

CIRINEO BOWLING PLAZA, INC., PETITIONER, VS. GERRY SENSING, BELEN FERNANDEZ, MIRASOL DIAZ, MARGARITA ABRIL, DARIO BENITEZ, MANUEL BENITEZ, RONILLO TANDOC, EDGAR DIZON, JOVELYN Q...

G.R. NO. 146572. January 14, 2005

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before us is a special civil action for certiorari filed by petitioner assailing the Resolution[1] dated August 31, 2000 of the Court of Appeals (CA) which dismissed petitioner's petition for certiorari; and the Resolution[2] dated November 10, 2000 which denied petitioner's motion for reconsideration.

The antecedent facts are as follows:

On November 27, 1995, Eligio Paolo, Jr., an employee of petitioner, filed a letter complaint with the Department of Labor and Employment (DOLE for short), Dagupan District Office, Dagupan City, requesting for the inspection/investigation of petitioner for various labor law violations like underpayment of wages, 13th month pay, non-payment of rest day pay, overtime pay, holiday pay and service incentive leave pay.[3] Pursuant to the visitorial and enforcement powers of the Secretary of Labor and Employment, his duly authorized representative under Article 128 of the Labor Code, as amended, conducted inspections on petitioner's establishment the following day. In his inspection report,[4] Labor and Employment Officer III, Crisanto Rey Dingle, found that petitioner has thirteen[5] employees and had committed the following violations: underpayment of minimum wage, 13[th] month pay, holiday premiums, overtime premiums, and non-payment of rest day. The findings in the inspection report were explained to petitioner's officer-in-charge, Ma. Fe Boquiren, who signed the same.

The first hearing of the case was scheduled on December 27, 1995, but petitioner failed to appear, thus, the hearing was reset to January 10, 1996. On the date set, Boquiren, as petitioner's representative, appeared with the information that petitioner's President/General Manager Luisito Cirineo was sick and confined in a hospital.

On the January 19, 1996 hearing, Cirineo appeared and asked for more time to settle with his employees. The case was again set on January 26, 1996 but Cirineo failed to appear.

On April 22, 1996, an Order[6] was issued by the DOLE Regional Office, the dispositive portion of which reads:

WHEREFORE, premises considered and considering further that the amount computed constitutes part of the lawful remunerations of thirteen affected employees, respondent is hereby ordered to pay them the total amount of THREE HUNDRED SEVENTY SEVEN THOUSAND FIVE HUNDRED PESOS AND 58/100. (P377,500.58), representing their unpaid/underpaid wages, 13th month pay, holiday premiums, rest day pay and overtime premiums distributed as follows:

NAME

AMOUNT

1. Gerry Sensing

P 9,505.68

2. Belen Fernandez

14,258.52

3. Mirasol Diaz

12,458.52

4. Margarita Abril

31,557.12

5. Lamberto Solano

53,151.12

6. Dario Benitez

53,151.12

7. Manuel Benitez

53,151.12

8. Ronillo Tandoc

36,951.12

9. Edgar Dizon

14,637.78

10. Jovelyn Quinto

22,769.88

11. Karen Remoran

21,387.78

12. Jennifer Ringor

37,304.82

13. Eligio Paolo, Jr.

12,810.00

TOTAL -----

P 373,094.58

and to submit the proof of payment to this Office within ten (10) days from receipt hereof. Otherwise, a Writ of Execution will be issued to enforce this order.

Respondent is further ORDERED to adjust the salaries of its employees to the applicable daily minimum

wages and to submit the proof thereof within the same period.

SO ORDERED.[7]

copy of which was received by petitioner's counsel on May 17, 1996. No motion for reconsideration or appeal memorandum was filed by petitioner.

On May 27, 1996, petitioner's representative, Carmen Zapata, appeared before the DOLE Regional Office and submitted the quitclaims, waivers and releases of employees-awardees, Lamberto Solano, Jovelyn Quinto, Manuel Benitez, Edgar Dizon, Ronillo Tandoc, Eligio Paolo, Jr., and Dario Benitez. Later, however, Benitez, Tandoc, Quinto and Dizon wrote DOLE a letter denying having received any amount from petitioner. Thus, DOLE's inspector Dingle went to petitioner's establishment to confirm the authenticity of the quitclaims and releases and talked to the employees concerned who stated that they signed the document without knowing its contents but they are willing to settle if they will be given the amount computed by DOLE.

