

MILAGROS PANUNCILLO, PETITIONER, VS. CAP PHILIPPINES, INC., RESPONDENT.

G.R. NO. 161305. February 09, 2007

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Assailed via Petition for Review[1] are the Decision dated May 16, 2003[2] and Resolution dated November 17, 2003[3] of the Court of Appeals in CA-G.R. SP No. 74665 which declared valid the dismissal of Milagros Panuncillo (petitioner) by CAP Philippines, Inc. (respondent).

Petitioner was hired on August 28, 1980 as Office Senior Clerk by respondent. At the time of her questioned separation from respondent on April 23, 1999, she was receiving a monthly salary of P16,180.60.

In order to secure the education of her son, petitioner procured an educational plan (the plan) from respondent which she had fully paid but which she later sold to Josefina Pernes (Josefina) for P37,000. Before the actual transfer of the plan could be effected, however, petitioner pledged it for P50,000 to John Chua who, however, sold it to Benito Bonghanoy. Bonghanoy in turn sold the plan to Gaudioso R. Uy for P60,000.

Having gotten wind of the transactions subsequent to her purchase of the plan, Josefina, by letter of February 10, 1999,[4] informed respondent that petitioner had "swindled" her but that she was willing to settle the case amicably as long as petitioner pay the amount involved and the interest. She expressed her appreciation "if [respondent] could help her in anyway."

Acting on Josefina's letter, the Integrated Internal Audit Operations (IIAO) of respondent required petitioner to explain in writing why the plan had not been transferred to Josefina and was instead sold to another. Complying, petitioner proffered the following explanation:

Because of extreme need of money, I was constrained to sell my CAP plan of my son to J. Pernes last July, 1996, in the amount of Thirty Seven Thousand Pesos (P37,000.) The plan was not transferred right away because of lacking requirement on the part of the buyer (birth certificate). The birth certificate came a month later. While waiting for the birth certificate, again because of extreme need of money, I was tempted to pawned [sic] the plan, believing I can redeemed [sic] it later when the birth certificate will come.

Last year, I was already pressured by J. Pernes for the transfer of the plan. But before hand, she already knew the present situation. I was trying to find means to redeemed [sic] the plan but to no avail. I cannot borrow anymore from my creditors because of outstanding loans which remains unpaid. As of the present, I am heavily debtladen and I don't know where to run.

I can't blame the person whom I pawned the plan if he had sold it. I can't redeemed [sic] it anymore. Everybody needs money and besides, I have given them my papers.

I admit, I had defrauded Ms. J. Pernes, but I didn't do it intentionally. At first, I believe I can redeem the plan hoping I can still borrow from somebody.

With my more than 18 years stay with the company, I don't have the intention of ruining my image as well as the company's. I think I am just a victim of circumstances.[5] (Emphasis and underscoring supplied)

A show-cause memorandum[6] dated February 23, 1999 was thereupon sent to petitioner, giving her 48 hours from receipt thereof to explain why she should not be disciplinarily dealt with. Petitioner did not comply, however.

The IIAO of respondent thus conducted an investigation on the matter. By Memorandum of April 5, 1999,[7] the IIAO recommended that, among other things, administrative action should be taken against petitioner for violating Section 8.4 of respondent's Code of Discipline reading:

Committing or dealing any act or conniving with co-employees or anybody to defraud the company or customer/sales associates.

In the same memorandum, the IIAO reported other matters bearing on petitioner's duties as an employee, to wit:

OTHERS:

We also received a copy of demand letter of a certain Evelia Casquejo addressed to Ms. Panuncillo requiring the latter to pay the amount of P54,870.00 for the supposed transfer of the lapsed plan of Subscriber Corazon Lintag with SFA # 25-67-40-01-00392. Ms. Panuncillo received the payment of P25,000.00 and P29,870.00 on July 17, 1997 and July 18, 1997 respectively (Exhibits L&M).

