

GOVERNMENT SERVICE INSURANCE SYSTEM, PETITIONER, VS. GSIS SUPERVISORS UNION AND COURT OF INDUSTRIAL RELATIONS, RESPONDENTS.

G.R. No. L-32018. April 30, 1979

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

On review by Certiorari are: 1) the Order of the Court of Industrial Relations dated April 29, 1970 in IPA Case No. 87 (8) entitled Government Service Insurance System Supervisor's Union (GSISSU) vs. Government Service Insurance System (GSIS) now G.R. No. L-32018, and 2) the Order of the same Court dated June 10, 1970 in IPA Case No. 87 (9), entitled Government Service Insurance System Employees Association - PAGE (GSISEA-PAGE) vs. GSIS, GSISEA-CUGCO, Intervenor, now G.R. No. L-32397.

The antecedent facts are as follows: On January 1, 1968, petitioner GSIS implemented a new and higher pay scale to which the salaries of all GSIS employees and officials were adjusted according to a uniform pattern. The increase or adjustment was equivalent to the next higher rate in the new scale not necessarily the next higher step in that new scale. For instance, in Pay Class 12, the first step under the old scale was P12,000. In the new scale, the first step was P12,600. Therefore, the employee receiving P12,000 under the old scale would receive an adjustment of P600.00.[1] However, it was discovered that some employees headed by Manuel Perlada (Pay Classes 7 to 13) received higher salary readjustment although some of them were merely "acting designees". Other employees belonging to the rank and file (Pay Classes 1-6) supposedly members of GSISEA-CUGCO received the same adjustments as the aforementioned employees also effective January 1, 1968. Members of the GSISSU and the GSISEA-PAGE did not. This caused a growing agitation among the rest of the GSIS officials and employees for the grant to them of the same benefits.

In a letter dated March 19, 1970 addressed to the GSIS General Manager, Mr. V. N. Magadia, as President of GSISSU, requested for a one (1) rate increase of salary for all employees and officials of the GSIS. Magadia also expressed the general sentiment and feelings of discrimination of the employees due to the bigger adjustments given to some employees who were merely acting designees in their positions (Exhibit "D"). Mr. Federico Romero, Personnel Manager of GSIS, in a Memorandum dated March 19, 1970 addressed to the GSIS General Manager, also recommended the extension of the same benefits given to certain employees to all other employees of the System even if it was to entail a budget of P4 million (Exhibit "A").

Apparently, no immediate action was taken by the GSIS on the matter. Hence, GSISSU and GSISEA-PAGE filed their Petitions against the GSIS with the Court of Industrial Relations on March 19, 1970 (IPA Case No. 87 [8]), and March 20, 1970 (IPA Case No. 87 [9]), respectively. Both Petitions alleged that the GSIS, to discourage membership in their respective Unions, by-passed their members and others in promotion in pay in the bargaining unit they represented, while the GSIS unduly favored a number of employees who were members of GSISEA-CUGCO by granting said employees increases in pay effective January 1, 1968. Petitioners also alleged

that despite demands made upon the GSIS to grant them a similar one (1) rate increase in pay effective January 1, 1968, the latter refused to grant said demands, and that as a consequence, petitioners had to retain counsel on a contingent basis. (The matter of attorney's fees claimed by Attys. Magadia and Uy is the subject of another appeal in G.R. No. L-32772). Petitioners then demanded the same increase effective January 1, 1968.

On April 1, 1970, the GSIS filed identical Oppositions to the Petitions alleging that pursuant to GSIS Board Resolution No. 1461, approved on September 3, 1968, all officials and employees of the System covered by the collective bargaining agreement of March 26, 1968 were given and paid the salary increases and adjustments effective January 1, 1968 subject to the terms and conditions provided therein.

Both cases were jointly tried by the Court of Industrial Relations.

