

TRIAD SECURITY & ALLIED SERVICES, INC. AND ANTHONY U. QUE, PETITIONERS, VS. SILVESTRE ORTEGA, JR., ARIEL ALVARO, RICHARD SEVILLANO, MARTIN CALLUENG, AND ISAGANI CAPILA, RESPONDE...

G.R. NO. 160871. February 06, 2006

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This petition seeks to set aside the Decision[1]dated 31 July 2003 of the Court of Appeals in CA-G.R. SP No. 77065 entitled, "Triad Security & Allied Services, Inc. and Anthony U. Que v. Labor Arbiter Edgar Bisana, et al." The dispositive portion of the decision reads:

WHEREFORE, the petition is DENIED DUE COURSE and is DISMISSED. The temporary restraining order earlier issued on June 12, 2003 is LIFTED.[2]

The following are the pertinent facts:

Petitioner Triad Security and Allied Services, Inc., (Triad Security) is a duly licensed security agency owned by co-petitioner Anthony U. Que. It holds office at 672 Carlos Palanca St., Quiapo, Manila.

On the other hand, respondents Silvestre Ortega, Jr., Ariel Alvaro, Richard Sevillano, Martin Callueng, and Isagani Capila were formerly employed by petitioner Triad Security as security guards.

On 25 March 1999, respondents filed a complaint against petitioners and a certain Ret. B/Gen. Javier D. Carbonell for underpayment/nonpayment of salaries, overtime pay, premium pay for holiday and rest day, service incentive leave pay, holiday pay, and attorney's fees.[3] The complaint was amended on 20 April 1999 to include the charges of illegal dismissal, illegal deductions, underpayment/nonpayment of allowance, separation pay, and claims for 13[th] month pay, moral and exemplary damages as well as night shift differential.[4]

According to respondents, during the time that they were in the employ of petitioners, they were receiving compensation which was below the minimum wage fixed by law. They were also made to render services everyday for 12 hours but were not paid the requisite overtime pay, nightshift differential, and holiday pay. Respondents likewise lamented the fact that petitioners failed to provide them with weekly rest period, service incentive leave pay, and 13[th] month pay. As a result of these perceived unfairness, respondents filed a complaint before the Labor Standards Enforcement Division of the Department of Labor on 6 January 1999.[5]Upon learning of the complaint, respondents' services were terminated without the benefit of notice and hearing.

For their part, petitioners denied respondents' claim of illegal dismissal. Petitioners explained that management policies dictate that the security guards be rotated to different assignments to avoid fraternization and that they be required to take refresher courses at their headquarters. Respondents allegedly refused to comply with these policies and instead went on leave or simply refused to report at their headquarters. As for respondents' money

claims, petitioners insisted that respondents worked for only eight hours a day, six days a week and that they received their premium pays for services rendered during holidays and rest day. The service incentive leave of respondents was allegedly made payable as soon as respondents applied for said benefit.[6]

In his decision dated 28 February 2000, Labor Arbiter Jose G. de Vera found in favor of respondents. The dispositive portion of his decision states:

WHEREFORE, all the foregoing premises considered judgment is hereby rendered ordering the respondents to reinstate the complainants (respondents herein) to their former jobs as security guards, and to pay jointly and solidarily complainants' backwages which as of February 24, 2000 already amount to P473,233.15, and to such further backwages as they accrue until reinstatement order is complied with by the respondents (petitioners herein).

Further, respondents are ordered to pay jointly and solidarily separation pay computed at the aggregate sum of P232,976.25 in the event reinstatement is no longer feasible.

Furthermore, respondents are ordered to pay jointly and solidarily complainants' money claims in the aggregate sum of P956, 115.30.

And finally, respondents are ordered to pay attorney's fees equivalent to ten percent (10%) of the judgment award.[7]

As petitioners failed to seasonably file an appeal with the National Labor Relations Commission, the decision of the labor arbiter became final and executory prompting respondents to file a motion for the issuance of writ of execution on 23 June 2000.[8] The writ of execution was thereafter issued on 25 August 2000.[9]

On 18 September 2000, petitioners filed a motion to recompute money claims as decreed[10] arguing therein that respondents' money claims as contained in the 28 February 2000 decision were baseless and that their former counsel was not furnished a copy of the computation nor was he allowed to submit comments thereon.

