

ISLRIZ TRADING/ VICTOR HUGO LU, PETITIONER, VS. EFREN CAPADA, LAURO LICUP, NORBERTO NIGOS, RONNIE ABEL, GODOFREDO MAGNAYE, ARNEL SIBERRE, EDMUNDO CAPADA, NOMERLITO MAGNAYE AND A...

G.R. No. 168501. January 31, 2011

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

We reiterate in this petition the settled view that employees are entitled to their accrued salaries during the period between the Labor Arbiter's order of reinstatement pending appeal and the resolution of the National Labor Relations Commission (NLRC) overturning that of the Labor Arbiter. Otherwise stated, even if the order of reinstatement of the Labor Arbiter is reversed on appeal, the employer is still obliged to reinstate and pay the wages of the employee during the period of appeal until reversal by a higher court or tribunal. In this case, respondents are entitled to their accrued salaries from the time petitioner received a copy of the Decision of the Labor Arbiter declaring respondents' termination illegal and ordering their reinstatement up to the date of the NLRC resolution overturning that of the Labor Arbiter.

This Petition for Review on Certiorari assails the Decision[1] dated March 18, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 84744 which dismissed the petition for certiorari before it, as well as the Resolution[2] dated June 16, 2005 which denied the motion for reconsideration thereto.

Factual Antecedents

Respondents Efren Capada, Lauro Licup, Norberto Nigos and Godofredo Magnaye were drivers while respondents Ronnie Abel, Arnel Siberre, Edmundo Capada, Nomerlito Magnaye and Alberto Dela Vega were helpers of Islriz Trading, a gravel and sand business owned and operated by petitioner Victor Hugo Lu. Claiming that they were illegally dismissed, respondents filed a Complaint[3] for illegal dismissal and non-payment of overtime pay, holiday pay, rest day pay, allowances and separation pay against petitioner on August 9, 2000 before the Labor Arbiter. On his part, petitioner imputed abandonment of work against respondents.

Proceedings before the Labor Arbiter and the NLRC

On December 21, 2001, Labor Arbiter Waldo Emerson R. Gan (Gan) rendered a Decision[4] in this wise:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. Declaring respondent ISLRIZ TRADING guilty of illegal dismissal.
2. Ordering respondent to reinstate complainants to their former positions without loss of seniority rights and the payment of full backwages from date of dismissal to actual reinstatement which are computed as follows: (As of date of decision);

1. EFREN CAPADA

P 102,400.00 (6,400.00X16)

2. LAURO LICUP

87,040.00 (5,440.00X16)

3. NORBERTO NIGOS

87,040.00 (5,440.00X16)

4. RONNIE ABEL

76,800.00 (4,800.00X16)

5. GODOFREDO MAGNAYE

102,400.00 (6,400.00X16)

6. ARNEL SIBERRE

51,200.00 (3,200.00X16)

7. EDMUNDO CAPADA

76,800.00 (4,800.00X16)

8. NOMERLITO MAGNAYE

76,800.00 (4,800.00X16)

9. ALBERTO DELA VEGA

51,200.00 (3,200.00X16)

3. Ordering respondent to pay complainants 10% of the total monetary award as attorney's fees.

All other claims are dismissed for lack of merit.

SO ORDERED.[5]

Aggrieved, petitioner appealed[6] to the NLRC which granted the appeal. The NLRC set aside the Decision of Labor Arbiter Gan in a Resolution[7] dated September 5, 2002. Finding that respondents' failure to continue working for petitioner was neither caused by termination nor abandonment of work, the NLRC ordered respondents' reinstatement but without backwages. The dispositive portion of said Resolution reads as follows:

WHEREFORE, premises considered, the appeal is GRANTED and the Decision dated 21 December 2001 is hereby ordered SET ASIDE.

A New Decision is hereby rendered finding that the failure to work of complainants-appellees is neither occasioned by termination (n)or abandonment of work, hence, respondents-appellants shall reinstate complainants-appellees to their former positions without backwages within ten (10) days from receipt of this Resolution.

