

NERISSA BUENVIAJE, SONIA FLORES, BELMA OLIVIO, GENALYN PELOBELLO, MARY JANE MENOR, JOSIE RAQUERO, ESTRELITA MANAHAN, REBECCA EBOL, AND ERLINDA ARGAS, PETITIONERS, VS. THE HONORAB...

G.R. No. 147806. November 12, 2002

Ponente: PUNO, J.

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PUNO, J.:

This petition seeks to set aside the Decision dated March 13, 2000 and Resolution dated February 13, 2001 of the Court of Appeals in CA-G.R. SP No. 53204 entitled “Cottonway Marketing Corp. vs. National Labor Relations Commission, et al.”

The facts are as follows:

Petitioners were former employees of Cottonway Marketing Corp. (Cottonway), hired as promo girls for their garment products. In October, 1994, after their services were terminated as the company was allegedly suffering business losses, petitioners filed with the National Labor Relations Commission (NLRC) a complaint for illegal dismissal, underpayment of salary, and non-payment of premium pay for rest day, service incentive leave pay and thirteenth month pay against Cottonway Marketing Corp. and Network Fashion Inc./JCT International Trading.[1]

On December 19, 1995, Labor Arbiter Romulus S. Protasio issued a Decision finding petitioners' retrenchment valid and ordering Cottonway to pay petitioners' separation pay and their proportionate thirteenth month pay.[2]

On appeal, the NLRC, in its Decision dated March 26, 1996, reversed the Decision of the Labor Arbiter and ordered the reinstatement of petitioners without loss of seniority rights and other privileges. It also ordered Cottonway to pay petitioners their proportionate thirteenth month pay and their full backwages inclusive of allowances and other benefits, or their monetary equivalent computed from the time their salaries were withheld from them up to the date of their actual reinstatement.[3]

Cottonway filed a motion for reconsideration which was denied by the Commission in a Resolution dated July 31, 1996.[4]

On August 30, 1996, Cottonway filed with the NLRC a manifestation stating that they have complied with the order of reinstatement by sending notices dated June 5, 1996 requiring the petitioners to return to work, but to no avail; and consequently, they sent letters to petitioners dated August 1, 1996 informing them that they have lost their employment for failure to comply with the return to work order.[5] Cottonway also filed a petition for certiorari with the Supreme Court which was dismissed on October 14, 1996.[6]

On November 6, 1997, petitioners filed with the NLRC a motion for execution of its Decision on the ground that it had become final and executory.[7]

On December 4, 1996, the Research and Investigation Unit of the NLRC issued a computation of the monetary award in accordance with the March 26 Decision of the NLRC.[8]

Meanwhile, Cottonway filed a motion for reconsideration of the Supreme Court Resolution of October 14, 1996 dismissing the petition for certiorari. The motion for reconsideration was denied with finality on January 13, 1997.[9]

On March 4, 1997, Cottonway filed a manifestation with the NLRC reiterating their allegations in their manifestation dated August 30, 1996, and further alleging that petitioners have already found employment elsewhere.[10]

On March 13, 1997, the Research and Investigation Unit of the NLRC issued an additional computation of petitioners' monetary award in accordance with the March 26 NLRC decision.[11]

On the same date, Cottonway filed with the NLRC a supplemental manifestation praying that the Commission allow the reception of evidence with respect to their claim that petitioners have found new employment. The Commission denied Cottonway's prayer in an Order dated March 24, 1997[12] and Resolution dated July 24, 1997.[13]

Nonetheless, on April 8, 1998, Labor Arbiter Romulus S. Protasio issued an Order declaring that the award of backwages and proportionate thirteenth month pay to petitioners should be limited from the time of their illegal dismissal up to the time they received the notice of termination sent by the company upon their refusal to report for work despite the order of reinstatement. He cited the fact that petitioners failed to report to their posts without justifiable reason despite respondent's order requiring them to return to work immediately. The Labor Arbiter ordered the Research and Investigation Unit to recompute the monetary award in accordance with its ruling.[14]

The April 8 Order of the Labor Arbiter, however, was set aside by the Commission in its Resolution dated September 21, 1998. The Commission ruled that its Decision dated March 26, 1996 has become final and executory and it is the ministerial duty of the Labor Arbiter to issue the corresponding writ of execution to effect full and unqualified implementation of said decision.[15] The Commission thus ordered that the records of the case be remanded to the Labor Arbiter for execution. Cottonway moved for reconsideration of said resolution, to no avail.

