

MRS. ALBERTA YANSON/Hacienda VALENTIN-BALABAG, vs. THE HON. SECRETARY, DEPARTMENT OF LABOR AND EMPLOYMENT (LEGAL SERVICE-MANILA), Public Respondent,

G.R. No. 159026. February 11, 2008

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before us is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, assailing the October 30, 2002 Decision[1] of the Court of Appeals (CA) which affirmed the September 21, 2001 Order[2] of the Secretary of the Department of Labor and Employment (public respondent), and the May 22, 2003 CA Resolution[3] which denied the motion for reconsideration.

The facts are of record.

On March 27, 1998, Mardy Cabigo and 40 other workers (private respondents) filed with the Department of Labor and Employment-Bacolod District Office (DOLE Bacolod) a request for payroll inspection[4] of Hacienda Valentin Balabag owned by Alberta Yanson (petitioner). DOLE Bacolod conducted an inspection of petitioner's establishment on May 27, 1998, and issued a Notice of Inspection Report, finding petitioner liable for the following violations of labor standard laws:

- Underpayment of salaries and wages (workers being paid a daily rate of Ninety Pesos [P90.00] since 1997 and Seventy Five Pesos [P75.00] prior to such year);
- Non-payment of 13[th] month pay for two (2) years;
- Non-payment of Social Amelioration Bonus (SAB) for two (2) years;
- Non-payment of employer's 1/3 carabao share.[5]

and directing her to correct the same, thus:

You are required to affect [sic] restitution and/or correction of the foregoing at the company or plant level within ten (10) calendar days from notice hereof.

Any question of the above findings should be submitted to this Office within five (5) working days from notice hereof otherwise order of compliance shall be issued.

This notice shall be posted conspicuously in the premises of the workplace, removal of which shall subject the establishment to a fine and/ or contempt proceedings.

When there is a certified union, a copy of the notice shall be furnished said union.[6]

In addition, DOLE Bacolod scheduled a summary investigation and issued, by registered mail, notices of hearing[7] as well as a subpoena duces tecum[8] to the parties. Petitioner did not appear in any of the scheduled hearings, or present any pleading or document.[9]

In a Compliance Order[10] dated August 12, 1998, DOLE Bacolod directed petitioner to pay, within five (5) days, P9,084.00 to each of the 41 respondents or a total of P372,444.00, and to submit proof of payment thereof. It also required petitioner to correct existing violations of occupational safety and health standards.[11]

Thereafter, DOLE Bacolod issued on December 17, 1998 a Writ of Execution of its August 12, 1998 Compliance Order, viz.:

NOW, THEREFORE, you are hereby commanded to proceed to the premises of HAD. VALENTIN/BALABAG, MS. ALBERTA YANSON located at Brgy. Graneda or at Burgos St., Bacolod City and require the respondent to comply with the Order and pay the amount of THREE HUNDRED SEVENTY-TWO THOUSAND FOUR HUNDRED FORTY-FOUR (P372,444.00).

You are to collect the above-stated amount from the respondent and deposit the same to the Cashier of this Office for appropriate disposition to herein workers and/or the supervision of the Office of the Regional Director. Otherwise, you are to execute this Writ by attaching the goods and chattel of the respondent not exempt from execution or in case of insufficiency thereof, against the real or immovable property.

You are further ordered to collect the Execution and/or Sheriff Fee in the amount of TWO THOUSAND ONE HUNDRED TWENTY-SEVEN (P2,127.00) PESOS.

Return this Writ to this Office within sixty (60) days from receipt hereof together with your statement in writing of the proceeding that you shall have conducted by virtue hereof.[12]

On February 17, 1999, petitioner filed with DOLE Bacolod a Double Verified Special Appearance to Oppose “Writ of Execution” For Being a Blatant and Dangerous Violation of Due Process,[13] claiming that she did not receive any form of communication, or participate in any proceeding relative to the subject matter of the writ of execution. Petitioner also impugned the validity of the August 12, 1998 Compliance Order subject of the writ of execution on the ground of lack of employment relationship between her and private respondents. DOLE Bacolod denied said motion in an Order[14] dated March 11, 1999.

