

THE EDWARD J. NELL COMPANY, PETITIONER, VS. RICARDO CUBACUB AND THE COURT OF INDUSTRIAL RELATIONS, RESPONDENTS.

G.R. No. L-20842. June 23, 1965

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Petitioner is a domestic corporation and respondent Ricardo Cubacub was one of its employees. On September 5, 1962, Cubacub filed a petition against the company in respondent Court of Industrial Relations for "reinstatement" and payment of "back wages" and attorney's fees (Case No. 1740-V).

The following are the allegations in that petition: that sometime in October 1955, when as such employee lie was receiving P4.50 a day, the company refused to Accept him for work; that he learned that the refusal was based on the fact that there was a pending homicide case against him; that the said case had nothing to do with his employment and was not a legal ground for his dismissal, since he was out on bail and could work freely; that the company promised to reinstate him as soon as the criminal case was settled; that he was convicted in 1958 and confined in the national penitentiary until April 1962, when he was released on parole; that he promptly reported for reinstatement to the company, but was turned down for lack of available vacancy; and that because of his unlawful dismissal he suffered actual and moral damages.

Petitioner here filed a motion to dismiss on three grounds: (1) that the court had no jurisdiction over the subject-matter of the case; (2) that the action had prescribed; and (3) that the petition states no cause of action. Cubacub opposed the motion and petitioner replied to the opposition. On November 15, 1962 respondent court, over the signature of Judge Arsenio J. Martinez, issued the following order:

"After going over the pleadings of the parties, the court finds that questions of law and fact are involved in this ease. Therefore, the determination of respondent's motion to dismiss is hereby deferred until the trial, so that all questions of law and fact may be determined in a single proceeding and decided in a single decision in pursuance of Section 3, Rule 8 of the Rules of Court."

A motion to reconsider the foregoing order was filed, but was denied by the court en banc on January 5, 1963, whereupon the instant petition for certiorari and prohibition was presented here, to set aside the orders of November 15, 1962 and January 5, 1963, and to enjoin respondent court from further proceeding.

The question which petitioner has submitted for our resolution is whether or not respondent court had jurisdiction over the case and, if it had none, whether or not it committed a grave abuse of discretion in deferring until after trial the consideration of petitioner's motion for dismissal. Evidently, respondent court believed that the grounds upon which said motion was based were not indubitable when it made reference to questions of law and fact which had to be determined in a single proceeding. Although three grounds were alleged in the motion, and that of prescription might conceivably require presentation of evidence, the question of jurisdiction could be resolved on the basis of the allegations in Cubacub's petition alone. It is a settled rule that the jurisdiction of a court over

the subject-matter is determined by the allegations in the complaint; and when a motion to dismiss is filed for lack of jurisdiction those allegations are deemed admitted for purposes of such motion, so that it may be resolved without waiting for the trial.[1] Thus it has been held that the consideration thereof may not be postponed in the hope that the evidence may yield other qualifying or concurring data which would bring the case under the court's jurisdiction.[2]

Now then, is the claim of respondent Cubacub for reinstatement and back wages, as recited in the petition filed by him below, within the jurisdiction of the Court of Industrial Relations? We have stated in a number of cases that for said court to have jurisdiction in a controversy, the following circumstances must be present (a) that there exists between the parties an employer-employee relationship, or the claimant seeks his reinstatement, and (b) the controversy relates to a case certified by the President to the Court of Industrial Relations as one involving national interest, or has a bearing on an unfair labor practice charge, or arises either under the Eight-Hour Labor Law or under the Minimum Wage Law.[3] The claim or demand here in question does not meet those requirements. While respondent Cubacub seeks reinstatement, he having ceased to be employed since 1955, none of the other circumstances is present. An analogous case is that of *San Miguel Brewery, Inc. vs. Floresca and CIR*, No. L-15127, April 26, 1962, where complainant Floresca filed a complaint for reinstatement, back salaries and separation pay, alleging dismissal without cause. The Court of Industrial Relations denied respondent company's motion to dismiss, and upon review of the order of denial we held that the prayer for reinstatement and back salaries did not bring the case within the jurisdiction of said court since it did not involve any one of the other circumstances enumerated above. The fact that in said case there was an outright denial of the motion to dismiss while in the case at bar there was merely a deferment of the consideration of a similar motion makes no material differences, for if the lack of jurisdiction is clear from the very allegations of the complaint or petition, further proceedings in the case would be a nullity and waste of time, and therefore although such order is interlocutory in nature they may be stopped by a writ of certiorari and prohibition.[4]

In reality, judging from his own allegations, respondent Cubacub virtually ceased to be an employee of petitioner when he was convicted of homicide and sentenced to a term of imprisonment, which he served from 1958 to 1962, and his petition below was for reemployment based on an alleged promise of the employer to take him back to work "after his criminal case was settled." The action therefore is one for specific performance, that is, for the enforcement of such promise, and is cognizable by ordinary courts and not by the Court of Industrial Relations.

The writ prayed for is granted and respondent court is ordered to desist from taking cognizance of the case in question (No. 1740-V). No pronouncement as to costs.

Bengzon, C.J., Bautista Angelo, Concepción, Reyes, J.B.L., Paredes, Dizon, Regala, Bengzon, J.P., and Zaldivar, JJ., concur.

Writ granted.

[1] *Campes Rueda Corporation vs. Bautista*, 116 Phil. 546; *Abo vs. Philame (NG) Employees and Workers Union*, PTWGO, L-19912, January 30, 1965.

[2] *Administrator of Hacienda Luisita Estate vs. Alberto*, L-1233, Oct. 31, 1958; *Abo vs. Philame, etc.*, supra.

[3] *National Mines & Allied Workers Union vs. Phil. Iron Mines, Inc.*, L-19372, Oct. 31, 1964; *Campos vs. MRR, et al.*, 115 Phil. 74; *Perez vs. CIR, et al.*, 117 Phil. 286.

[4] *Philippine International Fair, Inc. vs. Hon. Fidel Ibañez*, 94 Phil. 424.

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