Pursuant to the writ of execution, petitioner Triad Security's funds with its clients Remal Enterprises and Don Pedro Azucarera amounting to one million two hundred twenty-four thousand seven hundred sixty-two pesos and forty centavos (P1,224,762.40) were garnished.[11]

On 3 October 2000, petitioners filed a motion to lift notices of garnishment[12]

In the order dated 14 November 2000,[13] the labor arbiter denied, for lack of merit, petitioners' motion to recompute respondents' money claims as well as their motion to lift notices of garnishment. In the same order, the garnished receivables were ordered released to the NLRC cashier for proper disposition to respondents.

On 23 November 2000, respondents filed a motion seeking the release of the funds then in the custody of the NLRC cashier.[14]

On 13 December 2000, petitioners filed an appeal before the NLRC assailing the denial of their motion to recompute money claims and the labor arbiter's order releasing the garnished funds to respondents.[15] This appeal was dismissed by the NLRC's first division in its order promulgated on 29 May 2001.[16]

Similarly ill-fated were petitioners' petition for injunction which was dismissed by the NLRC in its resolution of 22 May 2001[17] and their motion for reconsideration of said resolution which was denied for utter lack of merit on 4 September 2001.[18]

Following petitioners' set-backs before the NLRC, the labor arbiter issued the order dated 31 August 2001 decreeing the release of the funds in the possession of the NLRC cashier to respondents.[19]

On 1 October 2002, the labor arbiter issued an alias writ of execution[20] commanding the sheriff to collect from petitioners the amount of six hundred three thousand seven hundred ninety-four and seventy-seven centavos (P603,794.77) representing the unsatisfied balance of the judgment award contained in the 28 February 2000 decision.

Acting on respondents' motion dated 15 October 2002, the labor arbiter issued the order dated 9 December 2002 directing the cashier of Don Pedro Azucarera to release to the NLRC cashier the garnished funds totaling P603,794.77.[21] The funds were eventually ordered released to respondents pursuant to the labor arbiter's order of 17 December 2002.[22]

On 30 September 2002, the Computation and Examination Unit of the NLRC came up with a computation of monetary award where it appears that petitioners were liable to respondents for the amount of P2,097,152.26 representing the latter's backwages and separation pay.[23]

On 30 January 2003, petitioners filed their comment on the computation prepared by the Computation and Examination Unit. Petitioners essentially opposed the computation based on the following grounds:

(a)

the balance of the unsatisfied award is only Php 603,794.77 and not Php 2,097,152.26 appearing on the computation;

(b)

the basis for computing the wage differential is erroneous.[24]

On the basis of the new computation, respondents filed a motion for the issuance of 2[nd] alias writ of execution.[25] This motion was predictably opposed by petitioners.[26]

Despite petitioners' protest, the labor arbiter issued the 23 April 2003 order stating as follows:

The records of the case reveal that the decision ordered the respondents to reinstate the complainants to their former job as security guards and decreed that respondents shall pay to the complainants further backwages as they accrue until the order of reinstatement is complied with.

The order of reinstatement is self-executing and should be complied with by the respondents upon receipt of the decision either by payroll or physical reinstatement. (Pioneer Texturizing Corporation vs. NLRC, 280 SCRA 806, in relation to Article 223 of the Labor Code, as amended).

The respondents failed to comply with the order of reinstatement, hence, complainants' backwages accrued.

As a matter of procedure, this Office ordered the Computation and Examination Unit to compute complainants' accrued backwages.

On September 30, 2002, the Computation and Examination Unit came up with the total amount of TWO MILLION NINETY SEVEN THOUSAND ONE HUNDRED FIFTY TWO and 26/100 (P2,097,152.26) PESOS.

The respondents filed their comment on the computation and their opposition to complainants' motion for execution.

We considered and studied respondents' arguments in their comment and opposition and We found them

inadequate to overcome the presumption of correctness and regularity of the computation; hence, the same is hereby approved.

Further, the argument regarding the supposed prescribed period covering the month 2 February – 20 April 1996 appears inconsequential in view of a manifestation during conference that (complainants are) willing to admit the same and deduct them from whatever amount is still due them.

WHEREFORE, in view of the foregoing, complainants' motion for the execution of their accrued backwages amounting to TWO MILLION NINETY SEVEN THOUSAND ONE HUNDRED FIFTY TWO and 26/100 (P2, 097,152.26) PESOS as computed by the Computation and Examination Unit of the NLRC is hereby granted less the amount of more or less P72,805.00 covering the wage differential for the period 2 February – 20 April 1996.

