

**MOTOROLA PHILIPPINES, INC. AND/OR SCG PHILIPPINES, INC.,
ROMERICO S. SERRANO, DANIEL JAVELOSA, ALFRED GAMBOL, ANN
DALUPAN AND JOSEPH JACOBSON, PETITIONERS, VS. IMELDA B.
AMBROCI...**

G.R. No. 173279. March 30, 2009

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

On petition for review on certiorari is the Court of Appeals March 1, 2006 Resolution[1] and June 27, 2006 Resolution[2] reinstating the appeal of respondent Imelda B. Ambrocio and 235[3] other respondents from the December 13, 2004 Resolution[4] and September 30, 2005 Resolution[5] of the National Labor Relations Commission (NLRC) in NLRC RAB IV Case Nos. 4-13771-01-C, and 4-13772-01-C.

Culled from the five-volume records of the case are the following undisputed facts:

Sometime in 1997, Motorola Philippines, Inc. (MPI), a subsidiary of Motorola U.S., decided to close its Parañaque plant in order to consolidate its operations at its Carmona, Cavite plant. It thus offered to its affected employees a redundancy/separation package consisting of the following benefits and emoluments:

- 1) separation pay equivalent to two months salary per year of service;
- 2) two-year health insurance policy;
- 3) one-year life insurance policy;
- 4) cost of stock liquidation transactions on the employees' stock options;
- 5) orientation program on fund management; and
- 6) orientation program and training on livelihood options.

Out of about 900 employees who availed of the package and were consequently separated from employment on July 24, 1998 when MPI's Parañaque plant finally closed shop, 236 employees including respondents herein, filed on July 24, 2001 two separate complaints against MPI, for payment of retirement pay equivalent to one month salary per year of service, alleging that they were entitled thereto under Sec. III-B of MPI's Retirement Plan.[6]

For its part, MPI alleged that the applicable retirement plan was not Sec. III-B, but Policy 1215, specifically Sec. III par. 6 thereof which reads:

In case of voluntary separation from the company due to Labor Saving devices or redundancy, retrenchment program initiated by the Company as a result of a merger or to prevent losses or other similar causes, the company shall provide a separation pay equivalent to one (1) month's pay per year of service, inclusive of any service benefit eligibility under the Retirement Plan.[7] (*Italics and underscoring supplied*)

MPI thus insisted that respondents had already received such one-month pay, the same having been included in the cash component of the separation/redundancy package, which consisted of two-months pay per year of service, paid to them.

Labor Arbiter Waldo Emerson Gan, by Decision[8] of December 16, 2002, found MPI and its officers liable to respondents for the payment of "retirement pay service benefits" under Sec. III-B of the Retirement Plan, as well as for interest thereon at 15% per annum, moral and exemplary damages equivalent to 25% of the total monetary award in each case, and attorney's fees equivalent to 15% of the total monetary award in each case.

In arriving at the decision, the Arbiter noted that retirement pay is separate and distinct from separation pay, hence, respondents were entitled to their claim of another separate one-month pay per year of service; that Policy 1215 was unfair; and that the quitclaims and waivers signed by respondents were void for they were forced and defrauded into signing them.

MPI appealed to the NLRC, which move was opposed by respondents, they alleging that the appeal was not perfected since the surety bond was filed not by MPI but by Motorola Communications Philippines, Inc. (MCPI) "for and in behalf of Motorola Philippines, Inc. and/or SCG Corporation," and that the initial amount of the bond posted was insufficient, being way below the amount of the total monetary award.

Respondents' opposition notwithstanding, the NLRC gave due course to MPI's appeal by Resolution of December 13, 2004, it holding that there is nothing in the law which requires that only the employer can post the appeal bond in order to perfect it, hence, MCPI was not precluded from filing the same on behalf of MPI and/or SCG Corporation.

The NLRC further held that the "rationale behind the requirement for the posting of an appeal bond to perfect an appeal is to guarantee the payment of the employee's valid and legal claims against any occurrence, during the pendency of the appeal, that would defeat or diminish recovery under the appealed judgment if it is subsequently affirmed," and this was complied with by MCPI's filing of the appeal bond in favor of MPI.

Moreover, the NLRC gave credence to MPI's explanation that prior to MPI's transfer of ownership to SCG Corporation, it was a sister company of MCPI, and the posting of the appeal bond by MCPI in favor of MPI/SCG Corporation was in fact in compliance with the indemnity agreement Motorola, Inc., MCPI's parent company, entered into with SCG - that SCG would be free from any and all liability arising from or related to the claims of MPI's former employees who were separated when SCG acquired its business.

Respecting the merits of the appeal, the NLRC held that MPI was not liable for payment of the so-called "retirement service benefits" under Sec. III-B of the Retirement Plan, consistent with its earlier findings in "Fe de Vera, et al. v. Motorola Philippines, Inc., et al., and Yolanda Rombaon, et al. v. Motorola Philippines, Inc. - cases filed by former employees of MPI which it decided on appeal.