On April 17, 1970, GSISEA-CUGCO filed a Motion for Intervention in IPA Case No. 87 (9) (GSISEA-PAGE vs. GSIS), which was allowed by respondent Court. In its Answer in Intervention filed on April 25, 1970, GSISEA-CUGCO averred that the increases given to some of its members were part of the collective bargaining agreement signed between the GSIS and GSISEA-CUGCO; that even before the implementation of said increase, Mr. Evangelo Savellano, acting President of GSISEA-CUGCO, in a letter dated February 10, 1970 to the General Manager of GSIS, demanded the implementation of the collective bargaining agreement for all members of GSISEA-CUGCO (Exhibit "I"); that as the representative of 2,500 members of GSISEA-CUGCO, intervenor prayed that should the Court be minded to grant the one (1) rate increase to petitioners (GSISEA-PAGE), the same be extended also to all its members (GSISEA-CUGCO), without any deduction of attorney's fees being claimed by Attys. Magadia and Uy.

After hearing, the Court of Industrial Relations issued the challenged Order, dated April 29, 1970, in IPA Case No. 87 (8) (GSISSU vs. GSIS), the dispositive portion of which reads as follows:

"WHEREFORE, respondent GSIS is hereby ordered to cease and desist from discriminating against petitioner, its members and other employees in the unit of supervisors, and to grant to all of said employees the same salary readjustment/increase as those already granted to Manuel Perlada and other members of GSISEA-CUGCO provided they have not reached the maximum step of their respective pay classes."

The records show that respondent GSIS received a copy of the above Order on April 30, 1970. Respondent GSIS filed its Motion for Reconsideration of the Order of April 29, 1970 on May 5, 1970, which was opposed by petitioner GSISSU on the ground that said Motion for Reconsideration was filed out of time. On May 8, 1970, the Court of Industrial Relations en banc denied the Motion for Reconsideration as it was filed beyond the reglementary period provided by section 17-A of the Rules of the Court of Industrial Relations. GSIS filed a Notice of Appeal on May 29, 1970.

In the meantime, hearing in IPA Case No. 87 (9) (GSISEA-PAGE vs. GSIS) continued in view of the intervention filed by GSISEA-CUGCO. Other incidents pertaining to attorney's fees were also being resolved by the Court of Industrial Relations, subject matter of other appeals in G.R. No. L-32772 and G.R. No. L-32854.

However, on June 10, 1970, the Court of Industrial Relations issued the Order in IPA Case No. 87 (9) (GSISEA-PAGE vs. GSIS, GSISEA-CUGCO, Intervenor), the decretal portion of which reads:

"WHEREFORE, the respondent is hereby ordered to grant all rank and file employees (Pay Classes 1 to 6) the same salary readjustment/increase as that already granted to Manuel Perlada and other members of Intervenor GSISEA-CUGCO provided they have not yet reached the maximum step of their respective pay classes; and to deduct from the employees in Pay Classes 1 to 6 who are entitled to salary readjustment an amount equivalent to 15% of their respective recoveries as and for attorney's fees and to deposit the amount to deducted in Court for further disposition.

"SO ORDERED."

The GSIS filed a Motion for Reconsideration of the aforestated Order on June 25, 1970, which was denied by the Court of Industrial Relations en banc in its Resolution dated June 30, 1970. Consequently, the GSIS filed its Notice of Appeal on August 14, 1970.

The Petition for Review by Writ of Certiorari filed by the GSIS in G.R. No. L-32018 (IPA Case No. 87 (8), GSISSU vs. GSIS) was given due course by this Court on June 18, 1970; while the Petition for Review by Writ of Certiorari in G.R. No. L-32397 was given due course on September 4, 1970.

