

JUANITO A. GARCIA AND ALBERTO J. DUMAGO, PETITIONERS, VS. PHILIPPINE AIRLINES, INC., RESPONDENT.

G.R. No. 164856. January 20, 2009

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Petitioners Juanito A. Garcia and Alberto J. Dumago assail the December 5, 2003 Decision and April 16, 2004 Resolution of the Court of Appeals[1] in CA-G.R. SP No. 69540 which granted the petition for certiorari of respondent, Philippine Airlines, Inc. (PAL), and denied petitioners' Motion for Reconsideration, respectively. The dispositive portion of the assailed Decision reads:

WHEREFORE, premises considered and in view of the foregoing, the instant petition is hereby GIVEN DUE COURSE. The assailed November 26, 2001 Resolution as well as the January 28, 2002 Resolution of public respondent National Labor Relations Commission [NLRC] is hereby ANNULLED and SET ASIDE for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction. Consequently, the Writ of Execution and the Notice of Garnishment issued by the Labor Arbiter are hereby likewise ANNULLED and SET ASIDE.

SO ORDERED.[2]

The case stemmed from the administrative charge filed by PAL against its employees-herein petitioners[3] after they were allegedly caught in the act of sniffing shabu when a team of company security personnel and law enforcers raided the PAL Technical Center's Toolroom Section on July 24, 1995.

After due notice, PAL dismissed petitioners on October 9, 1995 for transgressing the PAL Code of Discipline,[4] prompting them to file a complaint for illegal dismissal and damages which was, by Decision of January 11, 1999,[5] resolved by the Labor Arbiter in their favor, thus ordering PAL to, inter alia, immediately comply with the reinstatement aspect of the decision.

Prior to the promulgation of the Labor Arbiter's decision, the Securities and Exchange Commission (SEC) placed PAL (hereafter referred to as respondent), which was suffering from severe financial losses, under an Interim Rehabilitation Receiver, who was subsequently replaced by a Permanent Rehabilitation Receiver on June 7, 1999.

From the Labor Arbiter's decision, respondent appealed to the NLRC which, by Resolution of January 31, 2000, reversed said decision and dismissed petitioners' complaint for lack of merit.[6]

Petitioners' Motion for Reconsideration was denied by Resolution of April 28, 2000 and Entry of Judgment was issued on July 13, 2000.[7]

Subsequently or on October 5, 2000, the Labor Arbiter issued a Writ of Execution (Writ) respecting the reinstatement aspect of his January 11, 1999 Decision, and on October 25, 2000, he issued a Notice of Garnishment (Notice). Respondent thereupon moved to quash the Writ and to lift the Notice while petitioners moved to release the garnished amount.

In a related move, respondent filed an Urgent Petition for Injunction with the NLRC which, by Resolutions of November 26, 2001 and January 28, 2002, affirmed the validity of the Writ and the Notice issued by the Labor Arbiter but suspended and referred the action to the Rehabilitation Receiver for appropriate action.

Respondent elevated the matter to the appellate court which issued the herein challenged Decision and Resolution nullifying the NLRC Resolutions on two grounds, essentially espousing that: (1) a subsequent finding of a valid dismissal removes the basis for implementing the reinstatement aspect of a labor arbiter's decision (the first ground), and (2) the impossibility to comply with the reinstatement order due to corporate rehabilitation provides a reasonable justification for the failure to exercise the options under Article 223 of the Labor Code (the second ground).

By Decision of August 29, 2007, this Court **PARTIALLY GRANTED** the present petition and effectively reinstated the NLRC Resolutions insofar as it suspended the proceedings, viz:

Since petitioners' claim against PAL is a money claim for their wages during the pendency of PAL's appeal to the NLRC, the same should have been suspended pending the rehabilitation proceedings. The Labor Arbiter, the NLRC, as well as the Court of Appeals should have abstained from resolving petitioners' case for illegal dismissal and should instead have directed them to lodge their claim before PAL's receiver.

However, to still require petitioners at this time to re-file their labor claim against PAL under peculiar circumstances of the case- that their dismissal was eventually held valid with only the matter of reinstatement pending appeal being the issue- this Court deems it legally expedient to suspend the proceedings in this case.

WHEREFORE, the instant petition is **PARTIALLY GRANTED** in that the instant proceedings herein are **SUSPENDED** until further notice from this Court. Accordingly, respondent Philippine Airlines, Inc. is hereby **DIRECTED** to quarterly update the Court as to the status of its ongoing rehabilitation. No costs.

SO ORDERED.[8] (*Italics in the original; underscoring supplied*)

By Manifestation and Compliance of October 30, 2007, respondent informed the Court that the SEC, by Order of September 28, 2007, granted its request to exit from rehabilitation proceedings.[9]

In view of the termination of the rehabilitation proceedings, the Court now proceeds to resolve the remaining issue for consideration, which is whether petitioners may collect their wages during the period between the Labor Arbiter's order of reinstatement pending appeal and the NLRC decision overturning that of the Labor Arbiter, now that respondent has exited from rehabilitation proceedings.

Amplification of the First Ground

The appellate court counted on as its first ground the view that a subsequent finding of a valid dismissal removes the basis for implementing the reinstatement aspect of a labor arbiter's decision.

