

ELPIDIO CALIPAY, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, TRIANGLE ACE CORPORATION AND JOSE LEE, RESPONDENTS.

G.R. No. 166411. August 03, 2010

Ponente: PERALTA, J.

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PERALTA, J.:

Before the Court is a petition for review on certiorari seeking to annul and set aside the Decision[1] and Resolution[2] of the Court of Appeals (CA), dated August 24, 2004 and December 10, 2004, respectively, in CA-G.R. SP No. 79277. The CA Decision dismissed the special civil action for certiorari filed by petitioner, while the CA Resolution denied petitioner's motion for reconsideration.

The pertinent facts of the case are as follows:

On July 16, 1999, a Complaint[3] for illegal dismissal, unfair labor practice, underpayment of wages and 13[th] month pay, non-payment of service incentive leave pay, overtime pay, premium pay for holiday, rest day, night shift allowances and separation pay was filed by herein petitioner Elpidio Calipay, together with Alfredo Mission and Ernesto Dimalanta against herein private respondents Triangle Ace Corporation (Triangle) and Jose Lee.

Calipay and the other complainants alleged in their Position Paper that in the course of their employment, they were not given any specific work assignment; they performed various kinds of work imposed upon them by Lee; in discharging their functions, they were required by Lee to work for nine (9) hours a day, beginning from 7:00 a.m. and ending at 6:00 p.m. with a break of one hour at 12:00 noon; they were also required to report from Monday to Sunday; for work rendered from Mondays to Saturdays beyond the normal eight (8) working hours in a day, they were paid a uniform daily wage in the amount of P140.00 even during holidays; for work performed on Sundays, they were not paid any wage due to the policy of Lee that his workers must provide work without pay at least a day in the week under his so-called "bayanihan system"; in receiving their wages, they were not given any duly accomplished payslips; instead, they were forced to sign a blank form of their daily time records and salary vouchers.

It was further alleged that in May 1998, Lee confronted Calipay and Mission regarding their alleged participation and assistance in Dimalanta's claim for disability benefits with the Social Security System; despite their denials, Lee scolded Calipay and Mission; this incident later led to their dismissal in the same month.

In their Position Paper, private respondents countered that the termination of Calipay and the other complainants was for a valid or just cause and that due process was observed. They claimed, among others, that Calipay was on absence without leave (AWOL) status from November 2, 1998 up to November 17, 1998; a memorandum dated November 17, 1998, requiring him to explain why his services should not be terminated, was sent by mail but he refused to receive the same; for failure to explain his side, another memorandum dated December 11, 1998 was issued terminating Calipay's employment on the ground of abandonment of work; there is no unfair labor practice because there is no union; there is full compliance with the law regarding payment of wages and other benefits

due to their employees; non-payment of nightshift premium is true, because the company does not operate at night.

On July 10, 2000, the Labor Arbiter handling the case rendered a Decision[4] dismissing the Complaint for lack of merit.

Calipay and the other complainants filed an appeal with the National Labor Relations Commission (NLRC).[5]

On February 1, 2002, the NLRC rendered judgment via a Resolution[6] based on the findings that: (a) in dismissing the complainants from their employment, respondents failed to faithfully observe the requirements of notice and hearing rendering the said dismissals invalid and illegal; (b) the dismissals were not based on any of the just causes provided in Article 282 of the Labor Code; (3) the complainants' failure to report for work were justified by their sudden termination from employment which nullified respondents' contention that complainants were guilty of abandonment of work. The dispositive portion of the NLRC Decision reads as follows:

WHEREFORE, the Decision appealed from is hereby MODIFIED, ordering respondents Triangle Ace Corporation Inc./Jose Lee to reinstate the complainants to their former position without loss of seniority rights and benefits and to pay them full backwages reckoned from the date of dismissals up to actual reinstatement which as of even date amount to P149,017.57 for Alfredo Mission, P148,705.44 for Elpidio Calipay, and P165,961.77 for Ernesto Dimalanta, plus ten (10%) percent of the total award as and for attorney's fees totaling P46,368.47 computed as follows:

x x x x

Should reinstatement be not feasible, the payment of separation pay in lieu thereof is awarded.

The Decision is AFFIRMED in all other respects.

SO ORDERED.[7]

Aggrieved, private respondents filed a Motion for Reconsideration.

On September 24, 2002, the NLRC issued a Resolution[8] granting private respondents' Motion for Reconsideration, the dispositive portion of which reads:

WHEREFORE, the instant motion being meritorious is GIVEN DUE COURSE. Accordingly, Our Resolution promulgated on February 1, 2002 is hereby RECONSIDERED and the decision of the Arbiter a quo dated 10 July 2002 is REINSTATED and AFFIRMED en (sic) toto.

