

PFIZER, INC. AND/OR REY GERARDO BACARRO, AND/OR FERDINAND CORTES, AND/OR ALFRED MAGALLON, AND/OR ARISTOTLE ARCE, PETITIONERS, VS. GERALDINE VELASCO, RESPONDENT.*G.R. No. 177467. March 09, 2011*

Ponente: LEONARDO-DE CASTRO, J.

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This is a petition for review on certiorari under Rule 45 of the Rules of Civil Procedure to annul and set aside the Resolution[1] dated October 23, 2006 as well as the Resolution[2] dated April 10, 2007 both issued by the Court of Appeals in CA-G.R. SP No. 88987 entitled, "Pfizer, Inc. and/or Rey Gerardo Bacarro, and/or Ferdinand Cortes, and/or Alfred Magallon, and/or Aristotle Arce v. National Labor Relations Commission Second Division and Geraldine Velasco." The October 23, 2006 Resolution modified upon respondent's motion for reconsideration the Decision[3] dated November 23, 2005 of the Court of Appeals by requiring PFIZER, Inc. (PFIZER) to pay respondent's wages from the date of the Labor Arbiter's Decision[4] dated December 5, 2003 until it was eventually reversed and set aside by the Court of Appeals. The April 10, 2007 Resolution, on the other hand, denied PFIZER's motion for partial reconsideration.

The facts of this case, as stated in the Court of Appeals Decision dated November 23, 2005, are as follows:

Private respondent Geraldine L. Velasco was employed with petitioner PFIZER, INC. as Professional Health Care Representative since 1 August 1992. Sometime in April 2003, Velasco had a medical work up for her high-risk pregnancy and was subsequently advised bed rest which resulted in her extending her leave of absence. Velasco filed her sick leave for the period from 26 March to 18 June 2003, her vacation leave from 19 June to 20 June 2003, and leave without pay from 23 June to 14 July 2003.

On 26 June 2003, while Velasco was still on leave, PFIZER through its Area Sales Manager, herein petitioner Ferdinand Cortez, personally served Velasco a "Show-cause Notice" dated 25 June 2003. Aside from mentioning about an investigation on her possible violations of company work rules regarding "unauthorized deals and/or discounts in money or samples and unauthorized withdrawal and/or pull-out of stocks" and instructing her to submit her explanation on the matter within 48 hours from receipt of the same, the notice also advised her that she was being placed under "preventive suspension" for 30 days or from that day to 6 August 2003 and consequently ordered to surrender the following "accountabilities;" 1) Company Car, 2) Samples and Promats, 3) CRF/ER/VEHICLE/SOA/POSAP/MPOA and other related Company Forms, 4) Cash Card, 5) Caltex Card, and 6) MPOA/TPOA Revolving Travel Fund. The following day, petitioner Cortez together with one Efren Dariano retrieved the above-mentioned "accountabilities" from Velasco's residence.

In response, Velasco sent a letter addressed to Cortez dated 28 June 2003 denying the charges. In her letter, Velasco claimed that the transaction with Mercury Drug, Magsaysay Branch covered by her check (no. 1072) in the amount of P23,980.00 was merely to accommodate two undisclosed patients of a certain Dr. Renato Manalo. In support thereto, Velasco attached the Doctor's letter and the affidavit of the latter's secretary.

On 12 July 2003, Velasco received a "Second Show-cause Notice" informing her of additional developments

in their investigation. According to the notice, a certain Carlito Jomen executed an affidavit pointing to Velasco as the one who transacted with a printing shop to print PFIZER discount coupons. Jomen also presented text messages originating from Velasco's company issued cellphone referring to the printing of the said coupons. Again, Velasco was given 48 hours to submit her written explanation on the matter. On 16 July 2003, Velasco sent a letter to PFIZER via Aboitiz courier service asking for additional time to answer the second Show-cause Notice.

