, 1952, and from May 16, 1954 up to March 9, 1956, for which he was not paid extra remuneration.

The foregoing findings of the CIR are supported by substantial evidence on record, and there is no plausible reason for us to disturb those findings which, to Us, justify the payment to respondent Celorio of overtime pay and night differential pay by petitioner.

WHEREFORE, with the modification that respondent Celorio be not reinstated but should be paid separation pay, the decision and resolution appealed from are affirmed in all other respects. Costs against petitioner Luzon Stevedoring Co., Inc.

IT IS SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Sanchez, Angeles and Fernando, JJ., concur.

Ruiz Castro, J., took no part.

Judgment affirmed with modification.

[1] G.R. No. L-13806, promulgated May 23, 1960.

[2] Reiterated in *Bav View Hotel vs. Manila Hotel Workers' Union*, Zoilo R. Ferrer, et L-22979, January 27, 1967.

[3] Petitioner's Brief, pp. 1 & 11.

[4] *Abo vs. Philam Employees & Workers Union*, L-19912, January 30, 1965; *Bay-View Hotel Inc., vs. Manila Hotel Workers Union*, supra; and *National Shipyards and Steel Corporation vs. CIR, et al.*, L-21675, May 23, 1967.

[5] In *Bay View Hotel* case, supra, this Court said: "Another claim: The alleged dismissals of union members including union officials . . . 'without just cause, or for union activities.' This is an unfair labor practice charge over which the CIR unquestionably has jurisdiction." In paP. 10 of the petition, Celorio alleged discrimination, and also in par. 15.

[6] Cited in *National Shipyards and Steel Corporation vs. CIR, et al.*, supra.

[7] *Manila Port Service, et al., vs. CIR, et al.*, L-16904," Dec. 26, 1963.

[8] 21 CJS 45.

[9] Bay View Hotel vs. Manila Hotel Workers Union, *supra*.

[10] JBay View Hotel, Inc. vs. Manila Hotel Workers Union, *supra*; Rheem Phil. Inc. vs. Zoilo Ferrer, *supra*; and Martinez, et al. vs. Union de Maquinistas,, et al., L-19455 & L-19456, January 30, 1967.

[11] Gomez vs. North Camarines Lumber Co., Inc., L-11945, August 18, 1958.

[12] See also Baguio Gold Mining Company -vs. Benjamin Tabisola, et al., G.R. No. L-15265, April 27, 1962.

[13] Philippine Refining Co., Inc. vs. Rodolfo Garcia, et al., L-21871, September 27, 1966 & Rodolfo Garcia, et al., vs. Philippine Refining Co., Inc., L-21962, September 27, 1966.

[14] 14A parallel case in the United States is the case of Southern Steamship Company vs. National Labor Relations Board, 316 U.S. 31, 86 L.Ed. 1246, where it was ruled that the seaman's tenure and relationship to his ship and employer are not terminated by the mere expiration of the shipping articles. Said the U.S. Supreme Court:

"A concurrent finding of the National Labor Relations Board and the Circuit Court of Appeals that the tenure of employment of certain seamen had survived the termination of their shipping articles, and that refusal to reship them amounted to discharge by the employer, will not be disturbed by the Supreme Court, where it is shown that most of the seamen had been members of the crew for some time, and that it was the employer's custom to have seamen sign new articles for the next voyage when signing the old, but that, even when this was not done, the seamen considered themselves as employed for the next voyage unless notified to the contrary."

In an earlier case, National Labor Relations Board vs. Waterman S.S. Corp., 309 U.S. 206, 84 L. Ed. 704, 60 S Ct. 493, it was ruled that the expiration of the shipping articles does not terminate the employment relationship of seamen.

[15] Republic Act No. 1993 took effect on June 22, 1957, llic date of its approval.

[16] L-11945, August 18, 1958.

[17] See Order of CFI dated October 7, 1958, Annex 1 of Celorio's Brief.

[18] Fernandez vs. Cuerva & Co., L-21114, November 28, 1957; Tagarao vsi Garcia, 61 Phil. 5.

[19] Article 1144. The following actions must be brought within ten years from the time the right of action accrues:

" (1) Upon a written contract;

"(2) Upon an obligation created by law."

[20] Commonwealth Act 444, as amended.

[21] G.R. No. L-9115; 50 O.G. (13) 5836.

[22] This ruling was followed in NASSCO vs. Almin, L-9055, 28 November 1958.

[23] Philippine Wood Products vs. Court of Industrial Relations, G.R. No. L-15279, June 30, 1961.

[24] See Tenchavez vs. Escano, L-19671, Sept. 14, 1966.

[25] See Brief of respondent Celorio, p. 3.

[26] See Teotimo Billones, et al. vs. CIR, et al., G.R. No. L-17566 & Salvador Villardo, et al., vs. CIR, et al., L-17567, July 30, 1965.

[27] G.R. No. L-17661, December 28, 1961.

[28] G.R. No. L-17750, August 31, 1962.

[29] Corominas, et al. vs. The Labor Standard Commission, et al., G.R. No. L-14837, June 30, 1961.

[30] Corominas, et al. vs. Labor Standard Commission, supra; Manila Central University vs. Calupitan, L-15483; Baldrogan Co., Ltd., et al. vs. Fuentes, et al., L-15015, June 30, 1961.

[31] See also Federico Fernandez vs. P. Cuerva & Co., G.R. No. L-21114, November 28, 1967.

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