

MYRNA P. MAGANA, PETITIONER, VS. MEDICARD PHILIPPINES, INC., AND COURT OF APPEALS, RESPONDENTS.

G.R. No. 174833. December 15, 2010

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This resolves the petition for review[1] of the rulings[2] of the Court of Appeals absolving respondent Medicard Philippines, Inc. from liability for reinstatement wages in an illegal dismissal suit.

The Facts

In June 1990, respondent Medicard Philippines, Inc. (respondent), a health maintenance organization, hired petitioner Myrna P. Magana (petitioner) as company nurse whom respondent detailed to its corporate client, the Manila Pavilion Hotel (Hotel). Although respondent initially hired petitioner on probation, respondent converted petitioner's employment status to permanent in February 1993.

In October 1994, respondent was summarily replaced with another nurse. In lieu of a nursing-related position, respondent offered petitioner the position of liaison officer. Finding the offer unacceptable and with her continued non-assignment, petitioner sued respondent and the Hotel in the National Labor Relations Commission (NLRC) for illegal dismissal and payment of benefits and damages.

The Ruling of the Labor Arbiter

The labor arbiter[3] ruled for petitioner.[4] The arbiter found respondent to be a mere labor contractor for the Hotel which exercised control and termination powers over petitioner. The arbiter considered the Hotel's summary replacement of petitioner indicative of lack of cause for her dismissal and of bad faith. Consequently, the arbiter ordered the Hotel to reinstate petitioner and, with respondent, jointly and severally pay petitioner backwages, 13[th] month pay, damages and attorney's fees.[5]

Respondent and the Hotel appealed to the NLRC.

The Ruling of the NLRC

The NLRC affirmed the arbiter's ruling with modification.[6] It found respondent, not the Hotel, as petitioner's employer and held respondent liable for constructive illegal dismissal, and hence, for the payment of separation pay, 13[th] month pay, attorney's fees, and reinstatement wages.[7] The NLRC grounded its ruling on uncontroverted documentary evidence showing petitioner as respondent's regular employee whom respondent detailed to the Hotel under a health maintenance contract. The NLRC considered respondent's failure to assign petitioner to a suitable position within six months as basis for its liability for constructive illegal dismissal. The NLRC also awarded reinstatement wages to petitioner for respondent's failure to reinstate her pending appeal as

required under the second paragraph of Article 223 of the Labor Code. However, for lack of basis, the NLRC deleted the award of damages.

Respondent appealed to the Court of Appeals (CA) in a petition for certiorari, alleging grave abuse of discretion on the part of the NLRC.

Ruling of the Court of Appeals

The CA partially granted respondent's appeal by deleting the award of reinstatement wages. The CA found petitioner's dismissal with cause, noting that respondent's failure to assign petitioner to a suitable position within six months after her replacement is "analogous to a suspension of operations of an enterprise" entitling the employee to payment only of separation pay.[8]

In this petition, petitioner concedes the legality of her constructive dismissal. She grounds her case on the narrow contention that the Court of Appeals erred in deleting the reinstatement wages the NLRC awarded in her favor.

Respondent seeks the petition's denial, noting that the CA's finding that petitioner's dismissal was for cause precludes other remedies other than the payment of separation pay.

The Issue

The question is whether an employee is entitled to draw wages under an arbiter's ruling ordering her reinstatement even though such order is subsequently reversed on appeal.

The Ruling of the Court

We hold in the affirmative and thus, grant the petition.

Article 223, Paragraph 2 of the Labor Code, a Police Power Measure, is Mandatory and Immediately Executory

The requirement for employers to pay wages to employees obtaining favorable rulings in illegal dismissal suits pending appeal is statutorily mandated under the second paragraph of Article 223 of the Labor Code, as amended:

Article 223. Appeal. - 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. (Emphasis supplied)

Article 223 gives employers two options, namely, to (1) actually reinstate the dismissed employees or, (2) constructively reinstate them in the payroll. Either way, this must be done immediately upon the filing of their appeal, without need of any executory writ.

This unusual, mandatory order by law to execute reinstatement orders pending appeal, unheard of in ordinary civil proceedings,[9] is a police power measure, grounded on the theory -

[t]hat the preservation of the lives of the citizens is a basic duty of the State, that is more vital than the preservation of corporate profits. Then, by and pursuant to the same power, the State may authorize an immediate implementation, pending appeal, of a decision reinstating a dismissed or separated employee since that saving act is designed to stop, although temporarily since the appeal may be decided in favor of the appellant, a continuing threat or danger to the survival or even the life of the dismissed or separated employee and its family.[10] (Emphasis supplied)

Reversal of Reinstatement Order Does not Preclude its Execution

The issue at bar explores an aspect of Article 223's implementation: if the arbiter's order of reinstatement remains unexecuted, should its subsequent reversal on appeal preclude execution? Respondent expectedly holds the negative view, arguing that "there can be no reinstatement by virtue of the fact that there is no illegal dismissal to speak of." [11] A cursory search of this Court's jurisprudence belies the cogency of this claim.