On June 19, 1996, Luisito Cirineo and a certain Fe Cirineo Octaviano, owner of Esperanza Seafoods Kitchenette stationed in petitioner's establishment, wrote DOLE a letter requesting that the case be endorsed to the National Labor Relations Commission since the resolution of the case required evidentiary matters not disclosed or verified in the normal course of inspection. They also submitted documents to show that petitioner and Esperanza Seafoods Kitchenette are separate and distinct business entities and that some of the employees-awardees are actually employees of the Esperanza Seafoods Kitchenette.

On September 12, 1996, DOLE issued its Order[8] stating among others:

Records show that respondent, Luisito Cirineo and his representative appeared before this Office during the summary investigation of this instant case but they never once mentioned the issue of separate juridical personalities. Respondent had always been bent on settling the respective claims of all thirteen (13) concerned employees. In the process, however, he acknowledged being their employer. He cannot at this juncture therefore say, that some of the awardees in our ORDER are employees of another business entity. This being the case, we cannot grant his request for indorsement to the NLRC.

WHEREFORE, premises considered, the case of employees Eligio Paolo, Jr. and Lamberto Solano whose respective claims had been settled by respondent is hereby DISMISSED. The ORDER for the payment of the monetary claims of the eleven (11) other cash awardees STANDS. Let execution follow immediately.[9] (Emphasis supplied)

On October 21, 1996, DOLE Regional Director Maximo B. Lim issued a writ of execution.[10] On November 13, 1996, petitioner filed a motion to quash[11] the writ of execution alleging the following grounds:

- The Writ of Execution seeks to satisfy the monetary awards given to employees who are not employees of Cirineo Bowling Plaza, Inc..
- The Writ of Execution seeks to satisfy monetary awards given to employees of Fe Esperanza C. Octaviano who was not impleaded.
- The Writ of Execution seeks to satisfy monetary awards wrongfully given to employees employed by establishments employing less than ten (10) employees, who are not for this reason entitled to holiday and holiday premium pay, nor to underpayment of wages.
- The Writ of Execution seeks to satisfy the award of benefits in excess of the jurisdictional amount allowed by law.
- The Writ of Execution seeks to enforce an Order issued beyond the quasi-judicial authority of the Regional Director[12].

In an Order[13] dated February 7, 1997, DOLE Regional Director Lim denied petitioner's motion to quash the writ of execution.

Petitioner filed its Memorandum of Appeal to the Secretary of Labor and Employment[14] who dismissed the appeal on the ground that same was filed out of time.[15] On motion for reconsideration, the appeal was granted and the appeal was given due course.

However, on March 30, 1999, DOLE Undersecretary Jose Español dismissed the appeal and affirmed the order dated February 7, 1997 of the DOLE Regional Director with the following disquisitions:

In support thereof, respondent alleges that it had only eight (8) employees as the "other claimants of labor benefits . . . are employees of Fe Esperanza Octaviano doing business under the name and style "Esperanza Seafoods Kitchenette." Thus, it points out that:

...

Hence, under the Labor Code, Article 94 thereof the employees of the appellant are not entitled to holiday pay and holiday premium pay.

Under Republic Act 6727 and its Implementing Rules, Chapter 1, Section 1 thereof, establishments employing less than ten (10) employees are exempted from compliance with minimum wage rates. Hence, the wages given to respondents do not constitute under payments. As to their claims for overtime pay and rest day pay, there is no proof that respondents rendered overtime or restday work, hence they are not entitled to the same. (Cagampanan vs. NLRC, 195 SCRA 533)

We do not agree.

The records show that during the summary investigation respondent never refuted the findings of the labor inspector particularly the identity of the thirteen (13) concerned employees nor raised the issue of separate juridical personalities of respondent Cirineo and Esperanza Seafoods Kitchenette. Thus, in the Order dated 07 February 1997, the Regional Director ruled:

. . . Respondent's actuation during and after the summary investigation disclosed that it was bent on settling all the claims of the claimant-awardees and never did it refute the identity of the concerned awardees. Otherwise, respondent could have easily raised the issue by admitting evidence such as payrolls, daily time records and any similar document which could have pinpointed the real employer of the claimants.

