EQUITABLE BANKING CORPORATION (NOW KNOWN AS EQUITABLE-PCI BANK), PETITIONER, VS. RICARDO SADAC, RESPONDENT.

G.R. NO. 164772. June 08, 2006

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Before Us is a Petition for Review on Certiorari with Motion to Refer the Petition to the Court En Banc filed by Equitable Banking Corporation (now known as Equitable-PCI Bank), seeking to reverse the Decision[1] and Resolution[2] of the Court of Appeals, dated 6 April 2004 and 28 July 2004, respectively, as amended by the Supplemental Decision[3] dated 26 October 2004 in CA-G.R. SP No. 75013, which reversed and set aside the Resolutions of the National Labor Relations Commission (NLRC), dated 28 March 2001 and 24 September 2002 in NLRC-NCR Case No. 00-11-05252-89.

The Antecedents

As culled from the records, respondent Sadac was appointed Vice President of the Legal Department of petitioner Bank effective 1 August 1981, and subsequently General Counsel thereof on 8 December 1981. On 26 June 1989, nine lawyers of petitioner Bank's Legal Department, in a letter-petition to the Chairman of the Board of Directors, accused respondent Sadac of abusive conduct, inter alia, and ultimately, petitioned for a change in leadership of the department. On the ground of lack of confidence in respondent Sadac, under the rules of client and lawyer relationship, petitioner Bank instructed respondent Sadac to deliver all materials in his custody in all cases in which the latter was appearing as its counsel of record. In reaction thereto, respondent Sadac requested for a full hearing and formal investigation but the same remained unheeded. On 9 November 1989, respondent Sadac filed a complaint for illegal dismissal with damages against petitioner Bank and individual members of the Board of Directors thereof. After learning of the filing of the complaint, petitioner Bank terminated the services of respondent Sadac. Finally, on 10 August 1989, respondent Sadac was removed from his office and ordered disentitled to any compensation and other benefits.[4]

In a Decision[5] dated 2 October 1990, Labor Arbiter Jovencio Ll. Mayor, Jr., dismissed the complaint for lack of merit. On appeal, the NLRC in its Resolution[6] of 24 September 1991 reversed the Labor Arbiter and declared respondent Sadac's dismissal as illegal. The decretal portion thereof reads, thus:

> WHEREFORE, in view of all the foregoing considerations, let the Decision of October 2, 1990 be, as it is hereby, SET ASIDE, and a new one ENTERED declaring the dismissal of the complainant as illegal, and consequently ordering the respondents jointly and severally to reinstate him to his former position as bank Vice-President and General Counsel without loss of seniority rights and other privileges, and to pay him full backwages and other benefits from the time his compensation was withheld to his actual reinstatement, as well as moral damages of P100,000.00, exemplary damages of P50,000.00, and attorney's fees equivalent to Ten Percent (10%) of the monetary award. Should reinstatement be no longer possible due to strained relations, the respondents are ordered likewise jointly and severally to grant separation pay at one (1) month per year of

> service in the total sum of P293,650.00 with backwages and other benefits from November 16, 1989 to September 15, 1991 (cut off date, subject to adjustment) computed at P1,055,740.48, plus damages of P100,000.00 (moral damages), P50,000.00 (exemplary damages) and attorney's fees equal to Ten Percent (10%) of all the monetary award, or a grand total of P1,649,329.53.[7]

Petitioner Bank came to us for the first time via a Special Civil Action for Certiorari assailing the NLRC Resolution of 24 September 1991 in Equitable Banking Corporation v. National Labor Relations Commission, docketed as G.R. No. 102467.[8]

In our Decision[9] of 13 June 1997, we held respondent Sadac's dismissal illegal. We said that the existence of the employer-employee relationship between petitioner Bank and respondent Sadac had been duly established bringing the case within the coverage of the Labor Code, hence, we did not permit petitioner Bank to rely on Sec. 26, Rule 138[10] of the Rules of Court, claiming that the association between the parties was one of a client-lawyer relationship, and, thus, it could terminate at any time the services of respondent Sadac. Moreover, we did not find that respondent Sadac's dismissal was grounded on any of the causes stated in Article 282 of the Labor Code. We similarly found that petitioner Bank disregarded the procedural requirements in terminating respondent Sadac's employment as so required by Section 2 and Section 5, Rule XIV, Book V of the Implementing Rules of the Labor Code. We decreed:

> WHEREFORE, the herein questioned Resolution of the NLRC is AFFIRMED with the following MODIFICATIONS: That private respondent shall be entitled to backwages from termination of employment until turning sixty (60) years of age (in 1995) and, thereupon, to retirement benefits in accordance with law; that private respondent shall be paid an additional amount of P5,000.00; that the award of moral and exemplary damages are deleted; and that the liability herein pronounced shall be due from petitioner bank alone, the other petitioners being absolved from solidary liability. No costs.[11]

On 28 July 1997, our Decision in G.R. No. 102467 dated 13 June 1997 became final and executory.[12]

Pursuant thereto, respondent Sadac filed with the Labor Arbiter a Motion for Execution[13] thereof. Likewise, petitioner Bank filed a Manifestation and Motion[14] praying that the award in favor of respondent Sadac be computed and that after payment is made, petitioner Bank be ordered forever released from liability under said judgment.

Per respondent Sadac's computation, the total amount of the monetary award is P6,030,456.59, representing his backwages and other benefits, including the general increases which he should have earned during the period of his illegal termination. Respondent Sadac theorized that he started with a monthly compensation of P12,500.00 in August 1981, when he was appointed as Vice President of petitioner Bank's Legal Department and later as its General Counsel in December 1981. As of November 1989, when he was dismissed illegally, his monthly compensation amounted to P29,365.00 or more than twice his original compensation. The difference, he posited, can be attributed to the annual salary increases which he received equivalent to 15 percent (15%) of his monthly salary.

Respondent Sadac anchored his claim on Article 279 of the Labor Code of the Philippines, and cited as authority the cases of East Asiatic Company, Ltd. v. Court of Industrial Relations,[15] St. Louis College of Tuguegarao v. National Labor Relations Commission,[16] and Sigma Personnel Services v. National Labor Relations Commission.[17] According to respondent Sadac, the catena of cases uniformly holds that it is the obligation of the employer to pay an illegally dismissed employee the whole amount of the salaries or wages, plus all other benefits and bonuses and general increases to which he would have been normally entitled had he not been dismissed; and therefore, salary increases should be deemed a component in the computation of backwages. Moreover, respondent Sadac contended that his check-up benefit, clothing allowance, and cash conversion of

vacation leaves must be included in the computation of his backwages.

Petitioner Bank disputed respondent Sadac's computation. Per its computation, the amount of monetary award due respondent Sadac is P2,981,442.98 only, to the exclusion of the latter's general salary increases and other claimed benefits which, it maintained, were unsubstantiated. The jurisprudential precedent relied upon by petitioner Bank in assailing respondent Sadac's computation is Evangelista v. National Labor Relations Commission,[18] citing Paramount Vinyl Products Corp. v. National Labor Relations Commission,[19] holding that an unqualified award of backwages means that the employee is paid at the wage rate at the time of his dismissal. Furthermore, petitioner Bank argued before the Labor Arbiter that the award of salary differentials is not allowed, the established rule being that upon reinstatement, illegally dismissed employees are to be paid their backwages without deduction and qualification as to any wage increases or other benefits that may have been received by their co-workers who were not dismissed or did not go on strike.

