

**V.L. ENTERPRISES AND/OR FAUSTINO J. VISITACION, PETITIONERS,
VS. HON. COURT OF APPEALS, SHERIFF WILLY GABITO, REGIONAL
DIRECTOR OF THE NATIONAL CAPITAL REGION, DEPARTMENT OF
LAB...**

G.R. NO. 167512. March 12, 2007

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This is a Petition for Annulment of Judgment, Writ of Execution and Notice of Sale on Execution, relating to the following Orders:

- Resolutions dated 9 November 2004[1] and 3 February 2005[2] of the Court of Appeals;
- Order dated 5 May 1999 of Department of Labor and Employment (DOLE) Regional Director Maximo Lim;[3]
- Alias Writ of Execution dated 11 August 2004 issued by DOLE Acting Regional Director for the National Capital Region (NCR) Ciriaco A. Lagunzad III;[4] and
- Notice of Sale on Execution of Real Properties dated 11 October 2004 issued by Sheriff Willy Gabito.[5]

The facts of this case are as follows:

On 10 March 1998, the DOLE conducted an inspection of the establishment of petitioner company V.L. Enterprises. On 5 May 1999, then Regional Director Maximo Lim issued an Order, the dispositive portion of which states:

WHEREFORE, premises considered, [herein petitioners] V.L. ENTERPRISES AND/OR MR. FAUSTINO VISITACION is hereby ordered to pay CAMILO FRANCISCO and TWENTY TWO WORKERS SIMILARLY SITUATED the total amount of EIGHT HUNDRED AND TWENTY TWO THOUSAND NINE HUNDRED SEVENTY EIGHT PESOS (P822,978.00) corresponding to their claims within ten (10) days upon receipt of this order, otherwise, a Writ of Execution shall be issued.[6]

Petitioners appealed the aforequoted Order of the Regional Director.

On 23 June 1999, DOLE Undersecretary Jose M. Español, Jr. rendered an Order directing petitioners V.L. Enterprises and/or Faustino J. Visitacion, to post cash or surety bond in the amount equivalent to the monetary award; otherwise, the appeal will be dismissed for not having been perfected.

On 29 July 1999, petitioners filed an Urgent Motion for Reconsideration, invoking therein that in a similar case pending with the National Labor Relations Commission (NLRC NCR Case No. 00-10-0762-27) involving the same parties and issues, petitioners had already posted a supersedeas bond.

On 14 February 2000, Undersecretary Jose M. Español, Jr. rendered a Resolution, the decretal portion of which reads:

WHEREFORE, premises considered, the Urgent Motion for Reconsideration filed by respondent is DENIED. Respondents are hereby given ten (10) days from the receipt of this Order to post the requisite bond. Otherwise its appeal shall be dismissed.[7]

On 31 July 2002, DOLE Secretary Patricia A. Sto. Tomas affirmed the 14 February 2000 Order and deemed the appealed order to have become final and executory.

On 11 August 2004, Acting NCR Regional Director Ciriaco A. Lagunzad issued an Alias Writ of Execution, directing petitioners to pay respondent Camilo Francisco and several similarly situated employees the sum of P422,978.00. On the basis of said Alias Writ of Execution, Sheriff Wilfredo A. Gabito issued a Notice of Sale on Execution of Real Properties on 11 October 2004.

Petitioners filed a Petition for Certiorari with the Court of Appeals, docketed as CA-G.R. SP No. 87230, seeking the nullification of the following Issuances:

- Order dated 5 May 1999 of DOLE Regional Director Maximo Lim;
- Alias Writ of Execution dated 11 August 2004 issued by DOLE Acting NCR Regional Director Ciriaco A. Lagunzad III; and
- Notice of Sale on Execution of Real Properties dated 11 October 2004 issued by Sheriff Willy Gabito.

On 9 November 2004, the Court of Appeals dismissed the Petition for lack of merit in the first assailed Resolution. Petitioners filed a Motion for Reconsideration, but the same was likewise denied by the Court of Appeals in the second assailed Resolution.

Petitioners received a copy of the latter Resolution on 3 February 2005.[8] Instead of appealing said Court of Appeals Resolution via a Petition for Review on Certiorari, however, petitioner filed on 11 April 2005 the instant Petition for Annulment of Judgment, Writ of Execution and Notice of Sale on Execution with Prayer for Temporary Restraining Order.

The petition must fail.