...

The documents submitted to this Office by respondent could be interpreted as a desperate attempt to mislead this Office and to evade liability.

On the issue of jurisdiction, we rule that the Regional Director has jurisdiction over the instant case.

The old rule limiting the jurisdiction of the Secretary of Labor and Employment or his duly authorized representatives to money claims not exceeding P5,000.00 has been repealed by the passage of R.A. No. 7730, Section 1 of which reads:

Section 1. Paragraph (b) of Article 128 of the Labor Code. As amended, is hereby further amended to read as follows:

Art. 128. Visitorial and Enforcement Power.

...

(b) Notwithstanding the provisions of Articles 129 and 217 of this Code to the contrary, and in cases where the

relationship of employer-employee still exists, the Secretary of Labor and Employment or his duly authorized representative shall have the power to issue compliance orders to give effect to the labor standards provisions of this Code and other labor legislation based on the finding of the labor employment and enforcement officer or industrial safety engineers made in the course of inspection. The Secretary or his duly authorized representatives shall issue writs of execution to the appropriate authority for the enforcement of their orders, except in cases where the employer contests the findings of the labor employment and enforcement officer and raises issues supported by documentary proofs which were not considered in the course of inspection.

Pursuant to R.A. 7730, the jurisdictional limitations imposed by Article 129 on the visitatorial and enforcement powers of this Office under Article 128 of the Labor Code, have been repealed. The phrase “notwithstanding the provision of Articles 129 and 217 of the Labor Code to the contrary,” erases all doubts as to the amendatory nature of R.A. No. 7730. The amendment, in effect, overturned the rulings in the Aboitiz and Servandos cases insofar as the restrictive effect of Article 129 on the use of the power under Article 128 is concerned.

Indeed, the Supreme Court in *Nazareno Furniture vs. Hon. Secretary of Labor and Employment and Tomas Mendoza* (G.R. No. 128546, April 30, 1997), already ruled that:

Petitioner is incorrect in stating that R.A. 7730 did not specifically amend Art. 217 of the Labor Code. In fact, it is plainly stated that the amendment applies notwithstanding the provisions of Articles 129 and 217 to the contrary. Even if Article 217 confers original and exclusive jurisdiction over cases such as the one subject of this petition, this has been modified by the later enactment of R.A. 7730. . . .”[16]

Petitioner’s motion for reconsideration was denied in a Resolution dated April 18, 2000.[17]

Petitioner filed a petition for certiorari with prayer for the issuance of temporary restraining order with the CA.

On August 31, 2000, the CA dismissed the petition for failure of petitioner to (1) attach a copy of the letter complaint filed by petitioner’s employees and the Order dated February 7, 1997 of the DOLE Regional Director and (2) state the material date when the assailed Orders/Resolutions were received pursuant to Section 1 of Rule 65 and Section 3 of Rule 46 of the 1997 Rules of Civil Procedure. Petitioner filed a motion for reconsideration which was also denied by the CA on November 10, 2000, copy of which was received by petitioner on November 24, 2000.

Petitioner comes to us by way of a petition for certiorari under Rule 65 raising the sole issue:

PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DISMISSED THE INSTANT PETITION AND OUTRIGHT DISMISSAL OF PETITIONER’S MOTION FOR RECONSIDERATION DUE TO MERE TECHNICALITIES.

Respondents did not file their comment on the petition.

We dismiss the petition.

We find no grave abuse of discretion committed by the CA in issuing the assailed resolutions. The CA dismissed the petition for certiorari for failure of petitioner to attach certain documents and to state the material date. While petitioner filed its motion for reconsideration, attaching the required documents, the CA correctly found that it still did not state the material date when it received the DOLE’s Resolution dated April 18, 2000 denying its motion for reconsideration. Thus, without the date of receipt of the denial of such motion, the CA could not determine whether the petition was filed within the reglementary period of sixty days for filing the petition for certiorari under Rule 65 of the Rules of Court. Under Section 3, Rule 46 of the 1997 Rules of Civil Procedure, as amended by SC Circular No. 39-98, in original actions for certiorari filed with the CA, the petition must include

the following material dates, to wit:

Section 3. Contents and filing of petition; effect of non-compliance with requirements.-

...