That same day, Velasco filed a complaint for illegal suspension with money claims before the Regional Arbitration Branch. The following day, 17 July 2003, PFIZER sent her a letter inviting her to a disciplinary hearing to be held on 22 July 2003. Velasco received it under protest and informed PFIZER via the receiving copy of the said letter that she had lodged a complaint against the latter and that the issues that may be raised in the July 22 hearing "can be tackled during the hearing of her case" or at the preliminary conference set for 5 and 8 of August 2003. She likewise opted to withhold answering the Second Show-cause Notice. On 25 July 2003, Velasco received a "Third Show-cause Notice," together with copies of the affidavits of two Branch Managers of Mercury Drug, asking her for her comment within 48 hours. Finally, on 29 July 2003, PFIZER informed Velasco of its "Management Decision" terminating her employment.

On 5 December 2003, the Labor Arbiter rendered its decision declaring the dismissal of Velasco illegal, ordering her reinstatement with backwages and further awarding moral and exemplary damages with attorney's fees. On appeal, the NLRC affirmed the same but deleted the award of moral and exemplary damages.[5]

The dispositive portion of the Labor Arbiter's Decision dated December 5, 2003 is as follows:

WHEREFORE, judgment is hereby rendered declaring that complainant was illegally dismissed. Respondents are ordered to reinstate the complainant to her former position without loss of seniority rights and with full backwages and to pay the complainant the following:

- Full backwages (basic salary, company benefits, all allowances as of December 5, 2003 in the amount of P572,780.00);
- 13[th] Month Pay, Midyear, Christmas and performance bonuses in the amount of P105,300.00;
- Moral damages of P50,000.00;
- Exemplary damages in the amount of P30,000.00;
- Attorney's Fees of 10% of the award excluding damages in the amount of P67,808.00.

The total award is in the amount of P758,080.00.[6]

PFIZER appealed to the National Labor Relations Commission (NLRC) but its appeal was denied via the NLRC Decision[7] dated October 20, 2004, which affirmed the Labor Arbiter's ruling but deleted the award for damages, the dispositive portion of which is as follows:

WHEREFORE, premises considered, the instant appeal and the motion praying for the deposit in escrow of complainant's payroll reinstatement are hereby denied and the Decision of the Labor Arbiter is affirmed with the modification that the award of moral and exemplary damages is deleted and attorney's fees shall be based on the award of 13[th] month pay pursuant to Article III of the Labor Code.[8]

PFIZER moved for reconsideration but its motion was denied for lack of merit in a NLRC Resolution[9] dated December 14, 2004.

Undaunted, PFIZER filed with the Court of Appeals a special civil action for the issuance of a writ of certiorari under Rule 65 of the Rules of Court to annul and set aside the aforementioned NLRC issuances. In a Decision dated November 23, 2005, the Court of Appeals upheld the validity of respondent's dismissal from employment,

the dispositive portion of which reads as follows:

WHEREFORE, the instant petition is GRANTED. The assailed Decision of the NLRC dated 20 October 2004 as well as its Resolution of 14 December 2004 is hereby ANNULLED and SET ASIDE. Having found the termination of Geraldine L. Velasco's employment in accordance with the two notice rule pursuant to the due process requirement and with just cause, her complaint for illegal dismissal is hereby DISMISSED.[10]

Respondent filed a Motion for Reconsideration which the Court of Appeals resolved in the assailed Resolution dated October 23, 2006 wherein it affirmed the validity of respondent's dismissal from employment but modified its earlier ruling by directing PFIZER to pay respondent her wages from the date of the Labor Arbiter's Decision dated December 5, 2003 up to the Court of Appeals Decision dated November 23, 2005, to wit:

IN VIEW WHEREOF, the dismissal of private respondent Geraldine Velasco is AFFIRMED, but petitioner PFIZER, INC. is hereby ordered to pay her the wages to which she is entitled to from the time the reinstatement order was issued until November 23, 2005, the date of promulgation of Our Decision.[11]

Respondent filed with the Court a petition for review under Rule 45 of the Rules of Civil Procedure, which assailed the Court of Appeals Decision dated November 23, 2005 and was docketed as G.R. No. 175122. Respondent's petition, questioning the Court of Appeals' dismissal of her complaint, was denied by this Court's Second Division in a minute Resolution[12] dated December 5, 2007, the pertinent portion of which states:

Considering the allegations, issues and arguments adduced in the petition for review on certiorari, the Court resolves to DENY the petition for failure to sufficiently show any reversible error in the assailed judgment to warrant the exercise of this Court's discretionary appellate jurisdiction, and for raising substantially factual issues.

