

NATIONAL POWER CORPORATION, PETITIONER, VS. ROEL R. DEGAMO, RESPONDENT.*G.R. NO. 164602. February 28, 2005*

Ponente: CALLEJO, SR., J.

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In 1991, Roel R. Degamo was employed by the National Power Corporation (NPC). He was promoted, on December 16, 1992, and permanently appointed (co-terminus with the project) as senior plant mechanic.[1] On May 29, 1995, Degamo was appointed permanently by NPC as Electrical Control Operator of the Integrated Barge Management Department (IBMD), co-terminus with the project, effective upon approval and issuance of his appointment. However, he was detailed at Power Barge 119, then moored at Isabela, Basilan. On May 31, 1996, Degamo wrote Armand Ochoa, the Manager of IBMD (NPC), requesting for his transfer to the Palinpinon Geothermal Power Plant (PGPP) – I, in the Visayas Regional Center, Negros Oriental Power Plant Complex, vice Margarito C. Alinabo who was promoted.[2] Ochoa approved the request.

On July 3, 1996, Paulino C. Partoza, the Manager of the Small Power Utility Group (SPUG) issued an Unnumbered Office Order transferring Degamo to the Palinpinon Geothermal Power Plant – I, of the Negros Oriental Power Plant Complex, as Electrical Control Operator. Degamo was directed to report to Ignacio A. Llego, Complex Manager, for the details of his new assignment thereat.[3]

However, Degamo was ordered to secure a numbered and dated office order. He complied and returned to the Visayas Regional Complex with the numbered and dated office order to report for work. However, Jose C. Troyo, the Officer-in-Charge of the Visayas Regional Complex rejected the transfer of Degamo for the reason that the VRC manning level for 1996 had already been reached.[4] When Degamo reported back to his former position, he was told by Aurelio Sumalinog, the officer-in-charge of the IBMD – Visayas, that he can no longer return to his former position because his transfer to the VRC had already been approved and that he had already been replaced in his former position. Degamo was ordered to leave the office order for further study.[5] He was made to understand that, in due time, he could be absorbed by the PGPP.[6]

Believing that he was on a “floating status,” Degamo waited for further notice from the NPC. On February 3, 1997, Degamo received a letter from Sumalinog directing him to report for work within 72 hours from notice, otherwise, he will be dropped from the rolls.[7] Degamo reported for work but was flabbergasted when he was told that his former position was already filled up.

On August 19, 1997, Degamo wrote the Regional Legal Counsel of the NPC for legal opinion/advice on his status, insisting that he never resigned from his job.[8] However, the NPC wrote Degamo, on October 1, 1997, that he had been dropped from the rolls of Power Barge 107 effective September 30, 1997.[9]

On October 3, 1997, Degamo, still unaware of his dismissal, wrote the President of the NPC inquiring why no action had been made by the NPC on its unnumbered office order authorizing his transfer to PGPP.[10] In his reply for the president of NPC dated October 22, 1997, Cordell U. Del Rosario, the vice-president of NPC, wrote

Degamo that the latter had been told that his transfer can only be effected after a Selection Board action and that he was informed thereof; and that his failure to report for work was his own doing.[11]

In the meantime, the Regional Legal Counsel of the NPC, required Jerry S. Ceniza, the OIC, NOC, to comment on the August 19, 1997 letter of Degamo.[12] The General Counsel of NPC also requested Pio Benavidez, the Head of the Strategic Power Utilities Group and Jose Troyo, in the Office of the President of NPC, to clarify whether the undated and unnumbered office order given to Degamo is spurious.[13] On November 17, 1997, Ceniza wrote the Regional Legal Counsel that the Visayan Regional Center (Administration Section) was not aware of the undated and unnumbered Order.[14] On December 2, 1997, Sumalinog wrote the Regional Legal Counsel that the loss of Degamo of his employment was due to his fault.[15] Exasperated at the statement, Degamo wrote the General Counsel of NPC refuting the letter of Sumalinog and complained, thus:

Why the hell was I refused admission for work when I was very much willing to do so? If Mr. Sumalinog was not in bad faith, why then conceal the truth? Why [did the] IBMD office issued [a] written order for my being dropped from the rolls effective September 30, 1997 only when I already made my complaint on August 19, 1997? From February to August 1997, what did Mr. Sumalinog or [the] IBMD office do relative to my request to report back for work?[16]

Degamo requested that he be reinstated to his original position at IBMD with all the benefits he is entitled to under the law. When NPC failed to heed his request, Degamo filed a letter-complaint against the NPC with the Civil Service Commission. During the investigation, he adduced in evidence his telephone bills to prove his claim that he had been calling the NPC to follow up his inquiries as to the status of his transfer.