Hence, Cottonway filed a petition for certiorari with the Court of Appeals seeking the reversal of the ruling of the NLRC and the reinstatement of the Order dated April 8, 1998 issued by Labor Arbiter Romulus S. Protasio.

The appellate court granted the petition in its Decision dated March 13, 2000.[16] It ruled that petitioners' reinstatement was no longer possible as they deliberately refused to return to work despite the notice given by Cottonway. The Court of Appeals thus held that the amount of backwages due them should be computed only up to the time they received their notice of termination. It said:

“Petitioner's termination of private respondents' employment by reason of their failure to report for work despite due notice being valid, it would change the substance of the questioned March 26, 1996 decision which awards backwages to the complainants up to their reinstatement. Again, private respondents' reinstatement is no longer possible because of the supervening event which is their valid termination. The deliberate failure to report for work after notice to return bars reinstatement. It would be unjust and inequitable then to require petitioner to pay private respondents their backwages even after the latter were validly terminated when in fact petitioner dutifully complied with the reinstatement aspect of the decision. Thus, the period within which the monetary award of private respondents should be based is limited up to the time of private respondents' receipt of the respective notices of termination on August 27, 1998.”[17]

The Court of Appeals denied petitioners' motion for reconsideration in a Resolution issued on February 13, 2001.[18]

Petitioners now question the Decision and Resolution of the Court of Appeals. They impute the following errors:

I. That the Honorable Court of Appeals gravely abused its discretion amounting to lack of and/or in excess of jurisdiction in rendering the assailed decision in CA-G.R. No. SP 53204 without first performing its ministerial duty of taking initial judicial action thereon unlawfully depriving the petitioners the opportunity to comment and/or file responsive pleadings to the petition resulting to their being unlawfully denied a day in court;

II. That the Honorable Court of Appeals gravely abused its discretion amounting to lack of and/or in excess of jurisdiction in rendering a decision in CA-G.R. No. SP 53204 reversing and setting aside the lawful and appropriate September 21, 1998 and March 31, 1999 resolutions of the Honorable NLRC and reinstating the irregular and illegal April 8, 1998 Order of Honorable Arbiter Romulus Protasio; and

III. That the Honorable Court of Appeals gravely abused its discretion amounting to lack of and/or in excess of jurisdiction in issuing the February 13, 2001 Resolution which denied petitioners' motion for reconsideration from the decision of March 13, 2000 without stating the legal basis therefor.”[19]

We proceed directly to the central issue in this case which is the computation of petitioners' backwages—whether it should be limited from the time they were illegally dismissed until they received the notice of termination sent by Cottonway on August 1, 1996 as argued by respondent company, or whether it should be computed from the time of their illegal dismissal until their actual reinstatement as argued by the petitioners.

We agree with the petitioners.

The issue of the legality of the termination of petitioners' services has been settled in the NLRC decision dated March 26, 1996. Thus, Cottonway was ordered to reinstate petitioners to their former position without loss of seniority rights and other privileges and to pay them full backwages. The dispositive portion of the decision read:

“WHEREFORE, the decision appealed from is hereby REVERSED. Respondent Cottonway Marketing Corporation is hereby ordered to reinstate the complainants without loss of seniority rights and other privileges and to pay them the following: (1) their proportionate 13th month pay for 1994; and (2) their full backwages inclusive of allowances and other benefits, or their monetary equivalent computed from the time their salaries were withheld from them up to the date of their actual reinstatement.

SO ORDERED.”

