

ALDIN H. GARAI, NILO DEL SOL, NESTOR A. MENDOZA, CELESTINO E. BALMES, DOMINGO O. MENDOZA, EDUARDO A. RAYOS, ARNEL C. CASTANEDA, ERNESTO M. PERCULEZA, EDGARDO PENALOSA, OSCAR T....

G.R. No. 116016. April 26, 1996

Ponente: PADILLA, J.

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PADILLA, J.:

Petitioners seek to annul the resolutions of the National Labor Relations Commission (NLRC) dated 29 November 1993 and 15 April 1994 dismissing their complaints for lack of merit.

Petitioners applied for overseas employment thru private respondent A.P. Placement Specialist Center. After going through different types of examination, petitioners were hired by respondent SAAD Construction Establishment, as either technician, air duct fabricator, plumber or pipe insulator at the King Khalid Military Camp, Batin, Saudi Arabia. Petitioners were deployed on different dates from October 10 to December 1989, but each worked for less than three (3) months, because on 11 February 1990, they were sent home allegedly without a justifiable cause. Before they were repatriated, the sums of US\$435 or US\$635 were also deducted from their wages.

By private respondents' account, the employment contracts signed by petitioners provided for a probationary period of three (3) months within which the employer could terminate the contract in accordance with law.[1] During petitioners' employment with respondent company (SAAD Construction), they were warned in writing that their refusal to carry out the orders and instructions of their supervisors without a valid cause and their instigation of co-workers to stop working or not to report for work were acts prejudicial to the company and hence, similar acts in the future would be dealt with severely. Petitioners' performance on the jobs did not improve, so on different dates from 5 February to 10 February 1990, their employments were terminated for non-compliance with requirements for qualification and for violation of company rules and regulations. The sums of US\$435 or US\$635 were deducted from their wages to cover repatriation expenses.

Petitioners individually filed complaints for illegal dismissal against their foreign employer, SAAD Construction Establishment, represented by A.P. Placement in cases before the Philippine Overseas Employment Administration (POEA). The POEA consolidated and jointly heard the cases and rendered a decision on 11 December 1991, the dispositive part of which states:

"WHEREFORE, the respondents A.P. Placement Specialist Center, Saad Construction Est., and Times Surety Insurance Co., Inc. are hereby ordered to pay the following complainants:

1. ALDIN H. GARAI - SR28,845.00 and US\$435.00
2. NILO DEL SOL - SR28,845.00 and US\$435.00
3. NESTOR A. MENDOZA - SR28,845.00 and US\$435.00

- 4.CELESTINO E. BALMES- SR28,845.00 and US\$435.00
- 5.DOMINGO O. MENDOZA- SR28,845.00 and US\$435.00
- 6.EDUARDO A. RAYOS - SR29,970.00 and US\$635.00
- 7.ARNEL C. CASTANEDA- SR29,000.00 and US\$635.00
- 8.ERNESTO M. PERCULEZA- SR24,200.00 and US\$635.00
- 9.EDGARDO PENALOSA - SR29,000.00 and US\$635.00
- 10.OSCAR T. SANTOS - SR28,845.00 and US\$635.00

or their peso equivalent at time of payment."[2]

Private respondents appealed the POEA decision to the NLRC. While the memorandum of appeal filed by private respondents was dated 3 January 1992, the surety bond was posted only on 25 March 1992 after respondent NLRC issued a resolution dated 20 March 1992 directing private respondents to post a cash or surety bond based on the latter's own computation. Upon receipt of the 20 March 1992 resolution of the NLRC and the private respondents' notice of compliance therewith, petitioners filed an omnibus opposition on the ground, among others, that the POEA decision had already become final and executory after private respondents failed to perfect the appeal within the ten-day reglementary period provided under the POEA Rules and Regulations.[3] Petitioners alleged therein that in order to perfect an appeal to the NLRC, private respondents should have posted a cash or surety bond in an amount equivalent to the monetary award of the POEA within ten (10) days from receipt of the POEA decision. The bond in this case was posted beyond the reglementary period provided by the POEA Rules and Regulations.

On 29 November 1993, public respondent NLRC, unperturbed by the serious objection of petitioners based on jurisdictional grounds, reversed the POEA decision and dismissed the complaints of petitioners for lack of merit. The motion for reconsideration was likewise denied on 15 April 1994. Hence, this petition for certiorari under Rule 65 of the Rules of Court filed on 14 July 1994.

