

MT. CARMEL COLLEGE, PETITIONER, VS. JOCELYN RESUENA, EDDIE VILLALON, SYLVIA SEDAYON AND ZONSAYDA EMNACE, RESPONDENTS.*G.R. NO. 173076. October 10, 2007*

Ponente: CHICO-NAZARIO, J.

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In this Petition for Review on Certiorari under Rule 45 of the Revised Rules of Court, petitioner seeks the reversal of the Decision[1] dated 2 June 2006 of the Court of Appeals in CA-G.R. CEB-SP No. 01615 entitled, *Mt. Carmel College v. National Labor Relations Commission, Labor Arbiter Phibun D. Pura, Jocelyn Resuena, et al.* Petitioner seeks remedy from this Court for an alleged illegal execution of the Decision[2] dated 30 October 2001 by the National Labor Relations Commission (NLRC) in NLRC CASE No. V-000176-2000 (RAB CASE Nos. 06-06-10393-98; 06-06-10394-98; 06-06-10395-98; 06-06-10414-98) as affirmed by the Court of Appeals in CA-G.R. SP No. 80639 in a Decision[3] dated 17 March 2004, insisting it was not in accord with the dispositive portion thereof. Petitioner is not appealing the judgment itself but the manner of execution of the same.

The following are the factual antecedents of the instant Petition:

Petitioner Mt. Carmel College is a private educational institution. It is administered by the Carmelite Fathers at New Escalante, Negros Occidental. Respondents were employees of petitioner, namely: Jocelyn Resuena (Accounting Clerk), Eddie Villalon (Elementary Department Principal); Sylvia Sedayon (Treasurer), and Zonsayda Emnace (Secretary to the Director).

On 21 November 1997, respondents, together with several faculty members, non-academic personnel, and other students, participated in a protest action against petitioner. Thereafter, petitioner's Director, Rev. Fr. Modesto E. Malandac, issued a Memorandum to each of the respondents. The Memorandum directed respondents to explain in writing why they should not be dismissed for loss of trust and confidence for joining the protest action against the school administration. Petitioner maintained that respondents were occupying positions of highly confidential nature. After a hearing conducted by petitioner's Fact-Finding Committee and submission of its Report on 25 April 1998, recommending dismissal or suspension of respondents, petitioner issued written notices of termination to respondents on 7 May 1998. Respondents were terminated by petitioner on 15 May 1998.

Separate complaints were filed by each of the four respondents against petitioner before Regional Arbitration Branch VI of the NLRC in Bacolod City. Respondents charged petitioner with illegal dismissal and claimed 13th month pay, separation pay, damages and attorney's fees. The cases were docketed as RAB Cases No. 06-06-10393-98, 06-06-10394-98, 06-06-10395-98, and 06-06-10414-98. All four cases were consolidated, and Labor Arbiter Ray T. Drilon thereafter issued a Decision[4] dated 25 May 1999 affirming the validity of respondents' termination by petitioner on the ground of loss of trust and confidence. Although the Decision found respondents to have been legally dismissed, as equitable relief, however, they were awarded separation pay computed at one month pay for every year of service,[5] their proportionate 13th month pay, and attorney's

fees. Their claims for moral and exemplary damages were denied. In issuing the aforesaid Decision, the Labor Arbiter ruled:

WHEREFORE, premises considered, judgment is hereby rendered ordering [herein petitioner] Mount Carmel College represented by Fr. Modesto Malandac to pay [herein respondents] Jocelyn Resuena, Zonsayda Emnace, Eddie Villalon and Sylvia Sedayon, their respective 13[th] month pay, separation pay and attorney's fee in the total sum of THREE HUNDRED THIRTY-FOUR THOUSAND EIGHT HUNDRED SEVENTY-FIVE PESOS AND 67/100 (P334,875.47) to be deposited with this office within ten (10) days from receipt of this decision.

The complaint for moral and exemplary damages is hereby dismissed for lack of legal basis.

All other claims are hereby dismissed for lack of merit.[6]

On 9 September 1999, Labor Arbiter Drilon issued to the parties a Notice of Judgment/Decision of his 25 May 1999 Decision. The notice indicated that a "decision of the Labor Arbiter reinstating a dismissed or separated employee, in so far 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 employee (sic) merely reinstated in the payroll." [7]

In the meantime, petitioner appealed to the NLRC Fourth Division in Cebu City, seeking the reversal of the portion of the Labor Arbiter's Decision dated 25 May 1999 awarding separation pay to respondents. The NLRC dismissed the appeal in its Decision dated 30 October 2001. In the same Decision dismissing the appeal, the NLRC reversed and modified the 25 May 1999 Decision of the Labor Arbiter, and declared the termination of respondents to be illegal. It ordered the reinstatement of respondents, with payment of backwages or payment of separation pay in lieu thereof. The pertinent portion of the 30 October 2001 NLRC Decision reads:

We rule that complainants were illegally dismissed and must therefore be ordered reinstated with payment of backwages from the time they were illegally dismissed up to the time of their actual reinstatement.

All other claims are hereby dismissed for lack of merit.