Petitioner filed with public respondent a Verified Appeal[15] and Supplement to the Verified Appeal,[16] posting therewith an appeal bond of P1,000.00 in money order and attaching thereto a Motion to be Allowed to Post Minimal Bond with Motion for Reduction of Bond.[17] Public respondent dismissed her appeal in an Order[18] dated September 21, 2001.

Petitioner filed a Petition for Certiorari[19] which was denied due course and dismissed by the CA in its assailed October 30, 2002 Decision. Petitioner’s motion for reconsideration was also denied.

Hence, petitioner’s present recourse on the following grounds:

I. The Honorable Court of Appeals and the Honorable Secretary of Labor, with all due respect, deprived the herein petitioner-appellant of her constitutional right not to be deprived of property without due process of law, and of free access to courts and quasi-judicial bodies by reason of poverty;

II. The Honorable Labor Secretary in his assailed Decision, with all due respect, for some rather mysterious reason or the other, dismissed the appeal with utter disregard of the fact that her Regional Director, whose orders were appealed to her were never received by the Petitioner.

Said orders assessing payments against the petitioner were issued without notice received by petitioner, and enforced without giving the petitioner a chance to controvert the atrocious figures, and two years after the petitioner’s farm had ceased its operations;

III. The Honorable Labor Secretary denied the petitioner of her right to seasonably raise the issue of lack of jurisdiction and the right [to] appeal;

IV. There are very serious errors of fact and law in the assailed decision of the Honorable Labor Secretary, with all due respect; or that the assailed decision, with all due respect, is patently and blatantly contrary to law and jurisprudence.[20]

The petition lacks merit.

The appeal which petitioner filed with public respondent ultimately questioned the August 12, 1998 Compliance Order in which DOLE Bacolod, in the exercise of its visitorial and enforcement power, awarded private respondents P9,084.00 each in labor standard benefits or the aggregate sum of P377,444.00.[21] For its perfection, the appeal was therefore subject to the requirements prescribed under Article 128 of the Labor Code, as amended by Republic Act No. 7730,[22] viz.:

Art. 128. Visitorial and Enforcement Power. - x x x (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 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 findings 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 involves 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. (Emphasis ours)

When petitioner filed her Verified Appeal and Supplement to the Verified Appeal, she posted a mere P1,000.00-appeal bond and attached a Motion to be Allowed to Post Minimal Bond with Motion for Reduction of Bond. Public respondent rejected said appeal for insufficiency of the appeal bond, viz.:

We note and stress that there is no analogous application in the Office of the Secretary of the practice in the NLRC of reducing the appeal bond; the law applicable to the Office of the Secretary of Labor and Employment does not allow this practice. In other words, the respondent's request for the reduction of the required bond cannot be allowed for lack of legal basis. Hence, for lack of the required bond, the respondent's appeal was never duly perfected and must therefore be dismissed.[23] (Emphasis ours)

Citing *Allied Investigation Bureau, Inc. v. Secretary of Labor and Employment*,[24] the CA held that public respondent did not commit grave abuse of discretion in holding that petitioner failed to perfect her appeal due to the insufficiency of her bond.[25]

Petitioner contends that the CA and public respondent denied her the right to appeal when they rejected her P1,000.00-appeal bond. She insists that her appeal bond cannot be based on the monetary award of P372,444.00 granted by DOLE Bacolod in its August 14, 1998 Order which, having been rendered without prior notice to her, was a patent nullity and completely without effect.[26] She argues that her appeal bond should instead be based on her capacity to pay; otherwise, her right to free access to the courts as guaranteed under Article III, Section 2 of the Constitution would be set to naught merely because of her diminished financial capacity.

Our sympathy for petitioner cannot override our fidelity to the law.