SO ORDERED.[8]

Respondents filed a Motion for Reconsideration[9] thereto but same was likewise denied in a Resolution[10] dated November 18, 2002. This became final and executory on December 7, 2002.[11]

On December 9, 2003, however, respondents filed with the Labor Arbiter an Ex-Parte Motion to Set Case for

Conference with Motion.[12] They averred therein that since the Decision of Labor Arbiter Gan ordered their reinstatement, a Writ of Execution[13] dated April 22, 2002 was already issued for the enforcement of its reinstatement aspect as same is immediately executory even pending appeal. But this notwithstanding and despite the issuance and subsequent finality of the NLRC Resolution which likewise ordered respondents' reinstatement, petitioner still refused to reinstate them. Thus, respondents prayed that in view of the orders of reinstatement, a computation of the award of backwages be made and that an Alias Writ of Execution for its enforcement be issued.

The case was then set for pre-execution conference on January 29, February 24 and March 5, 2004. Both parties appeared thereat but failed to come to terms on the issue of the monetary award. Hence, the office of the Labor Arbiter through Fiscal Examiner II Ma. Irene T. Trinchera (Fiscal Examiner Trinchera) issued an undated Computation[14] of respondents' accrued salaries from January 1, 2002 to January 30, 2004 or for a total of 24.97 months in the amount of P1,110,665.60 computed as follows:

Accrued Salary from January 1, 2002 to January 30, 2004 = 24.97 months

Efren Capada

P 6,400.00 x 24.97 months

P 159,808.00

Lauro Licup

P 5,440.00 x 24.97 months

P 135,836.80

Norberto Nigos

P 5,440.00 x 24.97 months

P 135,836.80

Ronnie Abel

P 4,800.00 x 24.97 months

P 119,856.00

Godofredo Magnaye

P 6,400.00 x 24.97 months

P 159,808.00

Arnel Siberre

P 3,200.00 x 24.97 months

P 79,904.00

Edmundo Capada

P 4,800.00 x 24.97 months

P 119, 856.00

Nomerlito Magnaye

P 4,800.00 x 24.97 months

P 119, 856.00

Alberto de la Vega

P 3,200.00 x 24.97 months

P 79, 904.00

Total

P 1,110,665.60

Petitioner questioned this computation in his Motion/Manifestation[15] claiming that said computation was without any factual or legal basis considering that Labor Arbiter Gan's Decision had already been reversed and set aside by the NLRC and that therefore there should be no monetary award.

Nevertheless, Labor Arbiter Danna M. Castillon (Castillon) still issued a Writ of Execution[16] dated March 9, 2004 to enforce the monetary award in accordance with the abovementioned computation. Accordingly, the Sheriff issued a Notice of Sale/Levy on Execution of Personal Property[17] by virtue of which petitioner's properties were levied and set for auction sale on March 29, 2004. In an effort to forestall this impending execution, petitioner then filed a Motion to Quash Writ of Execution with Prayer to Hold in Abeyance of Auction Sale[18] and a Supplemental Motion to Quash/Stop Auction Sale.[19] He also served upon the Sheriff a letter of protest.[20] All of these protest actions proved futile as the Sheriff later submitted his Report dated March 30, 2004 informing the Labor Arbiter that he had levied some of petitioner's personal properties and sold them in an auction sale where respondents were the only bidders. After each of the respondents entered a bid equal to their individual shares in the judgment award, the levied properties were awarded to them.

Later, respondents claimed that although petitioner's levied properties were already awarded to them, they could not take full control, ownership and possession of said properties because petitioner had allegedly padlocked the premises where the properties were situated. Hence, they asked Labor Arbiter Castillon to issue a break-open order.[21] For his part and in a last ditch effort to nullify the writ of execution, petitioner filed a Motion to Quash Writ of Execution, Notice of Sale/Levy on Execution of Personal Property and Auction Sale on Additional Grounds.[22] He reiterated that since the NLRC Resolution which reversed the Decision of the Labor Arbiter ordered respondents' reinstatement without payment of backwages or other monetary award, only the execution of reinstatement sans any backwages or monetary award should be enforced. It is his position that the Writ of Execution dated March 9, 2004 ordering the Sheriff to collect respondents' accrued salaries of P1,110,665.60 plus P1,096.00 execution fees or the total amount of P1,111,761.60, in effect illegally amended the said NLRC Resolution; hence, said writ of execution is null and void. And, as the writ is null and void, it follows that the Labor Arbiter cannot issue a break-open order. In sum, petitioner prayed that the Writ of Execution be quashed and all proceedings subsequent to it be declared null and void and that respondents' Urgent Motion for Issuance of Break Open Order be denied for lack of merit.

