

FEDERATION OF FREE WORKERS AND ALLIED SUGAR CENTRALS EMPLOYEES & WORKERS UNION-FFW, PETITIONERS, VS. HON. AMADO G. INCIONG, IN HIS CAPACITY AS ACTING SECRETARY OF LABOR, HON. RAC...

G.R. No. L-48848. May 11, 1988

Ponente: GANCAYCO, J.

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GANCAYCO, J.

This is a Petition erroneously captioned as one for certiorari and declaratory relief. This notwithstanding, and in the interest of justice, We have treated the same as one for certiorari under Rule 65 of the Rules of Court on account of the jurisdictional issues raised herein.

The record of the case discloses that the herein petitioner Federation of Free Workers is a labor organization registered with the Department of Labor and Employment. It is the certified collective bargaining agent of all the rank and file employees of the herein private respondent, the Allied Sugar Centrals Company, a registered partnership.

On April 21, 1977, Presidential Decree No. 1123 was promulgated requiring all employers in the private sector to pay their employees an across-the-board increase of P60.00 in their existing monthly emergency allowance as provided for in an earlier law, Presidential Decree No. 525. The increase was to take effect on May 1, 1977. The Decree also authorizes the Secretary of Labor to issue the appropriate rules necessary to implement the provisions of the said law, including such regulations to govern the procedure through which financially distressed employers may be exempted from the requirements of the same. This authorization is recited in Section 4 thereof to wit —

"SEC. 4. The Secretary of Labor and the Commissioner of the Budget shall issue appropriate rules and regulations to implement this Decree for their respective sectors. Under such rules and regulations, distressed employers whether public or private may be exempted while in such condition in the interest of development and employment."

On May 1, 1977, the Secretary of Labor issued the implementing rules and regulations pertaining to the Decree. The procedure prescribed in the said Rules regarding exemptions from the requirement of the law is found in Section 6 thereof. viz

"Section 6. Application for exemption. — Employers falling under Section 1, paragraph (1) thereof, may apply for exemption with the Secretary of Labor within thirty (30) days from the effectivity of these Rules. The application shall be under oath showing their inability to implement the Decree and the reasons therefor which shall be accompanied by a certified copy of the Income Statement and the Statement of Assets and Liabilities for the last two (2) calendar years filed with Government entities such as the Securities and Exchange Commission and the Bureau of Internal Revenue, and such other proofs as may be required by the Secretary of Labor.

"xxx xxx xxx."

Under Section 19 thereof, the said Rules were to take effect on the date of issuance. May 1, 1977.

Sometime in May, 1977, the private respondent was about to pay the increase in emergency living allowance mandated by the Decree. Preparations were made in order to effectuate the payment but the attempt to do so was short-lived. The private respondent decided against the payment and the plan was, therefore, aborted.

Meanwhile, on August 2, 1977, the petitioner wrote to the Secretary of Labor inquiring if the private respondent filed an application for exemption in accordance with the abovesited Section 6. The petitioner also requested that it be furnished a copy of such application if one had indeed been filed by the private respondent. On August 30, 1977, the herein respondent Chairman of the Wage Commission of the Department of Labor Rachel Fidelino sent her reply to the petitioner stating therein that there was no application in the name of the private respondent in the records of their office.[1]

On September 27, 1977 or more than 100 days after the said rules took effect, the private respondent filed with the Wage Commission its application for exemption from paying the P60.00 increase mandated under Presidential Decree No. 1123. The application was accompanied by some financial statements.

In support of the application, the private respondent stressed, inter alia, that it had suffered substantial losses from its operations during the fiscal years 1974-1975 and 1975-1976, and that if the company were to pay the increase, the financial position of the firm would be adversely affected and this could lead to an inevitable shutdown of the business. On October 19, 1977, the private respondent submitted its income tax return for the fiscal year concerned, a sworn statement regarding the total number of employees in the company, and other pertinent information relating to the same.[2]

Sometime thereafter, the respondent Chairman of the Wage Commission submitted her report to the Secretary of Labor recommending the approval of the said application.[3] On November 21, 1977, the herein respondent Acting Secretary of Labor Amado Inciong wrote to the private respondent informing it that its application was approved for a period of one year, effective May 1, 1977. The letter of approval recited therein that the same is final and unappealable.[4] A notice of the order of approval was sent to both the president of the petitioner labor organization and the private respondent.

