

RURAL BANK OF CORON (PALAWAN), INC., EMPIRE COLD STORAGE AND DEVELOPMENT CORPORATION, CITIZENS DEVELOPMENT INCORPORATED, CARIDAD B. GARCIA, SANDRA G. ESCAT, LORNA GARCIA, AND OL...

G.R. No. 164888. December 06, 2006

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

In 1987, Virgilio Garcia, "founder" of petitioner corporations (the corporations), hired the then still single Annalisa Cortes (respondent) as clerk of the Rural Bank of Coron (Manila Office).

After Virgilio died, his son Victor took over the management of the corporations.

Anita Cortes (Anita), the wife of Victor Garcia, was also involved in the management of the corporations. Respondent later married Anita's brother Eduardo Cortes.

Anita soon assumed the position of Vice President of petitioner Citizens Development Incorporated (CDI) and practically controlled the financial operations of almost all of the other corporations in the course of which she allowed some of her relatives and in-laws, including respondent, to hold several key sensitive positions thereat.

Respondent later became the Financial Assistant, Personnel Officer and Corporate Secretary of The Rural Bank of Coron, Personnel Officer of CDI, and also Personnel Officer and Disbursing Officer of The Empire Cold Storage Development Corporation (ECSDC). She simultaneously received salaries from these corporations.

On examination of the financial books of the corporations by petitioner Sandra Garcia Escat, a daughter of Virgilio Garcia who was previously residing in Spain, she found out that respondent was involved in several anomalies,[1] drawing petitioners to terminate respondent's services on November 23, 1998 in petitioner corporations.[2]

By letter of November 25, 1998[3] addressed to individual petitioners Caridad B. Garcia (widow of Virgilio Garcia), Sandra G. Escat, and Olga G. Escat (another daughter of Virgilio Garcia), respondent's counsel conveyed respondent's willingness to abide by the decision to terminate her but reminded them that she was entitled to separation pay equivalent to 11 months salary as well as to the other benefits provided by law in her favor.

Respondent's counsel thus demanded the payment of respondent's unpaid salary for the months of October and November 1998, separation pay equivalent to 12 months salary,[4] 13th month pay and other benefits.

As the demand remained unheeded, respondent filed a complaint[5] for illegal dismissal and non-payment of salaries and other benefits, docketed as NLRC-NCR Case No. 00-05-05738-99.

Petitioners moved for the dismissal of the complaint on the ground of lack of jurisdiction, contending that the case was an intra-corporate controversy involving the removal of a corporate officer, respondent being the Corporate

Secretary of the Rural Bank of Coron, Inc., hence, cognizable by the Securities and Exchange Commission (SEC) pursuant to Section 5 of PD 902-A.[6]

In resolving the issue of jurisdiction, the Labor Arbiter noted as follows:

It is to be noted that complainant, aside from her being Corporate Secretary of Rural Bank of Coron, complainant was likewise appointed as Financial Assistant & Personnel Officer of all respondents herein, whose services w[ere] terminated on 23 November 1998, hence, the instant complaint.

Verily, a Financial Assistant & Personnel Officer is not a Corporate Officer of the [petitioners'] corporation, thus, pursuant to Article 217 of the Labor Code, as amended, the instant case falls within the ambit of original and exclusive jurisdiction of this Office.[7] (Emphasis and underscoring supplied).

Eventually, the Labor Arbiter found for respondent, computing the monetary award due her as follows:

Backwages P658,000.00

13[th]Month Pay for 1998, 1999 & 2000 63,000.00

P721,000.00

Separation Pay 315,000.00

Unpaid Salary 25,900.00

Attorney's fees 106,190.00

P1,168,090.00

Thus, the Labor Arbiter, by Decision of July 18, 2001, disposed:

WHEREFORE, in view of all the foregoing, respondents are hereby ordered to jointly and severally pay complainant the total amount of ONE MILLION ONE HUNDRED SIXTY-EIGHT THOUSAND NINETY (P1,168,090.00) PESOS as discussed above.[8]