Ms. Panuncillo verbally admitted that she was the one who sold the plan to Ms. Casquejo but with the authorization from Ms. Lintag. However, the transfer was not effected because she had misappropriated a portion of the money until the plan was terminated. Ms. Casquejo, however, did not file a complaint because Ms. Panuncillo executed a Special Power of Attorney authorizing the former to receive P68,000 of Ms. Panuncillo's retirement pay (Exhibit N).[8] (Emphasis in the original; underscoring supplied))

On April 7, 1999, another show-cause memorandum was sent to petitioner by Renato M. Daquiz (Daquiz), First Vice President of respondent, giving her another 48 hours to explain why she should not be disciplinarily dealt with in connection with the complaints of Josefina and Evelia Casquejo (Evelia). Complying with the directive, petitioner, by letter of April 10, 1999, on top of reiterating her admission of having "defrauded" Josefina, admitted having received from Evelia the payment for a lapsed plan, thus:

With regards to [Evelia's] case, yes its [sic] true I had received the payment but it was accordingly given to the owner or Subscriber Ms. C. Lintag. The plan was not transferred because it was already forfeited and we, Ms. Lintag, [Evelia] and I already made settlement of the case.

I think I have violated Sec. 8.4 of the company's Code of Discipline. I admit it is my wrongdoing. I was only forced to do this because of extreme needs to pay for my debts. I am open for whatever disciplinary action that will be sanctioned againsts [sic] me. I hope it is not termination from my job. How can I pay for obligations if that will happen to me.

As for [Josefina], I have the greatest desire to pay for my indebtedness but my capability at the moment is nil. (space) I have been planning to retire early just to pay my obligations. That is why I had written to you last year inquiring tax exemption when retiring. I have been with the company for almost 19 years already and I never intend [sic] to smear its name as well as mine. I was only forced by circumstances. Although it hurts to leave CAP, I will be retiring on April 30, 1999.

x x x [9] (Emphasis and underscoring supplied)

Respondent thereupon terminated the services of petitioner by Memorandum dated April 20, 1999.[10]

Petitioner sought reconsideration of her dismissal, by letter of April 23, 1999 addressed to Daquiz, imploring as follows:

. . . Please consider my retirement letter I sent to you. I would like to avail [of] the retirement benefit of the company. The proceeds of my retirement could help me pay some of my obligations as well as the needs of my family. My husband is jobless and I am the breadwinner of the family. If I will be terminated, I don't know what will happen to us.

Sir, I am enclosing the affidavit of Ms. Evelia Casquejo proving that we have already settled the case.

x x x x[11] (Underscoring supplied)

Pending resolution of petitioner's motion for reconsideration, respondent received a letter dated April 28, 1999[12] from one Gwendolyn N. Dinoro (Gwendolyn) who informed that she had been paying her "quarterly dues" through petitioner but found out that none had been remitted to respondent, on account of which she (Gwendolyn) was being penalized with interest charges.

Acting on petitioner's motion for reconsideration, Daquiz, by letter-memorandum of May 5, 1999, denied the same in this wise:

A review of your case was made per your request, and we note that it was not just a single case but multiple cases, that of Ms. Casquejo, Ms. Pernes, and newly reported Ms. Dinoro. Furthermore, the cases happened way back in July 1996 and 1997, and were just discovered recently. In addition, the misappropriation of money/or act to defraud the company or customer was deliberate and intentional. There were several payments received - over a period of time. While you plead for your retirement benefit to help you pay some of your obligations, as well as the need of your family (your husband being jobless and being the breadwinner), these thoughts should have crossed your mind before you committed the violations rather than now. To allow you to retire with benefits, is to tolerate and encourage others to do the same in the future, as it will be a precedent that will surely be invoked in similar situations in the future, as it will be a precedent that will surely be invoked in similar situations in the future. It is also unfair to others who do their jobs faithfully and honestly. If we let you have your way, it will appear that we let you scot-free and even reward you with retirement - someone who deliberately violated trust and confidence of the company and customers.

Premises considered, the decision to terminate your services for cause stays and the request for reconsideration is denied.

x x x x[13] (Emphasis and underscoring supplied)

Petitioner thus filed a complaint[14] for illegal dismissal, 13[th] month pay, service incentive leave pay, damages and attorney's fees against respondent.

The Labor Arbiter, while finding that the dismissal was for a valid cause, found the same too harsh. He thus ordered the reinstatement of petitioner to a position one rank lower than her previous position, and disposed as follows:

WHEREFORE, the foregoing considered, judgement [sic] is hereby rendered directing the respondent to pay complainant's 13[th] Month pay and Service Incentive Leave Pay for 1999 in proportionate amount computed as follows:

13[th] Month Pay

January 1, 1999 to April 1, 1999

= 3 months

= P16,180.60/12 mos. x 3 mos.