These are the reliefs afforded to employees whose employment is unlawfully severed. Reinstatement restores the employee to the position from which he was removed, i.e., to his status quo ante dismissal, while the grant of backwages allows the same employee to recover from the employer that which he lost by way of wages because of his dismissal.[20]

Under R.A. 6715, employees who are illegally dismissed are entitled to full backwages, inclusive of allowances and other benefits or their monetary equivalent, computed from the time their actual compensation was withheld from them up to the time of their actual reinstatement. If reinstatement is no longer possible, the backwages shall be computed from the time of their illegal termination up to the finality of the decision.[21] The Court explained the meaning of “full backwages” in the case of *Bustamante vs. NLRC*: [22]

“The Court deems it appropriate, however, to reconsider such earlier ruling on the computation of backwages as enunciated in said *Pines City Educational Center* case, by now holding that conformably with the evident legislative intent as expressed in Rep. Act No. 6715, above-quoted, backwages to be awarded to an illegally dismissed employee, should not, as a general rule, be diminished or reduced by the earnings derived by him

elsewhere during the period of his illegal dismissal. The underlying reason for this ruling is that the employee, while litigating the legality (illegality) of his dismissal, must still earn a living to support himself and family, while full backwages have to be paid by the employer as part of the price or penalty he has to pay for illegally dismissing his employee. The clear legislative intent of the amendment in Rep. Act No. 6715 is to give more benefits to workers than was previously given them under the Mercury Drug rule or the "deduction of earnings elsewhere" rule. Thus, a closer adherence to the legislative policy behind Rep. Act No. 6715 points to "full backwages" as meaning exactly that, i.e., without deducting from backwages the earnings derived elsewhere by the concerned employee during the period of his illegal dismissal. In other words, the provision calling for "full backwages" to illegally dismissed employees is clear, plain and free from ambiguity and, therefore, must be applied without attempted or strained interpretation. *Index animi sermo est.*" (italics supplied)

The Court does not see any reason to depart from this rule in the case of herein petitioners. The decision of the NLRC dated March 26, 1996 has become final and executory upon the dismissal by this Court of Cottonway's petition for certiorari assailing said decision and the denial of its motion for reconsideration. Said judgment may no longer be disturbed or modified by any court or tribunal. It is a fundamental rule that when a judgment becomes final and executory, it becomes immutable and unalterable, and any amendment or alteration which substantially affects a final and executory judgment is void, including the entire proceedings held for that purpose. Once a judgment becomes final and executory, the prevailing party can have it executed as a matter of right, and the issuance of a writ of execution becomes a ministerial duty of the court. A decision that has attained finality becomes the law of the case regardless of any claim that it is erroneous. The writ of execution must therefore conform to the judgment to be executed and adhere strictly to the very essential particulars.[23]

To justify the modification of the final and executory decision of the NLRC dated March 26, 1996, the Court of Appeals cited the existence of a supervening event, that is, the valid termination of petitioners' employment due to their refusal to return to work despite notice from respondents reinstating them to their former position.

We cannot concur with said ruling. Petitioners' alleged failure to return to work cannot be made the basis for their termination. Such failure does not amount to abandonment which would justify the severance of their employment. To warrant a valid dismissal on the ground of abandonment, the employer must prove the concurrence of two elements: (1) the failure to report for work or absence without valid or justifiable reason, and (2) a clear intention to sever the employer-employee relationship.[24]

The facts of this case do not support the claim of Cottonway that petitioners have abandoned their desire to return to their previous work at said company. It appears that three months after the NLRC had rendered its decision ordering petitioners' reinstatement to their former positions, Cottonway sent individual notices to petitioners mandating them to immediately report to work. The standard letter, signed by the company's legal counsel, Atty. Ambrosio B. De Luna, and sent to each of the petitioners read:

"June 5, 1996

Dear Ms. Alivid,[25]

By virtue of the decision of the National Labor Relation(s) Commission dated March 26, 1996 in Belma Alivid vs. Network Fashion, Inc., JCT Int'l Trading and, Cotton Mktg., Corp., NLRC CASE NO. NCR-010210-96 and NLRC NCR-00-10-07238-94, you are hereby ordered to report for work within five (5) days from receipt of this letter, otherwise, your failure will be deemed lack of interest to continue and considered to have abandoned your employment with the company.