On this score, the Court's attention is drawn to seemingly divergent decisions concerning reinstatement pending appeal or, particularly, the option of payroll reinstatement. On the one hand is the jurisprudential trend as expounded in a line of cases including *Air Philippines Corp. v. Zamora*,[10] while on the other is the recent case of *Genuino v. National Labor Relations Commission*. [11] At the core of the seeming divergence is the application of paragraph 3 of Article 223 of the Labor Code which reads:

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, 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. (*Emphasis and underscoring supplied*)

The view as maintained in a number of cases is that:

x x x [E]ven 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.[12] (Emphasis in the original; italics and underscoring supplied)

In other words, a dismissed employee whose case was favorably decided by the Labor Arbiter is entitled to receive wages pending appeal upon reinstatement, which is immediately executory. Unless there is a restraining order, it is ministerial upon the Labor Arbiter to implement the order of reinstatement and it is mandatory on the employer to comply therewith.[13]

The opposite view is articulated in *Genuino* which states:

If the decision of the labor arbiter is later reversed on appeal upon the finding that the ground for dismissal is valid, then the employer has the right to require the dismissed employee on payroll reinstatement to refund the salaries s/he received while the case was pending appeal, or it can be deducted from the accrued benefits that the dismissed employee was entitled to receive from his/her employer under existing laws, collective bargaining agreement provisions, and company practices. However, if the employee was reinstated to work during the pendency of the appeal, then the employee is entitled to the compensation received for actual services rendered without need of refund.

Considering that *Genuino* was not reinstated to work or placed on payroll reinstatement, and her dismissal is based on a just cause, then she is not entitled to be paid the salaries stated in item no. 3 of the fallo of the September 3, 1994 NLRC Decision.[14] (Emphasis, italics and underscoring supplied)

It has thus been advanced that there is no point in releasing the wages to petitioners since their dismissal was found to be valid, and to do so would constitute unjust enrichment.

Prior to *Genuino*, there had been no known similar case containing a dispositive portion where the employee was required to refund the salaries received on payroll reinstatement. In fact, in a catena of cases,[15] the Court did not order the refund of salaries garnished or received by payroll-reinstated employees despite a subsequent reversal of the reinstatement order.

The dearth of authority supporting *Genuino* is not difficult to fathom for it would otherwise render inutile the rationale of reinstatement pending appeal.

x x x [T]he 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

x x x In short, with respect to decisions reinstating employees, the law itself has determined a sufficiently overwhelming reason for its execution pending appeal.

x x x x

x x x Then, by and pursuant to the same power (police power), the State may authorize an immediate implementation, pending appeal, of a decision reinstating a dismissed or separated employee since that saving act is designed to stop, although temporarily since the appeal may be decided in favor of the appellant, a continuing threat or danger to the survival or even the life of the dismissed or separated employee and his family.[16]

The social justice principles of labor law outweigh or render inapplicable the civil law doctrine of unjust enrichment espoused by Justice Presbitero Velasco, Jr. in his Separate Opinion. The constitutional and statutory precepts portray the otherwise "unjust" situation as a condition affording full protection to labor.

Even outside the theoretical trappings of the discussion and into the mundane realities of human experience, the "refund doctrine" easily demonstrates how a favorable decision by the Labor Arbiter could harm, more than help, a dismissed employee. The employee, to make both ends meet, would necessarily have to use up the salaries received during the pendency of the appeal, only to end up having to refund the sum in case of a final unfavorable decision. It is mirage of a stop-gap leading the employee to a risky cliff of insolvency.

Advisably, the sum is better left unspent. It becomes more logical and practical for the employee to refuse payroll reinstatement and simply find work elsewhere in the interim, if any is available. Notably, the option of payroll reinstatement belongs to the employer, even if the employee is able and raring to return to work. Prior to Genuino, it is unthinkable for one to refuse payroll reinstatement. In the face of the grim possibilities, the rise of concerned employees declining payroll reinstatement is on the horizon.

Further, the Genuino ruling not only disregards the social justice principles behind the rule, but also institutes a scheme unduly favorable to management. Under such scheme, the salaries dispensed pendente lite merely serve as a bond posted in installment by the employer. For in the event of a reversal of the Labor Arbiter's decision ordering reinstatement, the employer gets back the same amount without having to spend ordinarily for bond premiums. This circumvents, if not directly contradicts, the proscription that the "posting of a bond [even a cash bond] by the employer shall not stay the execution for reinstatement." [17]

In playing down the stray posture in Genuino requiring the dismissed employee on payroll reinstatement to refund the salaries in case a final decision upholds the validity of the dismissal, the Court realigns the proper course of the prevailing doctrine on reinstatement pending appeal vis-à-vis the effect of a reversal on appeal.

Respondent insists that with the reversal of the Labor Arbiter's Decision, there is no more basis to enforce the reinstatement aspect of the said decision. In his Separate Opinion, Justice Presbitero Velasco, Jr. supports this argument and finds the prevailing doctrine in *Air Philippines* and allied cases inapplicable because, unlike the present case, the writ of execution therein was secured prior to the reversal of the Labor Arbiter's decision.

The proposition is tenuous. First, the matter is treated as a mere race against time. The discussion stopped there without considering the cause of the delay. Second, it requires the issuance of a writ of execution despite the immediately executory nature of the reinstatement aspect of the decision. In *Pioneer Texturing Corp. v. NLRC*, [18] which was cited in *Panuncillo v. CAP Philippines, Inc.*, [19] the Court observed:

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. x x x^[20] (Italics in the original; emphasis and underscoring supplied)

The Court reaffirms the prevailing principle that 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.^[21] It settles the view that the Labor Arbiter's order of reinstatement is immediately executory and the employer has to either re-admit them to work under the same terms and conditions prevailing prior to their dismissal, or to reinstate them in the payroll, and that failing to exercise the options in the alternative, employer must pay the employee's salaries.^[22]

Amplification of the Second Ground

The remaining issue, nonetheless, is resolved in the negative on the strength of the second ground relied upon by the appellate court in the assailed issuances. The Court sustains the appellate court's finding that the peculiar predicament of a corporate rehabilitation rendered it impossible for respondent to exercise its option under the circumstances.