Let an Alias Writ of Execution for the enforcement of the P2,097,152.26 less the above-mentioned amount, as complainants' accrued backwages, be accordingly issued.[27]

Forthwith, a 2nd alias writ of execution dated 14 May 2003 was issued by the labor arbiter for the satisfaction of the amount of P2,024,347.26 "representing (respondents') unpaid accrued backwages as computed by the Computation and Examination Unit xxx, including attorney's fees, plus execution fee." [28]

On 20 May 2003, petitioners filed before the Court of Appeals a petition for certiorari with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction. [29]

In a resolution promulgated on 12 June 2003, the Court of Appeals issued a temporary restraining order enjoining the execution or enforcement of the 23 April 2003 order of the labor arbiter. [30]

Petitioners' victory with the Court of Appeals was, however, short-lived. In the decision now assailed before us, the Court of Appeals ruled that backwages payable to respondents should be computed from the date of their termination from their jobs until actual reinstatement as provided in Article 223 of the Labor Code. As petitioners failed to observe said pertinent provision of the law, the labor arbiter could not be charged with having committed a grave abuse of discretion when he issued the assailed 23 April 2003 order.

Moreover, the Court of Appeals took note of the "procedural but fatal flaw" [31] committed by petitioners when they immediately elevated their case via petition for certiorari before the Court of Appeals without first seeking recourse from the NLRC in violation not only of the Rules of Procedure of said body but also of the doctrine of exhaustion of administrative remedies.

Petitioners' motion for reconsideration was denied by the Court of Appeals in a resolution dated 20 November 2003.

Hence this petition raising the following issues:

I

WHETHER OR NOT THE COURT OF APPEALS ERRED WHEN IT DECLARED THAT THE REMEDY ADOPTED BY THE PETITIONERS IS ERRONEOUS

II

WHETHER OR NOT PETITIONERS SHOULD BE HELD LIABLE TO THE ADDITIONAL AMOUNT AS CONTAINED IN THE 23 APRIL 2003 ORDER CONSIDERING THAT THE 28 FEBRUARY 2000 DECISION HAS ALREADY BEEN FULLY SATISFIED

III

WHETHER OR NOT THE 30 SEPTEMBER 2002 COMPUTATION ISSUE BY THE COMPUTATION
AND EXAMINATION UNIT OF THE NLRC IS CORRECT AND PROPER

The petition is partially meritorious.

First, we shall resolve the procedural issue posed in this petition.

Petitioners contend that based on the rules of procedure of the NLRC, the order granting the issuance of the 2nd alias writ of execution could not have been the proper subject of an appeal before the NLRC neither could petitioners have sought the remedy of certiorari from the NLRC. Petitioners argue that the rules of procedure of the NLRC do not provide for any remedy or procedure for challenging the order granting a writ of execution; hence, the pertinent provision of the Revised Rules of Court should apply which in this case is Section 1 of Rule 41. It states:

Section 1. Subject of appeal – An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

x x x x

(f) An order of execution;

x x x x

In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.

Moreover, Rule III, Section 4 of the Rules of Procedure of the NLRC expressly proscribes the filing of a petition for certiorari –

SECTION 4. PROHIBITED PLEADINGS & MOTIONS. The following pleadings, motions or petitions shall not be allowed in the cases covered by these Rules:

x x x x

c) Petition for Certiorari, Mandamus or Prohibition.

Therefore, inasmuch as the NLRC had no authority to issue the writ of certiorari, recourse to the Court of Appeals was only proper.

In addition, petitioners maintain that the doctrine of exhaustion of administrative remedies is not absolute as it accepts of certain exceptions such as when an appeal would not be an adequate remedy there being an order or execution already issued and the implementation of said writ loomed as a great probability.[32]

We do not agree.

It is a basic tenet of procedural rules that for a special civil action for a petition for certiorari to prosper, the following requisites must concur: (1) the writ is directed against a tribunal, a board or an officer exercising judicial or quasi-judicial functions; (2) such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.[33]

In this case, petitioners insist that the NLRC is bereft of authority to rule on a matter involving grave abuse of

discretion that may be committed by a labor arbiter. Such conclusion, however, proceeds from a limited understanding of the appellate jurisdiction of the NLRC under Article 223 of the Labor Code which states:

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.