WHEREFORE, premises considered the instant appeal is hereby DISMISSED for lack of merit and the appealed decision is hereby AFFIRMED with modification ordering the [herein petitioner] the payment of the backwages of the [herein respondents] from May 15, 1998 up to May 25, 1999, further directing the reinstatement of the [respondents] to their original positions without loss of seniority or in lieu thereof the payment of their separation pay as computed in the appealed decision.[8]

Petitioner filed a Motion for Reconsideration of the 30 October 2001 Decision of the NLRC. The said Motion was denied in the 19 June 2003 Resolution of the NLRC.

The case was elevated to the Court of Appeals via a Special Civil Action for Certiorari and Prohibition, docketed as CA-G.R. SP No. 80639 where petitioner assailed the aforementioned NLRC Decision dated 30 October 2001 and Resolution dated 19 June 2003, arguing that there is more than enough basis for loss of trust and confidence as ground for dismissing respondents. It also reiterated compliance with the twin requirements of notice and hearing. The Court of Appeals denied the petition in a Decision promulgated on 17 March 2004, ruling thus:

Consequently, we find no grave abuse of discretion committed by the NLRC in ruling that [herein respondents] have been illegally dismissed. Likewise, said [NLRC] correctly held that even if such participation of [respondents] in the protest picket is rather improper under the circumstances or disappointing to the School Administrator who had rightly expected them to take the side of the administration or at least stayed neutral on the demand for ouster of Fr. Malandac and Barairo, dismissal is definitely too harsh where a less punitive action such as reprimand or disciplinary action would have been sufficient. Considering the long years of

faithful service of [respondents] in the School without previous record of misconduct, as duly noted by the NLRC in its decision, their termination on the basis of alleged loss of confidence by taking part in an otherwise legitimate and constitutionally-protected right to free speech and peaceful assembly, is certainly illegal and unjustified.

x x x x

Having been illegally dismissed, [respondents] are entitled to back wages from the time of their termination until reinstatement, and if reinstatement is no longer possible, the grant of separation pay equivalent to one (1) month for every year of service. However, in this case since the Labor Arbiter did not order reinstatement, the NLRC correctly excluded the period of the appeal in the computation of back wages due to [respondents].

Finally, on the prayer for injunctive relief sought by petitioner on the ground that [public respondent] Labor Arbiter exceeded his jurisdiction in issuing the writ of execution despite the fact that his decision did not order reinstatement and that he is bereft of authority to implement the decision of the NLRC (Fourth Division).

x x x x

Considering that there is already an entry of judgment on the Decision dated October 30, 2001, and in view of Our disposition of this petition, we find no more obstacle for the enforcement of the said judgment even pending appeal, in accordance with Sections 1 and 2, Rule VIII of the NLRC Rules of Procedure, as amended, as well as Sections 2, 4 and 6, Rule III of the NLRC Manual on Execution of Judgment.

x x x x

WHEREFORE, premises considered, the present petition is hereby DENIED DUE COURSE and accordingly DISMISSED for lack of merit. The assailed Decision and Resolution are AFFIRMED.[9]

No Motion for Reconsideration of the afore-quoted Court of Appeals Decision in CA-G.R. SP No. 80639 was filed and it became final and executory on 14 April 2004.

At about the same time as the foregoing developments in CA-G.R. SP No. 80639, Labor Arbiter Phibun D. Pura issued an Order on 19 May 2003 opining on the self-executory nature of a reinstatement order:

To be sure the Court has not been consistent in its interpretation of Art. 223. The nagging issue has always been whether the reinstatement order is self-executory. Citing the divergent views of the court beginning with *Inciong v. NLRC* followed by the deviation in interpretation in *Maranaw Hotel Corporation (Century Park Sheraton Manila) v. NLRC*, as reiterated and adopted in *Archilles Manufacturing Corporation v. NLRC* and *Purificacion Ram v. NLRC*, the Court in the 1997 Pioneer case has laid down the doctrine that henceforth an Order or award for reinstatement is self-executory, meaning that it does not require a writ of execution, much less a motion for its issuance, as maintained by petitioner. x x x.

Successive writs of execution pertaining to the backwages and accrued salaries of the respondents were issued by Labor Arbiter Pura on these dates: 9 June 2003,[10] 10 December 2003,[11] and 20 January 2004.[12]

The first writ of execution, issued on 9 June 2003, directed the sheriff to collect from petitioner, the amount of P503,028.05 representing backwages from 15 May 1998 to 25 May 1999. Based on the Sheriff's Report dated 25 June 2003, reinstatement had not been effected. There was a Notice of Garnishment issued to the Equitable-PCI Bank Escalante Branch. Labor Arbiter Pura ordered the release of the garnished amount of P508,168.05 with the said bank for deposit to the Cashier of NLRC Regional Arbitration Branch VI in Bacolod City. Petitioner moved to quash the Writ of Execution dated 9 June 2003. It was denied.

By 4 December 2003, the NLRC entered in its Book of Entries of Judgment its Decision dated 30 October 2001. The records of the case were endorsed back to NLRC Regional Arbitration Branch VI for the execution of its final

and executory decision, as no restraining order was issued by the Court of Appeals.