The spirit of the rule on reinstatement pending appeal animates the proceedings once the Labor Arbiter issues the decision containing an order of reinstatement. The immediacy of its execution needs no further elaboration. Reinstatement pending appeal necessitates its immediate execution during the pendency of the appeal, if the law is to serve its noble purpose. At the same time, any attempt on the part of the employer to evade or delay its execution, as observed in *Panuncillo* and as what actually transpired in *Kimberly*,^[23] *Composite*,^[24] *Air Philippines*,^[25] and *Roquero*,^[26] should not be countenanced.

After the labor arbiter's decision is reversed by a higher tribunal, the employee may be barred from collecting the accrued wages, if it is shown that the delay in enforcing the reinstatement pending appeal was without fault on the part of the employer.

The test is two-fold: (1) there must be actual delay or the fact that the order of reinstatement pending appeal was not executed prior to its reversal; and (2) the delay must not be due to the employer's unjustified act or omission. If the delay is due to the employer's unjustified refusal, the employer may still be required to pay the salaries notwithstanding the reversal of the Labor Arbiter's decision.

In *Genuino*, there was no showing that the employer refused to reinstate the employee, who was the Treasury Sales Division Head, during the short span of four months or from the promulgation on May 2, 1994 of the Labor Arbiter's Decision up to the promulgation on September 3, 1994 of the NLRC Decision. Notably, the former NLRC Rules of Procedure did not lay down a mechanism to promptly effectuate the self-executory order of reinstatement, making it difficult to establish that the employer actually refused to comply.

In a situation like that in *International Container Terminal Services, Inc. v. NLRC*^[27] where it was alleged that

the employer was willing to comply with the order and that the employee opted not to pursue the execution of the order, the Court upheld the self-executory nature of the reinstatement order and ruled that the salary automatically accrued from notice of the Labor Arbiter's order of reinstatement until its ultimate reversal by the NLRC. It was later discovered that the employee indeed moved for the issuance of a writ but was not acted upon by the Labor Arbiter. In that scenario where the delay was caused by the Labor Arbiter, it was ruled that the inaction of the Labor Arbiter who failed to act upon the employee's motion for the issuance of a writ of execution may no longer adversely affect the cause of the dismissed employee in view of the self-executory nature of the order of reinstatement.[28]

The new NLRC Rules of Procedure, which took effect on January 7, 2006, now require the employer to submit a report of compliance within 10 calendar days from receipt of the Labor Arbiter's decision,[29] disobedience to which clearly denotes a refusal to reinstate. The employee need not file a motion for the issuance of the writ of execution since the Labor Arbiter shall thereafter *motu proprio* issue the writ. With the new rules in place, there is hardly any difficulty in determining the employer's intransigence in immediately complying with the order.

In the case at bar, petitioners exerted efforts[30] to execute the Labor Arbiter's order of reinstatement until they were able to secure a writ of execution, albeit issued on October 5, 2000 after the reversal by the NLRC of the Labor Arbiter's decision. Technically, there was still actual delay which brings to the question of whether the delay was due to respondent's unjustified act or omission.

It is apparent that there was inaction on the part of respondent to reinstate them, but whether such omission was justified depends on the onset of the exigency of corporate rehabilitation.

It is settled that upon appointment by the SEC of a rehabilitation receiver, all actions for claims before any court, tribunal or board against the corporation shall *ipso jure* be suspended.[31] As stated early on, during the pendency of petitioners' complaint before the Labor Arbiter, the SEC placed respondent under an Interim Rehabilitation Receiver. After the Labor Arbiter rendered his decision, the SEC replaced the Interim Rehabilitation Receiver with a Permanent Rehabilitation Receiver.

Case law recognizes that unless there is a restraining order, the implementation of the order of reinstatement is ministerial and mandatory.[32] This injunction or suspension of claims by legislative fiat[33] partakes of the nature of a restraining order that constitutes a legal justification for respondent's non-compliance with the reinstatement order. Respondent's failure to exercise the alternative options of actual reinstatement and payroll reinstatement was thus justified. Such being the case, respondent's obligation to pay the salaries pending appeal, as the normal effect of the non-exercise of the options, did not attach.

While reinstatement pending appeal aims to avert the continuing threat or danger to the survival or even the life of the dismissed employee and his family, it does not contemplate the period when the employer-corporation itself is similarly in a judicially monitored state of being resuscitated in order to survive.

The parallelism between a judicial order of corporation rehabilitation as a justification for the non-exercise of its options, on the one hand, and a claim of actual and imminent substantial losses as ground for retrenchment, on the other hand, stops at the red line on the financial statements. Beyond the analogous condition of financial gloom, as discussed by Justice Leonardo Quisumbing in his Separate Opinion, are more salient distinctions. Unlike the ground of substantial losses contemplated in a retrenchment case, the state of corporate rehabilitation was judicially pre-determined by a competent court and not formulated for the first time in this case by respondent.