In *Guico, Jr. v. Hon. Quisumbing*,[27] we held that the posting of the proper amount of the appeal bond under

Article 128 (b) is mandatory for the perfection of an appeal from a monetary award in labor standard cases:

The next issue is whether petitioner was able to perfect his appeal to the Secretary of Labor and Employment. Article 128 (b) of the Labor Code clearly provides that the appeal bond must be "in the amount equivalent to the monetary award in the order appealed from." The records show that petitioner failed to post the required amount of the appeal bond. His appeal was therefore not perfected.[28]

Just like the petitioner in the present case, the employer in *Guico v. Secretary of Labor* had also sought a reduction of the appeal bond due to financial losses arising from the shutdown of his business; yet, we did not temper the strict requirement of Article 128 (b) for him. The rationale behind the stringency of such requirement is that the employer-appellant may choose between a cash bond and a surety bond. Hence, limitations in his liquidity should pose no obstacle to his perfecting an appeal by posting a mere surety bond.

Moreover, Article 128(b) deliberately employed the word "only" in reference to the requirements for perfection of an appeal in labor standards cases. "Only" commands a restrictive application,[29] giving no room for modification of said requirements.

Petitioner pointed out, however, that Article 223[30] of the Labor Code prescribes similar requirements for perfection of appeals to the National Labor Relations Commission (NLRC); yet, the same has been applied with moderation in that a reduction of the appeal bond may be allowed.[31] That is correct; but then, it should be borne in mind that reduction of bond in the NLRC is expressly authorized under the Rules implementing Article 223, viz.: [32]

RULE VI. APPEALS

Section 6. Bond. – In case the decision of the Labor Arbiter, the Regional Director or his duly authorized Hearing Officer involves a monetary award, an appeal by the employer shall be perfected only upon the posting of a cash or surety bond, which shall be in effect until final disposition of the case, issued by a reputable bonding company duly accredited by the Commission or the Supreme Court in an amount equivalent to the monetary award, exclusive of damages and attorney's fees.

The employer, his counsel, as well as the bonding company, shall submit a joint declaration under oath attesting that the surety bond posted is genuine.

The Commission may, in justifiable cases and upon Motion of the Appellant, reduce the amount of the bond. The filing of the motion to reduce bond shall not stop the running of the period to perfect appeal. (Emphasis supplied.)

No similar authority is given the DOLE Secretary in Department Order No. 18-02 (Implementing Rules), Series of 2002, amending Department Order No. 7-A, Series of 1995, implementing Article 128(b), thus:

Rule X-A

Section 8. Appeal. - (a) The Order of the Regional Director shall be final and executory unless appealed to the Secretary within ten (10) calendar days from receipt thereof.

(b) The appeal shall be filed with the Regional Office where the case originated together with the memorandum of the appealing party. The appellee may file his answer within ten (10) calendar days from receipt of the appellants memorandum.

Section 9. Cash or surety bond; when required. - In case the order involves a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a duly accredited bonding company. The bond should be in the amount equivalent to the monetary award indicated in the order.

Section 10. Writ of execution. - (a) If no appeal is perfected within the reglementary period, the Regional Director shall, *motu proprio* or upon motion of any interested party, issue a writ of execution to enforce the order. In the enforcement of the writ, the assistance of the law enforcement authorities may be sought.

(b) A writ of execution may be recalled subsequent to its issuance, if it is shown that an appeal has been perfected in accordance with this rule. (Emphasis ours)

Under the foregoing Implementing Rules, it is plain that public respondent has no authority to accept an appeal under a reduced bond.

Further applying the Implementing Rules, there is one other reason for holding that petitioner failed to perfect her appeal. It is of record that she received the August 12, 1998 Compliance Order issued by DOLE-Bacolod, as indicated in the registry return card marked Annex "I".[33] Petitioner does not question this, except to point out that the registry return card does not indicate the date she received the order. That is of no consequence, for the fact remains that petitioner was put on actual notice not only of the existence of the August 12, 1998 Compliance Order but also of the summary investigation of her establishment. It behooves her to file a timely appeal to public respondent[34] or object to the conduct of the investigation.[35] Petitioner did neither, opting instead to sit idle and wait until the following year to question the investigation and resultant order, in the guise of opposing the writ of execution through a motion dubbed "Double Verified Special Appearance to Oppose 'Writ of Execution' For Being a Blatant and Dangerous Violation of Due Process." [36] Such appeal already went beyond the ten-day period allowed under Section 8(b) of Rule X-B of the Implementing Rules.