In granting MPI's appeal and dismissing the complaint of respondents, the NLRC held that the benefits received by respondents for involuntary separation under MPI's retirement plan included the service pay benefits under either Sec. III-B of the Retirement Plan or Policy 1215 which both grant exactly the same benefit in case of involuntary separation - one month's pay for every year of service.

The NLRC added that retirement pay is due only if an employee retires, and since none of respondents retired but were actually involuntarily separated due to redundancy, then they cannot avail of such pay.

The NLRC thus concluded that since respondents availed of the separation package consisting of two months pay for every year of service (as well as other emoluments) under MPI's retirement plan and Article 283 of the Labor

Code, as amended, they no longer have any cause of action.

Contrary to the arbiter's observation, the NLRC held that Policy 1215 was fair, for it did not revoke nor reduce any of the benefits granted under Sec. III-B of the Retirement Plan.

On the quitclaims and waivers executed by respondents, the NLRC found the same to be valid, it noting that respondents were given every opportunity to ask questions and review them in connection with the redundancy program through the meetings and seminars held, and pamphlets and other materials were in fact distributed and explained to them by MPI's officers.

The NLRC deleted the arbiter's award of damages and attorney's fees, finding no basis therefor. And with respect to the complaint of the four respondents namely Conchita V. Consibido, Violeta P. Guevarra, Liza Moya and Mila Samortin, the NLRC held that their cause of action had prescribed, their complaints having been filed three (3) years and one day from the time they were separated.

Finally, the NLRC rebuked the arbiter for granting monetary claims to persons, who were not listed as complainants in the two complaints, also named as respondents herein, viz: Rizalino Bancoleta, Elizabeth Sunga, Eva Bancoleta, Imelda de Villa, Maria Riza Berni, and Minda San Pablo.

Their motion for reconsideration having been denied by Resolution dated September 30, 2005, respondents appealed to the Court of Appeals.

Initially, the appellate court dismissed the petition by Resolution[9] promulgated on January 10, 2006 on the following technicalities: the signatory to the certification against non-forum shopping had no apparent authorization; the copies of the assailed NLRC resolutions appended to the petition were not certified true copies; and the copy of MPI's reply to the opposition as mentioned in the petition was not attached as required under Section 3 of Rule 46.

However, by the first challenged Resolution of March 1, 2006, the appellate court reinstated the petition on respondents' motion for reconsideration.

MPI filed a motion for reconsideration of the said Resolution of March 1, 2006, questioning the reinstatement of the petition, noting[10] that respondents' motion for reconsideration was filed out of time on February 8, 2006 or 11 days after the January 10, 2006 Resolution was received by respondents on January 13, 2006. MPI concluded that since respondents' motion for reconsideration was filed out of time, then the January 10, 2006 Resolution dismissing the petition had attained finality.

MPI, in any event, pointed out that the petition remained defective for the following reasons: the certification against forum shopping was signed by one Fe de Vera who is not a party to the case nor was authorized to sign it, ostensibly to "simplify the tedious individual signing of several legal documents," and the belated submission of the special power of attorneys (SPAs) in favor of de Vera did not cure the defect; the SPAs are dubious; and there was no explanation as to the belated filing of the Motion for Reconsideration as required under the Rules.

The appellate court, by Resolution dated June 27, 2006, denied MPI's motion for reconsideration, justifying its reinstatement of the petition with the fact that the petition was filed by more than a hundred complainants, hence, impressed it with a strong public interest warranting a suspension of the Rules in line with *Amorganda v. CA*. [11]

Hence, the instant petition for review on certiorari wherein MPI faults the appellate court to have committed grave abuse of discretion in reinstating respondents' petition, and in, among other things, applying the *Amorganda* ruling given that respondents did not give any explanation at all for their belated filing of their Motion for Reconsideration.

And MPI maintains that the attachments to the Motion for Reconsideration did not cure the fatal defects in the petition.

The petition is impressed with merit.

Procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudicing a party's substantive rights. The bare invocation of "substantial justice" is not a magic wand that will compel the court to suspend the rules of procedure. Rather, the appellate court needs to assess if the appeal is absolutely meritorious on its face. Only after such finding, can it ease the often stringent rules of procedure.[12] (Emphasis supplied)

In the present case, aside from the appellate court's declaration that the fact that the "case has been filed by more than a hundred petitioners is sufficient to impress it with a strong public interest," no compelling reason was proffered to justify the acceptance of respondents' motion for reconsideration which was admittedly filed out of time or 11 days beyond the reglementary period.

It is a hornbook doctrine that the 15-day reglementary period for filing a motion for reconsideration is non-extendible. Provisions of the Rules of Court prescribing the time within which certain acts must be done or certain proceedings taken are considered absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharge of judicial businesses and strict compliance with such rules is mandatory and imperative.[13]

The citation by the appellate court of the ruling in *Amorganda* is misplaced. In *Amorganda*, the Court stated that the therein petitioners' motion for reconsideration which was filed two calendar days late should have been given due course by the appellate court, as the counsel's mistaken belief that the last day for filing the motion, a Saturday, was a legal holiday, is pardonable.[14] The Court went on to note that "anyway, the delay of two (2) calendar days - one of which was a Sunday- in the filing of the motion for reconsideration did not prejudice the cause of private respondents, or that said private respondents suffered material injury by reason of the delay," and that "private respondents who appear to be guilty of coercion, stand to unjustly profit from their fraudulent and deceitful act at the expense of petitioners." [15]

In the case at bar, not only was there a considerable delay of 11 days beyond the 15-day reglementary period; no explanation therefor was proffered by respondents. That respondents numbered more than a hundred does not, per se, justify the relaxation of procedural rules.