We have aptly held in *Mercado v. Security Bank Corporation*,[9] that:

A principle almost repeated to satiety is that "an action for annulment of judgment cannot and is not a substitute for the lost remedy of appeal." A party must have first availed of an appeal, a motion for new trial or a petition for relief before an action for annulment can prosper. Its obvious rationale is to prevent the party from benefiting from his inaction or negligence. x x x.

Therefore, the petition cannot prosper insofar as it prayed for the annulment of the Court of Appeals Resolution as petitioners did not file a Petition for Review on Certiorari within the reglementary period. On the other hand, the prayer for the annulment of the three other Issuances, namely the 5 May 1999 DOLE Order, the 11 August 2004 Alias Writ of Execution, and the 11 October 2004 Notice of Sale on Execution of Real Properties, should also be denied in view of the final and executory judgment of the Court of Appeals. The appeal to this Court of the Court of Appeals Resolutions is but a continuation of the process of appeal against the assailed Issuances, and the failure to actively pursue the former without any justifiable reason effectively bars the petition for an annulment of said Issuances.

Be that as it may, the petition would still fail even if we decide the same on the merits. Petitioners' ground for annulment of the three Issuances is the alleged lack of jurisdiction on the part of the DOLE Regional Director in awarding amounts which exceeded P5,000.00. Petitioners cite the 1991 Minute Resolution in *5D's Liners v. Department of Labor and Employment*,[10] which in turn cited *Servando's Incorporated v. Secretary of Labor and*

Employment,[11] thus -

We further hold that to harmonize the above-quoted three (3) provisions of the Labor Code, the Secretary of Labor should be held as possessed of his plenary visitatorial powers to order the inspection of all establishments where labor is employed, to look into all possible violations of labor laws and regulations but the power to hear and decide employees' claims exceeding P5,000.00 for each employee should be left to the Labor Arbiter as the exclusive repository of the power to hear and decide such claims. In other words, the inspection conducted by the Secretary of Labor, through labor regulation officers or industrial safety engineers, may yield findings of violations of labor standards under labor laws; the Secretary of Labor may order compliance with said labor standards, if necessary, through appropriate writs of execution but when the findings disclose an employee claim of over P5,000.00, the matter should be referred to the Labor Arbiter in recognition of his exclusive jurisdiction over such claims.

and the 1993 Decision *Halili Inn, Incorporated v. Trajano*,[12] which reads -

[T]he original and exclusive jurisdiction to hear and decide employee's money claims arising from employer-employee relations exceeding the aggregate amount of P5,000.00 for each employee is vested in the Labor Arbiter (Art. 217 (a) (b), Labor Code as amended) and this is confirmed by the provisions of Art. 129 of the same Code, which excludes from jurisdiction of the Regional Director or any hearing officer of the Department of Labor and Employment (DOLE) the power to hear and decide claims of employees arising from employer-employee relations exceeding the amount of P5,000.00 for each employee.

Petitioners must have been unmindful of the fact that one year from the issuance of the *Halili Decision*, or on 2 June 1994, Republic Act No. 7730 amended Article 128(b) to its present wording so as to free it from the jurisdictional limitations found in Articles 129[13] and 217.[14] Thus, as it is now worded, the authority under Article 128[15] may be exercised by DOLE regardless of the monetary value involved, unlike in Article 129 where the authority is only for claims not exceeding P5,000.00 per claimant. Thus, we held in *Allied Investigation Bureau Inc. v. Secretary of Labor and Employment*[16]:

We dismiss the petition. Pursuant to Section 1 of Republic Act 7730 [Approved on June 2, 1994] which amended Article 128 (b) of the Labor Code, the Secretary of Labor and Employment or his duly authorized representative, in the exercise of their visitatorial and enforcement powers, are now authorized to issue compliance orders to give effect to the labor standards provisions of this Code and other labor legislation based on the findings of labor employment and enforcement officers or industrial safety engineers made in the course of inspection, sans any restriction with respect to the jurisdictional amount of P5,000.00 provided under Article 129 and Article 217 of the Code.

This was further affirmed by our ruling in *Guico v. Quisumbing*,[17] which stated categorically the abandonment of the *Servando* ruling:

With regard to the issue of jurisdiction, petitioner alleged that the Regional Director has no jurisdiction over the instant case since the individual monetary claims of the 21 employees exceed P5,000.00. He further argued that following Article 129 of the Labor Code, as amended, and Section 1, Rule IX of the Implementing Rules of Republic Act No. 6715, the jurisdiction over this case belongs to the Labor Arbiter, and the Regional Director should have indorsed it to the appropriate regional branch of the National Labor Relations Commission (NLRC). On the other hand, the respondent Secretary held that the jurisdictional limitation imposed by Article 129 on his visitatorial and enforcement power under Article 128 (b) of the Labor Code, as amended, has been repealed by Republic Act No. 7730. He pointed out that the amendment "[n]otwithstanding the provisions of Article 129 and 217 of the Labor Code to the contrary" erased all doubts as to the amendatory nature of the new law, and in effect, overturned this Court's ruling in the case of *Servando's Inc. v. Secretary of Labor and Employment*.