On 2 August 1999, Labor Arbiter Jovencio Ll. Mayor, Jr. rendered an Order[20] adopting respondent Sadac's computation. In the main, the Labor Arbiter relying on Millares v. National Labor Relations Commission[21] concluded that respondent Sadac is entitled to the general increases as a component in the computation of his backwages. Accordingly, he awarded respondent Sadac the amount of P6,030,456.59 representing his backwages inclusive of allowances and other claimed benefits, namely check-up benefit, clothing allowance, and cash conversion of vacation leave plus 12 percent (12%) interest per annum equivalent to P1,367,590.89 as of 30 June 1999, or a total of P7,398,047.48. However, considering that respondent Sadac had already received the amount of P1,055,740.48 by virtue of a Writ of Execution[22] earlier issued on 18 January 1999, the Labor Arbiter directed petitioner Bank to pay respondent Sadac the amount of P6,342,307.00. The Labor Arbiter also granted an award of attorney's fees equivalent to ten percent (10%) of all monetary awards, and imposed a 12 percent (12%) interest per annum reckoned from the finality of the judgment until the satisfaction thereof.

The Labor Arbiter decreed, thus:

> WHEREFORE, in view of al (sic) the foregoing, let an "ALIAS" Writ of Execution be issued commanding the Sheriff, this Branch, to collect from respondent Bank the amount of Ph6,342,307.00 representing the backwages with 12% interest per annum due complainant.[23]

Petitioner Bank interposed an appeal with the NLRC, which reversed the Labor Arbiter in a Resolution,[24] promulgated on 28 March 2001. It ratiocinated that the doctrine on general increases as component in computing backwages in Sigma Personnel Services and St. Louis was merely obiter dictum. The NLRC found East Asiatic Co., Ltd. inapplicable on the ground that the original circumstances therein are not only peculiar to the said case but also completely strange to the case of respondent Sadac. Further, the NLRC disallowed respondent Sadac's claim to check-up benefit ratiocinating that there was no clear and substantial proof that the same was being granted and enjoyed by other employees of petitioner Bank. The award of attorney's fees was similarly deleted.

The dispositive portion of the Resolution states:

> WHEREFORE, the instant appeal is considered meritorious and accordingly, the computation prepared by respondent Equitable Banking Corporation on the award of backwages in favor of complainant Ricardo Sadac under the decision promulgated by the Supreme Court on June 13, 1997 in G.R. No. 102476 in the aggregate amount of P2,981,442.98 is hereby ordered.[25]

Respondent Sadac's Motion for Reconsideration thereon was denied by the NLRC in its Resolution,[26] promulgated on 24 September 2002.

Aggrieved, respondent Sadac filed before the Court of Appeals a Petition for Certiorari seeking nullification of

the twin resolutions of the NLRC, dated 28 March 2001 and 24 September 2002, as well as praying for the reinstatement of the 2 August 1999 Order of the Labor Arbiter.

For the resolution of the Court of Appeals were the following issues, viz.:

> (1)
>
> Whether periodic general increases in basic salary, check-up benefit, clothing allowance, and cash conversion of vacation leave are included in the computation of full backwages for illegally dismissed employees;
>
> (2)
>
> Whether respondent is entitled to attorney's fees; and
>
> (3)
>
> Whether respondent is entitled to twelve percent (12%) per annum as interest on all accounts outstanding until full payment thereof.

Finding for respondent Sadac (therein petitioner), the Court of Appeals rendered a Decision on 6 April 2004, the dispositive portion of which is quoted hereunder:

> WHEREFORE, premises considered, the March 28, 2001 and the September 24, 2002 Resolutions of the National Labor Relations Commissions (sic) are REVERSED and SET ASIDE and the August 2, 1999 Order of the Labor Arbiter is REVIVED to the effect that private respondent is DIRECTED TO PAY petitioner the sum of PhP6,342,307.00, representing full back wages (sic) which sum includes annual general increases in basic salary, check-up benefit, clothing allowance, cash conversion of vacation leave and other sundry benefits plus 12% per annum interest on outstanding balance from July 28, 1997 until full payment.
>
> Costs against private respondent.[27]

The Court of Appeals, citing East Asiatic held that respondent Sadac's general increases should be added as part of his backwages. According to the appellate court, respondent Sadac's entitlement to the annual general increases has been duly proven by substantial evidence that the latter, in fact, enjoyed an annual increase of more or less 15 percent (15%). Respondent Sadac's check-up benefit, clothing allowance, and cash conversion of vacation leave were similarly ordered added in the computation of respondent Sadac's basic wage.

Anent the matter of attorney's fees, the Court of Appeals sustained the NLRC. It ruled that our Decision[28] of 13 June 1997 did not award attorney's fees in respondent Sadac's favor as there was nothing in the aforesaid Decision, either in the dispositive portion or the body thereof that supported the grant of attorney's fees. Resolving the final issue, the Court of Appeals imposed a 12 percent (12%) interest per annum on the total monetary award to be computed from 28 July 1997 or the date our judgment in G.R. No. 102467 became final and executory until fully paid at which time the quantification of the amount may be deemed to have been reasonably ascertained.

On 7 May 2004, respondent Sadac filed a Partial Motion for Reconsideration[29] of the 6 April 2004 Court of Appeals Decision insofar as the appellate court did not award him attorney's fees. Similarly, petitioner Bank filed a Motion for Partial Reconsideration thereon. Following an exchange of pleadings between the parties, the Court of Appeals rendered a Resolution,[30] dated 28 July 2004, denying petitioner Bank's Motion for Partial

Reconsideration for lack of merit.

Assignment of Errors

Hence, the instant Petition for Review by petitioner Bank on the following assignment of errors, to wit:

> (a) The Hon. Court of Appeals erred in ruling that general salary increases should be included in the computation of full backwages.
>
> (b) The Hon. Court of Appeals erred in ruling that the applicable authorities in this case are: (i) East Asiatic, Ltd. v. CIR, 40 SCRA 521 (1971); (ii) St. Louis College of Tuguegarao v. NLRC, 177 SCRA 151 (1989); (iii) Sigma Personnel Services v. NLRC, 224 SCRA 181 (1993); and (iv) Millares v. NLRC, 305 SCRA 500 (1999) and not (i) Art. 279 of the Labor Code; (ii) Paramount Vinyl Corp. v. NLRC, 190 SCRA 525 (1990); (iii) Evangelista v. NLRC, 249 SCRA 194 (1995); and (iv) Espejo v. NLRC, 255 SCRA 430 (1996).
>
> (c) The Hon. Court of Appeals erred in ruling that respondent is entitled to check-up benefit, clothing allowance and cash conversion of vacation leaves notwithstanding that respondent did not present any evidence to prove entitlement to these claims.
>
> (d) The Hon. Court of Appeals erred in ruling that respondent is entitled to be paid legal interest even if the principal amount due him has not yet been correctly and finally determined.[31]

Meanwhile, on 26 October 2004, the Court of Appeals rendered a Supplemental Decision granting respondent Sadac's Partial Motion for Reconsideration and amending the dispositive portion of the 6 April 2004 Decision in this wise, viz.:

> WHEREFORE, premises considered, the March 24 (sic), 2001 and the September 24, 2002 Resolutions of the National Labor Relations Commission are hereby REVERSED and SET ASIDE and the August 2, 1999 Order of the Labor Arbiter is hereby REVIVED to the effect that private respondent is hereby DIRECTED TO PAY petitioner the sum of P6,342,307.00, representing full backwages which sum includes annual general increases in basic salary, check-up benefit, clothing allowance, cash conversion of vacation leave and other sundry benefits "and attorney's fees equal to TEN PERCENT (10%) of all the monetary award" plus 12% per annum interest on all outstanding balance from July 28, 1997 until full payment.
>
> Costs against private respondent.[32]

On 22 November 2004, petitioner Bank filed a Supplement to Petition for Review[33] contending in the main that the Court of Appeals erred in issuing the Supplemental Decision by directing petitioner Bank to pay an additional amount to respondent Sadac representing attorney's fees equal to ten percent (10%) of all the monetary award.