Both motions were resolved in an Order[23] dated June 3, 2004. Labor Arbiter Castillon explained therein that the monetary award subject of the questioned Writ of Execution refers to respondents' accrued salaries by reason of

the reinstatement order of Labor Arbiter Gan which is self-executory pursuant to Article 223[24] of the Labor Code. The Order cited *Roquero v. Philippine Airlines Inc.*[25] where this Court ruled that employees are still entitled to their accrued salaries even if the order of reinstatement has been reversed on appeal. As to the application for break open order, Labor Arbiter Castillon relied on the Sheriff's report that there is imminent danger that petitioner's properties sold at the public auction might be transferred or removed, as in fact four of said properties were already transferred. Thus, she deemed it necessary to grant respondents' request for a break open order to gain access to petitioner's premises. The dispositive portion of said Order reads:

WHEREFORE, premises considered, the Motion to Quash Writ of Execution [and] Notice of Sale/Levy on Execution Sale filed by the respondent(s) [are] hereby DENIED. In view of the refusal of the respondents' entry to its premises, Deputy Sheriff S. Diega of this Office is hereby ordered to break-open the entrance of the premises of respondent wherein the properties are located.

For this purpose, he may secure the assistance of the local police officer having jurisdiction over the locality where the said properties are located.

SO ORDERED.[26]

Undeterred, petitioner brought the matter to the CA through a Petition for Certiorari.

Proceedings before the Court of Appeals

Before the CA, petitioner imputed grave abuse of discretion amounting to lack or excess of jurisdiction upon Labor Arbiter Castillon for issuing the questioned Writ of Execution and the Order dated June 3, 2004. He maintained that since the December 21, 2001 Decision of Labor Arbiter Gan has already been reversed and set aside by the September 5, 2002 Resolution of the NLRC, the Writ of Execution issued by Labor Arbiter Castillon should have confined itself to the said NLRC Resolution which ordered respondents' reinstatement without backwages. Hence, when Labor Arbiter Castillon issued the writ commanding the Sheriff to satisfy the monetary award in the amount of P1,111,761.60, she acted with grave abuse of discretion amounting to lack or excess of jurisdiction. For the same reason, her issuance of the Order dated June 3, 2004 denying petitioner's Motion to Quash Writ of Execution with Prayer to Hold in Abeyance Auction Sale and granting respondents' Urgent Motion for Issuance of Break Open Order is likewise tainted with grave abuse of discretion. Aside from these, petitioner also questioned the conduct of the auction sale. He likewise claimed that he was denied due process because he was not given the opportunity to file a motion for reconsideration of the Order denying his Motion to Quash Writ of Execution considering that a break-open order was also made in the same Order. For their part, respondents posited that since they have already disposed of petitioner's levied properties, the petition has already become moot.

In a Decision[27] dated March 18, 2005, the CA quoted the June 3, 2004 Order of Labor Arbiter Castillon and agreed with her ratiocination that pursuant to Article 223 of the Labor Code, what is sought to be enforced by the subject Writ of Execution is the accrued salaries owing to respondents by reason of the reinstatement order of Labor Arbiter Gan. The CA also found as unmeritorious the issues raised by petitioner with regard to the conduct of the auction sale. Moreover, it did not give weight to petitioner's claim of lack of due process considering that a motion for reconsideration of a Writ of Execution is not an available remedy. Thus, the CA dismissed the petition. Petitioner's Motion for Reconsideration[28] suffered the same fate as it was also denied in a Resolution[29] dated June 16, 2005.