On the other hand, PFIZER filed the instant petition assailing the aforementioned Court of Appeals Resolutions and offering for our resolution a single legal issue, to wit:

Whether or not the Court of Appeals committed a serious but reversible error when it ordered Pfizer to pay Velasco wages from the date of the Labor Arbiter's decision ordering her reinstatement until November 23, 2005, when the Court of Appeals rendered its decision declaring Velasco's dismissal valid.[13]

The petition is without merit.

PFIZER argues that, contrary to the Court of Appeals' pronouncement in its assailed Decision dated November 23, 2005, the ruling in *Roquero v. Philippine Airlines, Inc.*[14] is not applicable in the case at bar, particularly with regard to the nature and consequences of an order of reinstatement, to wit:

The order of reinstatement is immediately executory. The unjustified refusal of the employer to reinstate a dismissed employee entitles him to payment of his salaries effective from the time the employer failed to reinstate him despite the issuance of a writ of execution. Unless there is a restraining order issued, it is ministerial upon the Labor Arbiter to implement the order of reinstatement. In the case at bar, no restraining order was granted. Thus, it was mandatory on PAL to actually reinstate Roquero or reinstate him in the payroll. Having failed to do so, PAL must pay Roquero the salary he is entitled to, as if he was reinstated, from the time of the decision of the NLRC until the finality of the decision of the Court.[15] (Emphases supplied.)

It is PFIZER's contention in its Memorandum[16] that "there was no unjustified refusal on [its part] to reinstate [respondent] Velasco during the pendency of the appeal,"[17] thus, the pronouncement in *Roquero* cannot be made to govern this case. During the pendency of the case with the Court of Appeals and prior to its November 23, 2005 Decision, PFIZER claimed that it had already required respondent to report for work on July 1, 2005. However, according to PFIZER, it was respondent who refused to return to work when she wrote PFIZER, through counsel, that she was opting to receive her separation pay and to avail of PFIZER's early retirement

program.

In PFIZER's view, it should no longer be required to pay wages considering that (1) it had already previously paid an enormous sum to respondent under the writ of execution issued by the Labor Arbiter; (2) it was allegedly ready to reinstate respondent as of July 1, 2005 but it was respondent who unjustifiably refused to report for work; (3) it would purportedly be tantamount to allowing respondent to choose "payroll reinstatement" when by law it was the employer which had the right to choose between actual and payroll reinstatement; (4) respondent should be deemed to have "resigned" and therefore not entitled to additional backwages or separation pay; and (5) this Court should not mechanically apply Roquero but rather should follow the doctrine in *Genuino v. National Labor Relations Commission*[18] which was supposedly "more in accord with the dictates of fairness and justice." [19]

We do not agree.

At the outset, we note that PFIZER's previous payment to respondent of the amount of P1,963,855.00 (representing her wages from December 5, 2003, or the date of the Labor Arbiter decision, until May 5, 2005) that was successfully garnished under the Labor Arbiter's Writ of Execution dated May 26, 2005 cannot be considered in its favor. Not only was this sum legally due to respondent under prevailing jurisprudence but also this circumstance highlighted PFIZER's unreasonable delay in complying with the reinstatement order of the Labor Arbiter. A perusal of the records, including PFIZER's own submissions, confirmed that it only required respondent to report for work on July 1, 2005, as shown by its Letter[20] dated June 27, 2005, which is almost two years from the time the order of reinstatement was handed down in the Labor Arbiter's Decision dated December 5, 2003.

As far back as 1997 in the seminal case of *Pioneer Texturizing Corporation v. National Labor Relations Commission*, [21] the Court held that an award or order of reinstatement is immediately self-executory without the need for the issuance of a writ of execution in accordance with the third paragraph of Article 223[22] of the Labor Code. In that case, we discussed in length the rationale for that doctrine, to wit:

The provision of Article 223 is clear that an award [by the Labor Arbiter] for reinstatement shall be immediately executory even pending appeal and the posting of a bond by the employer shall not stay the execution for reinstatement. The legislative intent is quite obvious, i.e., to make an award of reinstatement immediately enforceable, even pending appeal. To require the application for and issuance of a writ of execution as prerequisites for the execution of a reinstatement award would certainly betray and run counter to the very object and intent of Article 223, i.e., the immediate execution of a reinstatement order. The reason is simple. An application for a writ of execution and its issuance could be delayed for numerous reasons. A mere continuance or postponement of a scheduled hearing, for instance, or an inaction on the part of the Labor Arbiter or the NLRC could easily delay the issuance of the writ thereby setting at naught the strict mandate and noble purpose envisioned by Article 223. In other words, if the requirements of Article 224 [including the issuance of a writ of execution] were to govern, as we so declared in *Maranaw*, then the executory nature of a reinstatement order or award contemplated by Article 223 will be unduly circumscribed and rendered ineffectual. In enacting the law, the legislature is presumed to have ordained a valid and sensible law, one which operates no further than may be necessary to achieve its specific purpose. Statutes, as a rule, are to be construed in the light of the purpose to be achieved and the evil sought to be prevented. x x x In introducing a new rule on the reinstatement aspect of a labor decision under Republic Act No. 6715, Congress should not be considered to be indulging in mere semantic exercise. x x x [23] (Italics in the original; emphasis and underscoring supplied.)

In the case at bar, PFIZER did not immediately admit respondent back to work which, according to the law, should have been done as soon as an order or award of reinstatement is handed down by the Labor Arbiter without need for the issuance of a writ of execution. Thus, respondent was entitled to the wages paid to her under the

aforementioned writ of execution. At most, PFIZER's payment of the same can only be deemed partial compliance/execution of the Court of Appeals Resolution dated October 23, 2006 and would not bar respondent from being paid her wages from May 6, 2005 to November 23, 2005.

It would also seem that PFIZER waited for the resolution of its appeal to the NLRC and, only after it was ordered by the Labor Arbiter to pay the amount of P1,963,855.00 representing respondent's full backwages from December 5, 2003 up to May 5, 2005, did PFIZER decide to require respondent to report back to work via the Letter dated June 27, 2005.

PFIZER makes much of respondent's non-compliance with its return- to-work directive by downplaying the reasons forwarded by respondent as less than sufficient to justify her purported refusal to be reinstated. In PFIZER's view, the return-to-work order it sent to respondent was adequate to satisfy the jurisprudential requisites concerning the reinstatement of an illegally dismissed employee.

It would be useful to reproduce here the text of PFIZER's Letter dated June 27, 2005:

Dear Ms. Velasco:

Please be informed that, pursuant to the resolutions dated 20 October 2004 and 14 December 2004 rendered by the National Labor Relations Commission and the order dated 24 May 2005 issued by Executive Labor Arbiter Vito C. Bose, you are required to report for work on 1 July 2005, at 9:00 a.m., at Pfizer's main office at the 23rd Floor, Ayala Life-FGU Center, 6811 Ayala Avenue, Makati City, Metro Manila.

Please report to the undersigned for a briefing on your work assignments and other responsibilities, including the appropriate relocation benefits.

For your information and compliance.

Very truly yours,

(Sgd.)

Ma. Eden Grace Sagisi

Labor and Employee Relations Manager[24]

To reiterate, under Article 223 of the Labor Code, an employee entitled to reinstatement "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."

It is established in jurisprudence that reinstatement means restoration to a state or condition from which one had been removed or separated. The person reinstated assumes the position he had occupied prior to his dismissal. Reinstatement presupposes that the previous position from which one had been removed still exists, or that there is an unfilled position which is substantially equivalent or of similar nature as the one previously occupied by the employee.[25]

Applying the foregoing principle to the case before us, it cannot be said that with PFIZER's June 27, 2005 Letter, in belated fulfillment of the Labor Arbiter's reinstatement order, it had shown a clear intent to reinstate respondent to her former position under the same terms and conditions nor to a substantially equivalent position. To begin with, the return-to-work order PFIZER sent respondent is silent with regard to the position or the exact nature of employment that it wanted respondent to take up as of July 1, 2005. Even if we assume that the job awaiting respondent in the new location is of the same designation and pay category as what she had before, it is plain from the text of PFIZER's June 27, 2005 letter that such reinstatement was not "under the same terms and conditions" as her previous employment, considering that PFIZER ordered respondent to report to its main office in Makati

City while knowing fully well that respondent's previous job had her stationed in Baguio City (respondent's place of residence) and it was still necessary for respondent to be briefed regarding her work assignments and responsibilities, including her relocation benefits.