The Court's Ruling

I.

We are called to write finis to a controversy that comes to us for the second time. At the core of the instant case are the divergent contentions of the parties on the manner of computation of backwages.

Petitioner Bank asseverates that Article 279 of the Labor Code of the Philippines does not contemplate the inclusion of salary increases in the definition of "full backwages." It controverts the reliance by the appellate court on the cases of (i) East Asiatic; (ii) St. Louis; (iii) Sigma Personnel; and (iv) Millares. While it is in accord with the pronouncement of the Court of Appeals that Republic Act No. 6715, in amending Article 279, intends to give more benefits to workers, petitioner Bank submits that the Court of Appeals was in error in relying on East Asiatic to support its finding that salary increases should be included in the computation of backwages as nowhere in Article 279, as amended, are salary increases spoken of. The prevailing rule in the milieu of the East Asiatic

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doctrine was to deduct earnings earned elsewhere from the amount of backwages payable to an illegally dismissed employee.

Petitioner Bank posits that even granting that East Asiatic allowed general salary increases in the computation of backwages, it was because the inclusion was purposely to cushion the blow of the deduction of earnings derived elsewhere; with the amendment of Article 279 and the consequent elimination of the rule on the deduction of earnings derived elsewhere, the rationale for including salary increases in the computation of backwages no longer exists. On the references of salary increases in the aforementioned cases of (i) St. Louis; (ii) Sigma Personnel; and (iii) Millares, petitioner Bank contends that the same were merely obiter dicta. In fine, petitioner Bank anchors its claim on the cases of (i) Paramount Vinyl Products Corp. v. National Labor Relations Commission;[34] (ii) Evangelista v. National Labor Relations Commission;[35] and (iii) Espejo v. National Labor Relations Commission,[36] which ruled that an unqualified award of backwages is exclusive of general salary increases and the employee is paid at the wage rate at the time of the dismissal.

For his part, respondent Sadac submits that the Court of Appeals was correct when it ruled that his backwages should include the general increases on the basis of the following cases, to wit: (i) East Asiatic; (ii) St. Louis; (iii) Sigma Personnel; and (iv) Millares.

Resolving the protracted litigation between the parties necessitates us to revisit our pronouncements on the interpretation of the term backwages. We said that backwages in general are granted on grounds of equity for earnings which a worker or employee has lost due to his illegal dismissal.[37] It is not private compensation or damages but is awarded in furtherance and effectuation of the public objective of the Labor Code. Nor is it a redress of a private right but rather in the nature of a command to the employer to make public reparation for dismissing an employee either due to the former's unlawful act or bad faith.[38] The Court, in the landmark case of Bustamante v. National Labor Relations Commission,[39] had the occasion to explicate on the meaning of full backwages as contemplated by Article 279[40] of the Labor Code of the Philippines, as amended by Section 34 of Rep. Act No. 6715. The Court in Bustamante said, thus:

> The Court deems it appropriate, however, to reconsider such earlier ruling on the computation of backwages as enunciated in said Pines City Educational Center case, by now holding that conformably with the evident legislative intent as expressed in Rep. Act No. 6715, above-quoted, backwages to be awarded to an illegally dismissed employee, should not, as a general rule, be diminished or reduced by the earnings derived by him elsewhere during the period of his illegal dismissal. The underlying reason for this ruling is that the employee, while litigating the legality (illegality) of his dismissal, must still earn a living to support himself and family, while full backwages have to be paid by the employer as part of the price or penalty he has to pay for illegally dismissing his employee. The clear legislative intent of the amendment in Rep. Act No. 6715 is to give more benefits to workers than was previously given them under the Mercury Drug rule or the "deduction of earnings elsewhere" rule. Thus, a closer adherence to the legislative policy behind Rep. Act No. 6715 points to "full backwages" as meaning exactly that, i.e., without deducting from backwages the earnings derived elsewhere by the concerned employee during the period of his illegal dismissal. In other words, the provision calling for "full backwages" to illegally dismissed employees is clear, plain and free from ambiguity and, therefore, must be applied without attempted or strained interpretation. Index animi sermo est.[41]

Verily, jurisprudence has shown that the definition of full backwages has forcefully evolved. In Mercury Drug Co., Inc. v. Court of Industrial Relations,[42] the rule was that backwages were granted for a period of three years without qualification and without deduction, meaning, the award of backwages was not reduced by earnings actually earned by the dismissed employee during the interim period of the separation. This came to be known as the Mercury Drug rule.[43] Prior to the Mercury Drug ruling in 1974, the total amount of backwages was reduced by earnings obtained by the employee elsewhere from the time of the dismissal to his reinstatement. The Mercury

Drug rule was subsequently modified in Ferrer v. National Labor Relations Commission[44] and Pines City Educational Center v. National Labor Relations Commission,[45] where we allowed the recovery of backwages for the duration of the illegal dismissal minus the total amount of earnings which the employee derived elsewhere from the date of dismissal up to the date of reinstatement, if any. In Ferrer and in Pines, the three-year period was deleted, and instead, the dismissed employee was paid backwages for the entire period that he was without work subject to the deductions, as mentioned. Finally came our ruling in Bustamante which superseded Pines City Educational Center and allowed full recovery of backwages without deduction and without qualification pursuant to the express provisions of Article 279 of the Labor Code, as amended by Rep. Act No. 6715, i.e., without any deduction of income the employee may have derived from employment elsewhere from the date of his dismissal up to his reinstatement, that is, covering the entirety of the period of the dismissal.

The first issue for our resolution involves another aspect in the computation of full backwages, mainly, the basis of the computation thereof. Otherwise stated, whether general salary increases should be included in the base figure to be used in the computation of backwages.

In so concluding that general salary increases should be made a component in the computation of backwages, the Court of Appeals ratiocinated, thus:

> The Supreme Court held in East Asiatic, Ltd. v. Court of Industrial Relations, 40 SCRA 521 (1971) that "general increases" should be added as a part of full backwages, to wit:
> In other words, the just and equitable rule regarding the point under discussion is this: It is the obligation of the employer to pay an illegally dismissed employee or worker the whole amount of the salaries or wages, plus all other benefits and bonuses and general increases, to which he would have been normally entitled had he not been dismissed and had not stopped working, but it is the right, on the other hand of the employer to deduct from the total of these, the amount equivalent to the salaries or wages the employee or worker would have earned in his old employment on the corresponding days he was actually gainfully employed elsewhere with an equal or higher salary or wage, such that if his salary or wage in his other employment was less, the employer may deduct only what has been actually earned.

The doctrine in East Asiatic was subsequently reiterated, in the cases of St. Louis College of Tugueg[a]rao v. NLRC, 177 SCRA 151 (1989); Sigma Personnel Services v. NLRC, 224 SCRA 181 (1993) and Millares v. National Labor Relations Commission, 305 SCRA 500 (1999).

Private respondent, in opposing the petitioner's contention, alleged in his Memorandum that only the wage rate at the time of the employee's illegal dismissal should be considered - private respondent citing the following decisions of the Supreme Court: Paramount Vinyl Corp. v. NLRC 190 SCRA 525 (1990); Evangelista v. NLRC, 249 SCRA 194 (1995); Espejo v. NLRC, 255 SCRA 430 (1996) which rendered obsolete the ruling in East Asiatic, Ltd. v. Court of Industrial Relations, 40 SCRA 521 (1971).

We are not convinced.