More importantly, there are legal effects arising from a judicial order placing a corporation under rehabilitation. Respondent was, during the period material to the case, effectively deprived of the alternative choices under

Article 223 of the Labor Code, not only by virtue of the statutory injunction but also in view of the interim relinquishment of management control to give way to the full exercise of the powers of the rehabilitation receiver. Had there been no need to rehabilitate, respondent may have opted for actual physical reinstatement pending appeal to optimize the utilization of resources. Then again, though the management may think this wise, the rehabilitation receiver may decide otherwise, not to mention the subsistence of the injunction on claims.

In sum, the obligation to pay the employee's salaries upon the employer's failure to exercise the alternative options under Article 223 of the Labor Code is not a hard and fast rule, considering the inherent constraints of corporate rehabilitation.

WHEREFORE, the petition is PARTIALLY DENIED. Insofar as the Court of Appeals Decision of December 5, 2003 and Resolution of April 16, 2004 annulling the NLRC Resolutions affirming the validity of the Writ of Execution and the Notice of Garnishment are concerned, the Court finds no reversible error.

SO ORDERED.

Puno, C.J., Ynares-Santiago, Carpio, Austria-Martinez, Corona, Azcuna, Tinga, Nachura, and Leonardo-De Castro, JJ., concur.

Quisumbing, J., with separate opinion.

Chico-Nazario, J., join the concurring and dissenting of J.Brion.

Velasco, Jr., J., concur in the result (with separate opinion)

Brion, J., with concurring opinion and dissenting opinion.

[1] Justices Marina L. Buzon, Sergio L. Pestaño (ponente) and Jose C. Mendoza comprised the [Former] Fourteenth Division of the appellate court.

[2] Rollo, pp. 47-48.

[3] Juanito A. Garcia and Alberto J. Dumago were employed as aircraft inspector and aircraft furnisher master, respectively.

[4] Particularly, Chapter II, Section 6, Articles 46 (Violation of Law/Government Regulations) and 48 (Prohibited Drugs).

[5] Records, Vol. 1, p. 167. The dispositive portion of the Decision penned by Labor Arbiter Ramon Valentin Reyes reads:

WHEREFORE, conformably with the foregoing, judgment is hereby rendered finding the respondents guilty of illegal suspension and illegal dismissal and ordering them to reinstate complainants to their former position without loss of seniority rights and other privileges. Respondents are hereby further ordered to pay jointly and severally unto the complainants the following:

Alberto J. Dumago - P409,500.00 backwages as of 1/10/99

34,125.00 for 13th month pay

Juanito A. Garcia - P1,290,744.00 backwages as of 1/10/99

107,562.00 for 13th month pay

[t]he amounts of P100,000.00 and P50,000.00 to each complainant as and by way of moral and exemplary damages; and

[t]he sum equivalent to ten percent (10%) of the total award as and for attorney's fees.

Respondents are directed to immediately comply with the reinstatement aspect of this Decision. However, in the event that reinstatement is no longer feasible, respondent is hereby ordered, in lieu thereof, to pay unto the complainants their separation pay computed at one month for [e]very year of service.

SO ORDERED. (Emphasis and underscoring supplied)

[6] Records, Vol. 1. pp. 174-186.

[7] Id, at 209. A second look at the antecedents of the main case reveals that petitioners went on certiorari to the Court of Appeals to challenge the finding of the validity of their dismissal. By Resolutions of August 10, 2000 and November 5, 2003, the appellate court dismissed the petition docketed as CA-G.R. SP No. 59826 and denied reconsideration thereof on technical grounds. By Decision of June 8, 2005, the Court reversed the two resolutions and remanded the case to the appellate court for further proceedings. vide rollo, pp. 218-219; Garcia v. Philippine Airlines, Inc., G.R. No. 160798, June 8, 2005, 459 SCRA 768. The appellate court, by Decision of March 28, 2008 and Resolution of July 11, 2008, dismissed the petition.

[8] Garcia v. Philippine Airlines, Inc., G.R. No. 164856, August 29, 2007, 531 SCRA 574, 582-583. Penned by Justice Leonardo A. Quisumbing.

[9] Rollo, pp. 250-257.

[10] G.R. No. 148247, August 7, 2006, 498 SCRA 59.

[11] G.R. Nos. 142732-33, December 4, 2007, 539 SCRA 342.

[12] Supra note 10 at 72-73.

[13] Roquero v. Philippine Airlines, 449 Phil. 437, 446 (2003).

[14] Supra note 11 at 363-364. The Court therein sustained the NLRC's reversal of the Labor Arbiter's decision but cancelled the NLRC's award of salaries accruing from the Labor Arbiter's order of reinstatement pending appeal.

[15] Composite Enterprises, Inc. v. Caparoso, G.R. No. 159919, August 8, 2007, 529 SCRA 470; Kimberly Clark (Phils), Inc. v. Facundo, G.R. No. 144885, July 26, 2006 (Unsigned Resolution); Sanchez v. NLRC, G.R. No. 124348, February 7, 2001 Unsigned Resolution; International Container Terminal Services, Inc. v. NLRC, 360 Phil. 527 (1998).

[16] Roquero v. Philippine Airlines, supra at 445 citing Aris (Phil.) Inc. v. NLRC, 200 SCRA 246 (1991).

[17] Labor Code, Article 223, par. 3.

[18] 345 Phil. 1057 (1997) which established the doctrine that an order or award for reinstatement is self-executory, meaning that it does not require a writ of execution, much less a motion for its issuance.

[19] G.R. No. 161305, February 9, 2007, 515 SCRA 323.

[20] Supra note 18 at 1075-1076.