P4,045.14

Service Incentive Leave= P16,180.60/26 days
=P622.30 per day x 5 days/12 months.

777.87

TOTAL -----P4,823.01

Plus P482.30 ten (10%) Attorney's Fees or a total aggregate amount of PESOS: FIVE THOUSAND THREE HUNDRED FIVE & 31/100 (P5,305.31).

Respondent is likewise, directed to reinstate the complainant to a position one rank lower without backwages.[15] (Underscoring supplied)

On appeal, the National Labor Relations Commission (NLRC), by Decision of October 29, 2001, reversed that of the Labor Arbiter, it finding that petitioner's dismissal was illegal and accordingly ordering her reinstatement to her former position. Thus it disposed:

WHEREFORE, the Decision in the main case dated February 18, 2000 of the Labor Arbiter declaring the dismissal of the complainant valid, and his Order dated June 26, 2000 declaring the Motion to Declare Respondent-appellant in Contempt as prematurely filed and ordering the issuance of an alias writ of execution are hereby SET ASIDE, and a new one is rendered DECLARING the dismissal of the complainant illegal, and ORDERING the respondent, CAP PHILIPPINES, INCORPORATED, the following:

- to reinstate the complainant MILAGROS B. PANUNCILLO to her former position without loss of seniority rights and with full backwages from the date her compensation was withheld from her on April 20, 1999 until her actual reinstatement;
- to pay to the same complainant P4,045.14 as 13[th] month pay, and P777.89 as service incentive leave pay;
- to pay to the same complainant moral damages of FIFTY THOUSAND PESOS (P50,000.00), and exemplary damages of another FIFTY THOUSAND PESOS (P50,000.00);
- to pay attorney's fees equivalent to ten percent (10%) of the total award exclusive of moral and exemplary damages.

Further, the complainant's Motion to Declare Respondent in Contempt dated May 3, 2000 is denied and rendered moot by virtue of this Decision.

All other claims are dismissed for lack of merit.[16] (Underscoring supplied)

In so deciding, the NLRC held that the transaction between petitioner and Josefina was private in character and, therefore, respondent did not suffer any damage, hence, it was error to apply Section 8.4 of respondent's Code of Discipline.

Respondent challenged the NLRC Decision before the appellate court via Petition for Certiorari.[17] By Decision of May 16, 2003,[18] the appellate court reversed the NLRC Decision and held that the dismissal was valid and that respondent complied with the procedural requirements of due process before petitioner's services were terminated.

Hence, the present petition, petitioner faulting the appellate court

I

x x x IN REVIEWING THE FINDINGS OF FACT OF THE LABOR ARBITER AND THE NATIONAL

LABOR RELATIONS COMMISSION THAT RESPONDENT CAP PHILIPPINES, INC., HAS NOT BEEN DEFRAUDED NOR DAMAGED IN THE TRANSACTION/S ENTERED INTO BY PETITIONER RELATING TO HER FULLY PAID EDUCATIONAL PLAN.

II

x x x IN HOLDING THAT RESPONDENT CAP PHILIPPINES, INC. IS THE INSURER OF PETITIONER'S FULLY PAID EDUCATIONAL PLAN UNDER THE INSURANCE CODE.

III

x x x IN HOLDING THAT PETITIONER WAS DULY AFFORDED DUE PROCESS BEFORE DISMISSAL[,]

and maintaining that she

IV

x x x IS ENTITLED TO HER FULL BACKWAGES FROM THE DATE HER COMPENSATION WAS WITHHELD FROM HER ON APRIL 20, 1999 PURSUANT TO THE DECISION OF THE NLRC REINSTATING HER TO HER PREVIOUS POSITION WITH FULL BACKWAGES AND SETTING ASIDE THE DECISION OF THE LABOR ARBITER REINSTATING HER TO A POSITION NEXT LOWER IN RANK, UNTIL THE REVERSAL OF THE NLRC DECISION BY THE HONORABLE COURT OF APPEALS.[19] (Emphasis and underscoring supplied)

The petition is not meritorious.

