

**FEDERATION OF FREE WORKERS, GERARDO ROSANA, FE DIVINA,
PATRICIO MIRANDA, ARTURO GUEVARRA, PURIFICACION
CABRERA, ANGELINA GAVIOLA, TITO MARQUEZ, ELPIDIO ORINION,
DELIA ABUEG, TER...**

G.R. No. L-49983. April 20, 1992

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This petition for certiorari with prayer for the issuance of a writ of preliminary injunction seeks to annul and set aside two decisions issued by the respondent Amado G. Inciong, Deputy Minister of Labor and Employment in Re: Illegal Strike Staged by Federation of Free Workers at Aris Philippines and docketed as AJML-009-78, entitled "Aris (Philippines) Inc., v. Federation of Free Workers, Gerardo Rosana, et al." The decision dated April 11, 1978 declared the illegality of the strike; ordered all striking employees except the union officers to return to work within twenty four (24) hours from the receipt of the order; revoked the previous order dated April 2, 1978; granted the application for clearance to place all union officers under preventive suspension and placed the administration of the union and the collective bargaining agreement directly under the Federation of Free Workers. The second assailed decision dated January 29, 1979 granted the application for clearance to terminate the services of eighteen (18) union officers and member of the FFW local union.

The antecedent facts are as follows:

Petitioner Federation of Free Workers (FFW) is a legitimate labor organization duly registered with the Ministry of Labor while petitioners Gerardo Rosana, Fe Divina, Patricio Miranda, Arturo Guevarra, Purificacion Cabrera, Angelina Gaviola, Tito Marquez, Elpidio Orinion, Delia Abueg, Teresita Garcia, Elena Padilla, Dolores Daileg, Crescelia Ybanes, Elena Ortilla, Marietta Salonga, Rodolfo Labarinto and Aurelia San Juan are union officers of the FFW local union and Lourdes Luna is a member of the union at private respondent Aris (Philippines), Incorporated. Private respondent Aris (Philippines), Incorporated (company) is a duly organized domestic corporation engaged in the manufacture of leather gloves exclusively for export.

On September 17, 1977, a certification election was held in private respondent company under the supervision of the Bureau of Labor Relations. Petitioner FFW garnered the highest number of votes and was subsequently declared the authorized bargaining representative.

Consequently, private respondent company and petitioner FFW executed a memorandum of agreement on February 3, 1978 wherein (a) the company recognized FFW as the bargaining representative of the rank and file employees in the bargaining unit as of February 1, 1978; (b) the company and FFW shall negotiate for a new collective bargaining agreement, but in the meantime FFW will continue to administer the then existing CBA which expired on December 31, 1977 until a new CBA is executed; and (c) FFW will be entitled to all union dues starting February 1, 1978. The same hold-over CBA contained a "no strike - no lockout clause."

Pursuant to the aforementioned memorandum of agreement, the company and FFW met on February 7, 13, 15, 22 and 25, 1978 to negotiate for a new CBA that would govern the terms and conditions of employment of the rank and file employees in the company. However, the parties failed to reach any agreement and a deadlock ensued.

On February 28, 1978, the FFW through its president, petitioner Gerardo Rosana filed with the MOLE (now DOLE) a notice of strike.

The company and FFW met on March 7, 13, 27 and 29, 1978 at the Bureau of Labor Relations for conciliation upon summons by Director Carmelo Noriel. However, the parties still failed to reach, any accord, so on March 29, 1978, FFW requested respondent Amado G. Inciong (then Acting Secretary) to assume jurisdiction over the labor dispute and undertake to terminate the case within two weeks (see Rollo, p. 19).

On April 1, 1978, after the required thirty (30) days notice, the FFW staged a strike on all the three (3) plants of the company (see Rollo, pp. 19-20).

The private respondent company having been classified as a vital industry pursuant to Letter of Instruction No. 368 and thus protected by Presidential Decree No. 823, as amended against any strike, the respondent Deputy Minister assumed jurisdiction over the dispute.