After an exchange of pleadings, respondents filed an Ex-Parte Motion for Issuance of Writ of Execution with the Labor Arbiter considering that the Entry of Judgment was already issued by the NLRC. On 10 December 2003, the Labor Arbiter granted the Motion and issued the second Writ of Execution. On motion of respondents, the Labor Arbiter ordered the release to them of the garnished amount of P503,028.05 deposited with the Cashier of NLRC Regional Arbitration Branch VI.

However, the foregoing amount was considered to be only a partial payment of the monetary awards due the respondents and the unpaid balance thereof continued to grow to P1,307,806.50. Respondents thus filed a motion for partial writ of execution, which the Labor Arbiter granted by issuing the third Writ of Execution on 20 January 2004.[13] Under the foregoing writs of execution, the aggregate amount of P1,736,592.08[14] was garnished by Bailiff/Acting Sheriff Romeo D. Pasustento, representing respondents' accrued salaries, backwages, attorney's fees and sheriff's fees computed from the promulgation of the NLRC Decision 30 October 2001.

Respondents filed on 14 July 2004 yet another Motion to Issue a Writ of Execution to collect backwages from 1 January 2004 to 30 June 2004. Petitioner opposed the motion, but the Motion to Issue a Writ of Execution was granted.

On 31 January 2005, Labor Arbiter Pura issued an Order[15] adopting the computation of the Fiscal Examiner of NLRC Regional Arbitration Branch VI and issuing a writ of execution to enforce the NLRC Decision dated 30 October 2001. The dispositive portion of the said Order reads:

In light of the foregoing, we have no choice but to adopt the computation of the RAB Fiscal Examiner, hereto attached and forming part of the record of these cases and conformably thereto, we grant the Motion to Issue Writ of Execution on backwages for the period stated in this computation, taking into consideration the grant of differentials as there are benefits which accrued to the [herein respondents] and which they should have enjoyed had they been employed and/or reinstated, as the case may be, and such other amount as may accrue until actually reinstated or in lieu of reinstatement, to pay [respondents] separation pay to be computed at one (1) month salary for every year of service in addition to backwages the formula adopted by the Labor Arbiter in the Decision dated May 25, 1999, page 7, paragraph 1.

Let therefore a Writ of Execution be, as it is hereby issued to enforce judgment in the above entitled cases.[16]

On 8 February 2005, petitioner filed a Motion for Reconsideration of the foregoing Order contending that the judgment of the NLRC mandated the payment of separation pay as computed in the appealed decision. Respondents likewise filed a Manifestation and Motion to include the month of November 2004 in the computation. In an Order dated 10 February 2005, the Labor Arbiter denied the petitioner's Motion for Reconsideration. On 22 February 2005, he issued an Alias Writ of Execution[17] for the collection from petitioner of the amount of P1,131,035.00 representing respondents' backwages, separation pay, and attorney's fees. Petitioner filed a Motion to Quash the Alias Writ of Execution on 17 March 2005.[18]

On 15 April 2005, the Labor Arbiter issued an Order where it found no compelling reason to warrant the grant of the Motion to Quash the Alias Writ of Execution. The afore-stated Order thus reads:

WHEREFORE, for lack of merit the Motion to Quash the Alias Writ dated March 17, 2005 is denied. [Respondents'] Motion to Include February and March 2005 in the Computation of wages is hereby GRANTED. The entry of appearance of the collaborating counsel is duly noted.[19]

From the said Order of the Labor Arbiter, petitioner filed with the NLRC an appeal with an application for issuance of a writ of preliminary injunction on the execution of judgment, docketed as NLRC Case No.

V-000377-05. Petitioner assailed the 15 April 2005 Order of the Labor Arbiter averring that the latter seriously committed errors when he ordered the payment and garnishment of backwages beyond the period 15 May 1998 to 25 May 1999. The NLRC dismissed the petitioner's appeal in a Resolution[20] dated 15 August 2005 for lack of merit. Petitioner filed a Motion for Reconsideration but it was denied by the NLRC in a Resolution dated 30 November 2005, disposed of as follows:

WHEREFORE, premises considered, the appeal of respondents is hereby DISMISSED for lack of merit. The 15 April 2005 Order of Labor Arbiter Phibun Pura is AFFIRMED.[21]

From the foregoing, petitioner filed with the Court of Appeals a Special Civil Action for Certiorari and Prohibition, docketed as CA-G.R. CEB-SP No. 01615, praying for the setting aside and nullification of the Resolutions dated 15 August 2005 and 30 November 2005 of the NLRC in NLRC Case No. V-000377-05. Petitioner contended that the NLRC acted with grave abuse of discretion when it denied its appeal and motion for reconsideration and in not ruling that there was already satisfaction of judgment. The crux of petitioner's case, as succinctly worded by the Court of Appeals in CA-G.R. CEB-SP No. 01615:

[P]etitioner seeks to annul and set aside the resolutions dated August 15, 2005 and November 30, 2005 of the respondent NLRC in NLRC Case No. V-000377-05 when the latter refuses to invalidate the various writs of executions and to refund petitioner of whatever excess there might be on the theory that the execution done by the respondent Labor Arbiter was illegal and in fact goes beyond what is stated in the decision dated October 30, 2001 of the respondent NLRC in NLRC Case No. V-000176-2000.[22]