SO ORDERED.[9]

As a consequence, Calipay and the other complainants moved for the reconsideration of the above-quoted Resolution, but the same was denied by the NLRC in a Resolution dated June 30, 2003.

Calipay and the other complainants then filed a special civil action for certiorari, with the CA assailing the September 24, 2002 and June 30, 2003 Resolutions of the NLRC.

On August 24, 2004, the CA rendered its presently disputed Decision dismissing the abovementioned petition for certiorari.

Calipay filed a Motion for Reconsideration, but the CA denied it in its Resolution dated December 10, 2004.

Hence, the instant petition of Calipay raising the following issues:

I.

WHETHER OR NOT PUBLIC RESPONDENT COURT OF APPEALS COMMITTED A REVERSIBLE

ERROR WHEN IT ISSUED ITS DECISION DATED 24 AUGUST 2004 AND RESOLUTION DATED 10 DECEMBER 2004 DISMISSING THE PETITION FOR CERTIORARI AND AFFIRMING THE RESOLUTIONS OF PUBLIC RESPONDENT NLRC DATED 30 JUNE 2003 AND 24 SEPTEMBER 2002, WHICH RESOLUTIONS DISMISSED PETITIONER'S COMPLAINT FOR ILLEGAL DISMISSAL BY REVERSING RESPONDENT NLRC'S PREVIOUS RESOLUTION DATED 01 FEBRUARY 2002.

II.

WHETHER OR NOT PUBLIC RESPONDENT COURT OF APPEALS COMMITTED A REVERSIBLE ERROR WHEN IT AFFIRMED THE SUBJECT RESOLUTIONS OF PUBLIC RESPONDENT NLRC DISMISSING THE APPEAL FILED BY PETITIONER AND REINSTATED THE DECISION OF LABOR ARBITER PANGANIBAN ORDERING THE DISMISSAL OF THE COMPLAINT FOR ILLEGAL TERMINATION NOTWITHSTANDING THE PREVIOUS RESOLUTION OF PUBLIC RESPONDENT NLRC DATED 01 FEBRUARY 2002 DECLARING THE ILLEGALITY OF PETITIONER'S DISMISSAL FROM EMPLOYMENT.

III.

WHETHER OR NOT SUBSTANTIAL JUSTICE WAS UNDULY COMPROMISED WHEN PUBLIC RESPONDENT COURT OF APPEALS AFFIRMED NLRC'S DISMISSAL OF PETITIONER'S APPEAL DATED 06 SEPTEMBER 2000 AND RULED AGAINST PETITIONER'S COMPLAINT FOR ILLEGAL DISMISSAL BASED SOLELY ON TECHNICAL RULES OF PROCEDURE WHEN THE SAME SHOULD HAVE BEEN RELAXED TO GIVE WAY TO MERITORIOUS AND JUDICIOUS CASES SUCH AS THIS INVOLVING DISMISSAL FROM WORK OF AN EMPLOYEE.[10]

Petitioner's basic contention is that the CA erred in dismissing the petition filed with it on the basis of strictly adhering to purely technical grounds. Petitioner argues that he cannot be solely faulted for his failure to timely file his appeal with the NLRC, considering that his former counsel suddenly and unexpectedly withdrew his services at the time that said counsel should have been preparing his appeal, leaving petitioner without anyone to help him prepare his appeal on time. Petitioner avers that in a number of cases, this Court allowed the late filing of an appeal where such appeal by a dismissed worker is, like in the present case, impressed with merit in order that the ends of substantial justice would be served.

The petition lacks merit.

It bears to reiterate the settled rule that the timely perfection of an appeal is a mandatory requirement, which cannot be trifled with as a "mere technicality" to suit the interest of a party.[11] The rules on periods for filing appeals are to be observed religiously, and parties who seek to avail themselves of the privilege must comply with the rules.[12]

Procedural rules setting the period for perfecting an appeal or filing a petition for review are generally inviolable.[13] It is doctrinally entrenched that appeal is not a constitutional right, but a mere statutory privilege.[14] Hence, parties who seek to avail themselves of it must comply with the statutes or rules allowing it.[15] The requirements for perfecting an appeal within the reglementary period specified in law must, as a rule, be strictly followed.[16] Such requirements are considered indispensable interdictions against needless delays and are necessary for the orderly discharge of the judicial business.[17] Furthermore, the perfection of an appeal in the manner and within the period permitted by law is not only mandatory, but also jurisdictional.[18] Failure to perfect the appeal renders the judgment of the court final and executory.[19] Just as a losing party has the privilege to file an appeal within the prescribed period, so does the winner also have the correlative right to enjoy the finality of the decision.[20]