In fine, the CA was correct in holding that public respondent did not commit grave abuse of discretion in rejecting the appeal of petitioner due to the insufficiency of her appeal bond.

Even if we delve into its substance, her appeal would still not prosper. Petitioner questions the August 12, 1998 Compliance Order on the grounds that she was never notified of the proceedings leading to its issuance, and that as early as 1997, her employment relationship with the private respondents had already been severed.

We dwell only on questions of law, not purely questions of fact, in petitions for review on certiorari under Rule 45 of the Rules of Court. The first issue which petitioner raised, that is, whether she was properly served the notices of hearing issued by DOLE-Bacolod, is purely factual.[37] The determination made by DOLE-Bacolod on this matter binds us, especially as it was not reversed by public respondent and the CA. We therefore cannot supplant its factual finding with our own,[38] moreso that petitioner's bare denial cannot outweigh the probative value of the registry return cards attached to the record which indicate that said notices were received by petitioner.[39]

Anent the second issue, the records do not sustain petitioner's claim. In a Collective Bargaining Agreement dated January 29, 1998,[40] petitioner acknowledged under oath that she is the employer of private respondents Mardy Cabigo, et al., who are members of the union known as Commercial and Agro-Industrial Labor Organization.

WHEREFORE, the petition is DENIED for lack of merit.

No costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Corona, Nachura, and Reyes, JJ., concur.

[*] In lieu of Justice Minita V. Chico-Nazario, per Special Order No. 484 dated January 11, 2008.

[**] Spelled "Talidong" in the December 17, 1998 Writ of Execution issued by DOLE Bacolod; rollo, p. 104

[***] Id.

[****] Spelled “Sanadre” in the December 17, 1998 Writ of Execution issued by DOLE Bacolod; rollo, p. 104.

[*****] Id.

[1] Penned by Associate Justice Bernardo P. Abesamis and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Edgardo F. Sundiam; rollo, p.42.

[2] Id. at 77.

[3] Id. at 55.

[4] CA rollo, p. 65.

[5] CA rollo, p. 91.

[6] Id.

[7] Rollo, pp. 102-102.

[8] Memorandum for Public Respondent, id. at 222.

[9] Id.

[10] Id. at 104.

[11] Id. at 105.

[12] Rollo, p. 105.

[13] Id. at 107.

[14] Id. at 90.

[15] Id. at 80.

[16] Id. at 112.

[17] Rollo, p. 99.

[18] Id. at 77.

[19] Id. at 62.

[20] Id. at 25-26.

[21] Verified Appeal, rollo, p. 82.

[22] An Act Further Strengthening the Visitorial and Enforcement Powers of the Secretary of Labor and Employment, Amending for the Purpose Article 128 (b) of Presidential Decree No. 442.

[23] September 21, 2001 DOLE Order, id. at 28.

[24] 377 Phil. 80, 92 (1999).

[25] Rollo, p. 47.

[26] Petition, id. at 27.

[27] 359 Phil. 197 (1998).

[28] Guico, Jr. v. Hon. Quisumbing, id. at 209.

[29] Sapitan v. JB Line, G.R. No. 163775, October 19, 2007.

[30] Article 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...

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In case of 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.

[31] Nicol v. Footjoy Industrial Corp., G.R. No. 159372, July 27, 2007.

[32] Computer Innovations Center v. National Labor Relations Commission, G.R. No. 152410, June 29, 2005, 462 SCRA 183, 189.

[33] Rollo, p. 103.

[34] Laguna CATV Network, Inc. v. Maraon, 440 Phil. 734, 740 (2002).

[35] EJR Crafts Corporation v. Court of Appeals, G.R. No. 154101, March 10, 2006, 484 SCRA 340, 351.

[36] Rollo, p. 109.

[37] Velayo-Fong v. Velayo, G.R. NO. 155488, December 6, 2006, 510 SCRA 320, 329.

[38] EJR Crafts Corporation v. Court of Appeals, supra note 35, at 349.

[39] Rollo, pp. 101-103.

[40] CA rollo, pp. 70-83.

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