Whether respondent did not suffer any damage resulting from the transactions entered into by petitioner, particularly that with Josefina, is immaterial. As *Lopez v. National Labor Relations Commission* instructs:

That the [employer] suffered no damage resulting from the acts of [the employee] is inconsequential. In *Glaxo Wellcome Philippines, Inc. v. Nagkakaisang Empleyado ng Wellcome-DFA (NEW-DFA)*, we held that deliberate disregard or disobedience of company rules could not be countenanced, and any justification that the disobedient employee might put forth would be deemed inconsequential. The lack of resulting damage was unimportant, because "the heart of the charge is the crooked and anarchic attitude of the employee towards his employer. Damage aggravates the charge but its absence does not mitigate nor negate the employee's liability." x x x[20] (Italics in the original; underscoring supplied)

The transaction with Josefina aside, there was this case of misappropriation by petitioner of the amounts given to her by Evelia representing payment for the lapsed plan of Corazon Lintag. While a settlement of the case between the two may have eventually been forged, that did not obliterate the misappropriation committed by petitioner against a client of respondent.

Additionally, there was still another complaint lodged before respondent by Gwendolyn against petitioner for failure to remit the cash payments she had made to her, a complaint she was apprised of but on which she was silent.

In fine, by petitioner's repeated violation of Section 8.4 of respondent's Code of Discipline, she violated the trust and confidence of respondent and its customers. To allow her to continue with her employment puts respondent under the risk of being embroiled in unnecessary lawsuits from customers similarly situated as Josefina, et al. Clearly, respondent exercised its management prerogative when it dismissed petitioner.

. . . [T]ime and again, this Court has upheld a company's management prerogatives so long as they are exercised in good faith for the advancement of the employer's interest and not for the purpose of defeating or

circumventing the rights of the employees under special laws or under valid agreements.

Deliberate disregard or disobedience of rules by the employees cannot be countenanced. Whatever maybe the justification behind the violations is immaterial at this point, because the fact still remains that an infraction of the company rules has been committed.

Under the Labor Code, the employer may terminate an employment on the ground of serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work. Infractions of company rules and regulations have been declared to belong to this category and thus are valid causes for termination of employment by the employer.

x x x x

The employer cannot be compelled to continue the employment of a person who was found guilty of maliciously committing acts which are detrimental to his interests. It will be highly prejudicial to the interests of the employer to impose on him the charges that warranted his dismissal from employment. Indeed, it will demoralize the rank and file if the undeserving, if not undesirable, remain in the service. It may encourage him to do even worse and will render a mockery of the rules of discipline that employees are required to observe. This Court was more emphatic in holding that in protecting the rights of the laborer, it cannot authorize the oppression or self-destruction of the employer.[21] x x x (Underscoring supplied)

Petitioner nevertheless argues that she was not afforded due process before her dismissal as she was merely required to answer a show-cause memorandum dated April 7, 1999 and there was no actual investigation conducted in which she could have been heard.

Before terminating the services of an employee, the law requires two written notices: (1) one to apprise him of the particular acts or omissions for which his dismissal is sought; and (2) the other to inform him of his employer's decision to dismiss him. As to the requirement of a hearing, the essence of due process lies in an opportunity to be heard, and not always and indispensably in an actual hearing.[22]

When respondent received the letter-complaint of Josefina, petitioner was directed to comment and explain her side thereon. She did comply, by letter of February 22, 1999 wherein she admitted that she "had defrauded Ms. J. Pernes, but [that she] didn't do it intentionally."

Respondent subsequently sent petitioner a show-cause memorandum giving her 48 hours from receipt why she should not be disciplinarily sanctioned. Despite the 48-hour deadline, nothing was heard from her until April 10, 1999 when she complied with the second show-cause memorandum dated April 7, 1999.

On April 20, 1999, petitioner was informed of the termination of her services to which she filed a motion for reconsideration.

There can thus be no doubt that petitioner was given ample opportunity to explain her side. Parenthetically, when an employee admits the acts complained of, as in petitioner's case, no formal hearing is even necessary.[23]

Finally, petitioner argues that even if the order of reinstatement of the NLRC was reversed on appeal, it is still obligatory on the part of an employer to reinstate and pay the wages of a dismissed employee during the period of appeal, citing *Roquero v. Philippine Airlines*,[24] the third paragraph of Article 223[25] of the Labor Code, and the last paragraph of Section 16,[26] Rule V of the then 1990 New Rules of Procedure of the NLRC.

