

PHILIPPINE SCOUT VETERANS SECURITY & INVESTIGATION AGENCY, INC. (PSVSIA), PETITIONER, VS. JOSE PASCUA, RESPONDENT.

G.R. NO. 154002. August 19, 2005

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

Before us is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Amended Decision[1] dated January 11, 2002 and the Resolution[2] dated June 14, 2002 rendered by the Court of Appeals in CA-G.R. SP No. 50527, entitled "Philippine Scout Veterans Security & Investigation Agency, Inc. vs. National Labor Relations Commission and Jose Pascua."

The instant controversy stemmed from a complaint for illegal dismissal from the service and non-payment of separation pay and other benefits filed with the Office of the Labor Arbiter by Jose C. Pascua, respondent, against Philippine Scout Veterans Security & Investigation Agency, Inc. (PSVSIA), petitioner, docketed as NLRC NCR Case No. 00-03-02632-94.

Respondent, in his complaint, alleged that on March 3, 1962, he was employed as a security guard by petitioner PSVSIA. At the time of his dismissal from the service, he was a duty sergeant assigned at the residence of Nancy Sy, receiving a monthly salary of P3,300.00. Sometime in January, 1994, Ms. Neneng Enverga, petitioner's personnel manager, proposed to change his employment from regular to retainer and to pay him his retirement benefits amounting to P15,000.00. Petitioner declined. Later or on March 16, 1994, when he reported for work, he was told that petitioner has terminated his employment.

In its answer to the complaint, petitioner denied the allegations therein and averred that on March 18, 1994, respondent was reassigned to the Makati Medical Center. But despite the issuance to him of his new uniform, still he refused to report for work.

On May 8, 1996, the Labor Arbiter rendered a Decision dismissing respondent's complaint.

Upon appeal, the National Labor Relations Commission (NLRC) issued a Resolution dated July 26, 1996 remanding the case to the Labor Arbiter "for further appropriate proceedings."

After the submission of the parties' supplemental position papers, the Labor Arbiter rendered a Decision dated December 15, 1996 finding that respondent was illegally dismissed from employment and ordering petitioner to pay him (1) his full backwages, (2) separation pay, (3) unpaid portion of his 13th month pay and service incentive leave, (4) cash bond refund, and (5) attorney's fees. The dispositive portion of the Decision reads:

"WHEREFORE, premises considered, judgment is hereby rendered:

- ORDERING respondent to pay complainant backwages from the time his compensation has been withheld from him up to the date of the promulgation of this decision inclusive of all other benefits such as salary

increases, bonuses, 13th month pay and service incentive leave pay without qualification and deduction pursuant to the Supreme Court ruling in *Bustamante, et al. vs. NLRC* (G.R. No. 111651, 15 March 1996) in the amount of P265,494.84;

- ORDERING respondent to pay complainant severance pay computed at the rate of P5,550.00 per month in the amount of P194,250.00;

- ORDERING respondent to pay complainant the unpaid portion of his 13th month pay and service incentive leave pay in the amount of P1,908.00;

- ORDERING respondent to refund complainant's cash bond in the amount of P4,955.00;

- ORDERING respondent to pay complainant's counsel of record ten (10%) percent of the total monetary award as attorney's fees in the sum of P46,660.78.

All other claims are dismissed for lack of merit.

SO ORDERED."

On January 23, 1998, petitioner filed with the NLRC an appeal and motion to reduce the appeal bond.

However, in a Resolution dated March 31, 1998, the NLRC dismissed the appeal for petitioner's failure to post an appeal bond.

Petitioner then filed a motion for reconsideration but it was denied by the NLRC in a Resolution dated June 16, 1998.

Consequently, petitioner filed with the Court of Appeals a petition for certiorari alleging that the NLRC committed grave abuse of discretion in dismissing its appeal.

On June 16, 2000, the Court of Appeals promulgated a Decision reversing the assailed Resolutions and ordering the NLRC to take cognizance of petitioner's motion to reduce appeal bond.

Respondent then filed a motion for reconsideration which was granted by the Court of Appeals. In its Amended Decision dated January 11, 2002, the Appellate Court dismissed the petition for certiorari, holding that since petitioner failed to post an appeal bond within the ten-day reglementary period, the dismissal of its appeal by the NLRC "for non-perfection thereof, is proper," thus:

"After carefully deliberating the matter raised by movant-private respondent, We are of the opinion and so hold that petitioner's previously filed "Motion to Reduce Bond," which was not immediately acted upon by public respondent before the expiration of the period to file an appeal, is tantamount to an extension of the period for perfecting an appeal. If public respondent was not able to resolve such "Motion to Reduce Bond," still petitioner should have filed the required appeal bond within the ten-day reglementary period following receipt of the order, resolution, or decision of the NLRC to forestall the finality of such order, resolution or decision. Now, considering that petitioner did not file the required appeal bond which is an indispensable and jurisdictional requisite, the challenged NLRC Resolution dated March 31, 1998, dismissing petitioner's appeal for non-perfection thereof, is proper. It bears emphasizing that an appeal is only a statutory privilege and it may only be exercised in the manner provided by law.

