

ZIRCON CEM-MIX, INC., MR. VICENTE CHUACUCO, AND MR. MARK YU, MGR., PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND FRANKIE G. GALIT, RESPONDENTS.

Ponente: REYES, J.

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REYES, J.:

Before us is the petition for certiorari under Rule 65 of the Rules of Court, filed by petitioners ZIRCON CEM-MIX, INC., Vicente Chuacuco and Mark Yu (collectively referred to as the petitioners and respondents below) which prays for the setting aside of the public respondent National Labor Relations Commission's (NLRC for brevity) Resolution issued on 05 July 2005 and its Affirmatory Resolution dated 25 October 2005, declaring private respondent Frankie G. Galit (Galit for brevity and complainant below) to be entitled to salary differentials and unpaid wages.

The facts of the case as embodied in the Labor Arbiter's decision and for which we adopt as our own, viz:

“ZIRCON CEM-MIX INC. is engaged in the ready mix cement business for construction use with its main office at 109 E. Criselda Bldg., Scout De Guia, Quezon City. It is headed by a certain Mr. Vincent Chucoco.

The said firm has a field office or factory known as ZIRCON CEM-MIX INC. at Brgy. Parulan, Plaridel, Bulacan. It is headed by certain Mr. Mark Yu.

The business establishment has fifty (50) under its employ in Bulacan alone one of whom is Frankie Galit, a driver of the said firm in Bulacan earning ONE HUNDRED EIGHTY FIVE PESOS (P185.00) per day with a work schedule from 8:00 A.M. to 5:00 P.M. He was employed by ZIRCON on August, 2001 and has been working there up to the date of his termination. Frankie Galit is a resident of Brgy. Ilang-Ilang, Guiguinto, Bulacan.

On January 13, 2003, Frankie Galit reported to the Chief Mechanic of ZIRCON that there was a transmission fault and gear oil problem with the truck that was assigned to him. The truck was a transit mixer of cement due for construction work. Despite his report, he was ordered by management to proceed to deliver the cement from Plaridel to Malabon City. He obeyed the directive but was not able to reach the place of delivery as the truck broke down at the expressway.

Upon knowledge of the non-delivery, he was ordered by management to prepare a written report regarding the failure of the truck to reach the place of delivery, which he did and this was signed by Chief Mechanic Jimmy Caculitan.

He was asked again to prepare another written report as the first one had been lost, according to management. He prepared another report, but this time the Chief Mechanic refused to sign his report. This was the first time that he sensed a foreboding of what management was planning against him.

On January 20, 2003, Mark Yu verbally notified him to pay the repair made on the transmission seal of the truck in the amount of TWENTY SEVEN THOUSAND PESOS (P27,000.00) or to resign.

The amount being exorbitant, Frankie Galit instead continued to report to work up to January 29, 2003 but

unable to get his salary from management from January 13, 2003 to January 29, 2003, he filed this Complaint the following day.

On the other hand, in order to controvert complainant's claims above, respondents made the following submission:

- Respondent Zircon Cem-Minx, Inc. ("respondent" for brevity), is a corporation existing and duly organized under the laws of the Republic of the Philippines with postal address at 109 E. Criselda Bldg., Scout de Guia, Quezon City. It is engaged in ready mix cements.
- Respondent Vincent Chuacuco is the President of Zircon Cem-Mix, Inc. with postal address same as above.
- Complainant is a former employee of the Respondent Company.
- Complainant Frankie G. Galit (herein complainant Galit) was employed by Zircon Cem-Mix sometime in 2001 as driver. From the statements of his colleagues, complainant Galit had the tendency of being tactless and careless in his job as a driver.
- In fact, on November 22, 2002, while driving a company truck, complainant Galit bumped a signboard and/or signage thereby destroying the same without complainant Galit knowing it. Worse, after being informed of the damage, complainant failed to report the matter to the management. And when asked to explain, complainant Galit readily admitted his carelessness when he wrote:
"PARA SA PAMUNUAN NANG ZIRCON CEM ANG PANGYAYARING NAGANAP NOON IKA 22 NG NOV. TAONG 2002 AY HINDI KO SINASADYA NABIGLA NA LANG AKO NANG SINABE SAKIN NG CREW NG PUMP NA TINAMAAN KO YUNG SIGN BOARD SA TAAS AT NANG BUMABA AKOT TINGNAN BASAG YONG KABILANG (SIDE)"

a copy of the complainant Galit's letter dated November 26, 2001 is hereto attached as Annex "1".