Petitioner adds that respondent made "clever moves to frustrate [her] from enjoying the reinstatement aspect of the decision starting from that of the Labor Arbiter (although to a next lower rank), [to that] of the NLRC to her previous position without loss of seniority rights until it was caught up by the decision of the Honorable Court of Appeals reversing the decision of the NLRC and declaring the dismissal of petitioner as based on valid grounds."

Respondent, on the other hand, maintains that Roquero and the legal provisions cited by petitioner are not applicable as they speak of reinstatement on order of the Labor Arbiter and not of the NLRC.

The Labor Arbiter ordered the reinstatement of petitioner to a lower position. The third paragraph of Article 223 of the Labor Code is clear, however - the employee, who is ordered reinstated, must be accepted back to work under the same terms and conditions prevailing prior to his dismissal or separation.

Petitioner's being demoted to a position one rank lower than her original position is certainly not in accordance with the said third paragraph provision of Article 223. Besides, the provision contemplates a finding that the employee was illegally dismissed or there was no just cause for her dismissal. As priorly stated, in petitioner's case, the Labor Arbiter found that there was just cause for her dismissal, but that dismissal was too harsh, hence, his order for her reinstatement to a lower position.

The order to reinstate is incompatible with a finding that the dismissal is for a valid cause. Thus this Court declared in *Colgate Palmolive Philippines, Inc. v. Ople*:

The order of the respondent Minister to reinstate the employees despite a clear finding of guilt on their part is not in conformity with law. Reinstatement is simply incompatible with a finding of guilt. Where the totality of the evidence was sufficient to warrant the dismissal of the employees the law warrants their dismissal without making any distinction between a first offender and a habitual delinquent. Under the law, respondent Minister is duly mandated to equally protect and respect not only the labor or workers' side but also the management and/or employers' side. The law, in protecting the rights of the laborer, authorizes neither oppression nor self-destruction of the employer. x x x As stated by Us in the case of *San Miguel Brewery vs. National Labor Union*, "an employer cannot legally be compelled to continue with the employment of a person who admittedly was guilty of misfeasance or malfeasance towards his employer, and whose continuance in the service of the latter is patently inimical to his interest." [27] (Emphasis and underscoring supplied)

The NLRC was thus correct when it ruled that it was erroneous for the Labor Arbiter to order the reinstatement of petitioner, even to a position one rank lower than that which she formerly held. [28]

Now, on petitioner's argument that, following the third paragraph of Article 223 of the Labor Code, the order of the NLRC to reinstate her and to pay her wages was immediately executory even while the case was on appeal before the higher courts: The third paragraph of Article 223 of the Labor Code directs that - "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."

In *Roquero*, the Labor Arbiter upheld the dismissal of Roquero, along with another employee, albeit he found both the two and employer Philippine Airlines (PAL) at fault. The Labor Arbiter thus ordered the payment of separation pay and attorney's fees to the complainant. No order for reinstatement was issued by the Labor Arbiter, precisely because the dismissal was upheld.

On appeal, the NLRC ruled in favor of Roquero and his co-complainant as it also found PAL guilty of instigation. The NLRC thus ordered the reinstatement of Roquero and his co-complainant to their former positions, but without backwages.

PAL appealed the NLRC decision via Petition for Review before this Court. Roquero and his co-complainant did not. They instead filed before the Labor Arbiter a Motion for Execution of the NLRC order for their reinstatement which the Labor Arbiter granted.

Acting on PAL's Petition for Review, this Court referred it to the Court of Appeals pursuant to *St. Martin Funeral Home v. NLRC*. [29]

The appellate court reversed the NLRC decision and ordered the reinstatement of the decision of the Labor Arbiter but only insofar as it upheld the dismissal of Roquero.