On December 2, 1977, Chairman Fidelino received a letter from the petitioner dated November 17, 1977 again inquiring on the existence of any application on the part of the private respondent. Chairman Fidelino did not send any reply.

On December 15, 1977, the petitioner filed with the Office of the Secretary a motion for reconsideration seeking a reversal of the approval of the said application on the grounds that the exemption granted to the private respondent is discriminatory and that the firm is not in unsound financial condition.[5]

On March 3, 1978, the private respondent filed another application for exemption, this time for the year 1978. In a letter addressed to the Secretary of Labor dated May 31, 1978, the petitioner opposed the application and reiterated its objection to the exemption granted to the firm for 1977 for the same reasons earlier mentioned.[6]

On June 5, 1978, Chairman Fidelino overruled the opposition and motion for reconsideration which stressed that the private respondent does not appear to be in distressed financial condition as observed by a financial analyst of the Commission.[7] Thus, on June 9, 1978, Acting Secretary Inciong issued an order approving the second application for exemption covering 1978, for a period of one year effective May 1 thereof. The approval also recited therein that the same is final and unappealable.[8]

Hence this Petition. The petitioner argues that the herein public respondents — Acting Secretary Inciong and Chairman Fidelino committed a grave abuse of their discretion, amounting to loss of jurisdiction, in effecting the approval of both applications for exemption sought by the private respondent. The Petition seeks the annulment of the orders issued by the Acting Secretary relating to such approval. The substantial grounds relied upon are as follows —

(1)

The first application for exemption was filed beyond the 30-day reglementary period prescribed in Section 6 of the rules implementing the provisions of Presidential Decree No. 1123;

(2)

The first application for exemption was not under oath as required under Section 6 of the same rules;

(3)

The first application for exemption was not supported by the documents required also under Section 6 aforesaid;

(4)

Chairman Fidelino had no basis for recommending approval of the applications;

(5)

The petitioner was not afforded the opportunity to be heard in its opposition to the applications in violation of the due process clause of the Constitution;

(6)

The petitioner was never served a copy of the pertinent documents relating to the approval of both applications filed by the private respondent;

(7)

The first application for exemption was tainted with bad faith and unfair labor practice on the part of the private respondent;

(8)

The private respondent is in a financial position to pay the additional emergency allowance mandated by Presidential Decree No. 1123; and

(9)

The private respondent is using its corporate personality to avoid paying the said additional emergency allowance to the prejudice of the petitioner.

This Court required the respondents to file their Answer to the Petition.[9] So the respondents filed their Answer contesting therein the substantial allegations in the Petition. Thereafter, the parties submitted other additional pleadings. In due time, the case was deemed submitted for decision.

After a careful examination of the entire record of the case, We find the instant Petition to be devoid of merit.

(1) Although the private respondent admits that the first application was filed beyond the 30-day reglementary period mentioned in Section 6 of the implementing rules, We believe that compliance with the said period is merely directory. The cited provision itself employs the word may, to wit. —

"xxx. Employers falling under Section 1. paragraph (1) thereof, may apply for exemption with the Secretary of Labor within (30) days from the effectivity of these Rules, xxx' (Italics supplied.)

In *In re Guarina*,[10] this Court had this to say on the proper interpretation of the use of this word in a statute, viz

—
"Whether the word 'may' in a statute is to be construed as mandatory and imposing a duty, or merely as permissive and conferring discretion, is to be determined in each case from the apparent intention of the statute as gathered from the context, as well as from the language of the particular provision. The question in each case is whether, taken as a whole and viewed in the light of surrounding circumstances, it can be said that a purpose existed on the part of the legislator to enact a law mandatory in its character. If it can. then it should be given a mandatory effect; if not. then it should be given its ordinary permissive effect..... "

It must be stressed that Presidential Decree No. 1123 did not set a deadline within which employers may seek exemption therefrom.