We sustain the jurisdiction of the respondent Secretary. As the respondent correctly pointed out, this Court's ruling in *Servando* - that the visitorial power of the Secretary of Labor to order and enforce compliance with labor standard laws cannot be exercised where the individual claim exceeds P5,000.00, can no longer be applied in view of the enactment of R.A. No. 7730 amending Article 128 (b) of the Labor Code, viz:

Article 128 (b) - Notwithstanding the provisions of Articles 129 and 217 of this Code to the contrary, and in cases where the relationship of employer-employee still exists, the Secretary of Labor and Employment or his duly authorized representatives shall have the power to issue compliance orders to give effect to the labor standards provisions of the Code and other labor legislation based on the findings of the labor employment and enforcement officers or industrial safety engineers made in the course of inspection. The Secretary or his duly authorized representatives shall issue writs of execution to the appropriate authority for the enforcement of their orders, except in cases where the employer contests the findings of the labor employment and enforcement officer and raises issues supported by documentary proofs which were not considered in the course of inspection.

An order issued by the duly authorized representative of the Secretary of Labor and Employment under this article may be appealed to the latter. In case said order involves 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 Secretary of Labor and Employment in the amount equivalent to the monetary award in the order appealed from. (*Italics supplied.*)

The records of the House of Representatives show that Congressmen Alberto S. Veloso and Eriberto V. Loreto sponsored the law. In his sponsorship speech, Congressman Veloso categorically declared that "this bill seeks to do away with the jurisdictional limitations imposed through said ruling (referring to *Servando*) and to finally settle any lingering doubts on the visitorial and enforcement powers of the Secretary of Labor and Employment." Petitioner's reliance on *Servando* is thus untenable.

WHEREFORE, the instant Petition for Annulment of Judgment, Writ of Execution and Notice of Sale on Execution is DISMISSED. Costs against the petitioners.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, and Nachura, JJ., concur.
Callejo, Sr., J., on leave.

[1] Penned by Associate Justice Marina L. Buzon with Associate Justices Mario L. Guarina III and Santiago Javier Ranada, concurring; rollo, pp. 22-23.

[2] *Id.* at 24-26.

[3] *Id.* at 46-49.

[4] *Id.* at 41-43.

[5] *Id.* at 44-45.

[6] *Id.* at 49.

[7] Records, pp. 176-177.

[8] Rollo, p. 19.

[9] G.R. No. 160445, 16 February 2006, 482 SCRA 501, 514.

[10] G.R. No. 96705, 2 October 1991.

[11] G.R. No. 85840, 5 June 1991, 198 SCRA 156, 161.

[12] G.R. No. 98318, 18 May 1993, 222 SCRA 269, 278.

[13] Art. 129. Recovery of Wages, Simple Money Claims and Other Benefits. - Upon complaint of any interested party, the regional director of the Department of Labor and Employment or any of the duly authorized hearing officers of the Department is empowered, through summary proceeding and after due notice, to hear and decide any matter involving the recovery of wages and other monetary claims and benefits, including legal interest, owing to an employee or person employed in domestic or household service or househelper under this Code, arising from employer-employee relations: Provided, That such complaint does not include a claim for reinstatement; Provided, further, That the aggregate money claim of each employee or househelper does not exceed Five Thousand Pesos (P5,000.00). The regional director or hearing officer shall decide or resolve the complaint within thirty (30) calendar days from the date of the filing of the same. Any sum thus recovered on behalf of any employee or househelper pursuant to this Article shall be held in a special deposit account by, and shall be paid on order of, the Secretary of Labor and Employment or the regional director directly to the employee or househelper concerned. Any such sum not paid to the employee or househelper, because he cannot be located after diligent and reasonable effort to locate him within a period of three (3) years, shall be held as a special fund of the Department of Labor and Employment to be used exclusively for the amelioration and benefit of workers.

Any decision or resolution of the regional director or hearing officer pursuant to this provision may be appealed on the same grounds provided in Article 223 of this Code, within five (5) calendar days from receipt of a copy of said decision or resolution, to the National Labor Relations Commission which shall resolve the appeal within ten (10) calendar days from the submission of the last pleading required or allowed under its rules.