On March 23, 2000, the CSC Regional Director rendered a Decision in favor of Degamo. The dispositive portion of the decision reads:

WHEREFORE, all the foregoing premises considered, the Order of National Power Corporation, dropping Roel Degamo from the rolls, is hereby SET ASIDE. Respondent National Power Corporation is directed to reinstate ROEL DEGAMO to his previous position or that of an equivalent rank with correspondent payment of back salaries sans the other prayed for damages (moral, exemplary, etc.) which is not within the competence of this forum to award.[17]

The Director declared that, based on the pleadings of the parties –

It is noteworthy to point out that the substantial allegations in the complaint have not been refuted by respondent National Power Corporation. As alleged in par. 7 of their answer, respondent claims to have insufficient knowledge to be able to affirm or deny the allegations made in paragraphs 3 to 22, and par. 25. Such denial is not well-taken. We wonder why no discussion was even made regarding the validity or invalidity of the NPC Office Order transferring complainant Roel Degamo to the Palinpinon Geothermal Power Plant I, Negros Oriental Power Plant Complex? Considering that this office order is purportedly signed by high ranking NPC officials, at the very least respondent NPC could have either affirmed or denied its validity or authenticity. We find this material since this is the basis why complainant Roel Degamo initially left his assignment at Power Barge 107, Integrated Barge Management Dept.[18]

The NPC appealed the decision to the Civil Service Commission which issued Resolution No. 010525, on March 2, 2001, granting the appeal of the NPC and reversing the decision of the Regional Director. The CSC ruled that the unnumbered and undated office order had not been registered in the records of the NPC. It disbelieved the telephone bills of Degamo as proof of his claim that he repeatedly called up the Manila, Cebu, Dumaguete Offices, at the Iloilo Office of the NPC, inquiring about his employment status and his pending request for transfer. The CSC also ruled that the appointment of Degamo was co-terminus with the project; hence, terminated upon the completion of the project.[19]

On November 15, 2001, the CSC issued a Resolution[20] denying the motion for reconsideration of Degamo of its first resolution.

Degamo filed a petition for review with the Court of Appeals (CA) which rendered a Decision on December 11, 2003, reversing the Resolution of the CSC.

NPC received a copy of the decision of the CA on February 20, 2000 and had until March 6, 2004 within which to file its motion for reconsideration thereto. However, the NPC failed to do so. Instead, on March 10, 2004, it filed a Motion for Leave to Admit its motion for reconsideration of the decision. The NPC appended to its motion a "Notice of Termination" dated January 29, 2003 approved by the Board of Directors of the respondent, on November 18, 2002,[21] addressed to all officials and employees of the NPC based on Republic Act (R.A.) No. 9136.

The CA granted its motion and admitted the NPC's motion. However, Degamo filed a motion for the reconsideration of the Resolution contending that said motion for leave to file a motion for reconsideration was filed beyond the period therefor. On July 23, 2004, the CA issued a Resolution[22] granting Degamo's motion for reconsideration and set aside its Resolution dated April 5, 2004 granting the motion of NPC.

The CA added that:

Moreover, even if the motion for reconsideration dated March 9, 2004 was admitted, yet, it is undeniable for lack of merit considering that this Court did not find any compelling reason to reconsider, modify, much less reverse, the decision promulgated on December 11, 2003 because the arguments set forth therein were already passed upon and taken into consideration by this Court when it prepared the subject decision and in fact, has exhaustively discussed them therein.

Furthermore, relative to the argument that due to the passage of the EPIRA Law, (R.A. No. 9136) otherwise known as "Electric Power Industry Reform Act of 2001," the decision for the reinstatement of the petitioner to his previous position or equivalent rank in the NPC plus backwages is already moot and academic, this issue being raised for the first time cannot be allowed without offending basic rules of fair play, justice and due process (People v. Chua, 356 SCRA 225).[23]

NPC, now as the petitioner, filed the petition for review on certiorari contending that:

I

THE HONORABLE COURT OF APPEALS ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION IN HOLDING THAT RESPONDENT'S DROPPING FROM THE ROLLS OF NPC WAS NOT JUSTIFIED.

