

POMPOSA VDA. DE NATOR AND ALFREDO TALON, PETITIONERS VS. THE HON. COURT OF INDUSTRIAL RELATIONS, DIONISIO ABENAZA, GAUDENCIO CARDONA, QUINTIN BRIONES, ALFREDO COMPRA AND LUCIO C...

G.R. No. L-16671. March 30, 1962

Ponente: PAREDES, J.

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PAREDES, J.:

On August 6, 1953, Dionisio Abenaza, Gaudencio Cardona, Quintin Briones, Alfredo Compra and Lucio Compra, filed with the Court of First Instance of Cebu (Civil Case No. 3238), an action for the recovery of various sums of money, due them as underpayment, overtime pay, separation pay, as hotel boys of the "La Suerte Hotel", Cebu City; moral damages, and attorney's fees against Pomposa Vda. de Nator and Alfredo Talon, owners and/or operators of said hotel; which was amended on January 4, 1954. After due hearing, the CFI, on May 20, 1955, rendered judgment, in favor of the plaintiffs claimants and against Nator and Talon, who appealed to the Court of Appeals, on July 30, 1955 (CA-G. R. No. 16861-R). Pending appeal, on November 30, 1957, the Court of Appeals was informed about the loss of the stenographic notes due to fire and on February 24, 1958, remanded the case to the court a quo for re-trial.

Under date of August 30, 1958, the lower court handed down the following order—

"After hearing the arguments of the plaintiffs and it appearing that the demands of the plaintiffs involve the application of the Minimum Wage Law; x x x considering that under the ruling,. of the Supreme Court laid down in the case of 'PAFLU vs. Hon. Tan, Judge of the Court of First Instance of Manila, et al., G. R. No. 9115/ any case involving the application of the Minimum Wage Law falls within the exclusive jurisdiction of the Court of Industrial Relations; and considering by analogy the rule laid down by the Supreme Court in the case of Castro vs. The Collector of Internal Revenue, et al., Off. Gaz., July 15, 1957, to the effect that a case occurring before the effectivity of the Act which gives jurisdiction to the new Court should be decided by the latter under whose jurisdiction it falls.

"HEREBY RESOLVES:

"To declare itself without jurisdiction to retry this case and dismisses it without prejudice and without special pronouncement as to costs."

The above order was the subject of a petition filed on September 29, 1958, for Mandamus and Prohibition in this Court (G. R. No. L-14568), to compel the judge of the court a quo to retry the case and restrain him from making any decision on the evidence taken anew, but transmit the evidence to the Court of Appeals. The petition was dismissed on October 23, 1958, this Court saying "appeal in due time being the proper remedy This Court also denied the motion for reconsideration filed thereto on November 14, 1958.

Under these circumstances, Abenaza and others, the plaintiffs in Civil Case No. 3238, presented their claim with the CIR on December 5, 1958 against Nator and Talon (Case No. 22-V Cebu), under five (5) causes of action, to

wit: (1) Underpayment or wage differentials under the Minimum Wage Law; (2) overtime pay for services rendered beyond the eight-hour period; (3) separation pay for having been dismissed without due notice and justifiable cause; (4) actual and moral damages and (5) for attorney's fees.

Respondents Nator and Talon filed separate Answers. Nator after specifically denying the material allegations of the complaint, interposed the following special defenses, to wit: (a) no cause of action for causes of action 3, 4 & 5; (b) prescription of action for causes of action 1, 2 & 4; (c) and as special defense for all the causes of action, that same is barred by prior judgment, since the subject matter of the instant proceedings is the same as that of Civil Case No. R-3238, CFI Cebu, which has been disposed of by said court and by this Court (G. R. No. L-14568) (Mandamus & Prohibition). Talon adopted the Special defenses invoked by Nator and interposed a Counter-claim for P2,500.00 for moral damages and attorney's fees. Both respondents prayed for the dismissal of the complaint.

After hearing, Judge Jose S. Bautista of the CIR rendered judgment finding that there is sufficient legal cause of action, and that the action has not prescribed. The dispositive portion of the decision recites—

"x x x x x x x

"IN VIEW WHEREOF, the respondents are hereby ordered jointly and severally to pay petitioners Dionisio Abenaza, Gaudencio Cardona, Alfredo Compra and Lucio Compra the sums of P1,312.22, P1,312.22, P1,400.28 and P1,15.16, respectively, plus interest thereon, at the rate of 6% annually from the time of the filing of this case on December 5, 1958 and until the above amounts are fully paid to the satisfaction of said petitioners."