While the ostensible purpose behind Presidential Decree No. 1123 is to protect wages, incomes and employment,[11] the law also takes into consideration the possibility that some private employers may not be in a financial position to pay an increase in the monetary benefits of their employees. Thus, the Decree allows distressed employers to seek exemptions while in such condition and the Secretary of Labor has been mandated to issue the pertinent rules governing the procedure by which distressed employers can seek such exemption. The standard set by the law to guide the Secretary in determining which employer should be so entitled is "the interest of development and employment." [12] The Decree, therefore, seeks a balancing of the interests of both employer and employee as regards the matter of exemption, i.e., the business ought to remain viable for the benefit of the private employer without prejudice to the pecuniary rights of the employee.

Taking into account this purpose of the Decree, We believe that a liberal construction of the 30-day period is in accord with that purpose. An employer who is distressed immediately before the lapse of the 30-day period is no different from one who becomes distressed immediately after the said period, as in the case of the private respondent. Both distressed employers would certainly need the benefit of the Decree. On the basis of the observations mentioned earlier, the Decree could not have intended to preclude from its coverage the latter employer. The implementing rules should echo, and not subvert, the purpose underlying the enabling law.

Inasmuch as compliance with the 30-day period recited in Section 6 is merely permissive, the approval of applications filed beyond the said period is addressed to the discretion of the Secretary of Labor. On this score, the petitioner has not satisfactorily demonstrated grave abuse of discretion on the part of the respondent Acting Secretary in approving the first application filed by the private respondent beyond the 30-day deadline.

(2) The allegation of the petitioner that the first application for exemption was not under oath is unavailing. Assuming, arguendo, that the application was not under oath, the infirmity appears to have been cured by the financial statement and report submitted to the Wage Commission by the private respondent. The statement and the report are certified by public accountants under their professional oath. The verification of the financial statements and the report is, under the circumstances obtaining in this case, more important than the verification of the application itself because the financial statement and report demonstrated the financial distress more comprehensively than the application.

However, compliance with the requirement as to verification should be emphasized. That should be the ideal situation. While a liberal attitude has been taken by this Court on this matter under the circumstances of this case, the Court reminds all litigants that the requirement as to verification must be complied with.

(3)

The petitioner also failed to show that the first application for exemption was not supported by the required financial documents. On the contrary, the application was accompanied by a financial statement for 1975 and a financial report for 1976.

(4)

The petitioner points out that the respondent Chairman of the Wage Commission had no basis to support her recommendation that the first application ought to be approved by the Secretary of Labor. This claim is belied by the fact that the applications had indeed been accompanied by pertinent documents and that financial statements were later submitted by the private respondent for the consideration of the Wage Commission.

(5)

The petitioner alleges that it was not afforded the opportunity to be heard in its opposition to the applications in violation of the due process clause of the Constitution. This contention is also unavailing. The petitioner was given the opportunity to contest the approval of the first application when it actually sought a reconsideration of the same in 1977. Moreover, the petitioner actually opposed the second application for exemption in 1978. The right to due process is not denied when an aggrieved party was given the opportunity to be heard.[13]

(6)

It is also alleged by the petitioner that it was never served copies of the pertinent documents relating to the approval of both applications filed by the private respondent. The claim does not appear to be substantiated. Moreover, the law and implementing rules do not require notice to employees of such application.

(7)

The petitioner also stresses that the first application was tainted with bad faith because the same was filed only after the private respondent had second thoughts about paying the mandated increase in emergency allowance. The petitioner calls attention to the fact that the private respondent was actually ready to pay the same as early as May, 1977.