On August 13, 2001, the tenth or last day of the period of appeal,[9] petitioners filed a Notice of Appeal and Motion for Reduction of Bond[10] to which they attached a Memorandum on Appeal.[11] In their Motion for Reduction of Bond, petitioners alleged that the corporations were under financial distress and the Rural Bank of Coron was under receivership. They thus prayed that the amount of bond be substantially reduced, preferably to one half thereof or even lower.[12]

By Resolution of October 16, 2001[13], the National Labor Relations Commission (NLRC), while noting that petitioners timely filed the appeal, held that the same was not accompanied by an appeal bond, a mandatory requirement under Article 223[14] of the Labor Code and Section 6, Rule VI of the NLRC New Rules of Procedure. It also noted that the Motion for Reduction of Bond was "premised on self-serving allegations." It accordingly dismissed the appeal.

Petitioners' Motion for Reconsideration[15] was denied by the NLRC by November 26, 2001 Resolution,[16] hence, they filed a Petition for Certiorari[17] before the Court of Appeals.

By Decision dated May 26, 2004[18], the appellate court dismissed the petition for lack of merit. Petitioners' motion for reconsideration was also denied by Resolution of August 13, 2004.[19]

Hence, this petition,[20] petitioners faulting the appellate court for:

I

... FAIL[URE] TO RULE THAT THE NLRC'S RULE OF PROCEDURE WHICH PROVIDES FOR THE POSTING OF A BOND AS A CONDITION PRECEDENT FOR PERFECTING AN APPEAL AS A CONDITION PRECEDENT FOR PERFECTING AN APPEAL IS CONTRARY TO LAW AND ESTABLISHED JURISPRUDENCE.

II

... DISMISS[ING] PETITIONERS['] PETITION FOR [CERTIORARI] BASED ON TECHNICALITY AND FAIL[URE] TO DECIDE THE SAME BASED ON ITS MERIT.

III

... DISMISSING PETITIONERS' PETITION FOR CERTIORARI FROM THE DECISION OF THE NLRC FOR NON-PERFECTION THEREOF.

IV

... DISMISSING PETITIONERS' PETITION FOR [CERTIORARI] FROM THE DECISION OF THE NLRC WITHOUT RESOLVING THE CASE BASED ON ITS MERITS.

V

... FAIL[URE] TO DECLARE THAT INDIVIDUAL PETITIONERS ARE NOT SOLIDARY LIABLE TO PAY THE RESPONDENT FOR HER MONETARY CLAIM IN VIEW OF THE ABSENCE OF ANY EVIDENCE SHOWING THAT THEY WERE MOTIVATED BY ILL-WILL OR MALICE IN SEVERING HER EMPLOYMENT.

VI

... FAIL[URE] TO RESOLVE THE ISSUE OF JURISDICTION.[21]

While, indeed, respondent was the Corporate Secretary of the Rural Bank of Coron, she was also its Financial Assistant and the Personnel Officer of the two other petitioner corporations.[22]

Mainland Construction Co., Inc. v. Movilla[23] instructs that a corporation can engage its corporate officers to perform services under a circumstance which would make them employees.[24]

The Labor Arbiter has thus jurisdiction over respondent's complaint.

On the first three assigned errors which bear on whether petitioners' appeal before the NLRC was perfected:

As before the Court of Appeals, petitioners cite *Cosico, Jr. v. NLRC*[25] and *Taberrah v. NLRC*[26] in support of their contention that their appeal before the NLRC was perfected. As correctly ruled by the Court of Appeals, however, the cited cases are not in point.