In actions filed under Rule 65, the petition shall further indicate the material dates showing when the notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received.

...

The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition.

It bears stressing that the timely perfection of an appeal is a mandatory requirement, which cannot be trifled with as a “mere technicality” to suit the interest of a party. The rules on periods for filing appeals are to be observed religiously, and parties who seek to avail themselves of the privilege must comply with the rules.[18] The failure to perfect an appeal as required by law renders the judgment final and executory.[19]

While there are exceptional cases where we set aside procedural defects to correct a patent injustice, there should be an effort on the part of the party invoking liberality to at least explain its failure to comply with the rules.[20] It appears that petitioner’s new counsel failed to state the material date twice, first in its petition filed with the CA and, second, in its motion for reconsideration. Petitioner’s explanation focused on the fact that its President, Luisito Cirineo, only learned of the DOLE’s denial of its motion for reconsideration on August 1, 2000 when he came back from a trip from Europe; that efforts to communicate with its former counsel remained futile. We find such explanation unsatisfactory since the material dates can easily be verified from the files of the DOLE office.

Even if we disregard technicality, we find the arguments raised by petitioner without merit. As correctly held by the DOLE Regional Director and sustained by the DOLE Undersecretary, records show that petitioner never refuted the findings of the labor inspector as to the identity of the thirteen employees nor raised the issue of separate juridical personalities of petitioner Cirineo and Esperanza Seafoods Kitchenette during the investigation and on the hearings conducted.

Likewise, we sustain the jurisdiction of the DOLE Regional Director. The visitorial and enforcement powers of the DOLE Regional Director to order and enforce compliance with labor standard laws can be exercised even where the individual claim exceeds P5,000.00.[21] In *Allied Investigation Bureau, Inc. vs. Secretary of Labor and Employment*,[22] we elucidated:

Petitioner argues that the power to adjudicate money claims belongs to the Labor Arbiter who has exclusive jurisdiction over employees’ claims where the aggregate amount of the claims of each employee exceeds P5,000.00; and, that the Labor Arbiter has jurisdiction over all other claims arising from employer-employee relations, including those of persons in domestic or household service, involving an amount exceeding five thousand pesos (P5,000.00), whether or not accompanied with a claim for reinstatement.

Petitioner’s arguments are untenable.

While it is true that under Articles 129 and 217 of the Labor Code, the Labor Arbiter has jurisdiction to hear and decide cases where the aggregate money claims of each employee exceeds P5,000.00, said provisions of law do not contemplate nor cover the visitorial and enforcement powers of the Secretary of Labor or his duly authorized representatives.

Rather, said powers are defined and set forth in Article 128 of the Labor Code (as amended by R.A. No. 7730)

thus:

Art. 128. Visitorial and enforcement power. –

(a) The Secretary of Labor or his duly authorized representatives, including labor regulation officers, shall have access to employer's records and premises at any time of the day or night whenever work is being undertaken therein, and the right to copy therefrom, to question any employee and investigate any fact, condition or matter which may be necessary to determine violations or which may aid in the enforcement of this Code and of any labor law, wage order or rules and regulations issued pursuant thereto.

(b) Notwithstanding the provisions of Articles 129 and 217 of this Code to the contrary, and in cases where the relationship of employer-employee exists, the Secretary of Labor and Employment or his duly authorized representatives shall have the power to issue compliance orders to give effect to the labor standards provisions of this Code and other labor legislation based on the findings of labor employment and enforcement officers or industrial safety engineers made in the course of inspection. The Secretary or his duly authorized representatives shall issue writs of execution to the appropriate authority for the enforcement of their orders, except in cases where the employer contests the finding of the labor employment and enforcement officer and raises issues supported by documentary proofs which were not considered in the course of inspection.

An order issued by the duly authorized representative of the Secretary of Labor and Employment under this article may be appealed to the latter. In case said order involved 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 Secretary of Labor and Employment in the amount equivalent to the monetary award in the order appealed from.

...

The aforequoted provision explicitly excludes from its coverage Articles 129 and 217 of the Labor Code by the phrase "(N)otwithstanding the provisions of Articles 129 and 217 of this Code to the contrary . . ." thereby retaining and further strengthening the power of the Secretary of Labor or his duly authorized representative to issue compliance orders to give effect to the labor standards provisions of said Code and other labor legislation based on the findings of labor employment and enforcement officers or industrial safety engineers made in the course of inspection.