[21] Supra note 12.

[22] Kimberly Clark (Phils), Inc. v. Facundo, supra.

[23] Supra, where the 3 months salary was delayed because the employer filed another baseless motion to quash

writ of execution.

[24] Supra, where the employer did not release the salaries despite agreeing on payroll reinstatement, awaiting the resolution of its unmeritorious Motion to be Allowed to pay Separation Pay in lieu of Reinstatement.

[25] Supra, where the employer did not at all comply with the standing writ of execution.

[26] Supra, where the employer refused to comply with the writ of execution, arguing that it filed a petition for review before the Court.

[27] Supra.

[28] International Container Terminal Services, Inc. v. NLRC, supra.

[29] Revised Rules of Procedure of the NLRC (2005), Rule V, Sec. 14 and Rule XI, Sec. 6.

[30] Petitioners state that respondent ignored their letter of June 14, 1999, prompting them to file a "Motion for Issuance of Writ of Execution [of the Labor Arbiter's January 11, 1999] and to Cite the Respondents in Contempt" of November 11, 1999, rollo, pp. 78-85, 169.

[31] Garcia v. Philippine Airlines, Inc., supra note 8.

[32] Roquero v. Philippine Airlines, supra note 13.

[33] Pres. Decree No. 902-A, Sec. 6 (c), as amended.

SEPARATE OPINION

QUISUMBING, J.:

From this Court's Decision[1] dated August 29, 2007, which ordered the suspension of the proceedings in this case, respondent Philippine Airlines, Inc. (PAL) filed a Manifestation and Compliance[2] on November 13, 2007 containing an Order[3] dated September 28, 2007, from the Securities and Exchange Commission (SEC) granting its request to exit from the rehabilitation proceedings.

In a letter dated September 14, 2007, the members of the Permanent Rehabilitation Receiver (PRR) recommended PAL's exit from rehabilitation "because the same is feasible based on the corporation's improved financial condition, capability to service debts or obligations, rosy projected cash flows, sustainable profitability and adherence to its Amended and Restated Rehabilitation Plan." [4] This assessment was bolstered by the Office of the General Accountant of the SEC in its Memorandum dated September 26, 2007, which concluded that PAL's projected income and projected cash flow for the next three years, cost of debt and equity capital, and latest interim (unaudited) financial statements, satisfactorily addressed concerns on its financial condition and sustainability of profit.[5]

Based on these recommendations, the SEC found the termination of the rehabilitation proceedings, on the ground of successful rehabilitation, in order, thus:

WHEREFORE, in the light of the foregoing, and considering PAL's firm commitment to settle its outstanding obligations as well as the fact that its operations and its financial condition have been normalized and stabilized in conformity with the Amended and Restated Rehabilitation Plan, exemplifying a successful corporate rehabilitation, the PAL's request to exit from rehabilitation is hereby GRANTED.

The PRR is likewise directed to furnish all creditors and parties concerned with copies of this Order at the

expense of the Petitioner and submit proof of service thereof to the Commission, within fifteen (15) days from date of receipt of this Order.

SO ORDERED.[6]

In view of the foregoing development, the instant case may now be resolved. But first, a brief summation of the antecedent proceedings.

Petitioners Alberto J. Dumago and Juanito A. Garcia were Aircraft Furnishers Master "C" and Aircraft Inspector, respectively, assigned in the PAL Technical Center. On October 9, 1995, they were dismissed for violation of Chapter II, Section 6, Article 46 (Violation of Law/Government Regulations) and Chapter II, Section 6, Article 48 (Prohibited Drugs) of the PAL Code of Discipline.[7] Both simultaneously filed a case for illegal dismissal and damages.

On January 11, 1999, the Labor Arbiter rendered a Decision[8] in petitioners' favor:

WHEREFORE, conformably with the foregoing, judgment is hereby rendered finding the respondents guilty of illegal suspension and illegal dismissal and ordering them to reinstate complainants to their former position without loss of seniority rights and other privileges. Respondents are hereby further ordered to pay jointly and severally unto the complainants the following:

Alberto J. Dumago - P409,500.00 backwages as of 1/10/99

34,125.00 for 13[th] month pay

Juanito A. Garcia - P1,290,744.00 backwages as of 1/10/99 107,562.00 for 13[th] month pay

The amounts of P100,000.00 and P50,000.00 to each complainant as and by way of moral and exemplary damages; and

The sum equivalent to ten percent (10%) of the total award as and for attorneys fees.

Respondents are directed to immediately comply with the reinstatement aspect of this Decision. However, in the event that reinstatement is no longer feasible, respondent[s] are hereby ordered, in lieu thereof, to pay unto the complainants their separation pay computed at one month for [e]very year of service.

SO ORDERED.[9]

On appeal, the National Labor Relations Commission (NLRC) reversed the Labor Arbiter's decision and dismissed the case for lack of merit.[10] Reconsideration having been denied, an Entry of Judgment[11] was issued on July 13, 2000.

On October 5, 2000, the Labor Arbiter issued a Writ of Execution[12] commanding the sheriff to proceed:

x x x x

- To the Office of respondent PAL Building I, Legaspi St., Legaspi Village, Makati City or to any of its Offices in the Philippines and cause reinstatement of complainants to their former position and to cause the collection of the amount of [P]549,309.60 from respondent PAL representing the backwages of said complainants on the reinstatement aspect;

- In case you cannot collect from respondent PAL for any reason, you shall levy on the office equipment and other movables and garnish its deposits with any bank in the Philippines, subject to the limitation that equivalent amount of such levied movables and/or the amount garnished in your own judgment, shall be equivalent to [P]549,309.60. If still insufficient, levy against immovable properties of PAL not otherwise exempt from execution.

x x x x[13]

Although PAL filed an Urgent Motion to Quash Writ of Execution, the Labor Arbiter issued a Notice of Garnishment[14] addressed to the President/Manager of the Allied Bank Head Office in Makati City for the amount of P549,309.60.