The Court of Appeals eventually dismissed CA-G.R. CEB-SP No. 01615, ruling as follows:

Thus, petitioner's avowal that their liability for private respondents' backwages is limited from May 15, 1998 up to May 25, 1999 is untenable on these grounds:

First, there is no showing, in the case at bench, that petitioner exercised its option to reinstate private respondents to their former position or to grant them separation pay. Accordingly, backwages have to be granted to private respondents until their reinstatement to their former position is effected or upon petitioner's payment of separation pay to private respondents if reinstatement is no longer feasible; and

Second, the decision dated March 17, 2004 of the 17[th] Division of the Court of Appeals in CA-G.R. SP No. 80639 acquiesced the propriety of the issuance of the writs of execution by the respondent labor arbiter on June 9, 2003, December 10, 2003 and January 30, 2004. On April 14, 2004, the said decision which sanctioned the payment of backwages even beyond May 25, 1999, became final and executory x x x.

x x x x

In light of the foregoing disquisition, we hereby find public respondent NLRC to have acted accordingly and without grave abuse of discretion when it issued the questioned Resolutions dated August 15, 2005 and November 30, 2005, respectively. Grave abuse of discretion means such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or, in other words where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law. It is not sufficient that a tribunal, in the exercise of power, abused its discretion; such abuse must be grave.

WHEREFORE, in view of the foregoing, the present petition is hereby DISMISSED and the assailed Resolutions dated August 15, 2005 and November 30, 2005, respectively, issued by the respondent NLRC in NLRC Case No. V-000377-05 are hereby AFFIRMED.[23]

Hence, petitioner filed the instant Petition for Review on Certiorari, raising the following issues:

I.

THE HONORABLE COURT OF APPEALS ERRED IN UPHOLDING THE LABOR ARBITER AND THE NLRC THAT THE AWARD OF BACKWAGES GOES BEYOND THE PERIOD FROM 15 MAY 1998 UP TO 25 MAY 1999 ON THE SUPPOSITION THAT REINSTATEMENT IS SELF-EXECUTORY AND DOES NOT NEED A WRIT OF EXECUTION FOR ITS ENFORCEMENT.

II.

THE HONORABLE COURT OF APPEALS ERRED IN NOT FINDING THAT THE CONTINUING GRANT AND AWARD OF BACKWAGES UP TO THE PRESENT IS CONTRARY TO LAW AND JURISPRUDENCE AS LAID DOWN BY THIS HONORABLE SUPREME COURT.

Petitioner prays that this Court render judgment (a) annulling and setting aside the assailed Decision on 02 June 2006 of the Court of Appeals in CA-G.R. CEB-SP No. 01615 and all its orders and issuances; (b) ordering that backwages be computed and executed corresponding only to the period from 15 May 1998 to 25 May 1999; (c) ordering that separation pay be computed based on the computation as originally submitted by the Labor Arbiter, P344,875.47, which corresponds to the date of respondents' employment until 15 May 1998; (d) that no other award except for backwages for the period 15 May 1998 to 25 May 1999 and separation pay amounting to P344,875.47 shall be paid by petitioner; and (e) that the respondents be ordered to refund and pay the alleged excess in the amounts garnished by virtue of the Writs of Execution dated 9 June 2003, 10 December 2003, and 30 January 2004.

In sum, the resolution of this petition hinges on the following issues: (1) whether reinstatement in the instant case is self-executory and does not need a writ of execution for its enforcement; and (2) whether the continuing award of backwages is proper.

Petitioner insists that what is at issue is the manner of execution of the NLRC Decision dated 30 October 2001 in NLRC CASE No. V-000176-2000 (RAB CASE Nos. 06-06-10393-98; 06-06-10394-98; 06-06-10395-98; 06-06-10414-98), as affirmed by the Decision dated 17 March 2004 of the Court of Appeals in CA-G.R. No. 80639.

In ruling on the consolidated complaints filed by the four respondents, Labor Arbiter Drilon found that they were not illegally dismissed but ordered that they be awarded 13[th] month pay, separation pay and attorney's fees in the amount of P334,875.47. Upon appeal to the NLRC, the NLRC reversed the findings of the Labor Arbiter ruling that the termination of respondents was illegal and ordering the payment of backwages of respondents from 15 May 1998 up to 25 May 1999. It further directed the reinstatement of respondents or payment of separation pay, with backwages. This was affirmed by the Court of Appeals.

While petitioner concedes that the case pertaining to the complaints for illegal dismissal filed by the respondents before the Labor Arbiter had been resolved with finality by the Court of Appeals in CA-G.R. No. 80639, no other remedy having been taken therefrom, it however assails the correctness and validity of the execution of the judgment therein. Petitioner avers that the Court of Appeals erred in upholding the Labor Arbiter and the NLRC that the award of backwages goes beyond the period 15 May 1998 to 25 May 1999 on the supposition that reinstatement is self-executory and does not need a writ of execution for its enforcement. Petitioner postulates that the Labor Arbiter went beyond the terms of the NLRC Decision, as affirmed by the Court of Appeals, and erroneously used as bases inapplicable law[24] and jurisprudence[25] in the execution of the same. Petitioner contends that the Labor Arbiter's reliance on *Pioneer Texturizing Corp. v. National Labor Relations Commission*[26] is misplaced, for it applied Article 223 of the Labor Code [27] since reinstatement was ordered at the Labor Arbiter's level while in the instant case, reinstatement was ordered upon appeal to the NLRC.