Please give this matter your utmost attention.

Very truly your(s),

(sgd) AMBROSIO B. DE LUNA
Legal Counsel”

The petitioners, however, were not able to promptly comply with the order. Instead, their counsel, Atty. Roberto LL. Peralta, sent a reply letter to Atty. De Luna stating that his clients were not in a position to comply with said order since the NLRC has not yet finally disposed of the case. The reply letter stated:[26]

“June 20, 1996

ATTY. AMBROSIO B. DE LUNA
Unit 2-D Bouganvilla (sic) Mansions
91 P. Tuazon Street, Cubao
Quezon City

Compañero,

Your letter dated June 5, 1996 to our clients, Erlinda Arga, et al., complainants in NLRC NCR CASE NO. 00-10-07238-94, Genalyn Pelobello, et al. vs. Network Fashion, et al., was referred to us for reply.

Please be informed that our said clients are not in a position now to comply with your order for them to report for work within five (5) days from receipt thereof since the National Labor Relations Commission, First Division, has yet to finally disposed off (sic) the case.

However, if it is now a case that your client, Mr. Michael Tong, is yielding to the Decision dated March 26, 1996 of the NLRC, we are then willing to sit down with you relative to the satisfaction of the same to avoid said decision from being enforced by the sheriff.

Trusting your cooperation on this matter.

Thank you.

Very truly yours,

(sgd) ROBERTO LL. PERALTA
Counsel For The Complainants”

Consequently, Cottonway sent the petitioners individual notices of termination. The standard letter of termination which was likewise signed by counsel and individually addressed to petitioners stated:

“August 1, 1996

BELMA ALIVID
c/o Sonia Flores
#1256-A St. Nino Street
Tondo(.) Manila

Dear Ms. Alivid,[27]

For your failure to report for work as per letter dated June 5, 1996 within the period of five days from receipt of the same, you are considered to have lost your employment status effective this date with the company on the ground of failure to report for work.

Please be guided accordingly.

Very truly yours,

(sgd) Ambrosio B. De Luna

Legal Counsel of
Network Fashion(,) Inc.”

We note that Cottonway, before finally deciding to dispense with their services, did not give the petitioners the opportunity to explain why they were not able to report to work. The records also do not bear any proof that all the petitioners received a copy of the letters. Cottonway merely claimed that some of them have left the country and some have found other employment. This, however, does not necessarily mean that petitioners were no longer interested in resuming their employment at Cottonway as it has not been shown that their employment in the other companies was permanent. It should be expected that petitioners would seek other means of income to tide them over during the time that the legality of their termination is under litigation. Furthermore, petitioners never abandoned their suit against Cottonway. While the case was pending appeal before the NLRC, the Court of Appeals and this Court, petitioners continued to file pleadings to ensure that the company would comply with the directive of the NLRC to reinstate them and to pay them full backwages in case said decision is upheld. Moreover, in his reply to the company’s first letter, petitioners’ counsel expressed willingness to meet with the company’s representative regarding the satisfaction of the NLRC decision.

It appears that the supposed notice sent by Cottonway to the petitioners demanding that they report back to work immediately was only a scheme to remove the petitioners for good. Petitioners’ failure to instantaneously abide by the directive gave them a convenient reason to dispense with their services. This the Court cannot allow. Cottonway cited Article 223 of the Labor Code providing that the decision ordering the reinstatement of an illegally dismissed employee is immediately executory even pending appeal as basis for its decision to terminate the employment of petitioners. We are not convinced. Article 223 of the Labor Code provides:

“ART. 223. Appeal. – Decisions, 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. x x x

x x x x x x x x

In any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be executory, even pending appeal. The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation or, at the option of the employer, merely reinstated in the payroll. The posting of a bond by the employer shall not stay the execution for reinstatement provided herein. x x x

x x x x x x x x.”