The Supreme Court had consistently held that payment of full backwages is the price or penalty that the employer must pay for having illegally dismissed an employee.

In Ala Mode Garments, Inc. v. NLRC 268 SCRA 497 (1997) and Bustamante v. NLRC and Evergreen Farms, Inc. 265 SCRA 61 (1996) the Supreme Court held that the clear legislative intent in the amendment in Republic Act 6715 was to give more benefits to workers than was previously given them under the Mercury Drug rule or the "deductions of earnings elsewhere" rule.

The Paramount Vinyl, Evangelista, and Espejo cases cited by private respondent are inapplicable to the case at bar. The doctrines therein came about as a result of the old Mercury Drug rule, which was repealed with the

passage of Republic Act 6715 into law. It was in Alex Ferrer v. NLRC 255 SCRA 430 (1993) when the Supreme Court returned to the doctrine in East Asiatic, which was soon supplanted by the case of Bustamante v. NLRC and Evergreen Farms, Inc., which held that the backwages to be awarded to an illegally dismissed employee, should not, as a general rule, be diminished or reduced by the earnings derived from him during the period of his illegal dismissal. Furthermore, the Mercury Drug rule was never meant to prejudice the workers, but merely to speed the recovery of their backwages.

Ever since Mercury Drug Co. Inc. v. CIR 56 SCRA 694 (1974), it had been the intent of the Supreme Court to increase the backwages due an illegally dismissed employee. In the Mercury Drug case, full backwages was to be recovered even though a three-year limitation on recovery of full backwages was imposed in the name of equity. Then in Bustamante, full backwages was interpreted to mean absolutely no deductions regardless of the duration of the illegal dismissal. In Bustamante, the Supreme Court no longer regarded equity as a basis when dealing with illegal dismissal cases because it is not equity at play in illegal dismissals but rather, it is employer's obligation to pay full back wages (sic). It is an obligation of the employer because it is "the price or penalty the employer has to pay for illegally dismissing his employee."

The applicable modern definition of full backwages is now found in Millares v. National Labor Relations Commission 305 SCRA 500 (1999), where although the issue in Millares concerned separation pay - separation pay and backwages both have employee's wage rate at their foundation.

> x x x The rationale is not difficult to discern. It is the obligation of the employer to pay an illegally dismissed employee the whole amount of his salaries plus all other benefits, bonuses and general increases to which he would have been normally entitled had he not been dismissed and had not stopped working. The same holds true in case of retrenched employees. x x x

x x x x

x x x Annual general increases are akin to "allowances" or "other benefits." [46] (Italics ours.)

We do not agree.

Attention must be called to Article 279 of the Labor Code of the Philippines, as amended by Section 34 of Rep. Act No. 6715. The law provides as follows:

> 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. (Emphasis supplied.)

Article 279 mandates that an employee's full backwages shall be inclusive of allowances and other benefits or their monetary equivalent. Contrary to the ruling of the Court of Appeals, we do not see that a salary increase can be interpreted as either an allowance or a benefit. Salary increases are not akin to allowances or benefits, and cannot be confused with either. The term "allowances" is sometimes used synonymously with "emoluments," as indirect or contingent remuneration, which may or may not be earned, but which is sometimes in the nature of compensation, and sometimes in the nature of reimbursement.[47] Allowances and benefits are granted to the employee apart or separate from, and in addition to the wage or salary. In contrast, salary increases are amounts which are added to the employee's salary as an increment thereto for varied reasons deemed appropriate by the employer. Salary increases are not separate grants by themselves but once granted, they are deemed part of the employee's salary. To extend the coverage of an allowance or a benefit to include salary increases would be to

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strain both the imagination of the Court and the language of law. As aptly observed by the NLRC, "to otherwise give the meaning other than what the law speaks for by itself, will open the floodgates to various interpretations."[48] Indeed, if the intent were to include salary increases as basis in the computation of backwages, the same should have been explicitly stated in the same manner that the law used clear and unambiguous terms in expressly providing for the inclusion of allowances and other benefits.

Moreover, we find East Asiatic inapplicable to the case at bar. In East Asiatic, therein petitioner East Asiatic Company, Ltd. was found guilty of unfair labor practices against therein respondent, Soledad A. Dizon, and the Court ordered her reinstatement with back pay. On the question of the amount of backwages, the Court granted the dismissed employee the whole amount of the salaries plus all general increases and bonuses she would have received during the period of her lay-off with the corresponding right of the employer to deduct from the total amounts, all the earnings earned by the employee during her lay-off. The emphasis in East Asiatic is the duty of both the employer and the employee to disclose the material facts and competent evidence within their peculiar knowledge relative to the proper determination of backwages, especially as the earnings derived by the employee elsewhere are deductions to which the employer are entitled. However, East Asiatic does not find relevance in the resolution of the issue before us. First, the material date to consider is 21 March 1989, when the law amending Article 279 of the Labor Code, Rep. Act No. 6715, otherwise known as the Herrera-Veloso Law, took effect. It is obvious that the backdrop of East Asiatic, decided by this Court on 31 August 1971 was prior to the current state of the law on the definition of full backwages. Second, it bears stressing that East Asiatic was decided at a time when even as an illegally dismissed employee is entitled to the whole amount of the salaries or wages, it was the recognized right of the employer to deduct from the total of these, the amount equivalent to the salaries or wages the employee or worker would have earned in his old employment on the corresponding days that he was actually gainfully employed elsewhere with an equal or higher salary or wage, such that if his salary or wage in his other employment was less, the employer may deduct only what has been actually earned.[49] It is for this reason the Court centered its discussion on the duty of both parties to be candid and open about facts within their knowledge to establish the amount of the deductions, and not leave the burden on the employee alone to establish his claim, as well as on the duty of the court to compel the parties to cooperate in disclosing such material facts. The inapplicability of East Asiatic to respondent Sadac was sufficiently elucidated upon by the NLRC, viz.:

> A full discernment of the pertinent portion of the judgment sought to be executed in East Asiatic Co., Ltd. would reveal as follows:
> "x x x to reinstate Soledad A. Dizon immediately to her former position with backwages from September 1, 1958 until actually reinstated with all the rights and privileges acquired and due her, including seniority and such other terms and conditions of employment AT THE TIME OF HER LAY-OFF"

The basis on which this doctrine was laid out was summed up by the Supreme Court which ratiocinated in this light. To quote:

> "x x x on the other hand, of the employer to deduct from the total of these, the amount equivalent to these salaries or wages the employee or worker would have earned in his old employment on the corresponding days that he was actually gainfully employed elsewhere with an equal or higher salary or wage, such that if his salary or wage in his other employment was less, the employer may deduct only what has been actually earned x x x" (Ibid, pp. 547-548).

But the Supreme Court, in the instant case, pronounced a clear but different judgment from that of East Asiatic Co. decretal portion, in this wise:

> "WHEREFORE, the herein questioned Resolution of the NLRC is AFFIRMED with the following MODIFICATIONS: that private respondent shall be entitled to backwages from termination of employment until turning sixty (60) years of age (in 1995) and, thereupon, to retirement benefits in accordance with law;

xxx"

Undisputably (sic), it was decreed in plain and unambiguous language that complainant Sadac "shall be entitled to backwages." No more, no less.