More than five years ago, the Court in *Roquero v. Philippine Airlines, Inc.* [12] was confronted with the same question now posed and, as respondent prays, was there asked to refuse payment of reinstatement wages of the dismissed employee because of the reversal on appeal of the reinstatement order. Speaking through Justice, later Chief Justice, Reynato S. Puno, we rejected this contention, holding that -

[T]echnicalities have no room in labor cases where the Rules of Court are applied only in a suppletory manner and only to effectuate the objectives of the Labor Code and not to defeat them. Hence, 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. 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. [13] (Emphasis supplied)

We reiterated *Roquero* in our succeeding ruling in *Air Philippines Corporation v. Zamora*. [14]

True, a Division of the Court in *Genuino v. National Labor Relations Commission* [15] diverged from *Roquero* by requiring refund or set-off of salaries received post-reversal of the reinstatement order. [16] However, the Court en banc in *Garcia v. Philippine Airlines, Inc.*, [17] nipped *Genuino* in the bud and reaffirmed the *Roquero* line of jurisprudence:

[T]he *Genuino* ruling not only disregards the social justice principles behind the rule [in Article 223], 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."

In playing down the stray posture in *Genuino* requiring the dismissed employee on payroll reinstatement to refund the salaries in case a final decision upholds the validity of the dismissal, the Court realigns the proper course of the prevailing doctrine on reinstatement pending appeal vis-a-vis the effect of a reversal on appeal.

x x x x

The Court reaffirms the prevailing principle that 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. It settles the view that the Labor Arbiter's order of reinstatement is immediately executory and the employer has to either readmit 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. [18] (Underlining in the original; italicization and boldfacing supplied)

Thus, respondent is not only bound to pay petitioner her reinstatement wages, had it done so, it is precluded from recovering the amount paid post-reversal of the arbiter's reinstatement order by the Court of Appeals.

WHEREFORE, we GRANT the petition We REVERSE the Decision dated 11 April 2006 and the Resolution

dated 5 September 2006 of the Court of Appeals insofar as they deleted the award of reinstatement wages to petitioner Myrna P. Magana. We ORDER respondent Medicard Philippines, Inc. to pay petitioner reinstatement wages computed from the filing of respondent's appeal of the labor arbiter's decision on 5 October 2000 until its receipt of the Court of Appeals' Decision dated 11 April 2006.

SO ORDERED.

Nachura, Peralta, Abad, and Mendoza, JJ., concur.

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Decision dated 11 April 2006, penned by Associate Justice Mario L. Guariña III with Associate Justices Roberto A. Barrios and Santiago Javier Ranada, concurring and the Resolution dated 5 September 2006, penned by Associate Justice Mario L. Guarina 111 with Associate Justices Roberto A. Barrios and Normandie B. Pizarro.

[3] Ramon Valentin C. Reyes.

[4] In a Decision dated 10 August 2000.

[5] The dispositive portion of the ruling provides (Rollo, p. 148):

WHEREFORE, in light of the foregoing, judgment is hereby rendered, declaring complainant's dismissal illegal, ordering Manila Pavilion to reinstate her to her former position or substantially equivalent one without loss of seniority rights, and ordering respondents to jointly and severally pay complainant:

- a) Full backwages from her dismissal until her reinstatement which for purpose of appeal, is hereby computed from October 10, 1994, until her reinstatement at P6,010.00 per month, which, when computed up to date, already amounts to P420,700.00 (Oct. 10, 1994 to Aug. 10, 1994 = 70 mos. x P6,010.00= P420,700.00).
- b) 13th month pay of P30,050.00 (P6,010.00 x 5 yrs. = P30,050.00);
- c) Moral damages of P20,000.00;
- d) Exemplary damages of P10,000.00;
- e) Attorney's fees often percent (10%) of the total award.

[6] In the Resolution dated 22 November 2002, penned by Commissioner Tito F. Genilo with Commissioners Lourdes C. Javier and Ireneo B. Bernardo, concurring.

[7] The dispositive portion of its ruling provides (Rollo, p. 198):

WHEREFORE, premises considered, Manila Pavilion's appeal is GRANTED and Medicard's appeal [is] partially GRANTED. Accordingly, the Decision appealed from is MODIFIED to the effect that Medicard is the employer of Mrs. Magana; that Medicard is guilty of constructive dismissal of her, and hence, liable to pay her separation pay equivalent to one (1) month for every year of service from April 28, 1992 to May 10, 1994; that Medicard is likewise liable to pay her thirteenth (13th) month pay in the amount of Php30,050.00. and reinstatement wages from the Sling of the twin appeals on October 5, 2000 to the issuance of (his Resolution which is in the amount of P186,579.50 as of the present time; that Medicard[,] however[,] is not liable to pay her any moral and exemplary damages; and that Manila Pavilion is absolved of any liability whatsoever.

[8] Rollo, p. 29.

[9] Where execution pending appeal is allowed only "upon good reasons." Rule 39, Section 2(a) of the 1997 Rules of Civil Procedure.

[10] Arts (Phil.), Inc. v. NLRC, G.R. No. 90501, 5 August 1991, 200 SCRA 246, 255 (internal citation omitted).

[11] Rollo, p. 287.

[12] 449 Phil. 437 (2003).

[13] Id. at 446 (internal citation omitted).

[14] G.R. No. 148247, 7 August 2006, 498 SCRA 59.

[15] G.R. Nos. 142732-33, 4 December 2007, 539 SCRA 342, Second Division.

[16] The ruling 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 [he/she] 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." Id. at 363-364 (internal citation omitted).

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

[18] Id. at 492-493 (internal citations omitted).

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