Back to this Court on Roquero's Petition for Review, the following material issues were raised:

x x x x

- Can the executory nature of the decision, more so the reinstatement aspect of a labor tribunal's order be halted by a petition having been filed in higher courts without any restraining order or preliminary injunction having been ordered in the meantime?
- Would the employer who refused to reinstate an employee despite a writ duly issued be held liable to pay the salary of the subject employee from the time that he was ordered reinstated up to the time that the reversed decision was handed down?[30]

Resolving these issues, this Court held in Roquero:

Article 223 (3[rd] paragraph) of the Labor Code as amended by Section 12 of Republic Act No. 6715, and Section 2 of the NLRC Interim Rules on Appeals under RA No. 6715, Amending the Labor Code, provide that an order of reinstatement by the Labor Arbiter is immediately executory even pending appeal. The rationale of the law has been explained in *Aris (Phil.) Inc. vs. NLRC*:

"In authorizing execution pending appeal of the reinstatement aspect of a decision of the Labor Arbiter reinstating a dismissed or separated employee, the law itself has laid down a compassionate policy which, once more, vivifies and enhances the provisions of the 1987 Constitution on labor and the working man.

x x x x

These duties and responsibilities of the State are imposed not so much to express sympathy for the workingman as to forcefully and meaningfully underscore labor as a primary social and economic force, which the Constitution also expressly affirms with equal intensity. Labor is an indispensable partner for the nation's progress and stability.

x x x x

The order of reinstatement is immediately executory. The unjustified refusal of the employer to reinstate a dismissed employee entitles him to payment of his salaries effective from the time the employer failed to reinstate him despite the issuance of a writ of execution. Unless there is a restraining order issued, it is ministerial upon the Labor Arbiter to implement the order of reinstatement. In the case at bar, no restraining order was granted. Thus, it was mandatory on PAL to actually reinstate Roquero or reinstate him in the payroll. Having failed to do so, PAL must pay Roquero the salary he is entitled to, as if he was reinstated, from the time of the decision of the NLRC until the finality of the decision of this Court.

We reiterate the rule that technicalities have no room in labor cases where the Rules of Court are applied only in a suppletory manner and only to effectuate the objectives of the Labor Code and not to defeat them. Hence, even if the order of reinstatement of the Labor Arbiter is reversed on appeal, it is obligatory on the part of the employer to reinstate and pay the wages of the dismissed employee during the period of appeal until reversal by the higher court. On the other hand, if the employee has been reinstated during the appeal period and such reinstatement order is reversed with finality, the employee is not required to reimburse whatever salary he received for he is entitled to such, more so if he actually rendered services during the period.[31] (*Italics in the original, emphasis and underscoring supplied*)

In the present case, since the NLRC found petitioner's dismissal illegal and ordered her reinstatement, following the provision of the sixth paragraph of Article 223, viz:

The [National Labor Relations] Commission shall decide all cases within twenty (20) calendar days from receipt of the answer of the appellee. The decision of the Commission shall be final and executory after ten (10) calendar days from receipt thereof by the parties. (Emphasis and underscoring supplied),

the NLRC decision became "final and executory after ten calendar days from receipt of the decision by the parties" for reinstatement.

In view, however, of Article 224 of the Labor Code which provides:

ART. 224. Execution of decisions, orders or awards. - (a) The Secretary of Labor and Employment or any Regional Director, the Commission or any Labor Arbiter, or med-arbiter or voluntary arbitrator may, *motu proprio* or on motion of any interested party, issue a writ of execution on a judgment within five (5) years from the date it becomes final and executory, requiring a sheriff or a duly deputized officer to execute or enforce final decisions, orders or awards of the Secretary of Labor and Employment or regional director, the Commission, the Labor Arbiter or med-arbiter, or voluntary arbitrators. In any case, it shall be the duty of the responsible officer to separately furnish immediately the counsels of record and the parties with copies of said decisions, orders or awards. Failure to comply with the duty prescribed herein shall subject such responsible officer to appropriate administrative sanctions.

x x x (Emphasis and underscoring supplied),

there was still a need for the issuance of a writ of execution of the NLRC decision.