... The appellant in *Taberrah* filed a motion to fix appeal bond instead of posting an appeal bond; and the Supreme Court relaxed the requirement considering that the labor arbiter's decision did not contain a computation of the monetary award. In *Cosico*, the appeal bond posted was of insufficient amount but the Supreme Court ruled that provisions of the Labor Code on requiring a bond on appeal involving monetary awards must be given liberal interpretation in line with the desired objective of resolving controversies on their merits. Herein, no appeal bond, whether sufficient or not, was ever filed by the petitioners.[27] (*Italics in the original; emphasis and underscoring supplied*)

Petitioners additionally cite *Star Angel Handicraft v. NLRC*[28] to support their position that there is a distinction

between the filing of an appeal within the reglementary period and its perfection. In the parallel case of *Computer Innovations Center v. National Labor Relations Commission*,^[29] this Court hesitated to reiterate the doctrine in *Star Angel* in this wise:

Petitioners invoke the aforementioned holding in *Star Angel* that there is a distinction between the filing of an appeal within the reglementary period and its perfection, and that the appeal may be perfected after the said reglementary period. Indeed, *Star Angel* held that the filing of a motion for reduction of appeal bond necessarily stays the reglementary period for appeal. However, in this case, the motion for reduction of appeal bond which was incorporated in the appeal memorandum, was filed only on the tenth or final day of the reglementary period. Under such circumstance, the motion for reduction of appeal bond can no longer be deemed to have stayed the appeal, and the petitioner faces the risk, as had happened in this case, of summary dismissal of the appeal for non-perfection.

Moreover, the reference in *Star Angel* to the distinction between the period to file the appeal and to perfect the appeal has been pointedly made only once by this Court in *Gensoli v. NLRC* thus, it has not acquired the sheen of venerability reserved for repeatedly-cited cases. The distinction, if any, is not particularly evident or material in the Labor Code; hence, the reluctance of the Court to adopt such doctrine. Moreover, the present provision in the NLRC Rules of Procedure, that "the filing of a motion to reduce bond shall not stop the running of the period to perfect appeal" flatly contradicts the notion expressed in *Star Angel* that there is a distinction between the filing an appeal and perfecting an appeal.

Ultimately, the disposition of *Star Angel* was premised on the ruling that a motion for reduction of the appeal bond necessarily stays the period for perfecting the appeal, and that the employer cannot be expected to perfect the appeal by posting the proper bond until such time the said motion for reduction is resolved. The unduly stretched-out distinction between the period to file an appeal and to perfect an appeal was not material to the resolution of *Star Angel*, and this could be properly considered as *obiter dictum*.^[30] (*Italics in the original; emphasis and underscoring supplied*)

The appellate court did not thus err in dismissing the petition before it. And contrary to petitioners' assertion, the appellate court dismissed its petition not "on a mere technicality." For the non-posting of an appeal bond within the reglementary period divests the NLRC of its jurisdiction to entertain the appeal. Thus, in the same case of *Computer Innovations Center*, this Court held:

Petitioners also characterize the appeal bond requirement as a technical rule, and that the dismissal of an appeal on purely technical grounds is frowned upon. However, Article 223, which prescribes the appeal bond requirement, is a rule of jurisdiction and not of procedure. There is a little leeway for condoning a liberal interpretation thereof, and certainly none premised on the ground that its requirements are mere technicalities. It must be emphasized that there is no inherent right to an appeal in a labor case, as it arises solely from grant of statute, namely the Labor Code.

We have indeed held that the requirement for posting the surety bond is not merely procedural but jurisdictional and cannot be trifled with. Non-compliance with such legal requirements is fatal and has the effect of rendering the judgment final and executory. The petitioners cannot be allowed to seek refuge in a liberal application of rules for their act of negligence.^[31] (*Emphasis and underscoring supplied*)

It bears emphasis that all that is required to perfect the appeal is the posting of a bond to ensure that the award is eventually paid should the appeal be dismissed. Petitioners should thus have posted a bond, even if it were only partial, but they did not. No relaxation of the Rule may thus be considered.^[32]

In the case at bar, petitioner did not post a full or partial appeal bond within the prescribed period, thus, no appeal was perfected from the decision of the Labor Arbiter. For this reason, the decision sought to be appealed to the NLRC had become final and executory and therefore immutable. Clearly then, the NLRC has

no authority to entertain the appeal, much less to reverse the decision of the Labor Arbiter. Any amendment or alteration made which substantially affects the final and executory judgment is null and void for lack of jurisdiction, including the entire proceeding held for that purpose.[33](Emphasis and underscoring supplied)

As the decision of the Labor Arbiter had become final and executory, a discussion of the fourth and fifth assigned errors is no longer necessary.