Petitioner argues that the relevant statutory and regulatory provisions herein are Article 224 of the Labor Code,[28] and Rule III of the NLRC Manual for Execution of Judgment,[29] given that there was no order of reinstatement at the Labor Arbiter level but only at the NLRC level. Petitioner insists that, applying Article 224 of the Labor Code in the instant case, any reinstatement aspect of the NLRC Decision, as affirmed by the Court of Appeals, should have been done through the issuance of a Writ of Execution as it is no longer self-executory. It furthermore contends that it was impossible to reinstate respondents, whether by way of an immediate execution or by way of a self-executory nature, since there was nothing to execute pending appeal because there was no order for reinstatement.

Petitioner vehemently raises the argument that the award of backwages subject to execution is limited to the period prior to the appeal and does not include the period during the pendency of the appeal, on the contention that reinstatement during appeal is warranted only when the Labor Arbiter rules that the dismissed employee should be reinstated. In support of its foregoing argument, petitioner invokes *Filflex Industrial & Manufacturing Corporation v. National Labor Relations Commission*[30] where this Court ruled:

In other words, reinstatement during appeal is warranted only when the labor arbiter (LA) himself rules that the dismissed employee should be reinstated. In the present case, neither the dispositive portion nor the text of the labor arbiter's decision ordered the reinstatement of private respondent. Further, the back wages granted to private respondent were specifically limited to the period prior to the filing of the appeal with Respondent NLRC. In fact, the LA's decision ordered her separation from service for the parties' "mutual advantage and most importantly to physical and health welfare of the complainant." Hence, it is an error and an abuse of discretion for the NLRC to hold that the award of limited back wages, by implication, included an order for private respondent's reinstatement.

An order for reinstatement must be specifically declared and cannot be presumed; like back wages, it is a separate and distinct relief given to an illegally dismissed employee. There being no specific order for reinstatement and the order being for complainant's separation, there can be no basis for the award of salaries/back wages during the pendency of appeal.

Petitioner's reliance on *Filflex* is misplaced and inapplicable to the case at bar. Indeed in *Filflex*, this Court ruled that the award of backwages is limited to the period prior to the filing of the appeal with the NLRC. This Court had declared in the aforesaid case that reinstatement during appeal is warranted only when the Labor Arbiter himself rules that the dismissed employee should be reinstated. But this was precisely because on appeal to the NLRC, it found that there was no illegal dismissal; thus, neither reinstatement nor backwages may be awarded. In fact, *Filflex* deleted the award of backwages granted during appeal, reiterating that an award of backwages by the NLRC during the period of appeal is totally inconsistent with its finding of a valid dismissal. In the instant petition, the NLRC Decision dated 30 October 2001 finding the termination of respondents illegal, had the effect of reversing Labor Arbiter Drilon's Decision dated 25 May 1999.

This Court sees no cogent reason as to the relevance of a discussion on whether or not reinstatement is self-executory. However, since petitioner raised this issue, this Court has opted to discuss it. Verily, Article 223 of the Labor Code is not applicable in the instant case. The said provision stipulates that 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.

Petitioner contends that the statutory provision applicable is Article 224 of the Labor Code, as well as Rule III, Section 2(b) of the NLRC Manual on Execution of Judgment, because the case was decided on appeal. Furthermore, it is a decision which is of a final and executory nature. The provisions invoked by petitioner reads:

Art. 224. Execution of decisions, orders or awards. -- (a) The Secretary of Labor and Employment or any

Regional Director, the Commission or any Labor Arbiter, or med-arbiter or voluntary arbitrator may, motu proprio or on motion of any interested party, issue a writ of execution on a judgment within five (5) years from the date it becomes final and executory x x x.[31]

If the execution be for the reinstatement of any person to any position, office or employment, such writ shall be served by the sheriff upon the losing party or upon any other person required by law to obey the same, and such party or person may be punished for contempt if he disobeys such decisions, order for reinstatement.[32]

The records of the case indicate that when Labor Arbiter Drilon issued its 25 May 1999 Decision, there was no order of reinstatement yet although the dispositive portion of the 31 January 2005 Order issued by Labor Arbiter Pura already provided for reinstatement or payment of separation pay, to wit:

In light of the foregoing, we have no choice but to adopt the computation of the RAB Fiscal Examiner, hereto attached and forming part of the record of these cases and conformably thereto, we grant the Motion to Issue Writ of Execution on backwages for the period stated in this computation, taking into consideration the grant of differentials as there are benefits which accrued to the complainants and which they should have enjoyed had they been employed and/or reinstated, as the case may be, and such other amount as may accrue until actually reinstated or in lieu of reinstatement, to pay complainants separation pay to be computed at one (1) month salary for every year of service in addition to backwages the formula adopted by the Labor Arbiter in the Decision dated May 25, 1999, page 7, paragraph 1.