In G.R. No. L-32018, respondent GSISSU filed a Motion to Dismiss Petition for Review on June 22, 1970. Said Motion was based primarily on the ground that the Order of the Court of Industrial Relations dated April 29, 1970 had already become final and executory as the Motion for Reconsideration of the same was filed beyond the four (4) day period provided in section 17-A of the Rules of the Court of Industrial Relations. GSISSU averred that the Order of April 29, 1970 was received by GSIS on April 30, 1970. Therefore, GSIS had up to May 4, 1970 to file its Motion for Reconsideration. GSIS filed its Motion for Reconsideration on May 5, 1970, or one day beyond the reglementary period. In a Resolution of this Court dated June 30, 1970, petitioner GSIS was required to submit its Comment on the Motion to Dismiss. In the Comment filed on July 16, 1970, Atty. Lorenzo Mosqueda, Assistant Government Corporate Counsel, alleged that although copy of the Order of April 29, 1970 was received by their Office on April 30, 1970, he received the questioned Order only on May 5, 1970. He attached to the Comment a Certificate of Appearance issued by the Clerk of Court of the Court of Industrial Relations attesting that he appeared at hearings in Baguio City on April 28-29, 1970 and May 2, 1970. He also attached a notarized medical certificate issued by Dr. Orlando Misa of the GSIS to the effect that he was under medical treatment for second degree burns on the left leg and ankle on May 4, 1970. He then prayed that under the circumstances and in justice and fairness to the GSIS, its Motion for Reconsideration should be considered as filed within the reglementary period. On July 17, 1970, this Court denied the Motion to Dismiss of respondent GSISSU, which then filed its Answer on August 13, 1970.

Petitioner filed its Brief in G.R. No. L-32018 on October 23, 1970, and in G.R. No. L-32397 on November 11, 1970. On December 10, 1970, respondent GSISSU and GSISEA-PAGE moved for the consolidation of the two cases on the ground that they involved identical issues. The Motion for Consolidation was granted on December 14, 1970. Respondents GSISSU and GSISEA-PAGE filed their joint Brief on January 11, 1971, while GSISEA-CUGCO, intervenor, filed its Brief on December 3, 1970.

G.R. No. L-32018

In G.R. No. L-32018, petitioner GSIS assigns the following errors:

"I

RESPONDENT CIR COMMITTED A GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OF JURISDICTION WHEN IT ISSUED THE ORDER OF APRIL 29, 1970, ANNEX "C" OF THE PETITION, AND AFFIRMED BY THE COURT EN BANC ON MAY 8, 1970, ANNEX "E" OF THE PETITION, EVEN IF THE CASE WAS NOT YET TERMINATED;

"II

RESPONDENT CIR COMMITTED A GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OF JURISDICTION WHEN IT ISSUED THE ORDER OF APRIL 29, 1970, ANNEX "C" OF THE PETITION, AND CONFIRMED BY THE COURT EN BANC IN A RESOLUTION DATED MAY 8, 1970, ANNEX "E"

OF THE PETITION, WHEN IT HELD THAT YOUR PETITIONER IS FINANCIALLY CAPABLE TO MEET THE ONE STEP SALARY ADJUSTMENT CONSIDERING THAT THERE IS NO EVIDENCE ON RECORD TO JUSTIFY SAID CONCLUSION OF FACTS; AND

"III

RESPONDENT CIR ERRED IN AWARDING INDISCRIMINATELY ONE STEP SALARY ADJUSTMENT TO ALL SUPERVISORS IN DISREGARD OF THE MERIT SYSTEM AND AVAILABILITY OF FUNDS."

A close scrutiny of this case leads this Court to believe that there is no necessity to go into the merits of the appeal. As previously mentioned, respondent GSISSU filed a Motion to Dismiss Petition on the ground that the Court of Industrial Relations Order, dated April 29, 1970, had already become final and executory, the GSIS Motion for Reconsideration of the same having been filed out of time. Although said Motion to Dismiss was denied in the Minute Resolution of this Court dated July 17, 1970, said denial did not delve into the merits of the Motion. And while the grounds cited in the Motion to Dismiss are not reiterated in respondent's Brief, we are taking cognizance of the same in view of the legal implications.