Unlike then the order for reinstatement of a Labor Arbiter which is self-executory, that of the NLRC is not. There is still a need for the issuance of a writ of execution. Thus this Court held in *Pioneer Texturizing Corp. v. NLRC*:^[32]

x x x The provision of Article 223 is clear that an award [by the Labor Arbiter] for reinstatement shall be immediately executory even pending appeal and the posting of a bond by the employer shall not stay the execution for reinstatement. The legislative intent is quite obvious, i.e., to make an award of reinstatement immediately enforceable, even pending appeal. To require the application for and issuance of a writ of execution as prerequisites for the execution of a reinstatement award would certainly betray and run counter to the very object and intent of Article 223, i.e., the immediate execution of a reinstatement order. The reason is simple. An application for a writ of execution and its issuance could be delayed for numerous reasons. A mere continuance or postponement of a scheduled hearing, for instance, or an inaction on the part of the Labor Arbiter or the NLRC could easily delay the issuance of the writ thereby setting at naught the strict mandate and noble purpose envisioned by Article 223. In other words, if the requirements of Article 224 [including the issuance of a writ of execution] were to govern, as we so declared in *Maranaw*, then the executory nature of a reinstatement order or award contemplated by Article 223 will be unduly circumscribed and rendered ineffectual. In enacting the law, the legislature is presumed to have ordained a valid and sensible law, one which operates no further than may be necessary to achieve its specific purpose. Statutes, as a rule, are to be construed in the light of the purpose to be achieved and the evil sought to be remedied. x x x In introducing a new rule on the reinstatement aspect of a labor decision under Republic Act No. 6715, Congress should not be considered to be indulging in mere semantic exercise. On appeal, however, the appellate tribunal concerned may enjoin or suspend the reinstatement order in the exercise of its sound discretion.^[33] (*Italics in the original, emphasis and underscoring supplied*)

If a Labor Arbiter does not issue a writ of execution of the NLRC order for the reinstatement of an employee even if there is no restraining order, he could probably be merely observing judicial courtesy, which is advisable "if there is a strong probability that the issues before the higher court would be rendered moot and moribund as a result of the continuation of the proceedings in the lower court."^[34] In such a case, it is as if a temporary restraining order was issued, the effect of which *Zamboanga City Water District v. Buhat* explains:

The issuance of the temporary restraining order ... did not nullify the rights of private respondents to their reinstatement and to collect their wages during the period of the effectivity of the order but merely suspended the implementation thereof pending the determination of the validity of the NLRC resolutions subject of the petition. Naturally, a finding of this Court that private respondents were not entitled to reinstatement would mean that they had no right to collect any back wages. On the other hand, where the Court affirmed the decision of the NLRC and recognized the right of private respondents to reinstatement,... private respondents are entitled to the wages accruing during the effectivity of the temporary restraining order.[35] (Emphasis and underscoring supplied)

While Zamboanga was decided prior to *St. Martin Funeral* and, therefore, the NLRC decisions were at the time passed upon by this Court to the exclusion of the appellate court, it is still applicable.

Since this Court is now affirming the challenged decision of the Court of Appeals finding that petitioner was validly dismissed and accordingly reversing the NLRC Decision that petitioner was illegally dismissed and should be reinstated, petitioner is not entitled to collect any backwages from the time the NLRC decision became final and executory up to the time the Court of Appeals reversed said decision.

It does not appear that a writ of execution was issued for the implementation of the NLRC order for reinstatement. Had one been issued, respondent would have been obliged to reinstate petitioner and pay her salary until the said order of the NLRC for her reinstatement was reversed by the Court of Appeals, and following *Roquero*, petitioner would not have been obliged to reimburse respondent for whatever salary she received in the interim.

IN SUM, while under the sixth paragraph of Article 223 of the Labor Code, the decision of the NLRC becomes final and executory after the lapse of ten calendar days from receipt thereof by the parties, the adverse party is not precluded from assailing it via Petition for Certiorari under Rule 65 before the Court of Appeals and then to this Court via a Petition for Review under Rule 45. If during the pendency of the review no order is issued by the courts enjoining the execution of a decision of the Labor Arbiter or NLRC which is favorable to an employee, the Labor Arbiter or the NLRC must exercise extreme prudence and observe judicial courtesy when the circumstances so warrant if we are to heed the injunction of the Court in *Philippine Geothermal, Inc v. NLRC*:

While it is true that compassion and human consideration should guide the disposition of cases involving termination of employment since it affects one's source or means of livelihood, it should not be overlooked that the benefits accorded to labor do not include compelling an employer to retain the services of an employee who has been shown to be a gross liability to the employer. The law in protecting the rights of the employees authorizes neither oppression nor self-destruction of the employer. It should be made clear that when the law tilts the scale of justice in favor of labor, it is but a recognition of the inherent economic inequality between labor and management. The intent is to balance the scale of justice; to put the two parties on relatively equal positions. There may be cases where the circumstances warrant favoring labor over the interests of management but never should the scale be so tilted if the result is an injustice to the employer. *Justitia nemini neganda est* (Justice is to be denied to none).[36] (Italics in the original; emphasis and underscoring supplied)

WHEREFORE, the petition is DENIED. The assailed Court of Appeals Decision dated May 16, 2003 and Resolution dated November 17, 2003 are AFFIRMED.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Tinga, and Velasco, Jr., JJ., concur.

