

**VV SECURITY AGENCY & ALLIED SERVICES, INC., PETITIONER,
VS. DEPARTMENT OF LABOR AND EMPLOYMENT – NATIONAL
CAPITAL REGION, LUIS CIRCUELA AND RUBEN BIAG, RESPONDENTS.**

Ponente: GARCIA, R.R., J.

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GARCIA, R.R., J.:

Before Us is a Petition for Certiorari[1] under Rule 65 of the Revised Rules of Court assailing the Order[2] dated November 14, 2013 of public respondent Department of Labor and Employment-National Capital Region which dismissed the appeal filed by petitioner VV Security and Allied Services, Inc.; and the Resolution by way of an undated Memorandum[3] denying the motion for reconsideration[4] thereof.

THE FACTS

Petitioner VV Security Agency and Allied Services, Inc. is a domestic corporation and a duly licensed security agency with principal office address at Carmen, Cagayan de Oro City.[5] On June 22, 2012, pursuant to its visitorial and enforcement power, public respondent Department of Labor and Employment (DOLE) conducted an inspection at petitioner's branch office in Quezon City. However, the duly authorized representative of DOLE was denied access to the employment records of petitioner's employees. Consequently, a Notice of Inspection Results was issued and served to petitioner, through its Branch Supervisor in Quezon City. Petitioner was directed to explain why the employment records were not shown during the inspection which was in violation of Article 128 of the Labor Code. It was likewise found that petitioner allegedly violated the labor standards provisions of the Labor Code by its failure to pay the benefits of some of its security guards, including herein private respondents Luis Circuela and Ruben Biag.[6]

Public respondent DOLE-NCR then scheduled several mandatory conferences to give petitioner an opportunity to refute the charges. On July 9, 16 and 23, 2012, petitioner's representative and some of the security guards appeared before the Office of the DOLE-NCR. Petitioner was required to submit the employment records of their employees but it failed to present the same. The erring employees, on the other hand, submitted copies of the computation of their claims.[7]

In an Order[8] dated January 15, 2013, the Regional Director of public respondent DOLE-NCR directed petitioner to pay herein private respondents Circuela and Biag, together with the other three complainants, the aggregate amount of P1,125,011.03 representing their unpaid wages, legal holiday pay, night shift differential pay, 13[th] month pay, rest day premium pay, service incentive leave pay and overtime pay. The decretal portion of the Order reads:

WHEREFORE, premises considered, V.V. SECURITY & ALLIED SERVICES, INC. and/or MR. JOSE VICENTE CABRERA is/are ordered to pay LUIS CIRUELA and [four] (4) other similarly situated employees, the aggregate amount of ONE MILLION ONE HUNDRED TWENTY FIVE THOUSAND ELEVEN PESOS & 03/100 (P1,125,011.03) within ten (10) days from receipt hereof. Failure to comply with this Order within the period prescribed shall cause the imposition of a penalty of double indemnity pursuant to

Republic Act No. 8188, otherwise known as “An Act Increasing the Penalty and Imposing Double Indemnity for violation of the Prescribed or Adjustment in the Wage Rates”.

A Writ of Execution shall be issued upon finality of this Order.

Further, the establishment is directed to give the Labor and Employment Officer access to its premises and records in order to question, copy and investigate any fact, condition or matter which may be necessary to determine compliance with labor laws. Criminal charges will be filed in the regular courts for violation of Article 128 of the Labor Code, as amended, in relation to Article 288 of the same Code, if the Office would be denied access the second time around.

SO ORDERED.[9]

Petitioner sought a reconsideration of the Order dated January 15, 2013 of public respondent DOLE-NCR. Petitioner argued that it did not violate the law on labor standards since it has regularly paid its security guards their minimum wage and other benefits.

Meanwhile, three (3) of the other complainants, namely: Reynald A. Tala-oc, Gomer D. Recomez and Aladin F. Ignalague, agreed to settle amicably with petitioner. The notarized quitclaims were then submitted before public respondent DOLE-NCR.[10]

In a Resolution[11] dated September 26, 2013, public respondent DOLE-NCR denied petitioner's motion for reconsideration for being filed out of time. Petitioner's representative in its Quezon City branch office was duly served with the inspection results, notices and orders. Also, during the summary hearings, petitioner was repeatedly required to submit the employment records of its workers but still failed to do so. There was thus no basis in petitioner's claim that it was denied due process since it was given ample opportunity to present its side of the case and to produce evidence in its favor. The pertinent portions of the Resolution read:

Also, assuming arguendo that respondent's motion was filed within the reglementary period, this Office finds no denial of its right to due process. Records show that respondent was given ample opportunity to present his side and to produce evidence in his favor. The Notice of Inspection Results was issued to and received by a person whom respondent itself admitted as his representative. The fact that the latter was negligent of its duty to communicate the matter to its principal does not in any way change the fact that respondent was duly notified. Moreover, summary hearings were also conducted wherein respondent had every opportunity to adduce evidence in its favor. In fact, during the hearings, respondent was repeatedly required to present the employment records but still failed to do so. Thus, it cannot be denied that respondent was afforded due process. Respondent cannot feign denial of reasonable opportunity to be heard by invoking its own inaction.

WHEREFORE, premises considered, the Motion for Reconsideration filed by both the respondent V.V. Security & Allied Services, Inc. and complainant Ruben Biag from our Order dated 15 January 2013 are hereby DENIED for being filed out of time.[12]

On October 23, 2013, petitioner filed its notice of appeal[13] and appeal memorandum[14].

In the assailed Order[15] dated November 14, 2013, public respondent DOLE-NCR held that petitioner failed to perfect its appeal for non-payment of the requisite appeal bond. Under Section 5, Rule XI of the Rules on Labor Laws Compliance System, the Regional Director of the DOLE is given authority to dismiss the appeal when it is filed beyond the reglementary period of ten days and/or when it is not supported by an appeal bond. While the notice and memorandum of appeal filed by petitioner was within the ten-day reglementary period, it was not accompanied by the required posting of appeal bond. Since there was no perfected appeal, the judgment has already become final and executory. The pertinent portions of the Order read:

It is provided in the subject “Notice of Appeal” that a copy of our Resolution dated 26 September 2013 was

received on 14 October 2013. Relevantly, Section 5, Rule XI of the Rules on Labor Laws Compliance System (Department Order No. 131-13), which took effect on 22 August 2013 provide that:

x x x

The abovementioned provision gives the Regional Director authority to dismiss the appeal when it is filed beyond the reglementary period of 10 days and/or when it is not supported by an appeal bond.

In this case, although the Notice and Memorandum of Appeal was filed within the ten-day reglementary period, it is not accompanied by the required posting of bond. Consequently, the appeal is not duly perfected. It is well to stress that an appeal is a mere statutory privilege and not a natural right and may be exercised only in the manner and in accordance with the provisions set by law. Corollarily, its requirements must be strictly complied with.

Verily, there being no perfected appeal, the Compliance Order attained finality. Necessarily, execution is the subsequent legal recourse.

WHEREFORE, premises considered, the appeal is DISMISSED. Let the Notice of Finality be issued.[16]

A Motion for Reconsideration[17] was filed by petitioner with the attached appeal bond by way of a manager's check[18] dated November 28, 2013 issued by the Bank of the Philippine Islands. Petitioner alleged that the amount of P301,115.81 represents the money claims of private respondents Circuela and Biag. In an undated Memorandum[19], public respondent DOLE-NCR denied the motion for reconsideration.

Hence, the instant petition for certiorari in which petitioner raised the following grounds[20] for its allowance, to wit:

I.

WHETHER OR NOT PUBLIC RESPONDENT DOLE-NCR COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION WHEN IT RULED THAT PETITIONER AGENCY'S MOTION FOR RECONSIDERATION WAS FILED OUT OF TIME.

II.

WHETHER OR NOT PUBLIC RESPONDENT DOLE-NCR COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION WHEN IT UNILATERALLY DISMISSED PETITIONER AGENCY'S NOTICE OF APPEAL ON THE GROUND THAT IT FAILED TO POST A BOND.

III.

WHETHER OR NOT PUBLIC RESPONDENT DOLE-NCR COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION WHEN IT REFUSED TO TAKE COGNIZANCE OF PETITIONER AGENCY'S MOTION FOR RECONSIDERATION AND MOTION TO ADMIT BOND.

IV.

WHETHER OR NOT PUBLIC RESPONDENT DOLE-NCR COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION WHEN IT FURNISHED PETITIONER AGENCY WITH NOTICES THROUGH ITS BRANCH SUPERVISOR.

V.

WHETHER OR NOT PUBLIC RESPONDENT DOLE-NCR COMMITTED GRAVE ABUSE OF

DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION WHEN IT GAVE WEIGHT TO THE BARE ALLEGATIONS OF RESPONDENTS AGAINST THE DULY SIGNED PAYROLLS SUBMITTED BY PETITIONER AGENCY.