WHEREFORE, private respondent's Motion for Reconsideration is hereby GRANTED. Accordingly, Our decision dated June 16, 2000 is ANNULLED and SET ASIDE and the instant petition for certiorari is correspondingly DISMISSED.

SO ORDERED."

Petitioner filed a motion for reconsideration but it was denied by the Appellate Court in a Resolution dated June 14, 2002.

Hence, the instant petition alleging that the Court of Appeals erred in upholding the NLRC's assailed Resolution dated March 31, 1998 dismissing the appeal for petitioner's failure to post an appeal bond.

We agree with the Court of Appeals. The posting of appeal bond is mandatory. Article 223 of the Labor Code, as amended, 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. Such appeal may be entertained only on any of the following grounds:

- (a) If there is prima facie evidence of abuse of discretion on the part of the Labor Arbiter;
- (b) If the decision, order or award was secured through fraud or coercion, including graft and corruption;
- (c) If made purely on questions of law; and
- (d) If serious errors in the finding of facts are raised which would cause grave or irreparable damage or injury to the appellant.

In case of a judgment involving 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 Commission in the amount equivalent to the monetary award in the judgment appealed from.

x x x x x."

Similarly, Sections 4(a) and 6 of Rule VI of the NLRC Rules of Procedure, as amended by Resolution No. 01-02, Series of 2002, provide:

"SECTION 4. REQUISITES FOR PERFECTION OF APPEAL. (a) The Appeal shall be filed within the reglementary period as provided in Section 1 of this Rule; shall be verified by appellant himself in accordance with Section 4, Rule 7 of the Rules of Court, 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 in three (3) legibly typewritten copies 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, resolution or order and a certificate of non-forum shopping with proof of service on the other party of such appeal. A mere notice of appeal without complying with the other requisites aforesaid shall not stop the running of the period of perfecting an appeal.

x x x x x."

"SECTION 6. BOND. In case the decision of the Labor Arbiter or the Regional Director involves a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond. The appeal bond shall either be in cash or surety in an amount equivalent to the monetary award, exclusive of damages and attorney's fees.

In case of surety bond, the same shall be issued by a reputable bonding company duly accredited by the Commission or the Supreme Court, and shall be accompanied by:

- a) a joint declaration under oath by the employer, his counsel, and the bonding company, attesting that the surety bond posted is genuine, and shall be in effect until final disposition of the case;
- b) a copy of the indemnity agreement between the employer-appellant and bonding company; and
- c) a copy of security deposit or collateral securing the bond.

A certified true copy of the bond shall be furnished by the appellant to the appellee who shall verify the regularity and genuineness thereof and immediately report to the Commission any irregularity.

Upon verification by the Commission that the bond is irregular or not genuine, the Commission shall cause the immediate dismissal of the appeal.

No motion to reduce bond shall be entertained except on meritorious grounds and upon the posting of a bond in a reasonable amount in relation to the monetary award.

The filing of the motion to reduce bond without compliance with the requisites in the preceding paragraph shall not stop the running of the period to perfect an appeal."

The necessary import of the foregoing sections, as we held in *Imperial Textile Mills, Inc. vs. NLRC*,^[3] is that "the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but jurisdictional, and failure to conform to the rules will render the judgment sought to be reviewed final and unappealable."

Thus, for petitioner's failure to post an appeal bond seasonably, the Labor Arbiter's Decision became final and unappealable. Clearly, the Court of Appeals did not err in sustaining the dismissal of petitioner's appeal by the NLRC.

WHEREFORE, the instant petition is DENIED. The assailed Amended Decision dated January 11, 2002 and Resolution dated June 14, 2002 of the Court of Appeals in CA-G.R. SP No. 50527 are hereby AFFIRMED.

Costs against petitioner.

SO ORDERED.

Panganiban, (Chairman), Corona, Carpio Morales, and Garcia, JJ., concur.

[1] Penned by Associate Justice Eloy R. Bello, Jr. (retired), with Associate Justice Delilah Vidallon-Magtolis and Associate Justice Elvi John S. Asuncion, concurring. Annex "A", Petition for Review, Rollo at 31-34.

[2] Annex "B", id. at 35-36.

[3] G.R. No. 101527, January 19, 1993, 217 SCRA 237, cited in *Philippine Transmarine Carriers, Inc. vs. Cortina*, G.R. No. 146094, November 12, 2003, 415 SCRA 714, 718.

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