The foregoing provision is intended for the benefit of the employee and cannot be used to defeat their own interest. The law mandates the employer to either admit the dismissed employee back to work under the same terms and conditions prevailing prior to his dismissal or to reinstate him in the payroll to abate further loss of income on the part of the employee during the pendency of the appeal. But we cannot stretch the language of the law as to give the employer the right to remove an employee who fails to immediately comply with the reinstatement order, especially when there is reasonable explanation for the failure. If Cottonway were really sincere in its offer to immediately reinstate petitioners to their former positions, it should have given them reasonable time to wind up their current preoccupation or at least to explain why they could not return to work at Cottonway at once. Cottonway did not do either. Instead, it gave them only five days to report to their posts and when the petitioners failed to do so, it lost no time in serving them their individual notices of termination. We are, therefore, not impressed with the claim of respondent company that petitioners have been validly dismissed on August 1, 1996 and hence their backwages should only be computed up to that time. We hold that petitioners are entitled to receive full backwages computed from the time their compensation was actually withheld until their

actual reinstatement, or if reinstatement is no longer possible, until the finality of the decision, in accordance with the Decision of the NLRC dated March 26, 1996 which has attained finality.[28]

IN VIEW WHEREOF, the petition is GRANTED. The Decision of the Court of Appeals dated March 13, 2000 and Resolution dated February 13, 2001 in CA-G.R. SP No. 53204 are REVERSED and SET ASIDE. Let the records of this case be remanded to the Labor Arbiter for execution in accordance with the Decision of the NLRC dated March 26, 1996.

SO ORDERED.

Panganiban, Sandoval-Gutierrez, Corona, and Carpio-Morales, JJ., concur.

[1] Original Record, vol. 1, p. 2.

[2] Id., pp. 240-247.

[3] Id., pp. 319-326.

[4] Id., pp. 386-390.

[5] Id., p. 432.

[6] Id., p. 478.

[7] Id., p. 479.

[8] Id., p. 490.

[9] Original Record, vol. 2, p. 74.

[10] Id., pp. 78-80.

[11] Id., p. 102.

[12] Id., p. 109.

[13] Id.

[14] Original Record, vol. 3, p. 517.

[15] Id., pp. 712-718.

[16] Rollo, pp. 40-50.

[17] Decision, CA-G.R. SP No. 53204, pp. 10-11; Rollo, pp. 49-50.

[18] Rollo, pp. 52-53.

[19] Petition, Rollo, pp. 15-16.

[20] De Guzman vs. NLRC, 312 SCRA 266 (1999).

[21] Prudential Bank and Trust Co. vs. Reyes, 352 SCRA 316 (2001); Times Transit Credit Cooperative, Inc. vs. NLRC, 304 SCRA 11 (1999).

[22] 265 SCRA 61 (1996).

[23] Buaya vs. Stronghold Insurance Co., Inc., 342 SCRA 576 (2000); Equatorial Realty Development, Inc. vs. Mayfair Theater, Inc., 332 SCRA 139 (2000).

[24] Icawat vs. NLRC, 334 SCRA 75 (2000).

[25] Similar letters were sent to the other petitioners, Maryjane Menor, Estrelita Manahan, Nerissa Buenviaje, Rebecca Ebol, Josie Raguero, Genalyn Pelobello, Erlinda Arga and Sonia Flores, differing only in the name of the addressee and the title of the complaint before the NLRC. (See Original Records, vol. 2, pp. 90-98).

[26] Original Records, vol. 2.

[27] Similar letters were sent to Maryjane Menor, Estrelita Manahan, Nerissa Buenviaje, Rebecca Ebol, Josie Raguero, Genalyn Pelobello, Erlinda Arga and Sonia Flores. (See Original Records, vol. 2, pp. 81-89)

[28] Association of Independent Unions in the Philippines vs. NLRC, 305 SCRA 219 (1999); Quebec, Sr. vs. NLRC, 301 SCRA 627 (1999).

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