Whatever reason prompted the private respondent to change its mind is of no moment. A change of mind does not

automatically amount to bad faith. Bad faith cannot be presumed. It is possible that the private respondent had reconsidered the idea of paying the increase for some reason or another and opted instead to avail of the benefit under Presidential Decree No. 1123. The private respondent had the right to do so if it believes that it ought to be within the coverage of the said law.

The issue as to whether or not the private respondent is guilty of unfair labor practice is beyond the scope of the instant Petition which relates to a case proceeding from the Wage Commission. That issue should be ventilated in the proper forum, the National Labor Relations Commission.

(8)

The claim that the private respondent is in a financial position to pay the additional emergency allowance provided for in Presidential Decree No. 1123 is likewise untenable. The Wage Commission and the Department of Labor and Employment are the administrative agencies which are in a better position to assess the matter on account of their expertise in the same. In the absence of any grave abuse of discretion on their part, and none has been shown in the instant Petition, their recommendations will be respected by this Court. Indeed, public respondents stressed that it is of public knowledge that in 1977 and 1978, the sugar industry was in financial straits due to the worldwide decline in the price of sugar.

(9)

Finally, there is no cogent basis for the allegation that the private respondent is using its corporate personality in such a way as to avoid its responsibility under the provisions of the Decree. The private respondent is a registered commercial partnership, not a corporate entity. The doctrine of piercing the corporate veil is not applicable in this case.

For their part, the respondents argue that the petitioner did not exhaust all administrative remedies available before it sought judicial review. They are of the view that the rulings of the respondent Acting Secretary of Labor can still be elevated to the President of the Philippines for review. This view is traversed by the fact that, as stated by the respondent Acting Secretary in approving both applications, such approval is final and unappealable.^[14] Moreover, in the absence of a constitutional provision or a statute to the contrary, the official acts of a Department Secretary are deemed the acts of the President himself unless disapproved or reprobated by the latter. This is the doctrine of qualified political agency announced in *Villena v. The Secretary of the Interior*.^[15] to wit —

"... under the presidential type of government which we have adopted and considering the departmental organization established and continued in force by ... our Constitution, all executive and administrative organizations are adjuncts of the Executive Department, the heads of the various executive departments are assistants and agents of the Chief Executive, and, except in cases where the Chief Executive is required by the Constitution or the law to act in person or the exigencies of the situation demand that he act personally, the multifarious executive and administrative functions of the Chief Executive are performed by and through the executive departments, and the acts of the secretaries of such departments, performed and promulgated in the regular course of business, are, unless disapproved or reprobated by the Chief Executive, presumptively the acts of the Chief Executive, xxx."

Inasmuch as no grave abuse of discretion appears to have been committed by the herein public respondents, the writ of certiorari sought by the petitioner cannot issue.

WHEREFORE, in view of the foregoing, the instant Petition is hereby DISMISSED for lack of merit. We make no pronouncement as to costs.

SO ORDERED.

Yap, C.J., Fernan, Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Padilla, Bidin, Sarmiento, Cortes, and Griño-Aquino, JJ., concur.

- [1] Annex "G". Petition: page 64. Rollo.
- [2] Page 87. Rollo.
- [3] Annex "M". Petition: page 80. Rollo.
- [4] Annex "A", Petition: page 56. Rollo.
- [5] Annex "W", Petition: pages 99 to 102. Rollo.
- [6] Annex "X". Petition: pages 103 to 105. Rollo.
- [7] Annex "Y". Petition: page 107. Rollo.
- [8] Annex "B", Petition: page 58. Rollo.
- [9] Page 142. Rollo. The public respondents were represented by the Office of the Solicitor General.
- [10] 24 Phil. 37, 41 (1913).
- [11] First "whereas" clause of Presidential Decree No. 1123.
- [12] Section 4. Presidential Decree No. 1123.
- [13] Maglasang v. Ople. 63 SCRA 508 (1975).
- [14] DOLE Policy Instructions No. 27. 23 June 1977.
- [15] 67 Phil. 451, at 463. (1939).

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