Section 17-A of the Rules of the Industrial Court, in force during the material dates of this case, provides as follows:

"Sec. 17-A. Time of Filing Motion for Reconsideration in Certified Cases - The aggrieved party may file a motion for reconsideration in 6 copies duly verified together with the supporting argument within a period of four (4) days without extension from receipt of decision or order together with proof of service of 1 copy thereof on the adverse party."

In a leading case, it has been held that the 4-day period within which to file a motion for reconsideration is jurisdictional and mandatory and failure to comply therewith is fatal.[2]

As previously mentioned, copy of the Order of April 29, 1970 was received by a clerk of the Office of the Government Corporate Counsel on April 30, 1970. So, petitioner had until May 4, 1970 within which to file the necessary Motion for Reconsideration. In its Comment to the Motion to Dismiss filed by respondent GSISSU, Atty. Lorenzo Mosqueda, the lawyer assigned to the case, stated that May 1, 1970 was a holiday and May 3, 1970 was a Sunday. From April 28 to 29 and May 2, 1970, he was at Baguio City in connection with the hearing of CIR Case Nos. 67-IPA (3 to 9 and 11) (Annex "A", Comment). On May 4, 1970, he was absent due to second degree burns on his left leg and ankle (Annex "B", Comment). It was only on May 5, 1970 that he learned personally of the adverse Order against petitioner, on which date he filed the Motion for Reconsideration.

In our opinion, the reasons advanced by Atty. Lorenzo Mosqueda, Assistant Government Corporate Counsel and counsel for petitioner, for his admitted failure to file the Motion for Reconsideration on time are not constitutive of excusable negligence. Thus, in the case of NWSA vs. MWSA Supervisors Union, *supra*, the failure of the lawyer to file the Motion for Reconsideration on time due to illness of his clerk was not considered excusable negligence. This Court held that considering the matters being handled by the Office of the Corporate Counsel, which involves public funds, one cannot but demand a more exacting sense of responsibility from those concerned. Adequate measures should have been taken by that office so that Court processes may be promptly and properly attended to even on non-working days and even in the absence of the head of office or the attorney assigned to the case.

Besides, it is to be noted that the main errors assigned are identical to those in G.R. No. L-32397 and our resolution in the latter case will, therefore, apply just as well.

G.R. No. L-32397

As regards G.R. No. L-32397, the GSIS interposed the following Assignments of Error:

"I

RESPONDENT CIR COMMITTED A GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OF JURISDICTION WHEN IT ISSUED THE ORDER OF JUNE 10, 1970 AND CONFIRMED BY THE COURT EN BANC IN A RESOLUTION DATED JUNE 30, 1970 HOLDING THAT YOUR PETITIONER IS FINANCIALLY CAPABLE TO MEET THE ONE STEP SALARY ADJUSTMENT OF RANK AND FILE EMPLOYEES OF THE SYSTEM FROM PAY CLASSES 1 to 6.

"II

RESPONDENT ERRED IN AWARDING INDISCRIMINATELY ONE STEP SALARY ADJUSTMENT TO ALL RANK AND FILE EMPLOYEES OF THE SYSTEM FROM PAY CLASSES 1 TO 6 IN DISREGARD OF THE MERIT SYSTEM AND AVAILABILITY OF FUNDS."

We affirm the Orders of respondent Court.

Petitioner's claim that the Court of Industrial Relations erred in finding the GSIS financially capable in meeting the economic demand for a one (1) rate increase in salary to all employees belonging to Pay Classes 1 - 6, for not being supported by evidence, is without merit.