PAL moved to lift the Notice of Garnishment while petitioners moved for the release of the garnished amount. PAL opposed petitioners' motion. It also filed an Urgent Petition for Injunction which the NLRC resolved as follows:

WHEREFORE, premises considered, the Petition is partially GRANTED. Accordingly, the Writ of Execution dated October 5, 2000 and related [N]otice of Garnishment [dated October 25, 2000] are DECLARED valid. However, the instant action is SUSPENDED and REFERRED to the Receiver of Petitioner PAL for appropriate action.

SO ORDERED.[15]

PAL appealed to the Court of Appeals on the grounds that: (1) by declaring the writ of execution and the notice of garnishment valid, the NLRC gave petitioners undue advantage and preference over PAL's other creditors and hampered the task of the PRR; and (2) there was no longer any legal or factual basis to reinstate petitioners as a result of the reversal by the NLRC of the Labor Arbiter's decision.

On December 5, 2003,[16] the appellate court ruled that the Labor Arbiter issued the writ of execution and the notice of garnishment without jurisdiction. Hence, the NLRC erred in upholding its validity. Since PAL was under receivership, it could not have possibly reinstated petitioners due to retrenchment and cash-flow constraints. The appellate court declared that a stay of execution may be warranted by the fact that PAL was under rehabilitation receivership. The dispositive portion of the decision dated December 5, 2003, reads:

WHEREFORE, premises considered and in view of the foregoing, the instant petition is hereby GIVEN DUE COURSE. The assailed November 26, 2001 Resolution, as well as the January 28, 2002 Resolution of public respondent National Labor Relations Commission is hereby ANNULLED and SET ASIDE for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction. Consequently, the Writ of Execution and the Notice of Garnishment issued by the Labor Arbiter are hereby likewise ANNULLED and SET ASIDE.

SO ORDERED.[17]

Petitioners moved for reconsideration which the appellate court denied on April 16, 2004,[18] thus:

Considering the Motion for Reconsideration filed by private respondents dated [January] 6, 2004 of this Court's Decision promulgated on December 5, 2003, as well as the Comment filed by petitioner dated February 20, 2003, the Court, finding no sufficient and compelling reason which will merit a reconsideration of the Decision rendered in this case as the issues raised therein had already been carefully considered and passed upon in the Decision sought to be reconsidered, hereby resolves to DENY the instant motion for reconsideration for lack of merit.

SO ORDERED.[19]

Hence, the instant petition raising a single issue as follows:

WHETHER OR NOT THE COURT OF APPEALS ERRED IN NOT HOLDING THAT THE PETITIONERS ARE ENTITLED TO THEIR ACCRUED WAGES DURING THE PENDENCY OF PAL'S APPEAL.[20]

Simply put, the issue is: Are petitioners entitled to their wages during the pendency of PAL's appeal to the

NLRC?

Petitioners argue that pursuant to this Court's ruling in *International Container Terminal Services, Inc. v. NLRC*,^[21] the reinstatement aspect of the Labor Arbiter's decision, albeit under appeal, is immediately enforceable as a consequence of which, the employer is duty-bound to choose forthwith whether to re-admit the employee or to reinstate him in the payroll. Failing to exercise the options in the alternative, the employer must pay the salary of the employee which automatically accrued from notice of the Labor Arbiter's order of reinstatement until its ultimate reversal by the NLRC.^[22] Petitioners add that PAL should not be excused from complying with the order of reinstatement on the ground that it was under receivership. At the time PAL received a copy of the Labor Arbiter's decision, PAL was not yet under receivership.

Respondent counters that PAL was already under an Interim Rehabilitation Receiver at the time it received a copy of the Labor Arbiter's decision. It also contends that it cannot be compelled to reinstate petitioners pending appeal to the NLRC since retrenchment and cash flow constraints rendered it impossible to exercise its option under Article 223 of the Labor Code.

At the crux of the controversy is the application of Article 223 of the Labor Code which provides that:

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

To be sure, the Court has divergent views on the immediately executory nature of reinstatement pending appeal particularly where the reinstatement order is reversed on appeal. On one hand, the Court has ruled that even if the Labor Arbiter's reinstatement order is reversed on appeal, it is the employer's obligation to reinstate and pay the wages of the dismissed employee during the period of appeal until reversal by the NLRC. However, if the employee has been reinstated during the period of appeal 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.^[23]

On the other hand, the Court has held that if the decision of the Labor Arbiter is later reversed on appeal upon the finding that the ground for dismissal is valid, then the employer has the right to require the dismissed employee on payroll reinstatement to refund the salaries s/he received while the case was pending appeal, or it can be deducted from the accrued benefits that the dismissed employee was entitled to receive from his/her employer under existing laws, collective bargaining agreement provisions, and company practices. However, if the employee was reinstated to work during the pendency of the appeal, then the employee is entitled to the compensation received for actual services rendered without need of refund.^[24]

In his dissenting opinion, Justice Presbitero J. Velasco, Jr. adopts the second interpretation and explains that since no actual or payroll reinstatement pending appeal transpired, petitioners are no longer entitled to their salaries for the period in question with the reversal of the Labor Arbiter's reinstatement order. There is no more legal basis for the payment of their salaries since their right to reinstatement pending appeal has been lost and extinguished. To release their salaries for the period in question would constitute unjust enrichment.