Hence, petitioner is now before this Court through this Petition for Review on Certiorari where he presents the following issues:

- Whether the provision of Article 223 of the Labor Code is applicable to this case x x x.
- Whether x x x the Decision dated March 18, 2005 and the Resolution dated June 16, 2005 of the Court of Appeals are contrary to law and jurisprudence[.]
- Whether x x x the award of accrued salaries has legal and factual bases[.][30]

The Parties' Arguments

Petitioner contends that the assailed Decision and Resolution of the CA are contrary to law and jurisprudence. This is because in upholding the issuance of the questioned Writ of Execution for the enforcement of respondents' accrued salaries, said Decision and Resolution, in effect, altered the NLRC Resolution which only decreed respondents' reinstatement without backwages. Moreover, he

posits that Article 223 of the Labor Code only applies when an employee has been illegally dismissed from work. And since in this case the NLRC ruled that respondents' failure to continue working for petitioner was not occasioned by termination, there is no illegal dismissal to speak of, hence, said provision of the Labor Code does not apply. Lastly, petitioner claims that the computation of respondents' accrued salaries in the total amount of P1,110,665.60 has no legal and factual bases since as repeatedly pointed out by him, the NLRC Resolution reversing the Labor Arbiter's Decision has already ordered respondents' reinstatement without backwages after it found that there was no illegal termination.

Respondents, on the other hand, maintain that the CA did not err in applying Article 223 of the Labor Code to the instant case. They thus contend that the computation of their accrued salaries covering the period during which they were supposed to have been reinstated or from January 1, 2002 to January 30, 2004, should be upheld since same merely applied Article 223. In sum, respondents believe that the assailed Decision and Resolution of the CA are in accord with law and jurisprudence.

Our Ruling

The petition is not meritorious.

The core issue to be resolved in this case is similar to the one determined in *Garcia v. Philippine Airlines Inc.*,^[31] that is, whether respondents may collect their wages during the period between the Labor Arbiter's order of reinstatement pending appeal and the NLRC Resolution overturning that of the Labor Arbiter.

In order to provide a thorough discussion of the present case, an overview of *Garcia* is proper.

In *Garcia*, petitioners therein were dismissed by Philippine Airlines Inc. (PAL) after they were allegedly caught in the act of sniffing shabu during a raid at the PAL Technical Center's Toolroom Section. They thus filed a complaint for illegal dismissal. In the meantime, PAL was placed under an interim rehabilitation receivership because it was then suffering from severe financial losses. Thereafter, the Labor Arbiter ruled in petitioners' favor and ordered PAL to immediately comply with the reinstatement aspect of the decision. PAL appealed to the NLRC. The NLRC reversed the Labor Arbiter's Decision and dismissed petitioners' complaint for lack of merit. As petitioners' Motion for Reconsideration thereto was likewise denied, the NLRC issued an Entry of Judgment. Notably, PAL's Interim Rehabilitation Receiver was replaced by a Permanent Rehabilitation Receiver during the pendency of its appeal with the NLRC. A writ of execution with respect to the reinstatement aspect of the Labor Arbiter's Decision was then issued and pursuant thereto, a Notice of Garnishment was likewise issued. To stop this, PAL filed an Urgent Petition for Injunction with the NLRC. While the NLRC suspended and referred the action to the rehabilitation receiver, it however, likewise affirmed the validity of the writ so that PAL appealed to the CA. Fortunately for PAL, the CA nullified the assailed NLRC Resolutions on the grounds that (1) a

subsequent finding of a valid dismissal removes the basis for the reinstatement aspect of a labor arbiter's decision and, (2) the impossibility to comply with the reinstatement order due to corporate rehabilitation justifies PAL's failure to exercise the options under Article 223 of the Labor Code. When the case reached this Court, we partially granted the petition in a Decision dated August 29, 2007 and effectively reinstated the NLRC Resolutions insofar as it suspended the proceedings. But as PAL later manifested that the rehabilitation proceedings have already been terminated, the court proceeded to determine the remaining issue, which is, as earlier stated, whether petitioners therein may collect their wages during the period between the Labor Arbiter's order of reinstatement pending appeal and the NLRC Resolution overturning that of the Labor Arbiter.

In resolving the case, the Court examined its conflicting rulings with respect to the application of paragraph 3 of Article 223 of the Labor Code, viz:

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.'

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.

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.