Respondent Court's conclusion was based on a Consolidated Statement of Financial Condition and Results of Operation of the GSIS as of June 30, 1969 as testified to by Mr. Julian Gonzalvo, Assistant General Manager of the System for Accounting since 1962. Mr. Gonzalvo translated to the Court the Projected Statement of Income and Expenses of GSIS for the fiscal year July 1, 1969 to June 30, 1970, which he prepared, showing the favorable financial position of GSIS. He also testified on a statement prepared under his direction indicating the capacity of the System to meet the claim for salary adjustment in the amount of P4,049,134.00; that by June 30, 1970, the System was expected to realize a net income of P49,995,000.00 available for dividends, bonuses, contingencies and taxes, and that salary adjustments may be charged proportionally to the three basic funds of the system, viz., life insurance fund, retirement fund and property insurance fund.[3]

Petitioner's contention that the finding of financial capability of GSIS to pay the salary increases cannot be based merely on a Statement of Income and Expenses but should consider such other factors as the impact of economic policies of the Government, the requirements of the future, the magnitude of the commitments to pay dividends, the difficulties of collecting some commercial and industrial loans, and a big overdraft, fails when we consider that the GSIS had, in fact, already ordered payment of the increases, besides the fact that no evidence to support such factors were presented in Court. Moreover, it has been held that as long as there is evidence to support a Decision of the Court of Industrial Relations, such Decision may not be revoked or reversed just because it is not based on overwhelming or preponderance of evidence.[4]

In respect of the allegation that respondent Court erred in awarding indiscriminately a one-step salary adjustment to all rank and file employees (Pay Classes 1 to 6) and supervisory employees (Pay Classes 7 to 13) in disregard of the merit system, suffice it to state that the merit system is not in point. What respondent Court sought to correct was the discriminatory effect of the act of petitioner GSIS in granting salary increases to a few and not to members of other Unions which had no collective bargaining agreement with it. Besides, the only condition imposed on the payment of increases as set forth in the Memorandum of the GSIS General Manager dated July 22, 1970,[5] was that those who were to be given salary adjustments were the ones "not receiving the maximum

of their respective Pay Classes."

WHEREFORE, 1) in G.R. No. L-32018, the petition is dismissed and the Order of the Court of Industrial Relations of April 29, 1970 in IPA Case No. 87(8) is hereby declared final and executory. No costs.

2) In G.R. No. L-32397, we hereby affirm the Order of the Court of Industrial Relations of June 10, 1970, in IPA Case No. 87(9). No costs.

SO ORDERED.

Makasiar, Fernandez, Guerrero, and De Castro, JJ., concur.
Teehankee, J., (Chairman), files a separate opinion.

[1] Exhibit "A", p. 5, Original Records.

[2] NAWASA vs. NWSA Supervisors Union, 58 SCRA 232 (1974).

[3] pp. 5-7 of Order of June 10, 1970 on pp. 42-44 of Rollo.

[4] Manila Metal Caps and Tins Mfg. Co. vs. CIR, 8 SCRA 552 (1963).

[5] G.R. No. L-32397, Rollo, p. 105.

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SEPARATE OPINION

TEEHANKEE, J.:

I concur in the result in that the Court's judgment in effect sustain both questioned orders of the Court of Industrial Relations of April 29, 1970 and June 10, 1970 in Cases L-32018 and L-32397, respectively, whereby petitioner GSIS was ordered by respondent court to cease and desist from discriminating against the members of respondents unions and its other employees in the granting of salary readjustments and increases.

I register, however, my dissent from the ruling in the main opinion in Case L-32018 that the one-day delay in petitioner's filing of its Motion for Reconsideration of the questioned Order of April 29, 1970 was "not constitutive of excusable negligence" and therefore fatal and rendered the questioned order "final and executory".

As stated in the main opinion and by petitioner in its comments, copy of the questioned Order was served on its counsel's receiving clerk in the late afternoon of April 30, 1970. So it had until the 4th day, May 4, 1970, within which to file its motion for reconsideration. The lawyer in charge of the case, Atty. Lorenzo Mosqueda of the Office of the Government Corporate Counsel, was in Baguio City on April 28 to 29 as well as on May 2, 1970 in connection with another case involving the Philippine National Railways. May 1, 1970 was Labor Day (an official holiday) and May 3, 1970 was a Sunday. On the following day, Monday, May 4, 1970, he was absent due to second degree burns on his left leg ankle, duly attested by his physician's sworn certificate. It was only on the fifth day, then, that he learned personally of the adverse Order and lost no time in filing on the same day the motion for

reconsideration.