The above decision is now before Us on review, petitioners raising two legal issues, to wit:—

- (1) Whether or not the action (CIR No. 22-V Cebu, has already prescribed; and
- (2) Whether or not said action has been barred by previous judgment.

Petitioners contend that the first cause of action, which comes under the Minimum Wage Law, accrued from August 4, 1951 to February 17, 1953, and the complaint for their recovery with the CIR having been filed only on December 5, 1958, or after the 3-year period, the action of respondents has prescribed. Section 17, of the Minimum Wage Act 602, as amended by R. A. No. 812, provides—

"Sec. 17. Statute of Limitation.—Any action commenced on or after the effective date of this Act to enforce any cause of action under this Act may be commenced within three years after the cause of action accrued, and every such action shall be forever barred unless commenced within three years after the cause of action accrued." (R. A. No. 602, as amended by R. A. No. 812).

As to the second cause of action, which is for overtime pay, and which allegedly cover the same period (Aug. 4, 1951 to February 17, 1953) said claim has also prescribed, since the complaint was only made on December 5, 1958. Section 7-A of Comm. Act No. 444, as amended by R.A. No. 1993, approved on June 22, 1957, states—

"Sec. 7-A. Any action to enforce any cause of action under this Act shall be commenced within three years after the cause of action accrued, otherwise such action shall be forever barred."

Petitioners also point out the fact that the filing of Civil Case No. R-3238, on August 6, 1953, with the CFI for the same causes of action, did not suspend the period of prescription, because as found by the CFI, it had no jurisdiction over the subject matter and dismissed the same. The case of *Conspecto vs. Fruto*, 34 Phil., 144f was cited wherein it was held that, "while the commencement of the action would of course stop the running of the statute of limitations, its dismissal or voluntary abandonment by plaintiff would leave the parties in exactly in the

same position, as if no action had been commenced at all. Said action by reason of its dismissal or abandonment took no time out of the prescription." And furthermore, "the bringing of an action in a court without jurisdiction does not interrupt the running of the statute of limitations" (Sec. 271, 54 C.J.S. p. 303).

Petitioners further contend that the case of respondents is barred by former judgment. Basis of this claim is the fact that when the court a quo dismissed the claim on the ground of lack of jurisdiction, the matter was brought before this Court on a Petition for Mandamus and Prohibition and which was dismissed for the reason that "appeal in due time being the proper remedy." And said dismissal having become final, same constitutes *res judicata* to the present case.

Respondents-claimants alleged that the petition at bar is premature and, therefore, constitutes no cause of action; that their causes of action is not barred by the statute of limitations nor by a former judgment. Respondents maintain that since the decision, subject of the present appeal, was only a decision of one judge, an appeal therefrom should have been made to the Court en banc, through a motion for reconsideration (*Broce, et al. vs. CIR, et al.*, G.R. No. L-12367, Oct. 28, 1959).

After a careful consideration of the circumstances surrounding the controversy, We find that the causes of action of respondents have not prescribed or barred by a former judgment.

It cannot be seriously controverted that the respondents claimants were militant and alert in the ventilation of their case and had pursued the procedure then available to them as sanctioned by existing jurisprudence. Within the prescriptive period of three years, they caused the filing of a complaint with the CIR, which refused to take cognizance thereof for lack of the numerical requirement of the employees involved; within the same period they presented their claim with the only court (CFI) which was then authorized to hear their case and which had found for them. The petitioners even appealed from the CFI decision to the Court of Appeals, which is an indication that they themselves were convinced of the trial court's jurisdiction at that time.