The rationale for execution pending appeal has been explained by this Court in *Aris (Phil.) Inc. v. NLRC*,^[25] thus:

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.^[26]

x x x x

If in ordinary civil actions execution of judgment pending appeal is authorized for reasons the determination of which is merely left to the discretion of the judge, We find no plausible reason to withhold it in cases of decisions reinstating dismissed or separated employees. In such cases, the poor employees had been deprived of their only source of livelihood, their only means of support for their family -- their very lifeblood. To Us, this special circumstance is far better than any other which a judge, in his sound discretion, may determine. In short, with respect to decisions reinstating employees, the law itself has determined a sufficiently overwhelming reason for its execution pending appeal.^[27]

Clearly, the principle of unjust enrichment does not apply. First, the provision on reinstatement pending appeal is in accord with the social justice philosophy of our Constitution. It is meant to afford full protection to labor as it aims to stop (albeit temporarily, since the appeal may be decided in favor of the employer) a continuing threat or danger to the survival or even the life of the dismissed employee and his family.^[28] Second, the provision on reinstatement pending appeal partakes of a special law that must govern the instant case. The provision of the Civil Code on unjust enrichment, being of general application, must give way.

In any case, Justice Velasco points out that the writ of execution in the instant case was issued after the promulgation of the NLRC resolution. As petitioners failed to act on their rights and seek enforcement of the reinstatement pending appeal, PAL is not liable to pay their accrued salaries for the period in question.

In *Pioneer Texturizing Corp. v. NLRC*,^[29] this Court clarified that an award or order for reinstatement is self-executory, to wit:

A closer examination, however, shows that the necessity for a writ of execution under Article 224 applies only to final and executory decisions which are not within the coverage of Article 223. ...

x x x x

... It can not relate to an award or order of reinstatement still to be appealed or pending appeal which Article 223 contemplates. The provision of Article 223 is clear that an award 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. ...^[30] (*Italics in the original.*)

Since the reinstatement order is self-executory, it is inaccurate to say that its non-implementation was due to petitioners' fault who failed to enforce their rights at the proper and opportune time. To reiterate, the reinstatement order does not require a writ of execution, much less a motion for its issuance. To require petitioners to move for the enforcement of the reinstatement order and blame them for its belated enforcement, as Justice Velasco does, would render nugatory the self-executory nature of the award.

Justice Velasco also posits that Article 223 of the Labor Code does not automatically make the employer liable for accrued salaries during the reinstatement pending appeal where no reinstatement took place. He stresses that the

only relief given under the NLRC Rules of Procedure is the remedy of compulsion via a citation for contempt, thus:

RULE V. SEC. 14. Contents of Decisions. --- ...

In case the decision of the Labor Arbiter includes an order of reinstatement, it shall likewise contain: a) a statement that the reinstatement aspect is immediately executory; and b) a directive for the employer to submit a report of compliance within ten (10) calendar days from receipt of the said decision.

RULE IX. SEC. 6. EXECUTION OF REINSTATEMENT PENDING APPEAL. --- In case the decision includes an order of reinstatement, and the employer disobeys the directive under the second paragraph of Section 14 of Rule V or refuses to reinstate the dismissed employee, the Labor Arbiter shall immediately issue a writ of execution, even pending appeal, directing the employer to immediately reinstate the dismissed employee either physically or in the payroll, and to pay the accrued salaries as a consequence of such reinstatement at the rate specified in the decision.

The Sheriff shall serve the writ of execution upon the employer or any other person required by law to obey the same. If he disobeys the writ, such employer or person may be cited for contempt in accordance with Rule IX. (Emphasis and underscoring supplied.)

Contrary to the position of Justice Velasco, there are actually two reliefs given in the foregoing provisions: (1) the payment of accrued salaries, and (2) a citation for contempt.

If the Labor Arbiter's decision includes a reinstatement order, the decision should state that the reinstatement aspect is immediately executory and direct the employer to submit a compliance report within ten calendar days from receipt of the said decision. Should the employer disobey the directive of the Labor Arbiter or refuse to reinstate the dismissed employee, the Labor Arbiter shall immediately issue a writ of execution, even pending appeal, directing the employer to immediately reinstate the dismissed employee either physically or in the payroll, and to pay the accrued salaries as a consequence of such reinstatement. If the employer still disobeys the writ of execution, then he may be cited for contempt.

Finally, the majority put forth the view that after the Labor Arbiter's reinstatement order is reversed by the NLRC, the employee may be barred from collecting his accrued salaries if it is shown that the non-implementation of the reinstatement order was not due to the fault of the employer. In the instant case, the corporate rehabilitation of PAL had the effect of suspending all actions or claims against it. It partakes of the nature of a restraining order that constitutes a legal justification for PAL's non-compliance with the reinstatement order. The writer adds that reinstatement pending appeal does not contemplate the period when the employer is similarly in a state of being resuscitated in order to survive.

In *Rubberworld (Phils.), Inc. v. NLRC*,^[31] we recognized that the automatic stay of all pending actions for claims is intended to enable the management committee or the rehabilitation receiver to effectively exercise its/his powers free from any judicial or extra judicial interference that might unduly hinder or prevent the 'rescue' of the distressed corporation. To allow such other actions to continue would only add to the burden of the management committee or rehabilitation receiver, whose time, effort and resources would be wasted in defending claims against the corporation instead of being directed toward its restructuring and rehabilitation.

