

GOVERNMENT SERVICE INSURANCE SYSTEM, PETITIONER, VS. HON. GAUDENCIO CLORIBEL AS JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA AND RAILROAD UNPAID RETIREES UNION, INC., RESPONDE...

G.R. No. L-22236. June 22, 1965

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

The Railroad Unpaid Retirees Union, Inc. (RURU) filed, on August 1, 1958, an amended petition for mandamus in the Court of First Instance of Manila against the Government Service Insurance System (GSIS) and the Manila Railroad Company (MRR). It sought to compel payment to the GSIS by MRR, in the latter's capacity as the employer, of retirement premiums indebtedness; payment by GSIS to 250 specified RURU members of full retirement benefits; and to recover damages.

The GSIS filed an answer thereto on August 14, 1958 stating that, with few exceptions, the retirement benefits—albeit readjusted—had already been paid the RURU members named in the petition. On August 22, 1958 GSIS filed a supplemental answer with a cross-claim against MRR for the latter's alleged failure to pay its full premium indebtedness, causing the readjustment of retirement benefits.

RURU filed a supplemental petition on September 26, 1958 to submit names of other members. An answer to the supplemental petition was filed by the GSIS on October 11, 1958.

A stipulation of facts was entered into by the parties on March 4, 1959. After trial, the Court of First Instance of Manila—Judge Gustavo Victoriano presiding—rendered judgment on August 1, 1960. GSIS was ordered to pay the RURU members full retirement benefits (notwithstanding MRR's non-payment in full of its premiums), plus P1,880.60 and P1,000.00 as costs and attorney's fees, respectively.

On September 6, 1960, GSIS filed a motion for reconsideration, to which RURU, on September 16, 1960, filed an opposition. The Court of First Instance, on September 23, 1960, denied said motion. GSIS thereupon appealed to the Court of Appeals.

Pending appeal in the Court of Appeals—CA-G.R. No. 28482-R—the parties, on December 20, 1960, entered into a compromise agreement. RURU thereunder waived its claim for attorney's fees and damages; MRR admitted its premium indebtedness to GSIS and committed to payment; and GSIS agreed to effect the necessary adjustment of retirement benefits of RURU members.

On June 20, 1961, the Court of Appeals, by resolution, approved the aforementioned compromise agreement and enjoined the parties to comply with its terms.

RURU, on May 27, 1963, filed in the Court of First Instance of Manila a petition for execution of judgment, praying that GSIS be ordered to pay the differentials in the retirement benefits due its members.

After GSIS' reply was submitted on May 29, 1963, the Court of First Instance—Judge Gaudencio Cloribel presiding—issued an order, on July 10, 1963, granting execution. GSIS received copy of said order on July 16, 1963 and filed a motion for reconsideration thereof on July 19 1963.

GSIS' motion for reconsideration was denied on July 31, 1963 and notice of said denial was received by GSIS on August 15, 1963.

On August 27, 1963, GSIS filed a notice of appeal and appeal bond, seeking to elevate the case to this Court. It also filed, on September 6, 1963, an amended notice of appeal and a record on appeal, stating that interpretation of the compromise agreement is involved. RURU, on the same date, filed an opposition to the appeal, contending that the notice of appeal and appeal bond were filed beyond the reglementary period; that the notice of appeal is defective for not stating that the appeal is based purely on questions of law; and that the GSIS failed to file a record on appeal.

GSIS filed a reply to the opposition on October 3, 1963.

Presiding Judge Cloribel of the Court of First Instance issued an order on December 3, 1963, dismissing the appeal. Four reasons were given : (1) The notice of appeal failed to state that the appeal was based purely on questions of law; (2) The record on appeal was not filed within the reglementary period; (3) Even allowing the amended notice of appeal, interpretation of the compromise agreement is not a question of law so appeal is not to the Supreme Court but to the Court of Appeals; (4) Even considering the appeal as one in mandamus, not requiring a record on appeal, appeal was not taken within 15 days from notice of the order.

GSIS, therefore, filed herein on December 17, 1963 the instant petition for certiorari, mandamus and prohibition, with preliminary injunction, against Judge Cloribel and RURU, submitting the procedural question passed upon by the lower court aforementioned.

Pending this proceedings we issued a writ of preliminary injunction, upon a bond of P5,000.00 on December 1963, to enjoin respondents from enforcing¹ the aforesaid orders of July 10, 1963 and December 3, 1963.

At the start it is well to note that RURU's petition for execution of judgment was filed in the same mandamus case instituted in the Court of First Instance of Manila, that is, Civil Case No. 36629 (See Annex P to Petition).

Accordingly, the appeal being- in an incident of a mandamus case, the period therefor was 15 days from notice (Sec. 17, Rule 41 in relation to Sec. 1, Rule 42, old Rules of Court). Furthermore, there need not be filed a record on appeal, since the original record is to be transmitted (Ibid.).

As stated, GSIS received copy of the order dated July 10, 1963 on July 16, 1963. It filed a motion for reconsideration of the order on July 19, 1963. Copy of the order denying the motion for reconsideration was received by GSIS on August 15, 1963. On August 27, 1963, it filed its notice of appeal and appeal bond. From July 16, 1963 to July 19, 1963 is 3 days; from August 15, 1963, to August 27, 1963 is 12 days. It is clear that, deducting the time when GSIS' motion for reconsideration was pending, the appeal was perfected on the 15th day from receipt of notice of the order. The same was, therefore, made on time.

A motion for reconsideration based, as in this case (See Annex S to Petition), on the ground that the findings or conclusions are not supported by the evidence, with express reference to the documentary evidence (specifically, the compromised agreement herein involved) suspends the period to appeal (Valdez vs. Jugo, 74 Phil. 49; Alvero vs. De la Rosa, 76 Phil., 428; Ylanan vs. Mercado, 94 Phil., 769; 50 Off Gaz., 1982; 1 Moran, Comments on the Rules of Court [1957 ed.], p. 516).

Since the notice of appeal stated that appeal was being taken to the Supreme Court (Annex U to Petition), there

was no need to state that it was based purely on questions of law. By appealing to the Supreme Court, GSIS is deemed to waive the right to dispute any finding of fact and the only question that may be raised is that of law (*Savellano vs. Diaz*, L-17944, July 31, 1963).

Respondent judge having erroneously dismissed GSIS' timely appeal, the present action for mandamus is the proper remedy (Sec. 15, Rule 41, Rules of Court). As regards the right to pass upon whether or not the appeal is manifestly for delay, the same resides not on the Court a quo whose decision or order is in issue, but on the appellate court during consideration of said appeal (*Desalía vs. Caluag*, L-18765, July 31, 1963).

Wherefore, the petition for mandamus is hereby granted and petitioner's appeal is hereby ordered to be certified and elevated to this Court; the preliminary injunction herein issued is made permanent subject to the ultimate decision in petitioner's appeal. No costs. It is so ordered.

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

Petition granted.

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