A marathon conference was held on April 2, 1978 between the company and FFW in Camp Crame with the active mediation of respondent Inciong and Brig. Gen. Prospero Olivas.

During the conference, an order dated April 2, 1978 was issued by respondent Inciong directing the company to give a wage increase of P3.00 for three years and to give one day additional vacation and one day additional sick leave each and ordered the strikers to immediately return to work (see Rollo, pp. 32-33).

Notwithstanding the FFW's commitment to abide by the aforesaid order of April 2, 1978, the strikers not only failed to lift the picket lines and return to work but intensified further the barricades.

On April 4, 1978, the company filed with the Secretary of Labor an urgent motion to declare the strike illegal and to revoke the order of April 2, 1978 at the same time it applied for clearance to terminate the employment of the illegal strikers with the Regional Office of the Department of Labor and Employment for violation of Presidential Decree No. 823, as amended and General Order No. 5.

In the meantime, the illegal strikers were placed under preventive suspension.

The respondent Deputy Minister rendered a decision on April 11, 1978, to wit:

"Based on the foregoing and by virtue of the powers of the Secretary of Labor under PD 823 as amended, and in order to serve as a warning to all others who violate or disregard the law and the authorities duly empowered to enforce it, the following are hereby ordered:

"1. The strike and the strike activities undertaken by the union are hereby declared illegal;

"2. All striking employees except the union officers are hereby ordered to return to work within 24 hours from the receipt of this order by the parties. The company may hire new employees to replace those employees who fail to report for work without any valid reason within the prescribed period.

"3. The Order of 2 April 1978 is hereby revoke (d). Instead, the last position of management under pressure from the government and the strikers in the amount of P2.25 is hereby adopted, but allotted (sic) as follows:

"(a) P1.00 for the first eighteen (18) months; and

"(b) P1.25 for the second eighteen (18) months.

"The P1.00 increase is retroactive to January 1, 1978, but the new 3-year collective bargaining agreement shall be effective upon signing. In addition, the company shall give one additional vacation and sick leave each. All other provisions of the collective agreement which expired in December 1977 are deemed retained for incorporation into the new CBA.

"4. Clearance is hereby granted to the company to place all union officers under preventive suspension. However, the individual accountability of the union officers and members for the illegal strike and other illegal activities of the union shall be the subject of further hearing by the Secretary of Labor. Atty. Virgilio Sy of the Bureau of Labor Relations is hereby designated as hearing officer and he shall submit this report and recommendation to the Secretary of Labor within 20 working days from start of hearing.

"5. Pending determination of the accountability of the union officers, the administration of the union and the collective bargaining is hereby placed directly under the Federation of Free Workers (FFW).

"SO ORDERED." (Rollo, pp. 23-25)

On the same date, the company and FFW, through the mediation of respondent Inciong entered into a memorandum of agreement to end their dispute and the strike.

Pursuant to the aforementioned memorandum of agreement, the company and FFW executed a CBA on April 12, 1978 before respondent Inciong.

Anent the application for clearance to terminate the employment of the illegal strikers, the respondent Deputy Minister rendered a decision on January 29, 1979 granting or approving the application for clearance to terminate, the dispositive portion of which provides as follows:

"WHEREFORE, in view of the foregoing, the application for clearance to terminate the services of Gerardo Rosana, Fe Divina, Patricio Miranda, Arturo Guevarra, Purificacion Cabrera, Angelina Gaviola, Tito Marquez, Elpidio Orinion, Delia Abueg, Teresita Garcia, Elena Padilla, Dolores Daileg, Crescelia Ybanes, Elena Ortila, Marietta Salonga, Rodolfo Labarinto, Aurelia San Juan and Lourdes Luna is hereby granted and/ or approved.

"SO ORDERED." (Rollo, pp. 30-31)

Hence, this present petition.