Let therefore a Writ of Execution be, as it is hereby issued to enforce judgment in the above entitled cases.[33]

Art. 223 of the Labor Code provides that reinstatement is immediately executory even pending appeal only when the Labor Arbiter himself ordered the reinstatement. In this case, the original Decision of Labor Arbiter Drilon did not order reinstatement. Reinstatement in this case was actually ordered by the NLRC, affirmed by the Court of Appeals. The order of Labor Arbiter Pura on 31 January 2005 directing reinstatement was issued after the Court of Appeals Decision dated 17 March 2004 which affirmed the NLRC's order of reinstatement. Thus, Art. 223 finds no application in the instant case. Considering that the order for reinstatement was first decided upon appeal to the NLRC and affirmed with finality by the Court of Appeals in CA-G.R. SP 80369 on 17 March 2004, petitioner rightly invoked Art. 224 of the Labor Code. As contemplated by Article 224 of the Labor Code, the Secretary of Labor and Employment or any Regional Director, the Commission or any Labor Arbiter, or med-arbiter or voluntary arbitrator may, motu proprio or on motion of any interested party, issue a writ of execution on a judgment within five (5) years from the date it becomes final and executory. Consequently, under Rule III of the NLRC Manual on the Execution of Judgment, it is provided that if the execution be for the reinstatement of any person to a position, an office or an employment, such writ shall be served by the sheriff upon the losing party or upon any other person required by law to obey the same, and such party or person may be punished for contempt if he disobeys such decision or order for reinstatement.[34]

However, as we can glean from the succeeding discussion, the above findings will not affect the award of backwages for the period beyond 25 May 1999.

Anent the second issue, petitioner contends that the 25 May 1999 Decision of Labor Arbiter Drilon did not order the reinstatement of respondents. Petitioner posits that since there was no finding of illegal dismissal at the Labor Arbiter's level, then it follows that there was no reinstatement aspect, and its liability for backwages is limited to the period from 15 May 1998 up to 25 May 1999, i.e., from dismissal to promulgation of the Labor Arbiter's Decision only, as allegedly determined by the NLRC in its Decision dated 30 October 2001. It argues that while the said NLRC Decision awarded backwages from 15 May 1998 to 25 May 1999 only, the Writs of Execution issued pursuant thereto ordered the payment of backwages way beyond the period stated in the Decision[35] it is supposed to execute.

Petitioner's argument is absurd. *Abbott v. National Labor Relations Commission*,^[36] as cited by petitioner, declared that there exists a big difference when what is sought to be reviewed is the manner of execution of a decision and not the decision itself. "While it is true that the decision itself has become final and executory and so can no longer be challenged, there is no question that it must be enforced in accordance with its terms and conditions. Any deviation therefrom can be the subject of a proper appeal."^[37] In the instant case, however, the manner of execution falls squarely within the terms of the Decision it seeks to implement.

The 30 October 2001 NLRC Decision ruled as follows:

We rule that complainants were illegally dismissed and must therefore be ordered reinstated with payment of backwages from the time they were illegally dismissed up to the time of their actual reinstatement.

All other claims are hereby dismissed for lack of merit.

WHEREFORE, premises considered the instant appeal is hereby DISMISSED for lack of merit and the appealed decision is hereby AFFIRMED with modification ordering the respondents the payment of the backwages of the complainants from May 15, 1998 up to May 25, 1999, further directing the reinstatement of the complainants to their original positions without loss of seniority or in lieu thereof the payment of their separation pay as computed in the appealed decision.^[38]

When the afore-quoted NLRC Decision was appealed to the Court of Appeals in CA-G.R. SP No. 80639, there seemed to be a contradiction between the body and the fallo of the appellate court's Decision dated 17 March 2004. Petitioner cites the following from the text of the Court of Appeals Decision:

However, in this case since the Labor Arbiter did not order reinstatement, the NLRC correctly excluded the period of the appeal in the computation of back wages due to private respondents.^[39]

The dispositive portion of the same Decision, however, concludes:

WHEREFORE, premises considered, the present petition is hereby DENIED DUE COURSE and accordingly DISMISSED for lack of merit. The assailed Decision and Resolution are AFFIRMED.^[40]

The general rule is that where there is conflict between the dispositive portion or the fallo and the body of the decision, the fallo controls. This rule rests on the theory that the fallo is the final order while the opinion in the body is merely a statement ordering nothing.^[41] Clearly, the award of backwages to respondents does not merely cover the period from 15 May 1998 up to 25 May 1999 alone.^[42] The findings of the NLRC, which were affirmed with finality in CA-G.R. SP No. 80639, and subject of execution in the instant petition, pronounced:

We rule that [respondents] were illegally dismissed and must therefore be ordered reinstated with payment of backwages from the time they were illegally dismissed up to the time of their actual reinstatement.

All other claims are hereby dismissed for lack of merit.