Under such special circumstances when three of the four days allotted by the industrial court's rules for the filing of a motion for reconsideration in certified cases were non-working days and nevertheless petitioner's counsel-in-charge was furthermore occupied with the hearing of another case in Baguio and had fallen sick besides on the only working day of the four-day period (Monday, May 4th), the one-day delay in the filing of petitioner's motion for reconsideration may certainly be deemed excusable.

The Court so ruled in its Resolution of July 17, 1970 when in acting upon respondent's motion to dismiss the petition at bar on the ground of finality of the questioned order and alleged consequent loss of this Court's jurisdiction to consider the appeal and petitioner's explanation and prayer that "under the circumstances and in justice and fairness to petitioner" its motion "be considered filed within the reglementary period," the Court denied without qualification the motion to dismiss and maintained its Resolution of June 18, 1970 giving due course to the petition and required respondent to answer the same. As stated in the main opinion (at page 6), respondent union no longer raised the question in its brief and therefore the same should have already been considered foreclosed and settled by the Court's resolutions of June 18, 1970 and July 17, 1970.

As stressed in *PBM Employees Organization vs. PBM Co., Inc.*[1] considering the special circumstances in the case at bar, *mutatis mutandis*, the industrial court's 4-day rule should be deemed "unreasonable" and violative of due process in its application, whether the movant for reconsideration be the employer or the employee.

Similarly, in *De las Alas vs. Court of Appeals*[2], the Court stressed that "a one-day delay does not justify the dismissal of the appeal under the circumstances obtaining in this case. The real purpose behind the limitation of the period of appeal is to forestall or avoid an unreasonable delay in the administration of justice and to put an end to controversies (*Dy Chay vs. Crossfield*, 38 Phil. 521-526)." No element of intent to delay the administration of justice could be attributed to petitioner or its counsel in the case at bar.

I hold, therefore, as stressed in the cited case of *De las Alas* that "litigations should, as much as possible, be decided on their merits and not on technicality." [3] At any rate, even if the industrial court's unorthodox 4-day rule for filing motions for reconsideration were deemed jurisdictional and mandatory (so that failure to comply therewith would result in the fatal loss of the right of appeal), this Court has the power to grant relief from an excusable failure to comply with the rule, as it did in this case per its above-cited Resolution of July 17, 1970 denying respondent's motion to dismiss the petition. As reiterated in the *PBM* case, *supra*, the Supreme Court has the inherent power to "suspend its own rules or to except a particular case from its operation, whenever the purposes of justice require." [4]

Since the main errors assigned in the two cases under review are identical and have been found to be without merit, with which finding I concur, my vote in Case L-32018, therefore, is to affirm on the merits (and not to dismiss the appeal for the excusable one-day delay in the filing of the motion for reconsideration) the questioned Order of April 29, 1970 for the same reasons and considerations stated for affirming the other questioned Order of June 10, 1970 in Case L-32397.

[1] 51 SCRA 189, 213, per Makasiar, J. (1973).

[2] 83 SCRA 200, 215 (May 16, 1978), per Makasiar, J.

[3] Citing *Gregorio vs. Court of Appeals*, 72 SCRA 120, 126, wherein we held that "x x x Dismissal of appeals purely on technical grounds is frowned upon where the policy of the courts is to encourage hearings of appeals on their merits. The rules of procedure ought not to be applied in a very rigid, technical sense; rules of procedure are

used only to help secure, not override, substantial justice. If a technical and rigid enforcement of the rules is made, their aim would be defeated."

[4] 51 SCRA at page 215.

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