

CEBU PORTLAND CEMENT COMPANY, PETITIONER, VS. MAXIMO S. SAVELLANO, SR., ET AL., RESPONDENTS.

G.R. No. L-19317. April 30, 1964

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Petition for review of an order of execution of the Court of Industrial Relations, in its Case No. 68-V, directing the herein petitioner, Cebu Portland Cement Company, to pay to the herein respondent, Maximo J. Savellano, the sum of P6,300 representing salary differential of back wages corresponding to the period from 1 October 1951 to 31 December 1956. The said order of execution was issued in pursuance of an order on 2 September 1955, the dispositive portion of which reads:

"Wherefore, it is hereby ordered—(a) That the Cebu Portland Cement Company shall reinstate Maximo J. Savellano, Leon P. Pelae, Galico Sotto, Ecilio Castillo, Pablo Castillo, and Pablo K. Barrios in the services, of the Company, with back salaries and wages from November 16, 1950 up to the date of their reinstatement. * *

*."

This order of reinstatement is not in controversy.

During the pendency of the case, the petitioner company and employees for the fiscal year 1951-1952 budget, and when the Savellano case was terminated, the company complied with the order of 2 September 1955 by reinstating respondent Savellano on 14 March 1956 and paying his back salaries at the rate of P9,600 per annum, which was his salary as second assistant general manager at the time of his illegal dismissal. However, he was refused the benefit of the whole-scale and general increases which were given to the other officials and employees of the company including personnel in the Administrative Department where Savellano was connected before his illegal dismissal, as well as Savellano's former co-petitioners in the labor court, namely, Emilio Castillo, Pablo Castillo, and Pablo Briones (or Barrios).

The claim of Savellano starts from 1 October 1951, because it was on this date that the salary of the first assistant general manager, Mamerto de Jesus, who formerly received the same salary as Savellano, P9,600 per annum, was raised under, and in implementation of the whole-scale and general increases granted by the company.

The petitioner company assigns two errors allegedly committed by the industrial court in ordering the payment of the respondent's salary differential, namely: (1) that when the company reinstated the respondent and paid him his back salaries based at the same rate he was receiving at the time of his improper dismissal the employer had satisfied the order of 2 September 1955; and (2) that the court had no jurisdiction to grant salary increase to the respondent.

Under the first assignment of error, the petitioner company argues that "backpay", as explained in *Donato vs. Philippine Marine Officers Association, et al.*, L-12506, 18 May 1959, is "what an employee has lost in the way of wages by reason of his dismissal", which it contends, "cannot be more neither can it be less." Citing also the case of *Philippine Charity Sweepstakes Office vs. Alandy*, 109 Phil., 1058, the company continues: "An increase

in an appropriation or salary should not automatically entitle the holder of the position to the increased salary."

Under the second assignment of error, the company simply states that the grant of salary increase to an employee is not, under the existing laws and jurisprudence, within the limited jurisprudence of the labor court.

The foregoing arguments discount the fact that the company not only appropriated but also granted whole-scale general increases to its officials and employees, irrespective of individual merit, efficiency or qualification, during the pendency of the case. Considering this essential fact, brought about by the company's own doing, the respondent, did lose by way of salaries, during and by reason of his unlawful dismissal, what he would have received at his old rate as well as what he would have received at the corresponding increased rate. Since the back salaries actually paid him by the company are only on the basis of old rate, the employer has failed to satisfy the judgment in full.

The court a quo, in ordering execution for the salary differential, was not assuming, and did not assume, jurisdiction to grant salary increase to the respondent, but was enforcing the company's own act of granting the whole-scale and general increases, without unjustified discrimination against a particular employee.

It is argued that the grant of salary increases is discretionary upon the appointing power. Indeed, it is, and the company did exercise that discretion by granting the general increases. It cannot now pretend that it intended to except the respondent from the benefits extended en masse to its officials and employees. Otherwise, Savellano would be prejudiced through his illegal dismissal, and such result the company had no right to cause, and the labor court had power to prevent.

Finding no error in the order under review, the same is hereby affirmed, with costs against the petitioner.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, Paredes, Dizon, and Makalintal, JJ., concur.

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