The efforts displayed by the respondents-claimants in filing their claim before the court which had jurisdiction over the claim in accordance with the law and jurisprudence existing then, negate the claim for prescription of action, since the basis of prescription is the unwarranted failure to bring the matter to the attention of those who are by law authorized to take cognizance thereof. The claim that the CFI did not have jurisdiction at the time it took cognizance of the case, is patently untenable. At that time the CFI was the proper Court. The filing of the case with the CFI arrested the period of prescription (Art. 1155 NCC), and the interruption of said period lasted until the time that the dismissal for lack of jurisdiction became final. "When prescription is interrupted by a judicial demand, the full time for the prescription must be reckoned from the cessation of the interruption" (cited in *Florendo vs. Organo*, 90 Phil., 483). The whole period during which the case had been pending cannot be counted for arriving at the prescriptive period. In other words, the running of the period of prescription in this particular case was interrupted on August 6, 1953, when the case in the CFI was filed and began to run again on August 30, 1958, when the same Court had dismissed the case. As the complaint was filed with the CIR on December 5, 1958, the action has not yet prescribed.

It is true that Comm. Act 444 and R. A. 603 provide for a 3-year period within which to bring the actions (Sees. 7-a and 17, respectively), but even Sec. 7-a of Comm. Act 444, as amended by Rep. Act No. 1993, grants an exception when it stated: "x x x Provided, however, the actions already commenced before the effective date of this Act shall not be affected by the period herein prescribed", which counsel wittingly or unwittingly omitted.

The dismissal by this Court of the Mandamus and Prohibition case was not on the merits. This is clear from our Resolution which said: "appeal in due time being the proper remedy." Before a judgment can be a bar to a subsequent action, said judgment must be on the merits. The elements of a bar by prior judgment (*res judicata*)

are: (1) it must be final; (2) rendered by a court of competent jurisdiction; (3) one on the merits; and (4) identity of parties, subject-matter and causes of action (*San Diego vs. Cardona*, 70 Phil., 281; *Aguirre, et al. w. Atienza, et al.*, 104 Phil., 477). When the CFI dismissed the case for lack of jurisdiction and this Court denied the Mandamus and Prohibition instituted against the CFI for its action (dismissal), there was no hearing on the merits as yet.

Under the above set of facts, therefore, it is clear that respondents causes of action are legally maintainable. However, during the pendency of the case, this Court has made pronouncements which affect the present controversy. Thus, in the case of *Naric Workers Union vs. The CIR and NARIC*, G. R. No. Ir-14999, Dec. 30, 1961. We said:

"Under the law and jurisprudence the Court of Industrial Relations' jurisdiction extends only to cases involving (a) labor disputes affecting an industry which is indispensable to the national interest and is so certified by the President to the Court (Sec. 10, Rep. Act No. 875); (b) controversy about the minimum wage under the Minimum Wage Law, (Rep. Act No. 602); (c) hours of employment, under the Eight Hour Labor Law, Comm. Act No. 444; and (d) Unfair Labor Practice (Sec. 5[a], Rep. Act No. 875). And such disputes, to fall under the jurisdiction of the CIR, must arise while the employer-employee relationship between the parties exists or the employee seeks reinstatement. When such relationship is over and the employee does not seek reinstatement, all claims become money claims that fall under the jurisdiction of the regular Courts (*Sy Haun vs. Judge Bautista, et al.*, 112 Phil., 914; 61 Off. GazM [20] 2942) and cases cited therein."

"x x x. In the recent case of *National Labor Union vs. Insular Yebana Tobacco Corporation*, (58 Off. Gaz., [40] 6447) it was ruled that in the absence of unfair labor practice, the CIR has no power to grant remedy under its general powers of mediation and conciliation, such as reinstatement or back wages. x x x (G. R. No. L-16031, *C. Cagalawan vs. Customs Canteen, et al.*, Oct. 31, 1961.)"

Respondents in this case never asked for reinstatement, nor was there any allegation of unfair labor practice committed by the petitioners. Their case, therefore, is properly cognizable by the Court of First Instance of Cebu, which Court has already rendered judgment in their favor, but for circumstances heretofore mentioned,, it had declared itself without jurisdiction. To affirm the judgment of the CIR would in effect be legalizing an act which, under existing jurisprudence, said court has no right to exercise.

Because of the conclusions reached, We deem it unnecessary to discuss the question of whether the appeal taken is premature.

WE hereby return the case, and direct, to the CFI of Cebu, to conduct a hearing as ordered by the Court of Appeals in its Resolution dated February 24, 1958, in case CA-G. R. No. 16861-R, for the purpose of retaking the portions of the testimonies in the case which were lost, after which to forward the same to the Court of Appeals for decision. Without special pronouncement as to costs.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, Dizon, and De Leon, JJ., concur.

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