

JOY L. BOMBASE, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND BLISS DEVELOPMENT CORPORATION (BDC), RESPONDENTS.

G.R. No. 110889. June 30, 1995

Ponente: PUNO, J.

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PUNO, J.:

On May 13, 1988, petitioner filed a complaint for illegal dismissal against private respondent Bliss Development Corporation. She was then officer-in-charge of its EDP Systems Department.

On February 26, 1990, Arbiter Lourdes Sales decided in favor of petitioner as she found that petitioner was illegally dismissed. She ordered private respondent to reinstate petitioner without loss of seniority rights and with full backwages from the time her compensation was withheld until her actual reinstatement. Private respondent was also directed to pay attorney's fees. The Decision was appealed to the second division of the National Labor Relations Commission (NLRC) by private respondent but its appeal was dismissed for failure to pay appeal bond. Thus, the Decision became final.

Petitioner's problems emanated from the enforcement of the Decision in her favor. On February 6, 1991, she was paid one hundred ninety thousand and one hundred twenty pesos (P190,120.00) representing her three (3)-year backwages from May 7, 1987 to May 7, 1990. It was computed based on her basic salary and exclusive of other benefits and allowances.

Petitioner's reinstatement posed a more difficult problem. She was refused reinstatement on the ground that on May 9, 1988 former President Corazon C. Aquino had ordered the dissolution and absorption of the private respondent by the Home Insurance Guaranty Corporation. Petitioner moved to cite private respondent's General Manager, Wilfredo Hernandez, in contempt. Mr. Hernandez was found guilty of indirect contempt and fined one hundred pesos (P100.00).

Still, petitioner was not reinstated. On January 13, 1992, she filed a Joint Motion for the Issuance of Warrant of Arrest and for a Second Writ of Execution. She prayed, inter alia, for "xxx an alias writ of execution to effect the immediate, actual and payroll reinstatement of complainant as of the date of the rendition of judgment to the same effect, and enforce payment of salaries due the complainant since her payroll reinstatement on 26 February 1990 when the decision of the Labor Arbiter was issued." [1] On March 19, 1992, Arbiter Melquiades Sol del Rosario denied the motion. He held that Mr. Hernandez has paid his fine and should not be arrested. He also ruled that petitioner has been fully paid her backwages. Nonetheless, he reiterated the order to reinstate petitioner.

Both parties moved for reconsideration. In an Omnibus Motion, petitioner contended that: (1) her three (3)-year backwages should be recomputed to include not only her basic wage but all her benefits and allowances; (2) since she could no longer be reinstated, she should be granted separation pay; and (3) she should be awarded additional backwages from May 8, 1990 to May 22, 1992. On the other hand, private respondent insisted it was already non-existing, hence, reinstatement of petitioner was no longer feasible. On July 8, 1992, the arbiter denied the

motions as prohibited pleadings citing section 17, Rule 5 of the Rules of Procedure of the NLRC. Petitioner appealed to the NLRC. In a Decision, dated April 27, 1993, the NLRC sustained the arbiter but ordered private respondent or its successor-in-interest to pay petitioner her separation pay of forty-two thousand pesos (P42,000.00) in lieu of reinstatement.

Hence, this petition where it is contended:

"RESPONDENT-COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AND VIOLATED PETITIONER'S RIGHT TO DUE PROCESS IN:

I. AWARDING BACKWAGES TO PETITIONER MERELY ON THE BASIS OF HER BASIC SALARY WITHOUT INCLUDING ALL ALLOWANCES AND OTHER BENEFITS DUE TO PETITIONER;

II. NOT HOLDING RESPONDENT BLISS DEVELOPMENT CORPORATION LIABLE TO PAY THE PETITIONER HER SALARY AS A RESULT OF HER AUTOMATIC PAYROLL REINSTATEMENT FROM THE DATE OF AUTOMATIC PAYROLL REINSTATEMENT MAY 8, 1990 UNTIL THE DISSOLUTION OF RESPONDENT CORPORATION MAKING REINSTATEMENT IMPOSSIBLE OR MAY 22, 1992;

III. LIMITING THE AWARD OF SEPARATION PAY ONLY TO THE THREE YEARS COMPUTED AND NOT UP TO THE DATE WHEN REINSTATEMENT BECAME IMPOSSIBLE ON MAY 22, 1992;

IV. NOT ORDERING THE RELEASE OF EMPLOYMENT RECORDS OF PETITIONER."[2]

We hold that public respondent NLRC did not commit grave abuse of discretion.

The claim of petitioner that her backwages should be recomputed was correctly denied by public respondent. The matter was only raised by petitioner when she moved for reconsideration of the Order of March 19, 1992 of Arbiter del Rosario. Her motion was denied on July 8, 1992 on the ground that under the rules of public respondent said motion for reconsideration is a prohibited pleading. The denial was appealed to the NLRC and it was rightly affirmed by public respondent NLRC for section 17, Rule 5 of the Revised Rules of the NLRC categorically provides that "no motions for reconsideration of any order or decision of the Labor Arbiter shall be given due course." In connection therewith, Article 223 of the Labor Code, as amended, provides that "decision, 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." It is thus plain that petitioner can no longer assail the correctness of her award of backwages as she failed to challenge it by means of appeal to the NLRC and within the ten (10) day period required by the Labor Code, as amended. In *Ramones v. NLRC*,^[3] we held that this appeal period is jurisdictional.

We also sustain the award of separation pay given by the public respondent to petitioner. The award was computed at 1.25 per month for every year of service rendered by petitioner or a sum of forty-two thousand pesos (P42,000.00). It is noteworthy that the amount is more liberal than the one-half (1/2) or one (1) month pay for every year of service provided by Article 283 of the Labor Code.

The payment of separation pay to petitioner cannot be faulted. Her reinstatement became a legal impossibility after private respondent was dissolved by former President Corazon C. Aquino in a Memorandum, dated May 7, 1988. Aside from this supervening legal obstacle, the relationship between the petitioner and the officials of private respondent has been strained by too much antagonism. Officials of private respondent have expressed lack of confidence on petitioner while petitioner has moved to cite the general manager of private respondent for contempt as indeed he was fined for contempt. Given this strained relationship, the reinstatement of petitioner will be neither beneficial for her nor her employer. Under these circumstances, public respondent took the most

equitable step by ordering the payment of separation pay in favor of the petitioner. With the grant of separation pay, it is incongruous for petitioner to insist on any kind of reinstatement. Separation pay is precisely the alternative remedy to reinstatement.

IN VIEW HEREOF, the petition is DISMISSED. No costs.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, and Mendoza, JJ., concur.

[1] Petition, p. 6; Rollo, p. 7.

[2] Id., p. 18; p. 19.

[3] G.R. No. 94012, February 17, 1993, 219 SCRA 62.

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