It is true that procedural rules may be waived or dispensed with in the interest of substantial justice.[21] This Court may deign to veer away from the general rule if, on its face, the appeal appears to be absolutely meritorious.[22] Indeed, in a number of instances, procedural rules are relaxed in order to serve substantial justice. However, the Court sees no reason to do so in this case as there is no reason to reverse the findings of the CA, to wit:

It must be considered that his [Calipay's] former counsel had manifested in his "Withdrawal of Appearance" (p. 80, Rollo) that he was withdrawing as counsel by reason of his (Calipay) desire to engage the services of another counsel for purposes of perfecting his appeal from the Labor Arbiter's Decision and said "Withdrawal of Appearance" was duly signed by his former counsel with the petitioner's conformity thereto and which therefore showed that the latter had assented to such withdrawal by reason stated therein. Hence, petitioner Calipay could not blame their former counsel for the non-perfection of their appeal. And even if it were true, that there was untimely withdrawal of his counsel, the latter should not be totally blamed as the herein petitioner is duty bound to protect his interests and he should have been more vigilant and circumspect of his right in pursuing his case by observing the rule on perfection of appeal.[23]

Moreover, the Court notes private respondents' contention that petitioner again did not comply with procedural requirements when he failed to attach to the instant petition a verification and certificate against forum shopping as required under Section, Rule 45 of the Rules of Court. On this basis alone, the petition should be dismissed.

Even if the Court were to disregard petitioner's violation of the above-cited procedural rules, a careful review of his contentions, as well as the records of the case, would show that on its merits, the present petition should still fail.

A perusal of the assailed Decision of the CA would readily confirm that the appellate court's dismissal of the petition filed by herein petitioner was not based solely on procedural or technical grounds. Thus, the CA held:

Be that as it may, even if We would set aside the technicalities in the interest of substantial justice as proffered by petitioner Calipay that the belated filing of his appeal should nevertheless be considered in order to completely resolve the case on its merits, We opine that the instant case would likewise fail.

We agree with the Labor Arbiter's finding that petitioner Calipay had abandoned his work. x x x

In the instant case, petitioner Calipay had failed to report for work for unknown reasons x x x His continued absences without the private respondents' approval constituted gross and habitual neglect which is a just cause for termination under Article 282 of the Labor Code of the Philippines.[24]

Petitioner harps on the fact that on February 1, 2002, the NLRC issued a Resolution which was in his favor. While petitioner relies heavily on the said Resolution, he, however, always fails to mention that in a subsequent Resolution dated September 24, 2002, the NLRC reversed itself and reinstated the Decision of the Labor Arbiter dismissing the complaint filed by petitioner and his former co-employees.

Furthermore, petitioner insists that he is not guilty of abandoning his job and that his failure to report for work was justified by his unceremonious dismissal from employment. However, the Labor Arbiter made the following categorical findings:

Complainant Ernesto Dimalanta claimed that he was dismissed on January 30, 1998. x x x Complainants Alfredo Mission and Elpidio Calipay, for their part, alleged that they were dismissed by the respondent[s] on May 25, 1998 and May 27, 1998, respectively x x x. The record, however, shows that complainants actually reported for work and were paid wages by the respondent company even after their alleged termination as evidenced by their Daily Time Records and Salary Vouchers submitted by respondents. Complainant Mission worked with the respondent until July 15, 1998, complainant Calipay up to November 2, 1998 while

complainant Dimalanta until May 17, 1998. After those dates, they absented themselves from their work without any permission from the management or without filing any leave of absence. Thus, two (2) written notices were sent to each complainant and the Department of Labor and Employment by the respondent through its General Manager.[25]

Calipay and the other complainants failed to sufficiently refute these findings of the Labor Arbiter in their appeal filed with the NLRC. They simply insisted that they did not report for work, because they were already terminated. However, they did not present any evidence to prove their allegation. On the other hand, as held by the Labor Arbiter, private respondents were able to present the DTRs and Salary Vouchers of Calipay and the other complainants showing that they indeed reported for work even after their alleged termination from employment.[26] Calipay and the other complainants also failed to present evidence to prove their allegation that they were forced to sign blank forms of their DTRs and Salary Vouchers.

Indeed, if petitioner was dismissed, as he claims, on May 27, 1998, why did the DTRs and Salary Vouchers presented by private respondents show that he continued to receive wages until October 31, 1998? Moreover, why did petitioner file his complaint for illegal dismissal only on July 16, 1999, or more than one year after he claims to have been illegally dismissed?