In the case at bar, the Office of respondent Regional Director conducted inspection visits at petitioner's establishment on February 9 and 14, 1995 in accordance with the above-mentioned provision of law. In the course of said inspection, several violations of the labor standard provisions of the Labor Code were discovered and reported by Senior Labor Enforcement Officer Eduvigis A. Acero in his Notice of Inspection Results. It was on the bases of the aforesaid findings (which petitioner did not contest), that respondent Regional Director issued the assailed Order for petitioner to pay private respondents the respective wage differentials due them.

Clearly, as the duly authorized representative of respondent Secretary of Labor, and in the lawful exercise of the Secretary's visitorial and enforcement powers under Article 128 of the Labor Code, respondent Regional Director had jurisdiction to issue his impugned Order.

In a recent case, the Supreme Court ruled in this wise:

Assailed in this special civil action for certiorari is the Order dated August 1, 1995 issued by public respondent Regional Director Romeo A. Young of the Department of Labor and Employment (DOLE) in Case No. NCROO-9503-IS-035, ordering petitioner Lord and Lady Salon to pay private respondent Ateldo Barroga the sum of P14,099.05 representing his underpaid wages and premium pay for work on holidays. This suit is an offshoot of the complaint for payment of salary differentials filed by private respondent against petitioner on March 20,

1995. Upon investigation conducted by public respondent's office, petitioner was found to have committed the following violations: (1) underpayment of wages, (2) non-implementation of premium pay for worked legal holidays, and (3) non-availability of records at the time of inspection. Consequent to the parties' failure to reach an amicable settlement, public respondent issued the assailed resolution. Petitioner asserts that public respondent exceeded his jurisdiction in taking cognizance of the complaint and ordering the payment of P14,099.05 to private respondent because the award of the latter amount goes over the jurisdictional amount of P5,000.00 for cases filed before the Regional Director, thus, is properly cognizable by the Labor Arbiter instead.

We dismiss the petition. Pursuant to Section 1 of Republic Act 7730 [Approved on June 2, 1994] which amended Article 128 (b) of the Labor Code, the Secretary of Labor and Employment or his duly authorized representative, in the exercise of their visitorial and enforcement powers, are now authorized to issue compliance orders to give effect to the labor standards provisions of this Code and other labor legislation based on the findings of labor employment and enforcement officers or industrial safety engineers made in the course of inspection, sans any restriction with respect to the jurisdictional amount of P5,000.00 provided under Article 129 and Article 217 of the Code.

The instant case therefore falls squarely within the coverage of the aforecited amendment as the assailed order was issued to enforce compliance with the provisions of the Code with respect to the payment of proper wages. Hence, petitioner's claim of lack of jurisdiction on the part of public respondent is bereft of merit.[23]

WHEREFORE, the instant petition is DISMISSED for lack of merit.

SO ORDERED.

Puno, (Chairman), Callejo, Sr., Tinga, and Chico-Nazario, JJ., concur.

[1] Penned by Justice Godardo A. Jacinto with the concurrence of Justices Rodrigo V. Cosico and Bienvenido L. Reyes.

[2] Id., pp. 26-27.

[3] CA Records, p. 118.

[4] Rollo, p. 54.

[5] See page 3 of herein decision.

[6] Rollo, pp. 54-56.

[7] Id., pp. 55-56.

[8] Rollo, pp. 57-59.

[9] Id., p. 58.

[10] Id., pp. 97-100.

[11] Id., pp. 101-109.

[12] Id., p. 101.

[13] Id., pp. 142-152.

[14] Secretary Leonardo A. Quisumbing (now Supreme Court Associate Justice).

[15] *Id.*, p. 121.

[16] *Id.*, pp. 125-126.

[17] *Id.*, p. 127.

[18] *Cuevas vs. Bais Steel Corporation*, 391 SCRA 192.

[19] *Mabuhay vs. NLRC*, 288 SCRA 1, 6.

[20] *Lapid vs. Laurea*, 391 SCRA 277, 285.

[21] *Guico vs. Quisumbing*, 298 SCRA 667.

[22] 319 SCRA 77.

[23] *Id.*, pp. 82-86.

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