

**VICENTE ASPERILLA, ET AL., PLAINTIFFS AND APPELLANTS, VS.
MANILA RAILROAD COMPANY, DEFENDANT AND APPELLEE.***G.R. No. 13964. February 25, 1960*

Ponente: BAUTISTA ANGELO, J.

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On August 7, 1950, plaintiffs filed a complaint before the Municipal Court of Manila praying, that defendant be ordered to pay them their respective salary differentials resulting from the standardization of salaries of defendant's employees, among whom were plaintiffs, for the period from February 1 to June 30, 1949 in the total amount of P7,878.15. The action was based on a memorandum of agreement executed on November 21, 1948 between defendant and two labor unions representing its employees and laborers. Paragraph 2 of said agreement provides: "* * * upon the exhaustion of the amount of P400,000.00, the employees and laborers affected by the standardized plan will receive their present salaries provided that any wage differential from date of exhaustion will be paid when funds for the purpose are available."

On September 12, 1956, defendant filed a motion to dismiss which was denied, and thereafter, it filed its answer wherein it reiterated its prayer for dismissal on the ground, among others, that the clause "provided that any wage differential from date of exhaustion will be paid when funds for the purpose are available" was understood by the parties to mean that the payment of said salary differentials will be made when the company is no longer losing in its operations, and that, since the obligation assumed by defendant is subject to a suspensive condition which had not yet happened, said obligation is not yet due and demandable; hence, the present action is premature.

On December 26, 1956, the municipal court rendered judgment in favor of plaintiffs ordering defendant to appropriate the sum of P6,922.81 not later than March 31, 1957 to be paid to plaintiffs, with legal interest thereon, and to pay the costs. Defendant appealed to the court of first instance, where the case was tried de novo, and having defendant succeeded in proving that it only realized profits during the fiscal year 1956-1957 the court found the action premature and dismissed the complaint. Hence the present appeal.

The main basis on which the decision of the trial court dismissing the case is predicated is that the action taken by appellants in the municipal court in August, 1956 is premature it appearing that defendant company only realized profits in its operations during the fiscal year 1956-1957 making in this respect the following comment:

"It was shown that the company had only realized profits in the fiscal year 1956-57 as shown by Exhibit 1 and consequently, the claim of the plaintiffs for the payment of their salary differential in accordance with the memorandum agreement, Exhibit A, did not take place until the fiscal year 1956-57. Consequently, the fixing by the lower court of the obligation on the part of the defendant to appropriate the amount to pay the said salary differential not later than March 31, 1957 is premature because they filed this case in the Municipal Court in August, 1956."

The above finding is undoubtedly based upon the theory, as entertained by appellee, that the clause "provided that any wage differential from date of exhaustion will be paid when funds for the purpose are available" was

understood by the parties to mean that the payment of the salary differentials will be made when the company is no longer losing in its operations, or when its financial position would warrant the payment of said salary differentials, and since it was here shown that appellee realized profits only in the fiscal year 1956-1957, the instant action is premature.

We submit that the foregoing interpretation runs counter to the opinion expressed by this Court in a similar case wherein another group of employees of appellee tried to recover the balance of their salary differentials under the same memorandum of agreement on which appellants now base their claim in the present case (*Tiglao, et al. vs. The Manila Railroad Company*, 98 Phil., 181; 52 Off., Gaz., [1] 179). Indeed, in that case, in refusing to pay the salary differentials, the company did not repudiate the agreement, but merely contended that pursuant to its terms the salary differentials would only be payable when "funds for the purpose are available," which, as counsel contends, was not then the case because the company was then losing in its business. In fact, the company presented as evidence some summary statements of its accounting department showing that it has sustained losses during the fiscal year ending June 30, 1953 and during the month of July next following.

In dismissing this contention as untenable, this Court made the following comment: "Those statements, however, do not necessarily prove that, in a multimillion peso business such as that of the defendant, funds for the payment of a debt of P7,275.00 due the plaintiffs could not have been raised or made available because of the losses suffered in one year and one month. The memorandum of agreement does not stipulate that the salary differentials shall be paid only from surplus profits. In fact the agreement provides that the standardized salaries—with the resulting salary differentials, naturally—are 'to be carried in all the subsequent budgets of the company.' And we think it may be admitted that in a going concern the availability of funds for a particular purpose is a matter that does not necessarily depend upon the cash position of the company but rather upon the judgment of its board of directors in the choice of projects, measures or expenditures that should be given preference or priority, or in the choice between alternatives. So if defendant was able to raise or appropriate funds to meet other obligations notwithstanding the fact that it was losing, we think it could have done likewise with respect to its debt to the plaintiffs, an obligation which is deserving of preferential' attention because it is owed to the poor."

The same observation may be made with regard to the claim of herein appellants which only amounts to the relatively small sum of P6,922.81 which appellee, with the exercise of a more sympathetic judgment, could have appropriated out of its funds even if it had to pay some other peremptory obligations for, as this Court well observed, this is a claim which deserves preferential consideration because it is owed to the poor. We find, therefore, incorrect the finding of the trial court that this action is premature on the mere ground that appellee has realized profits in its operation only in the fiscal year 1956-1957.

Wherefore, the decision appealed from is reversed. Instead, judgment is hereby rendered ordering appellee to pay appellant the sum of P6,922.81, with legal interest thereon from the date of the filing of the complaint, without pronouncement as to costs.

Paras, C. J., Bengzon, Montemayor, Labrador, Concepcion, Reyes, J. B. L., Endencia, Barrera, and Gutierrez David, JJ., concur.

Padilla, J., took no part.

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