This Court in a resolution dated March 30, 1979 issued a temporary restraining order enjoining respondents from enforcing or executing the order dated April 11, 1978 and the decision dated January 29, 1979 (see Rollo, pp. 44-45).

Petitioners stress that the respondent's order dated April 2, 1978 had become final and executory and therefore his subsequent decision dated April 11, 1978 could not legally revoke the said final order.

The law invoked by the petitioners is section 10 of Presidential Decree No. 823 as amended, to wit:

"Section 10. Where a labor dispute has not been resolved by the Regional Offices, the Bureau of Labor Relations, the National Labor Relations Commission and the voluntary arbitrators within the reglementary period, the Secretary of Labor is hereby authorized to assume jurisdiction over and summarily decide such dispute which poses an emergency or is critical to the national interest as determined by him on advise and recommendation of the Undersecretary of Labor, the Chairman of the National Labor Relations Commission and the Director of the Bureau of Labor Relations. Where the Labor Dispute Involves A Notice Of Strike Or Lockout, the Secretary of Labor May, At Any Time, Assume Jurisdiction And Summarily Decide It. The decision of the Secretary of Labor shall be final and executory unless stayed by the President of the Philippines." (Rollo, pp. 13-14)

In sum, petitioners insist that respondent Deputy Minister gravely abused his discretion and acted in total lack or in excess of his jurisdiction when he issued his decisions dated April 11, 1978 and January 29, 1979.

On the contrary, private respondent company emphasizes that the fact that the order dated April 2, 1978 declared on its face that the awards given therein are the "final and complete resolution of the issues" in the case does not mean that the said order may no longer be revoked or modified by the Minister (now Secretary) of Labor. It notes that the aforequoted phrase simply means that all the issues raised by the collective bargaining deadlock between the parties are already resolved and completely settled but did not make the order final and executory as of the date of issuance. Hence, the respondent Deputy Minister has the authority to modify and/or revoke his former order.

Furthermore, private respondent maintains that petitioners' failure to seasonably move for reconsideration or appeal the decision dated April 11, 1978 made it final and therefore may no longer be reviewed by the Supreme Court. It also underscores the fact that the petitioners are already estopped from questioning the assailed decisions because the parties already executed a memorandum of agreement on April 11, 1978 and subsequently, a collective bargaining agreement on April 12, 1978.

In conformity with the private respondent's stand, the respondent Deputy Minister through the Solicitor General argues that since the order dated April 2, 1978 was not appealed to the Office of the President, it is still well within the power of the respondent Deputy Minister to reconsider and revoke the same (see Rollo, p. 128).

Furthermore, the Solicitor General stresses that the remedy of appeal was not pursued by the petitioners but instead they allowed the decision dated April 11, 1978 to lapse into finality, hence, they cannot now contest the correctness of the said decision through a petition for certiorari eleven (11) months after its promulgation (see Rollo, p. 127).

The pivotal issue therefore, is whether or not the respondent Deputy Minister gravely abused his discretion when he revoked his former order dated April 2, 1978.

After a careful review of the records of this case, the Court finds the petition devoid of merit and holds that the respondent Deputy Minister did not gravely abuse his discretion when he revoked his previous order dated April 2, 1978 and subsequently issued his decisions dated April 11, 1978 and January 29, 1979.

The order dated April 2, 1978 of the Minister of Labor never assumed finality by the very own acts of petitioner union who broke its commitment to lift the strike when it resumed its blockades on the plant gates, erected tents, posted new placards and circulated new leaflets. The narration of the incidents of the controversy by the Deputy Minister of Labor in his decision dated April 11, 1978 shows that he even made a commitment to recommend affirmation by the Office of the President of his April 2 order and to ask management not to raise the illegality of the strike before the Department of Labor if only petitioner union would accept the same upon the opening of working hours on the following Monday, April 4. He renewed this commitment on April 4, 1978 when the union officials promised before General Prospero Olivas at Camp Crame and Mayor Joseph Estrada to dismantle their pickets and return to work immediately. However, petitioner union again backed out and continued their massive picketing. This Court is perplexed why petitioner union would now have the temerity to claim that said order of April 2, 1978 had attained finality.