Thus, this decree for Sadac cannot be considered in any way, substantially in essence, with the award of backwages as pronounced for Ms. Dizon in the case of East Asiatic Co. Ltd.[50]

In the same vein, we cannot accept the Court of Appeals' reliance on the doctrine as espoused in Millares. It is evident that Millares concerns itself with the computation of the salary base used in computing the separation pay of petitioners therein. The distinction between backwages and separation pay is elementary. Separation pay is granted where reinstatement is no longer advisable because of strained relations between the employee and the employer. Backwages represent compensation that should have been earned but were not collected because of the unjust dismissal. The bases for computing the two are different, the first being usually the length of the employee's service and the second the actual period when he was unlawfully prevented from working.[51]

The issue that confronted the Court in Millares was whether petitioners' housing and transportation allowances therein which they allegedly received on a monthly basis during their employment should have been included in the computation of their separation pay. It is plain to see that the reference to general increases in Millares citing East Asiatic was a mere obiter. The crux in Millares was our pronouncement that the receipt of an allowance on a monthly basis does not ipso facto characterize it as regular and forming part of salary because the nature of the grant is a factor worth considering. Whether salary increases are deemed part of the salary base in the computation of backwages was not the issue in Millares.

Neither can we look at St. Louis of Tuguegarao to resolve the instant controversy. What was mainly contentious therein was the inclusion of fringe benefits in the computation of the award of backwages, in particular additional vacation and sick leaves granted to therein concerned employees, it evidently appearing that the reference to East Asiatic in a footnote was a mere obiter dictum. Salary increases are not akin to fringe benefits[52] and neither is it logical to conceive of both as belonging to the same taxonomy.

We must also resolve against the applicability of Sigma Personnel Services to the case at bar. The basic issue before the Court therein was whether the employee, Susan Sumatre, a domestic helper in Abu Dhabi, United Arab Emirates, had been illegally dismissed, in light of the contention of Sigma Personnel Services, a duly licensed recruitment agency, that the former was a mere probationary employee who was, on top of this status, mentally unsound.[53] Even a cursory reading of Sigma Personnel Services citing St. Louis College of Tuguegarao would readily show that inclusion of salary increases in the computation of backwages was not at issue. The same was not on all fours with the instant petition.

What, then, is the basis of computation of backwages? Are annual general increases in basic salary deemed component in the computation of full backwages? The weight of authority leans in petitioner Bank's favor and against respondent Sadac's claim for the inclusion of general increases in the computation of his backwages.

We stressed in Paramount that an unqualified award of backwages means that the employee is paid at the wage rate at the time of his dismissal, thus:

> The determination of the salary base for the computation of backwages requires simply an application of judicial precedents defining the term "backwages". Unfortunately, the Labor Arbiter erred in this regard. An unqualified award of backwages means that the employee is paid at the wage rate at the time of his dismissal [Davao Free Worker Front v. Court of Industrial Relations, G.R. No. L-29356, October 27, 1975, 67 SCRA 418; Capital Garments Corporation v. Ople, G.R. No. 53627, September 30, 1982, 117 SCRA 473; Durabilt Recapping Plant & Company v. NLRC, G.R. No. 76746, July 27, 1987, 152 SCRA 328]. And the Court has

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> declared that the base figure to be used in the computation of backwages due to the employee should include not just the basic salary, but also the regular allowances that he had been receiving, such as the emergency living allowances and the 13th month pay mandated under the law [See Pan-Philippine Life Insurance Corporation v. NLRC, G.R. No. 53721, June 29, 1982, 144 SCRA 866; Santos v. NLRC, G.R. No. 76721, September 21, 1987, 154 SCRA 166; Soriano v. NLRC, G.R. No. 75510, October 27, 1987, 155 SCRA 124; Insular Life Assurance Co., Ltd. v. NLRC, supra.][54] (Emphasis supplied.)

There is no ambivalence in Paramount, that the base figure to be used in the computation of backwages is pegged at the wage rate at the time of the employee's dismissal, inclusive of regular allowances that the employee had been receiving such as the emergency living allowances and the 13[th] month pay mandated under the law.

In Evangelista v. National Labor Relations Commission,[55] we addressed the sole issue of whether the computation of the award of backwages should be based on current wage level or the wage levels at the time of the dismissal. We resolved that an unqualified award of backwages means that the employee is paid at the wage rate at the time of his dismissal, thus:

> As explicitly declared in Paramount Vinyl Products Corp. vs. NLRC, the determination of the salary base for the computation of backwages requires simply an application of judicial precedents defining the term "backwages." An unqualified award of backwages means that the employee is paid at the wage rate at the time of his dismissal. Furthermore, the award of salary differentials is not allowed, the established rule being that upon reinstatement, illegally dismissed employees are to be paid their backwages without deduction and qualification as to any wage increases or other benefits that may have been received by their co-workers who were not dismissed or did not go on strike.[56]

The case of Paramount was relied upon by the Court in the latter case of Espejo v. National Labor Relations Commission,[57] where we reiterated that the computation of backwages should be based on the basic salary at the time of the employee's dismissal plus the regular allowances that he had been receiving. Further, the clarification made by the Court in General Baptist Bible College v. National Labor Relations Commission,[58] settles the issue, thus:

> We also want to clarify that when there is an award of backwages this actually refers to backwages without qualifications and deductions. Thus, We held that:
> "The term 'backwages without qualification and deduction' means that the workers are to be paid their backwages fixed as of the time of the dismissal or strike without deduction for their earnings elsewhere during their layoff and without qualification of their wages as thus fixed; i.e., unqualified by any wage increases or other benefits that may have been received by their co-workers who are not dismissed or did not go on strike. Awards including salary differentials are not allowed. The salary base properly used should, however, include not only the basic salary but also the emergency cost of living allowances and also transportation allowances if the workers are entitled thereto."[59] (Italics supplied.)

Indeed, even a cursory reading of the dispositive portion of the Court's Decision of 13 June 1997 in G.R. No. 102467, awarding backwages to respondent Sadac, readily shows that the award of backwages therein is unqualified, ergo, without qualification of the wage as thus fixed at the time of the dismissal and without deduction.

A demarcation line between salary increases and backwages was drawn by the Court in Paguio v. Philippine Long Distance Telephone Co., Inc.,[60] where therein petitioner Paguio, on account of his illegal transfer sought backwages, including an amount equal to 16 percent (16%) of his monthly salary representing his salary increases during the period of his demotion, contending that he had been consistently granted salary increases because of his above average or outstanding performance. We said:

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> In several cases, the Court had the opportunity to elucidate on the reason for the grant of backwages. Backwages are granted on grounds of equity to workers for earnings lost due to their illegal dismissal from work. They are a reparation for the illegal dismissal of an employee based on earnings which the employee would have obtained, either by virtue of a lawful decree or order, as in the case of a wage increase under a wage order, or by rightful expectation, as in the case of one's salary or wage. The outstanding feature of backwages is thus the degree of assuredness to an employee that he would have had them as earnings had he not been illegally terminated from his employment.
>
> Petitioner's claim, however, is based simply on expectancy or his assumption that, because in the past he had been consistently rated for his outstanding performance and his salary correspondingly increased, it is probable that he would similarly have been given high ratings and salary increases but for his transfer to another position in the company.
>
> In contrast to a grant of backwages or an award of lucrum cessans in the civil law, this contention is based merely on speculation. Furthermore, it assumes that in the other position to which he had been transferred petitioner had not been given any performance evaluation. As held by the Court of Appeals, however, the mere fact that petitioner had been previously granted salary increases by reason of his excellent performance does not necessarily guarantee that he would have performed in the same manner and, therefore, qualify for the said increase later. What is more, his claim is tantamount to saying that he had a vested right to remain as Head of the Garnet Exchange and given salary increases simply because he had performed well in such position, and thus he should not be moved to any other position where management would require his services.[61]

Applying Paguio to the case at bar, we are not prepared to accept that this degree of assuredness applies to respondent Sadac's salary increases. There was no lawful decree or order supporting his claim, such that his salary increases can be made a component in the computation of backwages. What is evident is that salary increases are a mere expectancy. They are, by its nature volatile and are dependent on numerous variables, including the company's fiscal situation and even the employee's future performance on the job, or the employee's continued stay in a position subject to management prerogative to transfer him to another position where his services are needed. In short, there is no vested right to salary increases. That respondent Sadac may have received salary increases in the past only proves fact of receipt but does not establish a degree of assuredness that is inherent in backwages. From the foregoing, the plain conclusion is that respondent Sadac's computation of his full backwages which includes his prospective salary increases cannot be permitted.