[1] Rollo, pp. 20-49.

[2] Penned by Justice Rodrigo V. Cosico with the concurrence of Justices Juan Q. Enriquez, Jr. and Hakim S. Abdulwahid; CA rollo, pp. 253-269.

[3] Penned by Justice Rodrigo V. Cosico with the concurrence of Justices Jose L. Sabio, Jr. and Regalado E. Maambong; id. at 333.

[4] Id. at 105.

[5] Id. at 106.

[6] Id. at 111.

[7] Id. at 107-109.

[8] Id. at 108-109.

[9] Id. at 110.

[10] Id. at 201.

[11] Id. at 202.

[12] Id. at 199. The letter reads:

MR. JAIME B. DIZON
Senior Vice-President
Operations Head-CSO
College Assurance Plan Phils., Inc.
Makati, Metro Manila

Dear Sir:

This is [with] reference to my account with the following details:

ACCOUNT NO.: 60-67-46-01-A0250
SUBSCRIBER : GWENDOLYN N. DINORO
NOMINEE : KIMBERLY KATE N. DINORO

I have been paying my quarterly dues in good faith, through your agent, MS. MILA B. PANUNCILLO. And I have just recently found out that none of my cash payments have been remitted to your good office.

Due to Ms. Panuncillo[']s non-remittance of my payments to CAP, I am being penalized with interest charges for non-payment of my quarterly dues. I believe that it is only fair to have the interest charges waived as payments have been made quarterly to Ms. Panuncillo, but were never remitted to CAP without my knowledge.

I trust that your good office will do only what is fair, and will do away with interest charges for non-remittance of my payments to Ms. Panuncillo.

x x x x (Emphasis supplied)

[13] Id. at 203.

[14] Id. at 56-57.

[15] Id. at 94-95.

[16] Id. at 46-47.

[17] Id. at 2-37.

[18] Supra note 2.

[19] Rollo, p. 26.

[20] G.R. No. 167385, December 13, 2005, 477 SCRA 596, 602.

[21] San Miguel Corporation v. Ubaldo, G.R. No. 92859, February 1, 1993, 218 SCRA 293, 300-301.

[22] Standard Electric Manufacturing Corporation v. Standard Electric Employees Union-NAFLU-KMU, G.R. No. 166111, August 25, 2005, 468 SCRA 316, 329.

[23] Magos v. NLRC, 360 Phil. 670, 678 (1998); Pono v. NLRC, 341 Phil. 615, 621 (1997); Bernardo v. NLRC, 325 Phil. 371, 385 (1996).

[24] 449 Phil. 437 (2003).

[25] ART. 223. Appeal. - 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 (Underscoring supplied)

[26] SECTION 16. Contents of decisions. - x x x x

In case the decision includes an order of reinstatement, the Labor Arbiter shall direct the employer to immediately reinstate the dismissed or separated employee even pending appeal. The order of reinstatement shall indicate that 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.

[27] G.R. No. L-73681, June 30, 1988, 163 SCRA 323, 331. Vide GT Printers v. National Labor Relations Commission, G.R. No. 100749, April 24, 1992, 208 SCRA 321.

[28] CA rollo, p. 46.

[29] 356 Phil. 811 (1998).

[30] Supra note 24 at 443.

[31] Id. at 444-446.

[32] 345 Phil. 1057 (1997).

[33] Id. at 1075-1076.

[34] Go v. Judge Abrogar, 446 Phil. 227, 238 (2003).

[35] G.R. No. 104389, May 27, 1994, 232 SCRA 587, 593.

[36] G.R. No. 106370, September 8, 1994, 236 SCRA 371, 378-379, vide Homeowners Savings and Loan Asso. v. NLRC, 330 Phil. 979, 985 (1996).

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