The unexplained delay in the filing of respondents' motion for reconsideration before the appellate court is not just a technical lapse which can be excused. More importantly, it is a jurisdictional defect to thus render the January 10, 2006 Resolution final and executory. As such, the appellate court erred in taking cognizance of the motion for reconsideration.

Technicality aside, on the merits, respondents have no cause of action as against petitioners with respect to their claim for additional retirement benefits. Article 283 of the Labor Code, as amended, provides:

ART. 283. Closure of establishment and reduction of personnel. - The employer may also terminate the employment of any employee due to the installation of labor saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the [Department] of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or

cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year." (Emphasis supplied)

Separation pay has been defined as the amount that an employee receives at the time of his severance and is designed to provide the employee with the wherewithal during the period he is looking for another employment,[16] and is recoverable only in the instances enumerated under Articles 283 and 284 of the Labor Code, as amended, or in illegal dismissal cases when reinstatement is no longer possible.

Retirement pay, on the other hand, presupposes that the employee entitled to it has reached the compulsory retirement age or has rendered the required number of years as provided for in the collective bargaining agreement (CBA), the employment contract or company policy, or in the absence thereof, in Republic Act No. 7641 or the Retirement Law.

It is admitted that respondents were terminated pursuant to a redundancy, and not due to retirement program, hence, they were entitled to a separation pay of one month salary per year of service.

As correctly ruled by the NLRC, by whatever version of MPI's Retirement Plan would be made applicable, respondents are entitled to a separation pay of one month salary per year of service. Under Sec. III-B of the Plan on which respondents rely, "[i]n case of involuntary separation with the company due to retrenchment/redundancy, the employee shall be given a service benefit equivalent to one month per year of service." On the other hand, based on Policy 1215 on which MPI relies, under the same circumstances, the company shall provide its employee a separation pay equivalent to one (1) month's pay per year of service, inclusive of any service benefit eligibility under the Retirement Plan.

Thus, when respondents were paid a separation pay of two months salary for every year of service under the Redundancy Package, they already received what was due them under the law and in accordance with MPI's plan.

WHEREFORE, the petition of Motorola is hereby GRANTED. The Resolution of the Court of Appeals dated March 1, 2006 and its Resolution dated June 27, 2006 are SET ASIDE. Respondents' petition for certiorari is DISMISSED.

SO ORDERED.

Quisumbing, (Chairperson), Tinga, Velasco, Jr., and Peralta[*], JJ., concur.

[*] Additional member per Special Order No. 587 dated March 16, 2009 in lieu of the leave of absence due to sickness of Justice Arturo D. Brion.

[1] CA rollo, pp. 823-824. Penned by Associate Justice Mario L. Guariña III and concurred in by Associate Justices Roberto A. Barrios and Santiago Javier Ranada.

[2] Rollo, p.15-16. Penned by Associate Justice Mario L. Guariña III and concurred in by Associate Justices Roberto A. Barrios and Santiago Javier Ranada.

[3] A physical count of the herein named petitioners shows that there are only 188 of them.

[4] Records I, pp. 680-703. Per curiam, Presiding Commissioner Lourdes C. Javier and Commissioners Tito F. Genilo and Ernesto C. Verceles.

[5] Records II pp. 833-837. Per curiam, Presiding Commissioner Lourdes C. Javier and Commissioners Tito F. Genilo and Romeo C. Lagman.

[6] B. INVOLUNTARY SEPARATION

In case of involuntary separation with the company due to retrenchment/redundancy, the employee shall be given a service benefit equivalent to one month per year of service.

[7] Policy 1215, Records I, pp. 204-213 at 210.

[8] CA rollo, pp. 701-732.

[9] CA rollo, pp. 452-453. Penned by Associate Justice Mario L. Guariña III and concurred in by Associate Justices Roberto A. Barrios and Santiago Javier Ranada.

[10] See Motion for Time Ad Cautelam to file Comment Ad Cautelam to Joint Petition for Certiorari, CA rollo, pp. 825-828.

[11] No. L-80040, September 30, 1988, 166 SCRA 203

[12] Securities and Exchange Commission v. PICOP Resources, Inc., G.R. No. 164314, September 26, 2008

[13] Ponciano v. Laguna Lake Development Authority, G.R. No. 174536, October 29, 2008.

[14] Amorganda, supra, at 210.

[15] Id.

[16] Gabuay v. Oversea Paper Supply, G.R. No. 148837, August 13, 2004, 436 SCRA 514, 519-520

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