In the case of *Air Services Cooperative v. Court of Appeals*,^[34] we had the occasion to explain the scope of said article of the Labor Code to mean –

x x x Also, while the title of Article 223 seems to provide only for the remedy of appeal as that term is understood in procedural law and as distinguished from the office of certiorari, nonetheless, a closer reading thereof reveals that it is not as limited as understood by the petitioners x x x.

x x x x

Abuse of discretion is admittedly within the ambit of certiorari and its grant thereof to the NLRC indicates the lawmakers' intention to broaden the meaning of appeal as that term is used in the Code x x x.^[35]

Likewise, in the same case, this Court quoted with approval the following observation of the Court of Appeals:

We do not see how appeal would have been inadequate or ineffectual under the premises. On the other hand, being the administrative agency especially tasked with the review of labor cases, [the NLRC] is in a far better position to determine whether petitioners' grounds for certiorari are meritorious. Neither is there any cause for worry that appeal to the Commission would not be speedy as the Labor Code provides that the Commission shall decide cases before it, within twenty (20) calendar days from receipt of the Answer of Appellee x x x.^[36]

Given the foregoing, we hold that the Court of Appeals correctly dismissed the petition for certiorari brought before it. Notwithstanding this procedural defect committed by petitioners, in the interest of substantial justice, we shall proceed to resolve the other issues presented by petitioners.

Petitioners insist that their monetary obligation, as contained in the 28 February 2000 decision of the labor arbiter, had already been fully satisfied. They posit the argument that with respondents' receipt of their separation pay, they had opted not to seek reinstatement to their former jobs and elected instead to sever their employment with petitioner Triad Security. In fact, according to petitioners, respondents had already found new employments and to award them further backwages would be tantamount to unjust enrichment. Thus, petitioners maintain that there is no more basis to hold them liable for the accrued backwages stated in the 30 September 2002 computation.

Again, petitioners' argument is untenable.

Article 279 of the Labor Code, as amended, states:

ART. 279. SECURITY OF TENURE

In cases of regular employment the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

As the law now stands, an illegally dismissed employee is entitled to two reliefs, namely: backwages and

reinstatement. These are separate and distinct from each other.[37] However, separation pay is granted where reinstatement is no longer feasible because of strained relations between the employee and the employer.[38] In effect, an illegally dismissed employee is entitled to either reinstatement, if viable, or separation pay if reinstatement is no longer viable and backwages.[39]

Backwages and separation pay are, therefore, distinct reliefs granted to one who was illegally dismissed from employment. The award of one does not preclude that of the other as this court had, in proper cases, ordered the payment of both.[40]

In this case, the labor arbiter ordered the reinstatement of respondents and the payment of their backwages until their actual reinstatement and in case reinstatement is no longer viable, the payment of separation pay. Under Article 223 of the Labor Code, "the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall be immediately executory, even pending appeal." The same provision of the law gives the employer the option of either admitting the employee back to work under the same terms and conditions prevailing before his dismissal or separation from employment or the employer may choose to merely reinstate the employee to the payroll. It bears emphasizing that the law mandates the prompt reinstatement of the dismissed or separated employee. This, the petitioners failed to heed. They are now before this Court insisting that they have fully disposed of their legal obligation to respondents when they paid the latter's separation pay. We do not agree.

It should be pointed out that an order of reinstatement by the labor arbiter is not the same as actual reinstatement of a dismissed or separated employee. Thus, until the employer continuously fails to actually implement the reinstatement aspect of the decision of the labor arbiter, their obligation to respondents, insofar as accrued backwages and other benefits are concerned, continues to accumulate. It is only when the illegally dismissed employee receives the separation pay that it could be claimed with certainty that the employer-employee relationship has formally ceased thereby precluding the possibility of reinstatement. In the meantime, the illegally dismissed employee's entitlement to backwages, 13[th] month pay, and other benefits subsists. Until the payment of separation pay is carried out, the employer should not be allowed to remain unpunished for the delay, if not outright refusal, to immediately execute the reinstatement aspect of the labor arbiter's decision.

The records of this case are bereft of any indication that respondents were actually reinstated to their previous jobs or to the company payroll. Instead, they were given, albeit with much resistance from petitioners, the full amount of the money judgment stated in the 28 February 2000 decision of the labor arbiter, inclusive of separation pay, more than two years after the labor arbiter had issued his decision on the illegal dismissal case filed by respondents. As the law clearly requires petitioners to pay respondents' backwages until actual reinstatement, we resolve that petitioners are still liable to respondents for accrued backwages and other benefits from 25 February 2000 until 16 December 2002, the day before the labor arbiter ordered the release to respondents of P603,794.77 representing the full satisfaction of 28 February 2000 judgment, including separation pay.