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.

x x x x'

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." (Emphasis, italics and underscoring in the original; citations omitted.)[32]

The Court then stressed that as opposed to the abovementioned *Genuino v. National Labor Relations Commission*,[33] the social justice principles of labor law outweigh or render inapplicable the civil law doctrine

of unjust enrichment. It then went on to examine the precarious implication of the "refund doctrine" as enunciated in *Genuino*, thus:

[T]he "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. [Underscoring in the original][34]

In view of this, the Court held this stance in *Genuino* as a stray posture and realigned the proper course of the prevailing doctrine on reinstatement pending appeal vis-à-vis the effect of a reversal on appeal, that is, 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 or tribunal. It likewise settled 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.

The discussion, however, did not stop there. The court went on to declare that 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. It then provided for the two-fold test in determining whether an employee is barred from recovering his accrued wages, to wit: (1) there must be actual delay or 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 *Garcia*, after it had been established that there was clearly a delay in the execution of the reinstatement order, the court proceeded to ascertain whether same was due to PAL's unjustified act or omission. In so doing, it upheld the CA's finding that the peculiar predicament of a corporate rehabilitation rendered it impossible for PAL, under the circumstances, to exercise its option under Article 223 of the Labor Code. The suspension of claims dictated by rehabilitation procedure therefore constitutes a justification for PAL's failure to exercise the alternative options of actual reinstatement or payroll reinstatement. Because of this, the Court held that PAL's obligation to pay the salaries pending appeal, as the normal effect of the non-exercise of the options, did not attach. Simply put, petitioners cannot anymore collect their accrued salaries during the period between the Labor Arbiter's order of reinstatement pending appeal and the NLRC Resolution overturning that of the Labor Arbiter because PAL's failure to actually reinstate them or effect payroll reinstatement was justified by the latter's situation of being under corporate rehabilitation.

Application of the Two-Fold Test to the present case

As previously mentioned, the vital question that needs to be answered in the case at bar is: Can respondents collect their accrued salaries for the period between the Labor Arbiter's order of reinstatement pending appeal and the NLRC Resolution overturning that of the Labor Arbiter? If in the affirmative, the assailed CA Decision and Resolution which affirmed the June 3, 2004 Order of Labor Arbiter Castillon denying the Motion to Quash Writ of Execution and ordering the break-open of petitioner's premises as well as the issuance of the subject Writ of Execution itself, have to be upheld. Otherwise, they need to be set aside as what petitioner would want us to do.

To come up with the answer to said question, we shall apply the two-fold test used in *Garcia*.

Was there an actual delay or was the order of reinstatement pending appeal executed prior to its reversal? As can be recalled, Labor Arbiter Gan issued his Decision ordering respondents' reinstatement on December 21, 2001, copy of which was allegedly received by petitioner on February 21, 2002.[35] On March 4, 2002, petitioner appealed said decision to the NLRC. A few days later or on March 11, 2002, respondents filed an Ex-Parte Motion for Issuance of Writ of Execution relative to the implementation of the reinstatement aspect of the decision.[36] On April 22, 2002, a Writ of Execution was issued by Labor Arbiter Gan. However, until the issuance of the September 5, 2002 NLRC Resolution overturning Labor Arbiter Gan's Decision, petitioner still failed to reinstate respondents or effect payroll reinstatement in accordance with Article 223 of the Labor Code. This was what actually prompted respondents to file an Ex-Parte Motion to Set Case for Conference with Motion wherein they also prayed for the issuance of a computation of the award of backwages and Alias Writ of Execution for its enforcement. It cannot therefore be denied that there was an actual delay in the execution of the reinstatement aspect of the Decision of Labor Arbiter Gan prior to the issuance of the NLRC Resolution overturning the same.