Indeed, rehabilitation merely provides for the automatic stay of all pending actions or the suspension of payments of the distressed corporation to prevent the dissipation of its assets; it does not relieve the corporation of its obligations. Upon its successful rehabilitation, it must settle in full all claims previously suspended.

Applying the foregoing rule, we cannot adhere to the posture taken by the majority. Just because PAL was under

rehabilitation did not necessarily mean that immediately executory orders such as reinstatement pending appeal will be put to naught. That would in effect nullify the relief given to the employee when all the law seeks to do is suspend it.

Furthermore, we do not agree that reinstatement pending appeal is inapplicable in the instant case since, as the majority puts it, PAL is similarly in a state of being resuscitated in order to survive. PAL even argues that retrenchment and cash flow constraints rendered it impossible to comply with the reinstatement order. In *Flight Attendants and Stewards Association of the Philippines (FASAP) v. Philippine Airlines, Inc., et al.*,^[32] we noted that PAL failed to substantiate its claim of actual and imminent substantial losses which would justify the retrenchment of more than 1,400 of its cabin crew personnel. Although the Philippine economy was gravely affected by the Asian financial crisis, however, it cannot be assumed that it has likewise brought PAL to the brink of bankruptcy.^[33] In effect, we held that the mere fact that PAL underwent corporate rehabilitation does not automatically mean that it suffered specific and substantial losses that would necessitate retrenchment. In fact, PAL was on the road to recovery as early as February 1999 and was declaring profits in millions in the succeeding years.^[34]

Given the circumstances in this case, delay on the employee's part was not an issue. But we cannot agree that the petitioners could be barred from collecting accrued wages, merely on the ground of their delay in enforcing reinstatement pending appeal. For it was the statutory duty of the respondent as employer to comply with a self-executory order in favor of the employees, herein petitioners.

Thus, while its rehabilitation may have prevented PAL from exercising its option either to re-admit petitioners to work or to reinstate them in the payroll, it did not defeat petitioners' right to reinstatement pending appeal which vested upon rendition of the Labor Arbiter's decision; more so when no actual and imminent substantial losses were proven by PAL.

To reiterate, there is no longer any legal impediment to hold PAL liable for petitioners' salaries which automatically accrued from notice of the Labor Arbiter's order of reinstatement until its ultimate reversal by the NLRC.^[35]

WHEREFORE, I would vote to GRANT the petition.

[1] *Garcia v. Philippine Airlines, Inc.*, G.R. No. 164856, August 29, 2007, 531 SCRA 574.

[2] *Rollo*, pp. 250-251.

[3] *Id.* at 252-257.

[4] *Id.* at 254.

[5] *Id.* at 254-256.

[6] *Id.* at 257.

[7] *Records*, Vol. I, pp. 32-33.

[8] *Id.* at 160-167.

[9] *Id.* at 167.

[10] *Id.* at 174-186.

[11] Id. at 209-210.

[12] CA rollo, pp. 57-61.

[13] Id. at 60-61.

[14] Id. at 71.

[15] Id. at 21.

[16] Rollo, pp. 38-48. Penned by Associate Justice Sergio L. Pestaño, with Associate Justices Marina L. Buzon and Jose C. Mendoza concurring.

[17] Id. at 47-48.

[18] Id. at 49.

[19] Id.

[20] Id. at 219.

[21] G.R. No. 115452, December 21, 1998, 300 SCRA 335.

[22] Id. at 343.

[23] Kimberly Clark (Phils.), Inc. v. Ernesto Facundo, et al., G.R. No. 144885, July 12, 2006, p. 8 (Unsigned Resolution); Roquero v. Philippine Airlines, Inc., G.R. No. 152329, April 22, 2003, 401 SCRA 424, 430-431; See International Container Terminal Services, Inc. v. NLRC, G.R. No. 115452, December 21, 1998, 300 SCRA 335, 343.

[24] Genuino v. National Labor Relations Commission, G.R. Nos. 142732-33 & 142753-54, December 4, 2007, 539 SCRA 342, 363-364.

[25] G.R. No. 90501, August 5, 1991, 200 SCRA 246; See Composite Enterprises, Inc. v. Caparoso, G.R. No. 159919, August 8, 2007, 529 SCRA 470, 482; Air Philippines Corporation v. Zamora, G.R. No. 148247, August 7, 2006, 498 SCRA 59, 73; Roquero v. Philippine Airlines, Inc., supra note 23 at 429-430.

[26] Aris (Phil.) Inc. v. NLRC, id. at 253.

[27] Id. at 255.

[28] Id.

[29] G.R. No. 118651, October 16, 1997, 280 SCRA 806; See International Container Terminal Services, Inc. v. NLRC, supra note 21 at 341.

[30] Pioneer Texturizing Corp. v. NLRC, id. at 824-825.

[31] G.R. No. 128003, July 26, 2000, 336 SCRA 433, 437.

[32] G.R. No. 178083, July 22, 2008.

[33] Id. at 17.

[34] Id. at 21.

[35] Kimberly Clark (Phils.), Inc. v. Ernesto Facundo, et al., supra note 23 at 9; International Container Terminal Services, Inc. v. NLRC, supra note 21 at 343; See Composite Enterprises, Inc. v. Caparoso, supra note 25 at 483.

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