WHEREFORE, the petition is DENIED.

SO ORDERED.

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

[1] Position Paper of herein petitioners, NLRC records, 54-55.

[2] The letter (NLRC records, p. 46) which was signed by petitioners Caridad B. Garcia, Sandra G. Escat and Olga G. Escat, read:

x x x x

You are hereby notified that the Management has decided to terminate your services with RURAL BANK OF CORON, (Palawan), Inc. and EMPIRE COLD STORAGE & DEV. CORP. effective immediately.

You are further instructed to turnover all accountable forms and other related documents to Myleen Adduccul.

Your clearance will be issued upon clearing all your accountabilities.

x x x x

On the other hand, the Minutes of the Management Meeting held on November 23, 1998 (NLRC records, p. 47) reflected that

x x x x

V. The management also decided to terminate services of Annalisa Cortes in whatever function she is holding with CDI effective immediately without clearance until all accountabilities are establish[ed].

x x x x

[3] NLRC records, p. 48.

[4] In the letter of November 25, 1998, respondent's counsel stated that separation pay is equivalent to 11 months salary. In the letter of February 3, 1999, it was computed to 12 months since respondent worked for about 11½ years, a fraction of a year being considered as one month. (NLRC records, p. 50).

[5] NLRC records, pp. 2-4. Complaint was later amended showing respondent's computation of the money claims. (NLRC records, pp. 16-20)

[6] Section 5 of PD 902-A has been amended by the enactment of Republic Act No. 8799, the Securities Regulation Code, in 2000. Section 5.2 of RA 8799 provides:

The [SEC]'s jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court: Provided that the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over these cases. The [SEC] shall retain jurisdiction over pending cases involving intra-corporate disputes submitted for final resolution which should be resolved within one (1) year from the enactment of this Code. The [SEC] shall retain jurisdiction over pending suspension of payments/rehabilitation cases filed as of 30 June 2000 until finally disposed.

[7] NLRC records, pp. 166-167.

[8] Id. at 172-173.

[9] Petitioners' counsel received a copy of the July 18, 2001 Decision of the Labor Arbiter on August 3, 2001. Hence, petitioners have until August 13, 2001 to appeal the case to the NLRC pursuant to Article 223 of the Labor Code.

[10] NLRC records, pp. 181-183.

[11] Id. at 184-200.

[12] Id. at 182.

[13] Id. at 427-430.

[14] ART. 223. Appeal – x x x x

In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from.

x x x x

[15] NLRC records, pp. 439-448.

[16] Id. at 467-469.

[17] CA rollo, pp. 2- 40.

[18] Id. at 354-360. Penned by Justice Lucas P. Bersamin with the concurrence of Justices Remedios A. Salazar-Fernando and Mario L. Guariña III.

[19] CA rollo, pp. 390-391. Penned by Justice Lucas P. Bersamin with the concurrence of Justices Remedios A. Salazar-Fernando and Mario L. Guariña III.

[20] Rollo, pp. 9-50.

[21] Id. at 22-23.

[22] Certifications issued by Rolando S. Madrigal, Annexes "A" and "B" and Victor Garcia, Annex "C," NLRC records, pp. 43-45.

[23] 320 Phil, 353 (1995).

[24] Id. at 362 (1995).

[25] 338 Phil. 1080 (1997).

[26] 342 Phil. 394 (1997).

[27] CA rollo, pp. 358-359.

[28] G.R. No. 108914, September 20, 1994, 236 SCRA 580.

[29] G.R. No. 152410, June 29, 2005, 462 SCRA 183.

[30] Id. at 192-193.

[31] Id. at 193.

[32] Stolt-Nielsen Marine Services, Inc. v. National Labor Relations Commission, G.R. No. 147623, December 13, 2005, 477 SCRA 516, 531; Ong v. Court of Appeals, G.R. No. 152494, September 22, 2004, 438 SCRA 668, 677-678.

[33] Ong v. Court of Appeals, *supra* at 678.

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