II

THE HONORABLE COURT OF APPEALS ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION IN DENYING THE PETITIONER'S MOTION FOR LEAVE TO ADMIT (ATTACHED MOTION FOR RECONSIDERATION) AFTER IT HAS BEEN GRANTED ADMISSION SOLELY ON TECHNICALITY.

III

THE HONORABLE COURT OF APPEALS ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION IN NOT CONSIDERING THE STATUS OF APPOINTMENT OF MR. DEGAMO WHICH IS (PCP) PERMANENT CO-TERMINUS WITH THE PROJECT AND EFFECTIVE ONLY UNTIL DECEMBER 1997.

IV

THE HONORABLE COURT OF APPEALS ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION IN NOT CONSIDERING RA 9136, OTHERWISE KNOWN AS THE EPIRA LAW IN RESOLVING NPC'S MOTION FOR RECONSIDERATION OF THE CASE.[24]

The petition is denied for lack of merit.

First. The assailed decision of the Court of Appeals had become final and executory as of March 6, 2004. It was only on March 10, 2004 when the petitioner filed its motion to admit its motion for the reconsideration of the CA decision. By then, the decision of the CA had attained finality beyond the jurisdiction of the CA to review, reverse or modify.[25] Vested rights were acquired by the winning party. In *Oro v. Diaz*,[26] we held that, just as a losing party has the right to appeal within the prescribed period, the winning party has the correlative right to enjoy the finality of the case. Consequently, this Court has no jurisdiction over the present petition and cannot resolve the substantive issues raised thereby.[27] While in review cases, the Court relaxed the rule on the application of the reglementary period to file a motion for reconsideration of an action although filed belatedly, but it did so only on exceptional grounds or extraordinary circumstances.[28]

The petitioner in the present case failed to show any exceptional or extraordinary circumstances warranting the relaxation of the rules. Indeed, the petitioner even failed to explain why it failed to file its motion for reconsideration on time. The petitioner's failure to file its motion for reconsideration is not a mere technicality. It raises a jurisdictional problem in its appeal to the appellate court over the appeal.[29]

Second. The main issues raised by the petitioner are factual and the consistent ruling of the Court is that the Court is proscribed, under Rule 45 of the Rules of Court, from taking cognizance of and resolving the factual issues, the reason being that the Court is not a trier of facts; it is not to re-examine the evidence on record and calibrate the same, the factual findings of the CA being conclusive on the Court. Although in exceptional cases, the Court may resolve factual issues, the petitioner failed to show such exceptional circumstances in this case.

Third. As explained by the Court of Appeals in its Resolution dated July 23, 2004, the reinstatement of the respondent is without prejudice to the provisions of R.A. No. 9136. In fine, the reinstatement of the respondent pursuant to the decision of the Court of Appeals is subject to the right of the petitioner to terminate the employment of the respondent under R.A. No. 9136, subject to whatever monetary benefits he is entitled to under existing laws and R.A. No. 9136.

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED for lack of merit. No costs.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Tinga and Chico-Nazario, JJ., concur.

[1] Rollo, p. 58.

[2] Id. at 60.

[3] Id. at 62.

[4] Id. at 63.

[5] Id. at 75.

[6] Id. at 75-76.

- [7] Id. at 64.
- [8] Id. at 65-66.
- [9] Id. at 79.
- [10] Id. at 69.
- [11] Id.
- [12] Id. at 71.
- [13] Id. at 72-73.
- [14] Id. at 70.
- [15] Id. at 68.
- [16] Id. at 76.
- [17] Id. at 96.
- [18] Id. at 94-95.
- [19] Id. at 108-115.
- [20] Id. at 117-121.
- [21] Id. at 123-126.
- [22] Id. at 51-52.
- [23] Id. at 52.
- [24] Id. at 19-20.
- [25] Philippine Commercial International Bank v. Court of Appeals, 229 SCRA 560 (1994).

[26] 361 SCRA 108 (2001).

- [27] Rosario v. Philippine Deposit Insurance Company, 425 SCRA 608 (2004).
- [28] Republic of the Philippines v. Court of Appeals, 322 SCRA 81 (2000).
- [29] Bank of America, NT & SA v. Gerochi, Jr., 230 SCRA 9 (1994).

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