WHEREFORE, premises considered the instant appeal is hereby DISMISSED for lack of merit and the appealed decision is hereby AFFIRMED with modification ordering the [petitioner] payment of the backwages of the [respondents] from May 15, 1998 up to May 25, 1999, further directing the reinstatement of the [respondents] to their original positions without loss of seniority or in lieu thereof the payment of their separation pay as computed in the appealed decision.^[43]

The above ruling of the NLRC in its Decision dated 30 October 2001 had the effect of reversing and modifying the findings of the Labor Arbiter. Under Article 218(c) of the Labor Code, the Commission is empowered to "correct, amend, or waive any error, defect or irregularity whether in substance or form," in the exercise of its appellate jurisdiction.^[44] The dispositive portion of the Labor Arbiter's Decision as worded is clear and needs no

further interpretation. The NLRC found respondents to have been illegally dismissed by petitioner, and ordered reinstatement and payment of backwages. Additionally, it stated that where reinstatement is not possible, separation pay as computed in the appealed decision should be awarded to respondents. Petitioner interprets the dispositive portion of the NLRC Decision to mean that it is ordered to pay respondents backwages from 15 May 1998 to 25 May 1999 only. Petitioner seems to have missed that the aforestated NLRC Decision also directed it to reinstate respondents, or in lieu thereof, pay separation pay. This, petitioner failed to do. Petitioner did not exercise the option of either reinstatement or paying the separation pay of respondents.

Backwages are to be computed from the time of illegal dismissal until reinstatement or upon petitioner's payment of separation pay to respondents if reinstatement is no longer possible. Article 279 of the Labor Code, as amended, states:

Art. 279. Security of Tenure. – x x x

In cases of regular employment the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

Thus, an illegally dismissed employee is entitled to two reliefs: backwages and reinstatement. The two reliefs provided are separate and distinct. In instances where reinstatement is no longer feasible because of strained relations between the employee and the employer, separation pay is granted. In effect, an illegally dismissed employee is entitled to either reinstatement, if viable, or separation pay if reinstatement is no longer viable, and backwages.[45]

The normal consequences of respondents' illegal dismissal, then, are reinstatement without loss of seniority rights, and payment of backwages computed from the time compensation was withheld up to the date of actual reinstatement. Where reinstatement is no longer viable as an option, separation pay equivalent to one (1) month salary for every year of service should be awarded as an alternative.[46] The payment of separation pay is in addition to payment of backwages.

Concomitantly, it is evident that respondents' backwages should not be limited to the period from 15 May 1998 to 25 May 1999. The backwages due respondents must be computed from the time they were unjustly dismissed until their actual reinstatement to their former position or upon petitioner's payment of separation pay to them if reinstatement is no longer feasible. Thus, until petitioner actually implements the reinstatement aspect of the NLRC Decision dated 30 October 2001, as affirmed in the Court of Appeals Decision dated 17 March 2004 in CA-G.R. SP No. 80639, its obligation to respondents, insofar as accrued backwages and other benefits are concerned, continues to accumulate.

This Court takes this occasion to reiterate that execution is the final stage of litigation, the end of the suit. It can not and should not be frustrated except for serious reasons demanded by justice and equity.[47] "Litigation must end sometime and somewhere. An effective and efficient administration of justice requires that, once a judgment has become final, the winning party be not, through a mere subterfuge, be deprived of the fruits of the verdicts. Courts must, therefore, guard against any scheme calculated to bring about that result. Constituted as they are to put an end to controversies, courts should frown upon any attempt to prolong them." [48]

WHEREFORE, the instant petition is dismissed. The Decision dated 2 June 2006 of the Court of Appeals in CA-G.R. CEB-SP No. 01615 is **AFFIRMED**. Petitioner is **ORDERED** to (1) reinstate respondents to their original positions without loss of seniority rights, with payment of (a) backwages computed from 15 May 1998, the time

compensation of respondents was withheld from them when they were unjustly terminated, up to the time of reinstatement; and (b) accrued 13th month pay for the same period; OR in lieu of reinstatement, (2) pay respondents (a) separation pay, in the amount equivalent to one (1) month pay for every year of service; and (b) backwages, computed from 15 May 1998, the time compensation of respondents was withheld from them when they were unjustly terminated, up to the time of payment thereof; and (c) the accrued 13th month pay for the same period. For this purpose, the records of this case are hereby REMANDED to the Labor Arbiter for proper computation of the subject money claims as discussed above. Costs against petitioner.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Nachura, and Reyes, JJ., concur.

[1] Penned by Associate Justice Isaias P. Dicdican with Associate Justices Ramon M. Bato, Jr. and Apolinario D. Bruselas, Jr., concurring; rollo, pp. 35-46.

[2] Penned by Commissioner Edgardo M. Enerlan with Presiding Commissioner Irene E. Ceniza and Commissioner Oscar S. Uy, concurring; rollo, pp. 59-65.

[3] Penned by Associate Justice Martin S. Villarama, Jr. with Associate Justices Mario L. Guariña III and Vicente S.E. Veloso, concurring. Rollo, pp. 82-95.

[4] Rollo, pp. 48-56.

[5] Id. at 54.

[6] Id. at 55-56.

[7] Id. at 47.

[8] Id. at 65.

[9] Id. at 91-95.

[10] NOW THEREFORE, you are hereby directed to proceed to the premises of the [petitioner] MOUNT CARMEL COLLEGE and/or MODESTO MALANDAC, O CARM situated at Escalante, Negros Occidental together with the [respondents] and collect from said [petitioner] the total amount of FIVE HUNDRED THREE THOUSAND TWENTY EIGHT PESOS AND 05/100 (P503,028.05) representing [respondents'] back wages (sic) from May 15, 1998 up to May 19, 2003 x x x. (RAB Case No. 06-06-10293-98 Writ of Execution; rollo, pp. 73-74.)