On the basis of the foregoing, the Court arrives at the conclusion that the filing of the complaint for illegal dismissal appears only as a convenient afterthought on the part of petitioner and the other complainants after they were dismissed in accordance with law.

Jurisprudence has held time and again that abandonment is totally inconsistent with the immediate filing of a complaint for illegal dismissal, more so if the same is accompanied by a prayer for reinstatement.[27] In the present case, however, petitioner filed his complaint more than one year after his alleged termination from employment. Moreover, petitioner and the other complainants' inconsistency in their stand is also shown by the fact that in the complaint form which they personally filled up and filed with the NLRC, they only asked for payment of separation pay and other monetary claims. They did not ask for reinstatement. It is only in their Position Paper later prepared by their counsel that they asked for reinstatement. This is an indication that petitioner and the other complainants never had the intention or desire to return to their jobs. In fact, there is no evidence to prove that petitioner and his former co-employees ever attempted to return to work after they were dismissed from employment.

On the other hand, private respondents were able to present memoranda or show-cause letters served on petitioner and the other complainants at their last known address requiring them to explain their absence, with a warning that their failure would be construed as abandonment of work. Also, private respondents served on petitioner and the other complainants a notice of termination as required by law. Private respondents' compliance with said requirements, taken together with the other circumstances above-discussed, only proves petitioner and the other complainants' abandonment of their work.

Finally, it bears to point out that the Decision of the Labor Arbiter was affirmed by the NLRC and the CA. The settled rule is that the factual findings of the Labor Arbiter and the NLRC, especially when affirmed by the CA, are accorded not only great respect but also finality, and are deemed binding upon this Court so long as they are supported by substantial evidence.[28] In the present case, the Court finds no cogent reason to depart from this rule.

WHEREFORE, the petition is DENIED. The assailed Decision and Resolution of the Court of Appeals, dated August 24, 2004 and December 10, 2004, respectively, in CA-G.R. SP No. 79277, are AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Nachura, Abad, and Mendoza, JJ., concur.

[1] Penned by Associate Justice Bienvenido L. Reyes, with Associate Justices Eugenio S. Labitoria and Rosalinda Asuncion-Vicente, concurring; rollo, pp. 32-42.

[2] Id. at 30-31.

[3] Records, p. 1.

[4] Id. at 199-208.

[5] Id. at 210-220.

[6] Id. at 304-310.

[7] Id. at 309.

[8] Id. at 355-363.

[9] Id. at 362.

[10] Rollo, p. 13.

[11] Moneytrend Lending Corporation v. Court of Appeals, G.R. No. 165580, February 20, 2006, 482 SCRA 705, 714-715; Cuevas v. Bais Steel Corporation, 439 Phil. 793, 806 (2002).

[12] Id.

[13] *McBurnie v. Ganson*, G.R. Nos. 178034, 178117, 186984-85, September 18, 2009, 600 SCRA 658, 672; *Land Bank of the Philippines v. Ascot Holdings and Equities, Inc.*, G.R. No. 175163, October 19, 2007, 537 SCRA 396, 406.

[14] Id.

[15] Id.

[16] Id.

[17] Id.

[18] Id.

[19] Id.

[20] *Philippine Long Distance Telephone Company v. Raut*, G.R. No. 174209, August 25, 2009, 597 SCRA 66, 72, citing *Accessories Specialist, Inc. v. Alabanza*, 559 SCRA 550, 562-563 (2008).

[21] *Tiger Construction and Development Corporation v. Abay*, G.R. No. 164141, February 26, 2010; *Iligan Cement Corporation v. ILIASCOR Employees and Workers Union - Southern Philippines Federation of Labor (IEWU-SPFL)*, G.R. No. 158956, April 24, 2009, 586 SCRA 449, 461.

[22] *Ruiz v. Delos Santos*, G.R. No. 166386, January 27, 2009, 577 SCRA 29, 48.

[23] Rollo, pp. 39-40.

[24] Id. at 40.

[25] Records, pp. 171-172.

[26] Id. at 125-135.

[27] South Davao Development Company, Inc. v. Gamo, G.R. No. 171814, May 8, 2009, 587 SCRA 524, 535; RBC Cable Master System v. Baluyot, G.R. No. 172670, January 20, 2009, 576 SCRA 668, 679.

[28] Diversified Security, Inc. v. Alicia V. Bautista, G.R. No 152234, April 15, 2010; Solidbank Corporation v. NLRC, et al., G.R. No. 165951, March 30, 2010; Skippers United Pacific, Inc. v. NLRC, G.R. No. 148893, July 12, 2006, 494 SCRA 661, 667.

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