Nor can we give credence to petitioners claim that they could not reinstate respondents as the latter had already found jobs elsewhere. It is worthy to note here that respondents were minimum wage earners who were left with no choice after they were illegally dismissed from their employment but to seek new employment in order to earn a decent living. Surely, we could not fault them for their perseverance in looking for and eventually securing new employment opportunities instead of remaining idle and awaiting the outcome of this case.

We agree, however, with petitioners that the amount of basic salary used by the Computation and Examination Unit of the NLRC was erroneous. In said computation, the amount of respondents' $\frac{1}{2}$ basic salary from 25 February 1999 until 30 September 2002 (the date of the computation) was pegged at P250.00. However, the

prevailing daily minimum wage on 25 February 2000 was only P223.50[41]and it was only on 1 November 2000 when the rate was increased to P250.00.[42] Clearly, the Computation and Examination Unit of the NLRC was mistaken in its calculation. We, therefore, hold that from 25 February up to 31 October 2000, petitioners are liable for accrued backwages at the rate of P223.50 per day and from 1 November 2000 until 16 December 2002, they should be held accountable for accrued backwages of P250.00 per day. In addition, they should pay respondents any additional cost of living allowance which may have been prescribed within the period 25 February 2000 until 16 December 2002 and other benefits to which respondents are entitled to during said span of time.

WHEREFORE, premises considered, this Court AFFIRMS the Decision of the Court of Appeals dated 31 July 2003 and the Order dated 23 April 2003 of the Labor Arbiter declaring petitioners liable for additional accrued backwages. The amount of money claims due the respondents is, however, MODIFIED. Let the records of this case be remanded to the Computation and Examination Unit of the NLRC for proper computation of subject money claims as above-discussed. Costs against petitioners.

SO ORDERED.

Panganiban, C.J., (Chairman) Ynares-Santiago, Austria-Martinez and Callejo, Sr., JJ., concur.

[1] Penned by Associate Justice Roberto A. Barrios with Associate Justices Josefina Guevara-Salonga and Arturo D. Brion, concurring.

[2] Rollo, p. 51.

[3] Records, Vol. I, pp. 2-3; Only the Triad Security & Allied Services, Inc. and Anthony U. Que filed the present petition for review.

[4] Id., pp. 7-8.

[5] Id., p. 87.

[6]Id., pp. 91-92.

[7] Rollo, pp. 67-68.

[8] Records, Vol. I, pp. 174-176.

[9] Rollo, pp. 69-71.

[10] Records, Vol. I, pp. 199-200.

[11] Id., pp. 194-195.

[12]Id., pp. 192-193.

[13]Id., pp. 233-238.

[14]Id., pp. 241-242.

[15] Id., pp. 265-268.

[16] Id., pp. 353-354.

[17] Id., pp. 393-395.

[18] Id., pp. 445-449.

[19]Id., pp. 356-373.

[20] Rollo, pp. 72-75.

[21] Records, Vol. I, pp. 508-509.

[22] Id., pp. 499-500.

[23] Rollo, p. 84.

[24] Id., p. 22.

[25] Dated 18 February 2003; Id., pp. 99-101.

[26] Dated 02 April 2003; Id., pp. 102-114.

[27] Id., pp. 309-311.

[28] Id., pp. 115-116.

[29] CA rollo, pp. 2-23.

[30] Id., pp. 114-115.

[31] Rollo, p. 49.

[32] Id., p. 359, citing Omico Mining & Industrial Corporation v. Vallejos, G.R. No. L-38974, 25 March 1975, 63 SCRA 285, 301.

[33] Cuison v. Court of Appeals, G.R. No. 128540, 15 April 1998, 289 SCRA 159, 171.

[34] 354 Phil. 905 (1998).

[35] Air Services Cooperative v. Court of Appeals, *supra* at 915.

[36] Id. at 916.

[37] Torillo v. Leogardo, Jr., et al., 274 Phil. 758, 765 (1991).

[38] Lim v. National Labor Relations Commission, G.R. Nos. 79907 and 79975, 16 March 1989, 171 SCRA 328, 336.

[39] Air Services Cooperative v. Court of Appeals, *supra* note 34.

[40] Air Services Cooperative v. Court of Appeals, *supra*.

[41] Wage Order No. 7.

[42] Wage Order No. 8.

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