Respondent Sadac cannot take exception by arguing that jurisprudence speaks only of wage and not salary, and therefore, the rule is inapplicable to him. It is respondent Sadac's stance that he was not paid at the wage rate nor was he engaged in some form of manual or physical labor as he was hired as Vice President of petitioner Bank. He cites Gaa v. Court of Appeals[62] where the Court distinguished between wage and salary.

The reliance is misplaced. The distinction between salary and wage in Gaa was for the purpose of Article 1708 of the Civil Code which mandates that, "[t]he laborer's wage shall not be subject to execution or attachment, except for debts incurred for food, shelter, clothing and medical attendance." In labor law, however, the distinction appears to be merely semantics. Paramount and Evangelista may have involved wage earners, but the petitioner in Espejo was a General Manager with a monthly salary of P9,000.00 plus privileges. That wage and salary are synonymous has been settled in Songco v. National Labor Relations Commission.[63] We said:

> Broadly, the word "salary" means a recompense or consideration made to a person for his pains or industry in another man's business. Whether it be derived from "salarium," or more fancifully from "sal," the pay of the Roman soldier, it carries with it the fundamental idea of compensation for services rendered. Indeed, there is eminent authority for holding that the words "wages" and "salary" are in essence synonymous (Words and Phrases, Vol. 38 Permanent Edition, p. 44 citing Hopkins vs. Cromwell, 85 N.Y.S.839, 841, 89 App. Div. 481;

> 38 Am. Jur. 496). "Salary," the etymology of which is the Latin word "salarium," is often used interchangeably with "wage", the etymology of which is the Middle English word "wagen". Both words generally refer to one and the same meaning, that is, a reward or recompense for services performed. Likewise, "pay" is the synonym of "wages" and "salary" (Black's Law Dictionary, 5[th] Ed). x x x[64] (Italics supplied.)

II.

Petitioner Bank ascribes as its second assignment of error the Court of Appeals' ruling that respondent Sadac is entitled to check-up benefit, clothing allowance and cash conversion of vacation leaves notwithstanding that respondent Sadac did not present any evidence to prove entitlement to these claims.[65]

The determination of respondent Sadac's entitlement to check-up benefit, clothing allowance, and cash conversion of vacation leaves involves a question of fact. The well-entrenched rule is that only errors of law not of facts are reviewable by this Court in a petition for review.[66] The jurisdiction of this Court in a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, is limited to reviewing only errors of law, not of fact, unless the factual findings being assailed are not supported by evidence on record or the impugned judgment is based on a misapprehension of facts.[67] This Court is also not precluded from delving into and resolving issues of facts, particularly if the findings of the Labor Arbiter are inconsistent with those of the NLRC and the Court of Appeals.[68] Such is the case in the instant petition. The Labor Arbiter and the Court of Appeals are in agreement anent the entitlement of respondent Sadac to check-up benefit, clothing allowance, and cash conversion of vacation leaves, but the findings of the NLRC were to the contrary. The Labor Arbiter sustained respondent Sadac's entitlement to check-up benefit, clothing allowance and cash conversion of vacation leaves. He gave weight to petitioner Bank's acknowledgment in its computation that respondent Sadac is entitled to certain benefits, namely, rice subsidy, tuition fee allowance, and medicine allowance, thus, there exists no reason to deprive respondent Sadac of his other benefits. The Labor Arbiter also reasoned that the petitioner Bank did not adduce evidence to support its claim that the benefits sought by respondent Sadac are not granted to its employees and officers. Similarly, the Court of Appeals ratiocinated that if ordinary employees are entitled to receive these benefits, so it is with more reason for a Vice President, like herein respondent Sadac to receive the same.

We find in the records that, per petitioner Bank's computation, the benefits to be received by respondent are monthly rice subsidy, tuition fee allowance per year, and medicine allowance per year.[69] Contained nowhere is an acknowledgment of herein claimed benefits, namely, check-up benefit, clothing allowance, and cash conversion of vacation leaves. We cannot sustain the rationalization that the acknowledgment by petitioner Bank in its computation of certain benefits granted to respondent Sadac means that the latter is also entitled to the other benefits as claimed by him but not acknowledged by petitioner Bank. The rule is, he who alleges, not he who denies, must prove. Mere allegations by respondent Sadac does not suffice in the absence of proof supporting the same.

III.

We come to the third assignment of error raised by petitioner Bank in its Supplement to Petition for Review, assailing the 26 October 2004 Supplemental Decision of the Court of Appeals which amended the fallo of its 6 April 2004 Decision to include "attorney's fees equal to TEN PERCENT (10%) of all the monetary award" granted to respondent Sadac. Petitioner Bank posits that neither the dispositive portion of our 13 June 1997 Decision in G.R. No. 102467 nor the body thereof awards attorney's fees to respondent Sadac. It is postulated that the body of the 13 June 1997 Decision does not contain any findings of facts or conclusions of law relating to attorney's fees, thus, this Court did not intend to grant to respondent Sadac the same, especially in the light of its

finding that the petitioner Bank was not motivated by malice or bad faith and that it did not act in a wanton, oppressive, or malevolent manner in terminating the services of respondent Sadac.[70]

We do not agree.

At the outset it must be emphasized that when a final judgment becomes executory, it thereby becomes immutable and unalterable. The judgment may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the Court rendering it or by the highest Court of the land. The only recognized exceptions are the correction of clerical errors or the making of so-called nunc pro tunc entries which cause no prejudice to any party, and, of course, where the judgment is void.[71] The Court's 13 June 1997 Decision in G.R. No. 102467 became final and executory on 28 July 1997. This renders moot whatever argument petitioner Bank raised against the grant of attorney's fees to respondent Sadac. Of even greater import is the settled rule that it is the dispositive part of the judgment that actually settles and declares the rights and obligations of the parties, finally, definitively, and authoritatively, notwithstanding the existence of inconsistent statements in the body that may tend to confuse.[72]

Proceeding therefrom, we make a determination of whether the Court in Equitable Banking Corporation v. National Labor Relations Commission,[73] G.R. No. 102467, dated 13 June 1997, awarded attorney's fees to respondent Sadac. In recapitulation, the dispositive portion of the aforesaid Decision is hereunder quoted:

> WHEREFORE, the herein questioned Resolution of the NLRC is AFFIRMED with the following MODIFICATIONS: That private respondent shall be entitled to backwages from termination of employment until turning sixty (60) years of age (in 1995) and, thereupon, to retirement benefits in accordance with law; that private respondent shall be paid an additional amount of P5,000.00; that the award of moral and exemplary damages are deleted; and that the liability herein pronounced shall be due from petitioner bank alone, the other petitioners being absolved from solidary liability. No costs.[74]

The dispositive portion of the 24 September 1991 Decision of the NLRC awards respondent Sadac attorney's fees equivalent to ten percent (10%) of the monetary award, viz:

> WHEREFORE, in view of all the foregoing considerations, let the Decision of October 2, 1990 be, as it is hereby, SET ASIDE and a new one ENTERED declaring the dismissal of the complainant as illegal, and consequently ordering the respondents jointly and severally to reinstate him to his former position as bank Vice-President and General Counsel without loss of seniority rights and other privileges, and to pay him full backwages and other benefits from the time his compensation was withheld to his actual reinstatement, as well as moral damages of P100,000.00, exemplary damages of P50,000.00, and attorney's fees equivalent to Ten Percent (10%) of the monetary award. Should reinstatement be no longer possible due to strained relations, the respondents are ordered likewise jointly and severally to grant separation pay at one (1) month per year of service in the total sum of P293,650.00 with backwages and other benefits from November 16, 1989 to September 15, 1991 (cut off date, subject to adjustment) computed at P1,055,740.48, plus damages of P100,000.00 (moral damages), P50,000.00 (exemplary damages) and attorney's fees equal to Ten Percent (10%) of all the monetary award, or a grand total of P1,649,329.53.[75] (Italics Ours.)