- Again, sometime on January 2003, in an apparent display of recklessness and without due regard to her (sic) job and the company properties, the truck which complainant Galit was driving suffered a serious damage when the transmission broke down due to the absence of oil because of complainant Galit's failure to check the same before driving it.
- Thus, on February 03, 2003, complainant Galit was furnished a letter asking him to explain why the damage should not be charged against him. A copy of the letter is hereto attached as Annex "2".
- However, complainant Galit refused to receive the letter (Annex "2") and to submit his explanation. Instead, he failed to report for work anymore after he damaged the truck he was driving until he filed the present case on January 30, 2002.
- Still, the respondent showed patience and forbearance that in the initial hearings of the case on February 20, 2003, March 07, 2003 and March 28, 2003, respondent manifested in open court and made it on record that it has terminated complainant Galit and that the latter should report for work immediately.
- Notwithstanding the manifestation to report for work in the hearings of February 20, March 28, 2003, complainant Galit still refused to report for work and refused to submit his explanation." (Rollo, pp. 53 to 56)

After the submission of the parties' position papers (Annex "C", pp. 22 to 28; Annex "D"; pp. 32 to 35, Rollo) and Reply to complainant's Position Paper (Annex "E", pp. 36 to 38, *ibid*), together with the documentary evidence, Labor Arbiter Leandro M. Jose issued a decision dated 02 December 2003, the dispositive portion thereof reads:

"WHEREFORE, premises considered, judgment is hereby rendered dismissing instant complaint for illegal

dismissal for lack of merit.

However, respondents are hereby ordered to compensate complainant his salary differential in the sum of P17,516.33 for having paid the latter remuneration below minimum wage.

Respondents are likewise held liable to pay complainant's salary for the period January 13 to 29, 2003 in the amount of P2,960.00.

All other claims are hereby dismissed for lack of merit.

SO ORDERED." (Rollo, pp. 58 to 59)

On 15 March, the petitioner filed a memorandum of Partial Appeal before the public respondent NLRC, which seeks the reversal of the Labor Arbiter's decision, declaring private respondent Galit's entitlement to salary differentials and unpaid wages. (Annex "F", Id., pp. 43 to 50)

In like manner, private respondent Galit filed a "Memorandum of Complainant/Appellee on the Partial Appeal made by Respondents/Appellants", which prays that the Labor Arbiter's decision be affirmed, subject to a modification that the money judgment should earn (10%) percent interest per annum until it is finally paid (Annex "G", Id., pp. 67 to 69).

After considering the respective positions of both parties, the public respondent NLRC in its first assailed resolution dated 05 July 2005, affirmed in toto Labor Arbiter Jose's decision dated 02 December 2003, the decretal text of which reads:

"WHEREFORE, premises considered, the Decision appealed from is hereby AFFIRMED in toto.

SO ORDERED." (Id., p. 17)

On petitioners' motion for reconsideration to the public respondent NLRC's first assailed resolution, the latter denied it in its second assailed resolution dated 25 October 2005, the dispositive portion of which reads:

"WHEREFORE, the Motion for Reconsideration is hereby DENIED for lack of merit.

No further motion of this nature shall be entertained.

SO ORDERED." (Id., p. 21)

In affirming the decision of the Labor Arbiter, the public respondent NLRC ratiocinated in this wise:

"The Complaint (Rollo I) specifies unpaid salaries and the Amended Complaint bears checks for E. Underpayment and item one (1) thereunder pertaining to salaries/wages (Rollo 5). This circumstance shows respondents' averments of absence of basis for the award of claimed underpayment to be incorrect thus We reject their argument that to consider the same after having been left out by complainant himself amounts to violation of respondents' right to due process. Furthermore the standard minimum wage is mandated by law as complainant correctly asserts and employers are bound to observe the same or be held liable for non-compliance therewith as the Labor Arbiter correctly determined. We noted that even at this late hour all that respondents raise is non-inclusion of the underpayment issue but they do not dispute complainant's claimed wage rate of one hundred eight-five (sic) pesos (P185.00) per day.

In respondents' Memorandum of Partial Appeal, they adduced photocopy of a payslip for complainant for 13 to 18 January 2003 (Annex "4"). We do not find said payslip an evidence of payment of claimed unpaid wages. We noted that despite the claim for unpaid wages specified in the complaint (Rollo I) and discussed in complainant's Position Paper (Rollo 10). Respondents did not refute the claim despite pleadings and evidences they had adduced (Position Paper, Rollo, 16-24; Reply, Rollo 26-32). That he reported for work until 29

January 2003 to get his salary from 13 to 29 January 2003 but was not able to get the same remains uncontroverted. We noted also that only one hundred eighty-five pesos (P185.00) is indicated on the payslip, or a day's wage of complaint while the number of days shown thereon to be covered is more, without any absence, late or undertime record for complainant in the given period. We thus sustain the Labor Arbiter's disposition on the matter.

Complainant's Memorandum on Respondents Partial Appeal denies recklessness and counters that respondents have the propensity for distorting facts. To sustain his denial, he adduced a management letter to him (Anne "1") informing him of a grant of rice incentive in appreciation of his performance.

However, he does not appeal from the Decision but instead merely prays for ten (10%) percent legal interest per annum on the money judgment until the same is paid in full.

