

PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, PETITIONER, VS. RIZALINA RAUT, LEILA EMNACE AND GINA CAPISTRANO, RESPONDENTS.

G.R. No. 174209. August 25, 2009

Ponente: NACHURA, J.

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NACHURA, J.:

This is a petition for review on certiorari under Rule 45 of the Rules of Court assailing the Court of Appeals (CA) Decision[1] in CA-GR SP. No. 85829 which affirmed the National Labor Relations Commission's (NLRC's) dismissal[2] of petitioner Philippine Long Distance Telephone Company's Memorandum of Appeal for failure to attach thereto the requisite Certificate of Non-Forum Shopping.

The facts, as summarized by the CA, are as follows:

This case was originally filed on December 17, 1996 by Rizalina Raut and [Leila] Emnace against Philippine Long Distance Telephone Company (PLDT for brevity) for illegal dismissal and non-payment of salaries, overtime pay, night shift differential, 13th month pay, service incentive leave, backwages with moral damages and attorney's fees. Gina Capistrano followed suit by filing a similar case on January 18, 1997. These cases were consolidated by the Labor Arbiter on February 25, 1997 due to similarity of facts and issues involved.

In the complaint, signed and verified by the respondents, they alleged that they were illegally dismissed on November 30, 1996 and December 16, 1996 respectively.

In the decision of the Labor Arbiter promulgated on July 30, 1997, it reinstated the respondents x x x to their former position as telephone operators or if not feasible anymore to another equal position without loss of seniority rights and benefits and to pay the following backwages which are subject to recomputation up to the date of the finality of the decision as follows:

1.

Rizalina Raut

- P32,505.00

2.

[Leila] Emnace

- P32,505.00

3.

Gina Capistrano

- P34,320.00

P99,330.00

Soon after, the respondents were reinstated on December 16, 1998, but allegedly continued to be treated as temporary employees of the petitioner.

Petitioner appealed the decision, alleging grave abuse of discretion on the part of the Honorable Labor Arbiter, insisting that the respondents were never employees of the petitioner but that of independent contractor, Peerless Integrated Services, Inc.

In respondents' Answer to the Appeal, respondents argued that their functions were no different from those performed by the regular employees. They aver that they were trained by petitioner to become Traffic Operator, a position that is categorized as technical. Now, if they were trained to be skilled workers, how come they were extended only contractual employment of ten (10) months? Aside from that, respondents maintained that the claim of the petitioner that their arrangement with Peerless to supply it with various types of workers "in order to augment its present workforce" is but a scheme to subvert their tenurial security. According to respondents, petitioner expressly admits that Peerless provides only the workers. Thus, its contract with the former is one of "labor only" contracting, which is specifically prohibited under Sec. 9 (b) Rule VIII of the Omnibus Rules in relation to Article 106 of the Labor Code of the Philippines.

Subsequently, on April 30, 1998, the NLRC rendered a Decision affirming with modification the Decision of the Honorable Labor Arbiter. In addition to those already granted, petitioner x x x is further ordered to pay respondents their overtime pay, nightshift differential pay, service incentive leave pay and 13th month pay.

Petitioner filed a motion for reconsideration but the same was denied in a Resolution promulgated by the NLRC dated September 25, 1998.

Consequently, petitioner filed a petition for certiorari before the Court of Appeals. However, the court rendered a Decision dated September 24, 1999, the dispositive portion of which reads as follows:

"Wherefore, with the modification that the 13th month pay for respondents Raut and Emnace for the period August 16, 1995 to June 15, 1996 and for respondent Capistrano for the period of August 1, 1995 to May 31, 1996 should be deducted from the computation of the awards to private respondents, the assailed Decision of the National Labor Relations Commission is AFFIRMED."

Petitioner filed a Motion for Reconsideration, which was denied by the court. In effect, its aforesaid Decision became final and executory on March 26, 2000 per Entry of Judgment.

On April 24, 2002, respondents filed a Motion for Issuance of Writ of Execution which was granted by the Labor Arbiter in an Order dated June 21, 2002, the dispositive portion of which viz.:

"Wherefore, let a writ of execution be issued for the enforcement of the following awards:

1. Rizalina Raut - P354,535.36
 2. [Leila] Emnace - P354,535.36
 3. Gina Capistrano - P354,535.36
-

P1,063,606.00"[3]

Aggrieved, petitioner appealed the order to the NLRC which, as previously adverted to, dismissed petitioner's Memorandum of Appeal for failure to attach a Certificate of Non-Forum Shopping.

Undaunted, petitioner filed a petition for certiorari before the CA alleging grave abuse of discretion in the NLRC's dismissal of its appeal. Once again, petitioner fared no better in the CA; its petition for certiorari was denied due course.

Indefatigably, petitioner comes before us on appeal by certiorari raising the following issues for our resolution:

- WHETHER x x x THE DECISION DATED APRIL 18, 2006 OF THE COURT OF APPEALS, WHICH AFFIRMED RESOLUTION DATED JANUARY 15, 2004 AND RESOLUTION DATED JULY 26, 2004, BOTH ISSUED BY THE NLRC, IS IN ACCORDANCE WITH LAW AND APPLICABLE DECISIONS OF THE SUPREME COURT.
- MEMORANDUM WARRANTS THE DISMISSAL OF THE PETITIONER'S APPEAL FROM THE ORDER DATED JUNE 21, 2002 OF THE LABOR ARBITER TO THE NLRC.
- WHETHER x x x THE ORDER DATED JUNE 21, 2002 OF LABOR ARBITER ERNESTO F. CARREON DIRECTING THE ISSUANCE OF A WRIT OF EXECUTION FOR THE ENFORCEMENT OF THE AWARD OF [P]354,535.36 TO EACH OF THE RESPONDENTS, WHICH WAS AFFIRMED IN TOTO BY THE NLRC'S DECISION DATED JANUARY 15, 2004[,] AND WHICH[,] IN TURN[,] WAS AFFIRMED BY THE COURT OF APPEALS DECISION DATED APRIL 18, 2006, IS NULL AND VOID.[4]

The definitive issue boils down to whether the CA erred in affirming the NLRC's dismissal of petitioner's appeal for failing to attach a Certificate of Non-Forum Shopping.