The Secretary of Labor and Employment or his duly authorized representative may supervise the payment of unpaid wages and other monetary claims and benefits, including legal interest, found owing to any employee or househelper under this Code.

[14] ART. 217. JURISDICTION OF LABOR ARBITERS AND THE COMMISSION. - (a) Except as otherwise provided under this Code, the Labor Arbiter shall have original and exclusive jurisdiction to hear and decide within thirty (30) calendar days after the submission of the case by the parties for decision without extension, even in the absence of stenographic notes, the following cases involving all workers, whether agricultural or non-agricultural:

- Unfair labor practice cases;
- Termination disputes;
- If accompanied with a claim for reinstatement, those cases that workers may file involving wages, rates of pay, hours of work and other terms and conditions of employment;
- Claims for actual, moral, exemplary and other forms of damages arising from the employer-employee relations;
- Cases arising from any violation of Article 264 of this Code, including questions involving the legality of strikes and lockouts;
- Except claims for Employees Compensation, Social Security, Medicare and maternity benefits, all other claims, arising from employer-employee relations, including those of persons in domestic or household service, involving an amount exceeding five thousand pesos (P5,000.00) regardless of whether accompanied with a claim for reinstatement.

(b) The Commission shall have exclusive appellate jurisdiction over all cases decided by Labor Arbiters.

(c) Cases arising from the interpretation of collective bargaining agreements and those arising from the interpretation or enforcement of company personnel policies shall be disposed of by the Labor Arbiter by referring the same to the grievance machinery and voluntary arbitration as may be provided in said agreements.

[15] Article 128 refers to the Visitorial and Enforcement power of the Secretary of Labor or his duly authorized representatives, while Article 129 refers to money claims adjudication by the DOLE Regional Director where the aggregate money claim does not exceed P5,000.00. Article 128 provides:

Article 128. Visitorial and Enforcement Power. - (a) The Secretary of Labor or his duly authorized representatives, including labor regulation officers, shall have access to employer's records and premises at any time of the day or night whenever work is being undertaken therein, and the right to copy therefrom, to question any employee and investigate any fact, condition or matter which may be necessary to determine violations or which may aid in the enforcement of this Code and of any labor law, wage order or rules and regulations issued pursuant thereto.

(b) Notwithstanding the provisions of Articles 129 and 217 of this Code to the contrary, and in cases where the relationship of employer-employee still exists, the Secretary of labor and Employment or his duly authorized representatives shall have the power to issue compliance orders to give effect to labor legislation based on the findings of labor employment and enforcement officers or industrial safety engineers made in the course of inspection. The Secretary or his duly authorized representatives shall issue writs of execution to the appropriate authority for the enforcement of their orders, except in cases where the employer contests the findings of the labor employment and enforcement officer and raises issues supported by documentary proofs which were not considered in the course of inspection. (As amended by R.A. No. 7730, June 2, 1994.)

An order issued by the duly authorized representative of the Secretary of Labor and Employment under this article may be appealed to the latter. In case said order involves 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 Secretary of Labor and Employment in the amount equivalent to the monetary award in the order appealed from. (As amended by R.A. No. 7730, June 2, 1994.)

(c) The Secretary of Labor may likewise order stoppage of work or suspension of operations of any unit or department of an establishment when non-compliance with the law or implementing rules and regulation poses grave and imminent danger to the health and safety of workers in the workplace. Within twenty-four hours, a hearing shall be conducted to determine whether an order for the stoppage of work or suspension of operations shall be lifted or not. In case the violation is attributable to the fault of the employer, he shall pay the employees concerned their salaries or wages during the period of such stoppage of work or suspension of operation.

(d) It shall be unlawful for any person or entity to obstruct, impede, delay or otherwise render ineffective the orders of the Secretary of Labor or his duly authorized representatives issued pursuant to the authority granted under this article, and no inferior court or entity shall issue temporary or permanent injunction or restraining order or otherwise assume jurisdiction over any case involving the enforcement orders issued in accordance with this Article.

(e) Any government employee found guilty of violation of, or abuse of authority, under this Article shall, after appropriate administrative investigation, be subject to summary dismissal from the service.

(f) The Secretary of Labor may by, appropriate regulations, require employers to keep and maintain such employment records as may be necessary in aid of his visitorial and enforcement powers under this Code.

[16] 377 Phil. 80, 91 (1999), citing *Lord and Lady Salon v. Hon. Young* G.R. No. 123258, 11 November 1996.

[17] 359 Phil. 197, 207-209 (1998).

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