THE ISSUE

The pivotal issue to be resolved is whether or not public respondent DOLE-NCR acted with grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing petitioner's appeal for failure to post the requisite appeal bond.

THE RULING

The petition is bereft of merit.

Petitioner contends that public respondent DOLE-NCR gravely abused its discretion in dismissing the appeal on mere technicality that the required appeal bond was not posted. Compliance with the bond requirement should be liberally construed since petitioner exhibited its willingness to pay the same. In fact, it attached a check in the amount P301,115.81 representing the alleged unpaid wages and other benefits of private respondents. The DOLE-NCR should have also taken into consideration that the notice and appeal memorandum have been filed within the ten-day reglementary period. Petitioner should be given a chance to argue its case and present its evidence. Public respondent would have seen that petitioner did not violate any provision of the labor standards law. Its payrolls show that private respondents have been duly paid their wages and other benefits.

We are not persuaded.

Article 223 of the Labor Code sets forth the rules on the posting of an appeal bond by the employer in case of a judgment involving a monetary award. It provides that the appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by public respondent NLRC in the amount equivalent to the monetary award. We quote:

Article 223. Appeal.— Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. xxx

xxx

In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from. [Emphasis supplied.]

The 2011 NLRC Rules of Procedure (NLRC Rules) incorporates this requirement in Rule VI, Section 6, which provides:

SECTION 6. Bond. – In case the decision of the Labor Arbiter or the Regional Director involves a monetary award, an appeal by the employer may be perfected only upon the posting of a bond, which shall either be in the form of cash deposit or surety bond equivalent in amount to the monetary award, exclusive of damages and attorney's fees. [Emphasis supplied.]

In *Co Say Coco Products Phils., Inc. vs. Baltasar*[21], the Supreme Court held that it is entrenched in our jurisprudence that perfection of an appeal in a manner and within the period prescribed by law is not only mandatory but jurisdictional, and failure to perfect an appeal has the effect of making a judgment final and executory. While the dismissal of an appeal on technical grounds is frowned upon, Article 223 of the Labor Code

which prescribes the appeal bond requirement, however, is a rule of jurisdiction and not of procedure. Hence, there is a little leeway for condoning a liberal interpretation thereof, and certainly none premised on the ground that its requirements are mere technicalities. The timely perfection of an appeal is a mandatory requirement, which cannot be trifled with a "mere technicality" to suit the interest of a party. We quote:

It is entrenched in our jurisprudence that perfection of an appeal in a manner and within the period prescribed by law is not only mandatory but jurisdictional, and failure to perfect an appeal has the effect of making judgment final and executory. While dismissal of an appeal on technical grounds is frowned upon, Article 223 of the Labor Code which prescribes the appeal bond requirement, however, is a rule of jurisdiction and not of procedure. Hence, there is a little leeway for condoning a liberal interpretation thereof, and certainly none premised on the ground that its requirements are mere technicalities. It is axiomatic that an appeal is only a statutory privilege and it may only be exercised in the manner provided by law. The timely perfection of an appeal is a mandatory requirement, which cannot be trifled with a "mere technicality" to suit the interest of party. We cannot condone the practice of parties who, either by their own or their counsel's inadvertence, have allowed the judgment to become final and executory and, after the same had reached finality, seeks the shield of substantial justice to assail it.

In *Lopez vs. Quezon City Sports Club, Inc.*[22], the Supreme Court enunciated further that it is clear from both the Labor Code and the NLRC Rules of Procedure that there is legislative and administrative intent to strictly apply the appeal bond requirement, and the Court should give utmost regard to this intention. The intention of the lawmakers to make the bond a mandatory requisite for the perfection of an appeal by the employer is clearly expressed in the provision that an appeal by the employer may be perfected only upon the posting of a cash or surety bond. The word "only" makes it unmistakably plain that the lawmakers intended the posting of a cash or surety bond by the employer to be the essential and exclusive means by which an employer's appeal may be perfected.