Besides, it is very clear that the remedy of petitioners against the decision dated April 11, 1978 revoking his previous order dated April 2, 1978 is appeal to the Office of the President.

While the special civil action of certiorari may be availed of in the alternative situation where an appeal would not constitute a plain, speedy and adequate remedy, this is on the theoretical assumption that the right to appeal is still

available in the case. If, however, the remedy by appeal had already been lost and the loss was occasioned by petitioner's own neglect or error in the choice of remedies, certiorari cannot lie as a substitute or a tool to shield the petitioner from the adverse consequences of such neglect or error. The two remedies are mutually exclusive and not alternative or successive (*Manila Electric Company v. Court of Appeals*, G.R. No. 88396, July 4, 1990, 187 SCRA 200, 205).

Applying this fundamental principle to the case at bar, it is readily evident that the petitioners had ample opportunity to appeal the decision of the respondent Deputy Minister revoking his previous order dated April 2, 1978. The remedy of appeal to the Office of the President was not pursued by the petitioners. They nevertheless deliberately allowed the period for appeal to pass without interposing one. Worse, despite the then availability of the remaining period for appeal, the petitioners allowed the decision to lapse into finality. Hence, they cannot now contest the legality of the decision through the present petition for certiorari.

It is noteworthy that the present petition hardly assailed the correctness of the decision dated January 29, 1979 despite petitioners' supplemental petition seeking the reinstatement of the individual petitioners with full backwages and without loss of seniority.

The respondent Deputy Minister already declared the strike staged by the union illegal in his decision dated April 11, 1978, the pertinent portion of which provides:

"It should be noted that the strike and the strike activities undertaken by the union were patently illegal. First, the employer is engaged in a vital industry and, therefore, protected by PD 823 as amended from strikes and lockouts. Second, the Secretary of Labor had already assumed jurisdiction over the dispute and therefore, the parties are enjoined against strikes and lockouts. Third, the parties themselves have voluntarily agreed to maintain the status quo, while waiting for the summary decision of the Secretary of Labor. Moreover, even if the strike were not illegal per se, the strike activities staged by the union, especially the establishment of massive human barricades at all entrances to the company and the use of coercive methods to keep company officials and other personnel out, were definitely illegal." (Rollo, p. 20)

We already ruled in the case of *Union of Filipino Employees v. Nestle Philippines, Inc.* (G.R. Nos. 88710--13, December 19, 1990, 192 SCRA 396, 411) that "[a] strike that is undertaken despite the issuance by the Secretary of Labor of an assumption or certification order becomes a prohibited activity and thus illegal, pursuant to the second paragraph of Art. 264 of the Labor Code as amended (*Zamboanga Wood Products, Inc. v. NLRC*, G.R. 82088, October 13, 1989; 178 SCRA 482). The Union officers and members, as a result, are deemed to have lost their employment status for having knowingly participated in an illegal act."

Unrebutted evidence shows that the individual petitioners actively participated in the illegal strike staged by the union (see Rollo, pp. 27-28, 30). Hence, the termination of the services of the individual petitioners is justified.

All premises considered, the Court is convinced that the assailed decisions of the respondent Deputy Minister are not tainted with arbitrariness that would amount to grave abuse of discretion or lack of jurisdiction and therefore, We find no reason to disturb the same.

ACCORDINGLY, the petition is DISMISSED for lack of merit and the decisions of the Deputy Minister of Labor dated April 11, 1978 and January 29, 1979 are hereby AFFIRMED. The temporary restraining order issued by this Court on March 30, 1979 is hereby LIFTED.

SO ORDERED.

Narvasa, C.J., Cruz, and Grino-Aquino, JJ., concur.

Bellosillo, J., on leave.

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