

CENTRO ESCOLAR UNIVERSITY, PETITIONER, VS. FIRST DIVISION OF THE NATIONAL LABOR RELATIONS COMMISSION AND MARIA C. ALBA, RESPONDENTS.

G.R. No. 121275. August 07, 1997

Ponente: ROMERO, J.

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ROMERO, J.:

This is a special civil action for certiorari under Rule 65 of the Rules of Court which seeks to set aside the decision of the National Labor Relations Commission dated September 16, 1994 in NLRC Case No. 004668-93 entitled “Maria C. Alba vs. Centro Escolar University,” which reversed the decision of the Labor Arbiter by finding herein petitioner liable for illegal dismissal.

Private respondent Maria C. Alba was hired by petitioner Centro Escolar University in July 1971 as Clinic Nurse of the Health Services Department. Seven years later, she was promoted as Clinic Nurse-in-Charge, and on December 6, 1979, she was appointed as Administrative Assistant/Senior Nurse. Six months later, she was promoted to Administrative Officer. On July 1, 1984, she was appointed Administrator of the Health Services Department. She occupied this position until she was notified of her dismissal on September 18, 1991.

On December 5, 1990, private respondent was placed under preventive suspension by petitioner as a result of a written complaint signed by eight of her staff citing her domineering behaviour.[1] Private respondent filed her answer on December 10, 1990.[2]

The investigating committee submitted its report to the Acting President of petitioner university recommending that the clinic be headed by a medical officer.[3] On January 18, 1991 private respondent met with three of petitioner university’s officials who later advised her to go on leave of absence without pay from January 16, 1991 to July 6, 1991 and thereafter go on retirement.

On January 31, 1991, private respondent once again met with CEU’s Acting President. The latter reiterated her suggestion that private respondent should retire. On February 4, 1991, she was directed to go on leave without pay from January 16, 1991 to July 6, 1991, otherwise she would be considered AWOL.

When private respondent reported back to work on July 18, 1991, she was given a retirement form. She refused to accomplish said form and instead requested the university’s Chairman of the Board to convene an administrative council.[4] In a letter dated August 5, 1991, petitioner extended her preventive suspension until the administrative council convenes.[5]

On September 18, 1991, private respondent was given a notice of termination.[6]

Private respondent filed with the Labor Arbiter a complaint for illegal suspension, illegal dismissal, non-payment of salary, holiday pay, service incentive leave pay, and allowances and moral damages.

On November 27, 1992, Labor Arbiter Ramon Valentin Reyes rendered his decision[7] dismissing the complaint

upon finding that private respondent was dismissed for just cause with due process, and therefore not entitled to money claims except in the amount of P4,200.00. The judgment was without prejudice to private respondent's retirement benefits.[8]

On appeal, the NLRC reversed the Labor Arbiter's decision and ordered private respondent's reinstatement. Respondent Commission's decision dated September 16, 1994 has the following dispositive portion:

"WHEREFORE, premises considered, the appealed decision is hereby REVERSED and SET ASIDE. The dismissal of the complainant as of December 6, 1990 is hereby declared illegal, and respondent CENTRO ESCOLAR UNIVERSITY is hereby ordered to:

1. Reinstatement the complainant MARIA C. ALBA to her former position without loss of seniority rights;
2. Pay the complainant MARIA C. ALBA her backwages from the time she was dismissed on December 6, 1990 until she is actually reinstated, computed at P14,000.00 a month (basic salary plus regular allowance) amounting, as of September 6, 1994 to P616,000.00;
3. Pay the complainant MARIA C. ALBA moral damages of P75,000.00 and exemplary damages of P75,000.00; and
4. Attorney's fees of 10% of the aggregate awards.

SO ORDERED."[9]

Petitioner received a copy of the decision of NLRC on October 27, 1994.[10] On November 26, 1994, petitioner filed a motion for reconsideration of said decision by registered mail.

No action was taken on this motion because it was never received by respondent Commission as evidenced by a Certification issued by the Record Officer of the Receiving Section, National Labor Relations Commission.[11] In fact, since the decision was considered final and executory, a writ of execution was issued on February 23, 1995.[12]

The instant petition is hereby dismissed.

Section 14, Rule VII of the New Rules of Procedure of the NLRC specifically provides that the aggrieved party may file a motion for reconsideration within ten (10) calendar days from receipt of any order, resolution, or decision of the NLRC. In this case, petitioner received a copy of the decision on September 16, 1994 giving it until September 27, 1994 to submit its motion for reconsideration. Petitioner's motion for reconsideration mailed on November 26, 1994 was filed well beyond the ten-day period provided by law. A motion for reconsideration that is filed out of time renders the decision sought to be reconsidered final and executory.[13] Consequently, the decision of the NLRC in the case at bar had attained finality after the expiration of the reglementary period within which a motion for reconsideration may be filed.

Time and again, this Court has reiterated in several cases that before certiorari under Rule 65 can be availed of, a motion for reconsideration must first be filed. A motion for reconsideration is indispensable to enable the tribunal, board, or office, in this case, the NLRC, to pass upon and correct its mistakes without the intervention of a higher court.[14]

In the case of *Building Care Corporation vs NLRC*,[15] we held that the failure to file a motion for reconsideration is a fatal infirmity:

"The unquestioned rule in this jurisdiction is that certiorari will lie only if there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law against the acts of public respondent. In the instant

case, the plain and adequate remedy expressly provided by the law was a motion for reconsideration of the assailed decision, based on palpable or patent errors, to be made under oath and filed within ten (10) days from receipt of the questioned decision.

The filing of such motion is intended to afford public respondent an opportunity to correct any actual or fancied error attributed to it by way of a re-examination of the legal and factual aspects of the case. Petitioner's inaction or negligence under the circumstances is tantamount to a deprivation of the right and opportunity of the respondent Commission to cleanse itself of an error unwittingly committed or to vindicate itself of an act unfairly imputed." (Emphasis supplied.)

Since the assailed decision is indisputably final and executory, its merits can no longer be examined in order to determine the existence of grave abuse of discretion on the part of respondent Commission.

WHEREFORE, the instant petition is hereby DISMISSED. The decision of the National Labor Relations Commission dated September 16, 1994, is accordingly AFFIRMED. Costs against petitioner.
SO ORDERED.

Regalado, (Chairman), Puno, and Mendoza, JJ., concur.
Torres, Jr., J., on leave.

[1] Volume I of Records, p. 121.

[2] Volume 1 of Records, pp. 123-130.

[3] Volume I of Records, pp. 259-263.

[4] Volume I of Records, p. 134.

[5] Volume I of Records, p. 135.

[6] Volume I of Records, p. 419.

[7] Rollo, p. 89.

[8] Ibid.

[9] Rollo, p. 39.

[10] Records, p. 582, Vol. 2.

[11] Volume 2 of Records, p. 649.

[12] Volume 2 of Records, p. 639.

[13] Flores v. NLRC, 256 SCRA 735 (1996).

[14] PNCC v. NLRC, 245 SCRA 668, 674-675 (1995); Gonpu Services Corp. v. NLRC, G.R. No. 111897, January 27, 1997.

[15] G.R. No. 94237, February 26, 1997, citing Interorient Maritime Enterprises, Inc., et al. V. NLRC, G.R. No. 115497, September 16, 1996; Palomado v. NLRC, G.R. No. 96520, June 28, 1996; Purefoods Corp. v. NLRC, 171 SCRA 415, 425, March 21, 1989; Philippine National Construction Corp. (PNCC) v. NLRC, 245 SCRA 668, 674-675, July 7, 1995.

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