[11] NOW THEREFORE, you are hereby directed to proceed to the premises of the [petitioner] MOUNT CARMEL COLLEGE and/or MODESTO MALANDAC, O CARM situated at Escalante, Negros Occidental together with the [respondents] and collect from said [petitioner] the total amount of FIVE HUNDRED THREE THOUSAND TWENTY-EIGHT PESOS AND 05/100 (P503,028.05) representing [respondents'] back wages (sic) from May 15, 1998 up to May 19, 2003 x x x. (RAB Case No. 06-06-10393-00 et. al. Writ of Execution; rollo, pp. 75-77.)

[12] NOW THEREFORE, you are hereby directed to proceed to the premises of the [petitioner] MOUNT CARMEL COLLEGE and/or MODESTO MALANDAC, O CARM situated at Escalante, Negros Occidental together with the [respondents] and collect from said [petitioner] the total amount of ONE MILLION THREE HUNDRED SIXTEEN THOUSAND and FOUR HUNDRED PESOS AND 6/100 (P1,316,400.66) representing

[respondents'] back wages (sic) from May 15, 1998 up to May 19, 2003, accrued salaries May 26, 1999 to October 29, 2001 and May 20, 2003 to December 31, 2003 x x x. (RAB Case No. 06-06-10393-00 et. al. Writ of Execution; rollo, pp. 78-80.)

[13] Based on the computations provided by the RAB VI Cashier, the total of the monetary judgment is P1,316,400.66. The additional sum of P289,875.41 was garnished and released to respondents. Before the transmittal of the original case records before the Court of Appeals, P516,497.20 was released to private respondents.

[14] Collected on different dates.

[15] Rollo, pp. 96-119.

[16] Id. at 116-117.

[17] Id. at 120-123.

[18] Id. at 125-153.

[19] Id. at 155.

[20] Penned by Commissioner Aurelio D. Menzon with Presiding Commissioner Gerardo C. Nograles and Commissioner Oscar S. Uy, concurring; CA rollo, pp. 35-46.

[21] CA rollo, p. 46.

[22] Rollo, pp. 41-42.

[23] Id. at 44-45.

[24] Article 223 of the Labor Code, as cited by petitioner.

[25] Pioneer Texturizing Corporation v. National Labor Relations Commission, 345 Phil. 1057 (1997).

[26] Id.

[27] Art. 223. Appeal x x x

x x x x

In any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be executory, even pending appeal. The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation or, at the option of the employer, merely reinstated in the payroll. The posting of a bond by the employer shall not stay the execution for reinstatement provided herein.

[28] Art. 224. Execution of decisions, orders or awards.- (a) The Secretary of Labor and Employment or any Regional Director, the Commission or any Labor Arbiter, or med-arbiter or voluntary arbitrator may, motu proprio or on motion of any interested party, issue a writ of execution on a judgment within five (5) years from the date it becomes final and executory x x x.

[29] Sec. 2. x x x

(1) If the execution be for the payment of a sum of money by the losing party, the writ shall be served by the sheriff upon the losing party or upon any other person required by law to obey the same before proceeding to satisfy the judgment out of the personal property of such party and if no sufficient personal property can be found,

then out of his real property;

(2) If the execution be for the reinstatement of any person to any position, office or employment, such writ shall be served by the sheriff upon the losing party or upon any other person required by law to obey the same and such party or person may be punished for contempt if he disobeys such decisions, order for reinstatement.

[30] 349 Phil. 913, 921-922 (1998).

[31] Labor Code.

[32] NLRC Manual on the Execution of Judgment, Rule III, Section 2(b).

[33] Rollo, pp. 116-117.

[34] Rule III, NLRC Manual on the Execution of Judgment.

[35] NLRC Decision dated 30 October 2001 in NLRC Case No. V-000176-2000.

[36] 229 Phil. 229, 233 (1986).

[37] Id.

[38] Rollo, p. 65.

[39] Id. at 92.

[40] Id. at 95.

[41] *Poliand Industrial Limited v. National Development Company*, G.R. No. 143866, 22 August 2005, 467 SCRA 500, 550; *Mendoza, Jr. v. San Miguel Foods, Inc.*, G.R. No. 158684, 16 May 2005, 458 SCRA 664, 676-677.

[42] Article 279, Labor Code; *Pheschem Industrial Corporation v. Moldez*, G.R. No. 161158, 9 May 2005, 458 SCRA 339, 348.

[43] Rollo, p. 65

[44] *Judy Philippines, Inc. v. National Labor Relations Commission*, 352 Phil. 593, 604 (1998).

[45] *Triad Security & Allied Services, Inc. v. Ortega, Jr.*, G.R. No. 160871, 6 February 2006, 481 SCRA 591, 605.

[46] *Pheschem Industrial Corporation v. Moldez*, supra note 42.

[47] *Torres v. National Labor Relations Commission*, 386 Phil. 513, 520 (2000).

[48] *Dizon v. Court of Appeals*, 444 Phil. 161, 168 (2003).

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