Legal interest on a monetary award may be considered awards for consequential damages. However, without complainant's appeal from the Decision which does not award the legal interest, We are precluded from giving concern thereto. We are bound by the rule that he who does not appeal cannot obtain from the appellate court any affirmative relief than the one granted in the appealed decision. (*Filtex Industrial and Mfg. Corporation vs. NLRC*, 286 SCRA 245; *Lagandon vs. CA*, 290 SCRA 330)." (Id., pp. 15 to 17)

Unfazed, the petitioners brought this case before us via petition for certiorari, by ascribing grave abuse of discretion upon the public respondent NLRC when it affirmed the decision of Labor Arbiter Leandro M. Jose. (Id., p. 6)

The petition failed to sway us.

In this petition and even in their memorandum, the petitioners simply argue that private respondent Galit was paid in accordance with law and had, in fact, received all the wages due him before the institution of this instant complaint (Par. 4.2, Id., p. 08). As to the manner and circumstances that led to the petitioners' alleged fulfillment of this statutory obligation with private respondent Galit, the same were not explained and established in any stage of the proceedings.

At the outset, we emphasize that it is axiomatic that the findings of the Labor Arbiter, when affirmed by the NLRC, are generally binding on this court, unless patently and grossly erroneous. It is not the function of this court to analyze or weigh all over again the evidence already considered in the proceedings below; or reevaluate the credibility of witnesses; or substitute the findings of fact of an administrative tribunal which has expertise in its special field. (*Urbanes vs. Court of Appeals, et al.*, 444 SCRA 84; *German Machineries vs. Endaya*, 444 SCRA 329).

With more reason, this petition for certiorari is a special civil action where our review is limited to the consideration of whether the judge acted outside of or in excess of its jurisdiction by violating jurisdictional parameters or through grave abuse of discretion amounting to lack or excess of jurisdiction. Grave abuse of discretion implies such capricious and whimsical exercise of jurisdiction or, the exercise of power in an arbitrary or despotic manner because of passion or personal hostility or in a manner so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law (*Esguerra vs. Court of Appeals*, 267 SCRA 380, 399 to 400). Our review of the decision of the NLRC in a petition for certiorari under Rule 65 of the Revised Rules of Court is confined only to issues of want or excess of jurisdiction or grave abuse of discretion on the part of NLRC. It does not include an inquiry as to the correctness of the conclusion nor for us to substitute the findings of fact of the NLRC that has gained expertise in its specialized field. If findings of fact of the Labor Arbiter and the NLRC are supported by evidence on record, the same must be accorded due respect and finality (*German Machineries Corp. vs. Endaya, Id.*)

In the light of the foregoing established doctrines, conformably with the facts and the evidence adduced and admitted by the Labor Arbiter and NLRC, we hold that the public respondent NLRC did not gravely abuse its discretion when it affirmed the decision of the Labor Arbiter. Contrary to the petitioners' assertion, the claim for wage differentials was one of the reliefs being prayed for by private respondent Galit. The amended complaint (Annex "2", Rollo, p. 60) would clearly show that under the column: CAUSE OF ACTION – Letter E, Underpayment, 1. Salaries/Wages, etc., it is very visible and explicit that an (x) was indicated thereon. It simply means that aside from illegal dismissal, non-payment of separation pay and illegal deduction, which were all marked with "x", included in the private respondent Galit's amended complaint, was the relief for underpayment of salaries and wages. Hence, when the public respondent NLRC affirmed the findings of the Labor Arbiter for salary differentials, it was in accordance with private respondent Galit's causes of action and one of the reliefs prayed for. Well settled is the rule that in labor cases, technicality should not be permitted to stand in the way of equitably and completely resolving the rights and obligations of the parties (*Lopez, Jr. vs. National Labor Relations Commission*, 245 SCRA 644).

In the same breath, we hold that the public respondent NLRC had not gravely abused its discretion when it affirmed the Labor Arbiter's award of non-payment of private respondent Galit's wage for the period January 13 to 29, 2003 in the total amount of two thousand nine hundred sixty (P2,960.00) pesos. As adjudicated by the Labor Arbiter and confirmed by the public respondent NLRC, the petitioners failed to refute the claim of private respondent Galit that he did not receive his earned salary for January 13 up to 29, 2003. Well settled in labor cases that as a general rule, one who pleads payment has the burden of proving it. Even where the employee must allege non-payment, the general rule is that the burden rests on the employer to prove payment, rather than on the employee to prove non-payment. The reason for the rule is that the pertinent personnel files, payrolls, records, remittances and other similar documents – which will show that overtime, differentials, service incentive leave and other claims of workers have been paid – are not in the possession of the worker but in the custody and absolute control of the employer (*Villar vs. NLRC*, 331 SCRA 666 as cited in *Agabon, et al. vs. NLRC, et al.*, 442 SCRA 618). To borrow the words of the public respondent NLRC, except for a photocopy of the payslip of private respondent Galit for 13 to 18 January 2003 (Annex "A"), we do not find the said payslip as evidence of payment for the petitioner's unpaid wages.

WHEREFORE, in consideration of the foregoing premises, the instant petition is perforce dismissed. Accordingly, the public respondent NLRC's assailed resolutions dated 05 July 2005 and 25 October 2005 are hereby affirmed.

SO ORDERED.

Reyes, Jr. and Lanzas, JJ., concur.

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