We find the petition bereft of merit. We note that petitioner deftly brought to the fore the validity of the Labor Arbiter's order of execution. However, even on this issue, the appeal lacks merit.

The decision of the CA is consistent with both law and jurisprudence. Petitioner's contention - that the only jurisdictional requirements of appeal are: (1) the perfection of the appeal within the reglementary period of ten (10) days from receipt of the decision, award, or order; and (2) the posting of a cash or surety bond in appeals involving monetary awards, as specified under Article 223 of the Labor Code - is wrong. Petitioner is mistaken in confining the perfection of an appeal to compliance with just those requisites.

The perfection of an appeal necessarily includes the filing of a complete (not a defective) memorandum of appeal within the ten (10) day reglementary period. Petitioner conveniently disregards that the NLRC Rules of Procedure requires the appeal to be accompanied by a Certificate of Non-Forum Shopping.[5] Thus, petitioner's filing of a memorandum of appeal without the requisite certificate did not stop the running of the period to perfect an appeal. In short, the Order of Execution of the Labor Arbiter became final and executory.

Our ruling in *Accessories Specialist, Inc. v. Alabanza*[6] emphasizes the nature of an appeal:

Furthermore, we would like to reiterate that appeal is not a constitutional right, but a mere statutory privilege. Thus, parties who seek to avail themselves of it must comply with the statutes or rules allowing it. Perfection of an appeal in the manner and within the period permitted by law is mandatory and jurisdictional. The requirements for perfecting an appeal must, as a rule, be strictly followed. Such requirements are considered indispensable interdictions against needless delays and are necessary for the orderly discharge of the judicial business. Failure to perfect the appeal renders the judgment of the court final and executory. Just as a losing party has the privilege to file an appeal within the prescribed period, so does the winner also have the correlative right to enjoy the finality of the decision.

In the case at bar, the judgment against petitioner became final and executory on March 26, 2000. However, to this day, respondents are prevented from enjoying fruits of the final judgment in their favor because of petitioner's frivolous appeal against an order of execution.

To lend some semblance of merit to its appeal and to further delay the execution of judgment against it, petitioner insists that the Labor Arbiter's order of execution is null and void for increasing the judgment award in the original decision. Petitioner likewise avers that nothing appears in the dispositive portion of the Labor Arbiter's decision that respondents ought to be reinstated as regular employees.

Petitioner's contention splits hairs. Indeed, an order of execution must conform to the decision sought to be enforced.[7] The Labor Arbiter's order of execution does ostensibly appear to increase the original judgment award if, as what petitioner has done, only the dispositive portions of the lower tribunals' decisions are laid out. However, we point out that the Labor Arbiter's decision specifically declared "that the [respondents] were never the employees of Peerless Integrated Services, Inc., as they were all the time employees of [petitioner]."

We need not belabor the point. It is quite apparent from the respective decisions of the Labor Arbiter, the NLRC, and the CA that respondents were found to be regular employees of petitioner. Article 279, in relation to Article 280 of the Labor Code, confirms the nature of employment of respondents regardless of petitioner's unschooled opinion. The articles read:

ART. 279. Security of Tenure. - 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.

ART. 280. Regular and Casual Employment. - The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.

Thus, the lower tribunals all affirmed the order of reinstatement of respondents and their corresponding entitlement to the payment of salaries and other benefits received by petitioner's regular employees.

Finally, on the increase in the computation of the monetary award to respondents, the decision of the Labor Arbiter specified that for purposes of putting up a bond should petitioner appeal, the backwages were computed only for a certain period. Otherwise, the actual backwages to be paid to respondents are computed from the date of dismissal until the finality of the decision. In addition, because petitioner continues to refuse and accord regular status to respondents and to pay them their corresponding wages even after the lapse of two (2) years from the finality of the Labor Arbiter's decision, the Labor Arbiter correctly included that in its order of execution. Thus, the Labor Arbiter's order of execution simply covered the correct computation of wages and other payments enjoyed by petitioner's regular employees.

WHEREFORE, premises considered, the petition is hereby DENIED. The decision of the Court of Appeals in CA-G.R. SP. No. 85829 is AFFIRMED. Costs against petitioner.

SO ORDERED.

Carpio Morales,[*] Chico-Nazario,**] (Acting Chairperson), Velasco, Jr., and Peralta, JJ., concur.

[*] Additional member in lieu of Associate Justice Consuelo Ynares-Santiago per Special Order No. 679 dated August 3, 2009.

**] In lieu of Associate Justice Consuelo Ynares-Santiago per Special Order No. 678 dated August 3, 2009.

[1] Penned by Associate Justice Pampio A. Abarintos, with Justices Enrico Lanzas and Apolinario D. Bruselas, Jr., concurring; rollo, pp. 37-45.

[2] Rollo, pp. 67-69.

[3] Id. at 38-40.

[4] Id. at 260.

[5] See Rule VI, Section 4 of the NLRC Rules of Procedure.

[6] G.R. No. 168985, July 23, 2008, 559 SCRA 550, 562-563, citing Cuevas v. Bais Steel Corporation, 439 Phil. 793, 805 (2002).

[7] Banquerigo v. Court of Appeals, G.R. No. 164633, August 7, 2006, 498 SCRA 169.

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