Petitioners assail the resolutions of public respondent NLRC on the following grounds:

I

THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION (NLRC) COMMITTED GRAVE ABUSE OF DISCRETION IN SIDE-STEPPING THE ISSUE ON FINALITY RAISED BY THE PLEADINGS AND/OR IN NOT HOLDING THE DECISION OF 11 DECEMBER 1991 OF THE POEA ALREADY FINAL AND EXECUTORY; AND

II

THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION (NLRC) COMMITTED GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OF JURISDICTION WHEN IT SET ASIDE AND REVERSED THE DECISION OF 11 DECEMBER 1991 OF THE POEA DESPITE THE FACT THE SAME WAS SUPPORTED BY THE EVIDENCE AND THE LAW APPLICABLE.[4]

We will first discuss the procedural aspect of the imputed errors. Petitioners claim that respondent NLRC did not have any jurisdiction to entertain the appeal of private respondents because it was filed beyond the ten-day (10) reglementary period for appeal to the NLRC. Surprisingly, private respondents are silent on this issue. They did not refute petitioners' argument on the final and executory character of the POEA decision, but they insist that respondent NLRC did not gravely abuse its discretion in dismissing the complaints of petitioners. On the other

hand, respondent NLRC thru the Office of the Solicitor General alleges that there is no clear and satisfactory evidence that private respondents failed to perfect the appeal to the NLRC. The Office of the Solicitor General concludes that when the NLRC acted on private respondents' motion to reduce the bond dated 20 January 1992, it decreed that it had jurisdiction over the case.

The petitioners' argument is well-founded. The POEA decision dated 11 December 1991 had indeed become final and executory. Section 5, Rule V of the POEA Rules and Regulations enumerates the requisites for perfection of an appeal to the NLRC, thus:

"Section 5. Requisites for Perfection of Appeal. The appeal shall be filed within the reglementary period as provided in Section 1 of this Rule; shall be under oath with proof of payment of the required appeal fee and the posting of a cash or surety bond as provided in Section 6 of this Rule; shall be accompanied by a memorandum of appeal which shall state the grounds relied upon and the arguments in support thereof; the relief prayed for; and a statement of the date when the appellant received the appealed decision and/or award and proof of service on the other party of such appeal.

A mere notice of appeal without complying with the other requisites afore stated shall not stop the running of the period for perfecting an appeal."

The requirements above mentioned shall be filed by the appellant within ten (10) days from receipt of the POEA decision, otherwise, the decision becomes final and executory. Non-compliance with such requisites will not stop the running of the prescriptive period.[5] The Rules likewise stress the importance of posting a bond in the perfection of appeal to the NLRC. Section 6, Rule V thereof states:"

"Section 6. BOND. In case the decision of the Administration involves a monetary award, an appeal by the employer shall be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in an amount equivalent to the monetary award." (italics supplied)

Section 6, in relation to Section 5, Rule V, earlier quoted, attests to the intention of the lawmaker to make the bond an indispensable requirement for the perfection of an appeal to the NLRC by the employer. The Court made this pronouncement in the case of *Viron Garments v. NLRC*[6] which involved the issue of whether or not the posting of a cash or surety bond is a mandatory requirement for the perfection of an appeal to the NLRC. Although the appeal in that case was from the decision of the labor arbiter and not of the POEA, the POEA Rules and Regulations and the Labor Code provide for similar provisions governing appeals to the NLRC. The presence of this provision in legislation and in the POEA rules is evidence of the state's adherence to the policy of full protection to labor. The posting of a cash or surety bond is intended to assure the workers that if they finally prevail in the case, the monetary award will be given to them upon the dismissal of the employer's appeal. It is further intended to discourage employers from using the appeal to delay or evade payment of their obligations to the employees.[7]

In the case at bar, the records do not show clearly when the private respondents received the POEA decision. Neither was the date of appeal to the NLRC indicated in the pleadings submitted before this Court. However, it can be gathered from the records that private respondents received copy of the POEA decision before 3 January 1992 because the memorandum of appeal to the NLRC was dated 3 January 1992. If we were to give a wide latitude to respondent A.P. Placement by supposing that it received the POEA decision only on 3 January 1992, private respondents would have ten (10) days from 3 January 1992 or until 13 January 1992 to post the required bond in order to perfect the appeal to the NLRC. Even again assuming that the memorandum of appeal was filed on the same day the POEA decision was received, still the motion to fix the bond was filed more than ten (10) days therefrom, or on 20 January 1992 and the bond was posted only on 25 March 1992.

Therefore, since the appeal from the POEA was not perfected within the reglementary period, the NLRC did not acquire jurisdiction over the case, as perfection of the appeal to the NLRC is not only mandatory but also jurisdictional.[8] Hence, the petitioners' first argument is well-taken.

Consequently, the Court sees no need for a discussion of the second issue. Besides, said second issue requires a determination of facts that can no longer be raised by the parties on certiorari.

WHEREFORE, the Court finds the respondent NLRC committed grave abuse of discretion in taking cognizance of the appeal of private respondents. The NLRC resolutions dated 29 November 1993 and 15 April 1994 are hereby SET ASIDE, and the POEA decision dated 11 December 1991 is DECLARED to have become final and executory. Cost against private respondents.

SO ORDERED.

Bellosillo, Vitug, Kapunan, and Hermosisima, Jr., JJ., concur.

[1] Rollo, p. 84.

[2] Rollo, p. 52.

[3] Rules and Regulations Governing Overseas Employment (1991).

[4] Rollo, p. 10.

[5] Section 1 in relation to Section 5, Rule V of the POEA Rules and Regulations.

[6] G.R. No. 97357, 18 March 1992, 207 SCRA 339, 342.

[7] Supra at 342.

[8] Lucero vs. NLRC, G.R. No. 74197, 28 October 1991, 203 SCRA 218,224.

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