Now, the next question is: Was the delay not due to the employer's unjustified act or omission? Unlike in *Garcia* where PAL, as the employer, was then under corporate rehabilitation, Islriz Trading here did not undergo rehabilitation or was under any analogous situation which would justify petitioner's non-exercise of the options provided under Article 223 of the Labor Code. Notably, what petitioner gave as reason in not immediately effecting reinstatement after he was served with the Writ of Execution dated April 22, 2002 was that he would first refer the matter to his counsel as he could not effectively act on the order of execution without the latter's advice.[37] He gave his word that upon conferment with his lawyer, he will inform the Office of the Labor Arbiter of his action on the writ. Petitioner, however, without any satisfactory reason, failed to fulfill this promise and respondents remained to be not reinstated until the NLRC resolved petitioner's appeal. Evidently, the delay in the execution of respondents' reinstatement was due to petitioner's unjustified refusal to effect the same.

Hence, the conclusion is that respondents have the right to collect their accrued salaries during the period between the Labor Arbiter's Decision ordering their reinstatement pending appeal and the NLRC Resolution overturning the same because petitioner's failure to reinstate them either actually or through payroll was due to petitioner's unjustified refusal to effect reinstatement. In order to enforce this, Labor Arbiter Castillon thus correctly issued the Writ of Execution dated March 9, 2004 as well as the Order dated June 3, 2004 denying petitioner's Motion to Quash Writ of Execution and granting respondents' Urgent Motion for Issuance of Break-Open Order. Consequently, we find no error on the part of the CA in upholding these issuances and in dismissing the petition for certiorari before it.

Having settled this, we find it unnecessary to discuss further the issues raised by petitioner except the one with respect to the computation of respondents' accrued salaries.

Correctness of the Computation of

Respondents' Accrued Salaries

Petitioner contends that respondents' accrued salaries in the total amount of P1,110,665.60 have no factual and legal bases. This is because of his obstinate belief that the NLRC's reversal of Labor Arbiter Gan's Decision has effectively removed the basis for such award.

Although we do not agree with petitioner's line of reasoning, we, however, find incorrect the computation made by Fiscal Examiner Trinchera.

In *Kimberly Clark (Phils.), Inc., v. Facundo*,^[38] we held that:

[T]he Labor Arbiter's order of reinstatement was immediately executory. After receipt of the Labor Arbiter's decision ordering private respondents' reinstatement, petitioner 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. Failing to exercise the options in the alternative, petitioner must pay private respondents' salaries which automatically accrued from notice of the Labor Arbiter's order of reinstatement until its ultimate reversal of the NLRC.

x x x x

x x x [S]ince private respondent's reinstatement pending appeal was effective only until its reversal by the NLRC on April 28, 1999, they are no longer entitled to salaries from May 1, 1999 to March 15, 2001, as ordered by the Labor Arbiter. (Emphasis supplied)

To clarify, respondents are entitled to their accrued salaries only from the time petitioner received a copy of Labor Arbiter Gan's Decision declaring respondents' termination illegal and ordering their reinstatement up to the date of the NLRC Resolution overturning that of the Labor Arbiter. This is because it is only during said period that respondents are deemed to have been illegally dismissed and are entitled to reinstatement pursuant to Labor Arbiter Gan's Decision which was the one in effect at that time. Beyond that period, the NLRC Resolution declaring that there was no illegal dismissal is already the one prevailing. From such point, respondents' salaries did not accrue not only because there is no more illegal dismissal to speak of but also because respondents have not yet been actually reinstated and have not rendered services to petitioner.

Fiscal Examiner Trinchera's computation of respondents' accrued salaries covered the period January 1, 2002 to January 30, 2004. As there was no showing when petitioner actually received a copy of Labor Arbiter Gan's decision except for petitioner's self-serving claim that he received the same on February 21, 2002,^[39] we are at a loss as to how Fiscal Examiner Trinchera came up with January 1, 2002 as the reckoning point for computing respondents' accrued wages. We likewise wonder why it covered the period up to January 30, 2004 when on September 5, 2002, the NLRC already promulgated its Resolution reversing that of the Labor Arbiter. Hence, we deem it proper to remand the records of this case to the Labor Arbiter for the correct computation of respondents' accrued wages which shall commence from petitioner's date of receipt of the Labor Arbiter's Decision ordering reinstatement up to the date of the NLRC Resolution reversing the same. Considering, however, that petitioner's levied properties have already been awarded to respondents and as alleged by the latter, have also already been sold to third persons, respondents are ordered to make the proper restitution to petitioner for whatever excess amount received by them based on the correct computation.