As can be gleaned from the foregoing, the Court's Decision of 13 June 1997 AFFIRMED with MODIFICATION the NLRC Decision of 24 September 1991, which modification did not touch upon the award of attorney's fees as granted, hence, the award stands. Juxtaposing the decretal portions of the NLRC Decision of 24 September 1991 with that of the Court's Decision of 13 June 1997, we find that what was deleted by the Court was "the award of moral and exemplary damages," but not the award of "attorney's fees equivalent to Ten Percent (10%) of the monetary award." The issue on the grant of attorney's fees to respondent Sadac has been adequately and

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definitively threshed out and settled with finality when petitioner Bank came to us for the first time on a Petition for Certiorari in Equitable Banking Corporation v. National Labor Relations Commission, docketed as G.R. No. 102467. The Court had spoken in its Decision of 13 June 1997 in the said case which attained finality on 28 July 1997. It is now immutable.

IV.

We proceed with the penultimate issue on the entitlement of respondent Sadac to twelve percent (12%) interest per annum on the outstanding balance as of 28 July 1997, the date when our Decision in G.R. No. 102467 became final and executory.

In Eastern Shipping Lines, Inc. v. Court of Appeals,[76] the Court, speaking through the Honorable Justice Jose C. Vitug, laid down the following rules of thumb:

> - When an obligation, regardless of its source, i.e., law, contracts, quasi-contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages.
>
> - With regard particularly to an award of interest in the concept of actual or compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:
>
> - When the obligation is breached, and it consists in the payment of a sum of money, i.e., a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, i.e., from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.
>
> - When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Article 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.
>
> - When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2 above, shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.[77]

It is obvious that the legal interest of twelve percent (12%) per annum shall be imposed from the time judgment becomes final and executory, until full satisfaction thereof. Therefore, petitioner Bank is liable to pay interest from 28 July 1997, the finality of our Decision in G.R. No. 102467.[78] The Court of Appeals was not in error in imposing the same notwithstanding that the parties were at variance in the computation of respondent Sadac's backwages. What is significant is that the Decision of 13 June 1997 which awarded backwages to respondent Sadac became final and executory on 28 July 1997.

V.

Finally, petitioner Bank's Motion to Refer the Petition En Banc must necessarily be denied as established in our foregoing discussion. We are not herein modifying or reversing a doctrine or principle laid down by the Court en banc or in a division. The instant case is not one that should be heard by the Court en banc.[79]

Fallo

WHEREFORE, the petition is PARTIALLY GRANTED in the sense that in the computation of the backwages, respondent Sadac's claimed prospective salary increases, check-up benefit, clothing allowance, and cash conversion of vacation leaves are excluded. The petition is PARTIALLY DENIED insofar as we AFFIRMED the grant of attorney's fees equal to ten percent (10%) of all the monetary award and the imposition of twelve percent (12%) interest per annum on the outstanding balance as of 28 July 1997. Hence, the Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 75013, dated 6 April 2004 and 28 July 2004, respectively, and the Supplemental Decision dated 26 October 2004 are MODIFIED in the following manner, to wit:

Petitioner Bank is DIRECTED TO PAY respondent Sadac the following:

(1) BACKWAGES in accordance with Our Decision dated 13 June 1997 in G.R. No. 102467 with a clarification that the award of backwages EXCLUDES respondent Sadac's claimed prospective salary increases, check-up benefit, clothing allowance, and cash conversion of vacation leaves;

(2) ATTORNEY'S FEES equal to TEN PERCENT (10%) of the total sum of all monetary award; and

(3) INTEREST of TWELVE PERCENT (12%) per annum is hereby imposed on the total sum of all monetary award from 28 July 1997, the date of finality of Our Decision in G.R. No. 102467 until full payment of the said monetary award.

The Motion to Refer the Petition to the Court En Banc is DENIED.

No costs.

SO ORDERED.

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

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[1] Rollo, pp. 30-40; Penned by Associate Justice Vicente Q. Roxas with Associate Justices Rodrigo V. Cosico and Mariano C. Del Castillo, concurring.[2] Id. at 55-56.[3] Id. at 90-94.[4] Equitable Banking Corporation v. National Labor Relations Commission, 339 Phil. 541, 550-551 (1997).[5] CA rollo, pp. 49-68.[6] Id. at 69-104.[7] Id. at 102-103.[8] Supra note 4; See also CA rollo, pp. 106-136.[9] Penned by Associate Justice Jose C. Vitug.[10] Sec. 26, Rule 138, Rules of Court, now reads:

> Sec. 26. Change of Attorneys. - x x x
> A client may at any time dismiss his attorney or substitute another in his place, but if the contract between client and attorney has been reduced to writing and the dismissal of the attorney was without justifiable cause, he shall be entitled to recover from the client the full compensation stipulated in the contract. However, the attorney may, in the discretion of the court, intervene in the case to protect his rights. For the payment of his compensation the attorney shall have a lien upon all judgments for the payment of money, and executions issued in pursuance of such judgment, rendered in the case wherein his services had been retained by the client.

[11] Equitable Banking Corporation v. National Labor Relations Commission, supra note 4 at 569-570.[12] See CA rollo, p. 137.[13] Id. at 167-169.[14] Id. at 164-166.[15] 148-B Phil. 401, 414-415 (1971).[16] G.R. No. 74214, 31 August 1989, 177 SCRA 151, 156.[17] G.R. No. 108284, 30 June 1998, 224 SCRA 181, 188.[18] 319 Phil. 299, 301 (1995).[19] G.R. No. 81200, 17 October 1990, 190 SCRA 525, 537.[20] Rollo, pp. 113-123.[21] 365 Phil. 42, 54 (1999).[22] CA rollo, pp. 180-183.[23] Rollo, pp. 122-123.[24] Id. at 57-71.[25] Id. at 71.[26] Id. at 72-79.[27] Id. at 39-40.[28] CA rollo, pp. 102-103.[29] Id. at 330-337.[30] Rollo, pp. 55-56.[31] Id. at 6.[32] Id. at 93-94.[33] Id. at 81-87.[34] Supra note 19.[35] Supra note 18.[36] 325 Phil. 753, 760 (1996).[37] Torillo v. Leogardo, Jr., 274 Phil. 758, 765 (1991), citing Philippine Airlines, Inc. v. National Labor Relations Commission, G.R. No. 55159, 22 December 1989, 180 SCRA 555, 565.[38] Tomas Claudio Memorial College, Inc. v. Court of Appeals, G.R. No. 152568, 16 February 2004, 423 SCRA 122, 134, citing Imperial Textile Mills, Inc. v. National Labor Relations Commission, G.R. No. 101527, 19 January 1993, 217 SCRA 237, 247; St. Theresa's School of Novaliches Foundation v. National Labor Relations Commission, 351 Phil. 1038, 1044-1045 (1998).[39] 332 Phil. 833 (1996).[40] 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. [41] Bustamante v. National Labor Relations Commission, supra note 39 at 842-843.[42] 155 Phil. 636 (1974).[43] See Mercury Drug Co. Inc. v. Court of Industrial Relations, Id.; Lepanto Consolidated Mining Co. v. Olegario, G.R. No. L-77437, 23 June 1988, 162 SCRA 512, 516; Hernandez v. National Labor Relations Commission, G.R. No. 84302, 10 August 1989, 176 SCRA 269, 276; St. Louis College of Tuguegarao v. National Labor Relations Commission, supra note 16 at 157; Torillo v. Leogardo, Jr., supra note 37 at 479; Arms Taxi v. National Labor Relations Commission, G.R. No. 104523, 8 March 1993, 219 SCRA 706, 713; JAM Transportation Co. Inc. v. Flores, G.R. No. 82829, 19 March 1993, 220 SCRA 114, 123; Philippine Airlines Inc. v. National Labor Relations Commission, G.R. No. 106374, 17 June 1993, 223 SCRA 463, 468.[44] G.R. No. 100898, 5 July 1993, 224 SCRA 410, 423.[45] G.R. No. 96779, 10 November 1993, 227 SCRA 655, 664.[46] Rollo, pp. 33-36.[47] Words and Phrases, Vol. 3, Permanent Edition, p. 360, citing Sherburne's Adm'r v. United States, 16 Ct.Cl. 491, 496, 500.[48] Rollo, p. 66.[49] East Asiatic Company, Ltd. v. Court of Industrial Relations, supra note 15 at 429.[50] Rollo, pp. 64-65.[51] Lim v. National Labor Relations Commission, G.R. Nos. 79907 and 79975, 16 March 1989, 171 SCRA 328, 336.[52] Fringe benefits are defined by Section 33(B) of the Tax Code of 1997, viz.:

> Section 33. Special Treatment of Fringe Benefit. - x x x
> (B) Fringe Benefit Defined. - For purposes of this Section, the term 'fringe benefit' means any good, service or other benefit furnished or granted in cash or in kind by an employer to an individual employee (except rank and file employees as defined herein) such as, but not limited to, the following:
> (1) Housing;
> (2) Expense account;
> (3) Vehicle of any kind;
> (4) Household personnel, such as maid, driver and others;
> (5) Interest on loan at less than market rate to the extent of the difference between the market rate and actual rate granted;
> (6) Membership fees, dues and other expenses borne by the employer for the employee in social and athletic clubs or other similar organizations;
> (7) Expenses for foreign travel;
> (8) Holiday and vacation expenses;
> (9) Educational assistance to the employee or his dependents; and

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(10) Life or health insurance and other non-life insurance premiums or similar amounts in excess of what the law allows.

[53] Sigma Personnel Services v. National Labor Relations Commission, supra note 17 at 184.[54] Paramount Vinyl Products Corporation v. National Labor Relations Commission, supra note 19 at 537.[55] Supra note 18.[56] Id. at 301, citing Insular Life Assurance Co., Ltd. v. National Labor Relations Commission, G.R. No. L-74191, 21 December 1987, 156 SCRA 740, 749, citing Durabuilt Recapping Plant & Co. v. National Labor Relations Commission, G.R. No. L-76746, 27 July 1987, 152 SCRA 328, 332; Insular Life Assurance Co., Ltd., Employees Association-NATU v. Insular Life Assurance Co., Ltd., G.R. No. L-25291, 5 May 1977, 77 SCRA 3, 4.[57] Supra note 36 at 436 (1996).[58] G.R. No. 85534, 5 March 1993, 219 SCRA 549.[59] Id. at 559-560, citing Samahang Manggagawa ng Rizal Park v. National Labor Relations Commission, G.R. No. 94372, 9 October 1991, First Division, Minute Resolution, citing Resolution in Central Azucarera de Tarlac v. Sampang, G.R. No. 84598, promulgated on 19 May 1989.[60] 441 Phil. 679 (2002).[61] Id. at 690-691, citing cases.[62] G.R. No. L-44169, 3 December 1985, 140 SCRA 304, 309.[63] G.R. Nos. 50999-51000, 23 March 1990, 183 SCRA 610.[64] Id. at 617-618.[65] Rollo, p. 16.[66] Blanco v. Quasha, 376 Phil. 480, 491 (1999), citing Boneng v. People, 363 Phil. 594, 600 (1999).[67] Manila Bankers Life Insurance Corporation v. Ng Kok Wei, G.R. No. 139791, 12 December 2003, 418 SCRA 454, 459, citing Cosmos Bottling Corporation v. National Labor Relations Commission, G.R. No. 146397, 1 July 2003, 405 SCRA 258, 263.[68] Nasipit Lumber Company v. National Organization of Workingmen (NOWM), G.R. No. 146225, 25 November 2004, 444 SCRA 158, 170.[69] CA rollo, p. 179.[70] Rollo, pp. 81-87.[71] Nuñal v. Court of Appeals, G.R. No. 94005, 6 April 1993, 221 SCRA 26, 32, citing Manning International Corporation v. National Labor Relations Commission, G.R. No. 83018, 13 March 1991, 195 SCRA 155, 161; See also Ramos v. Ramos, 447 Phil. 114, 116 (2003); Argel v. Pascua, 415 Phil. 608, 612 (2001); Sacdalan v. Court of Appeals, G.R. No. 128967, 20 May 2004, 428 SCRA 586, 599.[72] Light Rail Transit Authority v. Court of Appeals, G.R. Nos. 139275-76 and 140949, 25 November 2004, 444 SCRA 125, 136, citing Espiritu v. Court of First Instance of Cavite, G.R. No. L-44696, 18 October 1988, 166 SCRA 394, 399.[73] Supra note 4. [74] Id. at 569-570.[75] CA Rollo, pp. 102-103.[76] G.R. No. 97412, 12 July 1994, 234 SCRA 78.[77] Id. at 95-97.[78] Equitable Banking Corporation v. National Labor Relations Commission, supra note 4.[79] Sec. 4(2), Article VIII, 1987 Constitution reads:
(2) All cases involving the constitutionality of a treaty, international or executive agreement, or law, which shall be heard by the Supreme Court en banc, and all other cases which under the Rules of Court are required to be heard en banc, including those involving the constitutionality, application, or operation of presidential decrees, proclamations, orders, instructions, ordinances, and other regulations, shall be decided with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon. See also Firestone Ceramics, Inc. v. Court of Appeals, 389 Phil. 810, 816-817 (2000), citing Supreme Court Circular No. 2-89, dated February 7, 1989, as amended by the Resolution of November 18, 1993, holding, viz.:

x x x the following are considered en banc cases:

- Cases in which the constitutionality or validity of any treaty, international or executive agreement, law, executive order, or presidential decree, proclamation, order, instruction, ordinance, or regulation is in question;

- Criminal cases in which the appealed decision imposes the death penalty;

- Cases raising novel questions of law;

- Cases affecting ambassadors, other public ministers and consuls;

- Cases involving decisions, resolutions or orders of the Civil Service Commission, Commission on Elections, and Commission on Audit;

- Cases where the penalty to be imposed is the dismissal of a judge, officer or employee of the judiciary, disbarment of a lawyer, or either the suspension of any of them for a period of more than one (1) year or a fine exceeding P10,000.00 or both;

- Cases where a doctrine or principle laid down by the court en banc or in division may be modified or reversed;

- Cases assigned to a division which in the opinion of at least three (3) members thereof merit the attention of the court en banc and are acceptable to a majority of the actual membership of the court en banc; and

- All other cases as the court en banc by a majority of its actual membership may deem of sufficient importance to merit its attention.

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