Corollarily, in *Accessories Specialist, Inc. vs. Alabanza*[23], the High Court held that parties who seek to avail themselves of it must comply with the statutes or rules allowing it. Rules on perfection of an appeal, particularly in labor cases, must be strictly construed because to extend the period of the appeal is to delay the case, a circumstance which would give the employer a chance to wear out the efforts and meager resources of the worker to the point that the latter is constrained to give up for less than what is due him. It is further meant to discourage employers from using the appeal to delay or evade payment of their obligations to the employees.[24]

After a careful consideration of the circumstances of the case at bench, We find that public respondent DOLE-NCR, through its Regional Director, correctly dismissed petitioner's appeal for failure to perfect the same by not posting the requisite appeal bond within the ten-day reglementary period. While the records show that petitioner timely filed its notice and memorandum of appeal, the requisite appeal bond was belatedly filed. The records show that the Resolution dated September 26, 2013 which was the subject of petitioner's appeal was received by its representative on October 14, 2013. The notice of appeal and appeal memorandum were filed on October 23, 2013. However, the appeal bond was posted only on November 28, 2013, or more than a month from the allowable ten-day reglementary period. Petitioner failed to justify its failure to timely post the appeal bond. It must be noted that some of private respondents' co-complainants have been paid by petitioner of their money claims during their amicable settlement. We find that there was no exceptional circumstances obtaining in the case at bar which would warrant the relaxation of the bond requirement as a condition for perfecting the appeal. The liberal interpretation and application of rules apply only in proper cases of demonstrable merit and under justifiable causes and circumstances.[25]

Considering that the decision of the public respondent DOLE-NCR has already become final and executory and binding upon this Court, We thus find no basis to set aside the disquisitions made by the DOLE-NCR. It is settled

that when a decision has acquired finality, the same becomes immutable and unalterable. The judgment may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest Court of the land.[26] Indeed, just as a losing party has the right to file an appeal within the prescribed period, the winning party also has the correlative right to enjoy the finality of the resolution of his case by the execution and satisfaction of the judgment.[27]

In sum, no grave abuse of discretion can be ascribed to public respondent DOLE-NCR. It may be well to stress that certiorari lies only where it is clearly shown that there is a patent and gross abuse of discretion amounting to an evasion of positive duty or virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility. Certiorari may not be availed of where it is not shown that the respondent court lacked or exceeded its jurisdiction over the case.[28] We find neither lack of jurisdiction nor grave abuse of discretion in this case.

WHEREFORE, premises considered, the instant petition for certiorari is hereby DISMISSED.

SO ORDERED.

Salazar-Fernando, R.A., (Chairperson), and Bueser, D.Q., JJ., concur.

[1] Rollo, pp. 3-24.

[2] Rollo, pp. 25-27.

[3] Rollo, pp. 33-34.

[4] Rollo, pp. 28-32.

[5] Vide: Petition for Certiorari, Rollo, p. 6.

[6] Vide: Order dated January 15, 2013, Rollo, p. 37.

[7] Ibid.

[8] Rollo, pp. 37-41.

[9] Rollo, p. 41.

[10] Vide: Resolution dated September 26, 2013, Rollo, p. 230.

[11] Rollo, pp. 229-232.

[12] Rollo, p. 231.

[13] Rollo, pp. 212-213.

[14] Rollo, pp. 214-226.

[15] Rollo, pp. 25-27.

[16] Rollo, pp. 25-26.

[17] Supra at note 4.

[18] Rollo, p. 35.

[19] Supra at note 3.

[20] Rollo, p. 12.

[21] G.R. No. 188828, March 5, 2014.

[22] Ramirez vs. Court of Appeals, et al., G.R. No. 182626, December 4, 2009; .Lopez vs. Quezon City Sports Club, Inc., G.R. No. 164032, January 19, 2009.

[23] G.R. No. 168985, July 23, 2008.

[24] Co Say Coco Phils., Inc. vs. Baltasar, G.R. No. 188828, March 5, 2014; Accessories Specialist, Inc. vs. Alabanza, G.R. No. 168985, July 23, 2008.

[25] McBurnie v. Ganzon, et al., G.R. Nos. 178034 & 178117; G.R. Nos. 186984-85, September 18, 2009.

[26] Mauleon vs. Porter, G.R. No. 203288, July 18, 2014.

[27] Ibid.

[28] Cadalin et al. vs. Court of Appeals, et al., G.R. No. G.R. No.168923, November 28, 2008, citing Machica vs. Roosevelt Services Center, Inc., G.R. No. 168664, May 4, 2006; Security Bank Corp. vs. Victorio, G.R. No. 155099, August 31, 2005; Johnson Lee and Sonny Moreno vs. People of the Philippines and the Court of Appeals, G.R. No. 137914, December 4, 2002; Bayas et al. vs. Sandiganbayan, et al., G.R. No. 143689-91, November 12, 2002.

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