As a final note, since it appears that petitioner still failed to reinstate respondents pursuant to the final and executory Resolution of the NLRC, respondents' proper recourse now is to move for the execution of the same. It is worthy to note that Labor Arbiter Castillon stated in her questioned Order of June 3, 2004 that the Writ of Execution she issued is for the sole purpose of enforcing the wages accruing to respondents by reason of Labor Arbiter Gan's order of reinstatement. Indeed, the last paragraph of said writ provides only for the enforcement of said monetary award and nothing on reinstatement, viz:

NOW THEREFORE, you are commanded to proceed to the premises of respondents Islriz Trading/Victor Hugo C. Lu located at Brgy. Luciano Trece Martires[,] Cavite City or wherever it may be found to collect the amount of One Million One Hundred Eleven Thousand Seven Hundred Sixty One pesos & 60/100 (P1,111,761.60) inclusive [of] P1,096.00 as execution fees and turn over the said amount to the NLRC Cashier for further disposition. In case you fail to collect the said amount in cash, you are directed to cause the satisfaction of the same out of respondents' chattels, movable/immovable properties not exempt from execution. You are directed to return these Writ One Hundred Eighty (180) days from receipt hereof, together with the report of compliance.

SO ORDERED.[40]

WHEREFORE, the Petition for Review on Certiorari is DENIED. The assailed March 18, 2005 Decision and June 16, 2005 Resolution of the Court of Appeals in CA-G.R. SP No. 84744 are AFFIRMED. The records of this case are ordered REMANDED to the Office of the Labor Arbiter for the correct computation of respondents' accrued salaries covering the date of petitioner's receipt of the December 21, 2001 Decision of the Labor Arbiter up to the issuance of the NLRC Resolution on September 5, 2002. Respondents are ordered to make the proper restitution to petitioner for whatever excess amount which may be

determined to have been received by them based on the correct computation.

SO ORDERED.

Corona, C.J., (Chairperson), Velasco, Jr., Leonardo-De Castro, and Perez, JJ., concur.

[1] CA rollo, pp. 165-181; penned by Associate Justice Vicente S. E. Veloso and concurred in by Associate Justices Roberto A. Barrios and Amelita G. Tolentino.

[2] Id. at 198-199.

[3] Rollo, p. 57-58.

[4] Id. at 59-65.

[5] Id. at 64-65.

[6] See petitioners' Notice of Appeal, Memorandum of Appeal and Joint Affidavit, id. at 66-71.

[7] Id. at 83-92.

[8] Id. at 91-92.

[9] Id. at 93-95.

[10] Id. at 96-98.

[11] Id. at 99.

[12] CA rollo, pp. 69-71.

[13] Rollo, pp. 80-82.

[14] Id. at 103.

[15] Id. at 100-102.

[16] Id. at 104-106.

[17] Id. at 107.

[18] Id. at 108-110.

[19] Id. at 111-112.

[20] Id. at 114.

[21] Urgent Motion for Issuance of Break Open Order, id. at 116-119.

[22] Id. at 120-124.

[23] Id. at 126-132.

[24] Labor Code, Article 223, par. 3 provides:

"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."

[25] 449 Phil 437, 446 (2003).

[26] Rollo, p. 132.

[27] CA rollo, pp. 165-181.

[28] Id. at 184-191.

[29] Id. at 198-199.

[30] Rollo, p. 13.

[31] G.R. No. 164856, January 20, 2009, 576 SCRA 479.

[32] Id. at 488-490.

[33] G.R. Nos. 142732-33 & 142753-54, December 4, 2007, 539 SCRA 342.

[34] Garcia v. Philippine Airlines Inc., supra note 31 at 491-492.

[35] As alleged by petitioners in their Notice of Appeal, Memorandum of Appeal and Joint Affidavit, rollo, pp. 66-71.

[36] Please see page 2 of the Writ of Execution dated April 22, 2002, id. at 80-82.

[37] See Sheriff's Return, id. at 223.

[38] G.R. No. 144885 (Unsigned Resolution), July 12, 2006.

[39] Supra note 30.

[40] Rollo, p. 106.

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