The Court is cognizant of the prerogative of management to transfer an employee from one office to another within the business establishment, provided that there is no demotion in rank or diminution of his salary, benefits and other privileges and the action is not motivated by discrimination, made in bad faith, or effected as a form of punishment or demotion without sufficient cause.[26] Likewise, the management prerogative to transfer personnel must be exercised without grave abuse of discretion and putting to mind the basic elements of justice and fair play. There must be no showing that it is unnecessary, inconvenient and prejudicial to the displaced employee.[27]

The June 27, 2005 return-to-work directive implying that respondent was being relocated to PFIZER's Makati main office would necessarily cause hardship to respondent, a married woman with a family to support residing in Baguio City. However, PFIZER, as the employer, offered no reason or justification for the relocation such as the filling up of respondent's former position and the unavailability of substantially equivalent position in Baguio City. A transfer of work assignment without any justification therefor, even if respondent would be presumably doing the same job with the same pay, cannot be deemed faithful compliance with the reinstatement order. In other words, in this instance, there was no real, bona fide reinstatement to speak of prior to the reversal by the Court of Appeals of the finding of illegal dismissal.

In view of PFIZER's failure to effect respondent's actual or payroll reinstatement, it is indubitable that the Roquero ruling is applicable to the case at bar. The circumstance that respondent opted for separation pay in lieu of reinstatement as manifested in her counsel's Letter[28] dated July 18, 2005 is of no moment. We do not see respondent's letter as taking away the option from management to effect actual or payroll reinstatement but, rather under the factual milieu of this case, where the employer failed to categorically reinstate the employee to her former or equivalent position under the same terms, respondent was not obliged to comply with PFIZER's ambivalent return-to-work order. To uphold PFIZER's view that it was respondent who unjustifiably refused to work when PFIZER did not reinstate her to her former position, and worse, required her to report for work under conditions prejudicial to her, is to open the doors to potential employer abuse. Foreseeably, an employer may circumvent the immediately enforceable reinstatement order of the Labor Arbiter by crafting return-to-work directives that are ambiguous or meant to be rejected by the employee and then disclaim liability for backwages due to non-reinstatement by capitalizing on the employee's purported refusal to work. In sum, the option of the employer to effect actual or payroll reinstatement must be exercised in good faith.

Moreover, while the Court has upheld the employer's right to choose between actually reinstating an employee or merely reinstating him in the payroll, we have also in the past recognized that reinstatement might no longer be possible under certain circumstances. In *F.F. Marine Corporation v. National Labor Relations Commission*,[29] we had the occasion to state:

It is well-settled that when a person is illegally dismissed, he is entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages. In the event, however, that reinstatement is no longer feasible, or if the employee decides not be reinstated, the employer shall pay him separation pay in lieu of reinstatement. Such a rule is likewise observed in the case of a strained employer-employee relationship or when the work or position formerly held by the dismissed employee no longer exists. In sum, an illegally dismissed employee is entitled to: (1) either reinstatement if viable or separation pay if reinstatement is no longer viable, and (2) backwages.[30] (Emphasis supplied.)

Similarly, we have previously held that an employee's demand for separation pay may be indicative of strained

relations that may justify payment of separation pay in lieu of reinstatement.[31] This is not to say, however, that respondent is entitled to separation pay in addition to backwages. We stress here that a finding of strained relations must nonetheless still be supported by substantial evidence.[32]

In the case at bar, respondent's decision to claim separation pay over reinstatement had no legal effect, not only because there was no genuine compliance by the employer to the reinstatement order but also because the employer chose not to act on said claim. If it was PFIZER's position that respondent's act amounted to a "resignation" it should have informed respondent that it was accepting her resignation and that in view thereof she was not entitled to separation pay. PFIZER did not respond to respondent's demand at all. As it was, PFIZER's failure to effect reinstatement and accept respondent's offer to terminate her employment relationship with the company meant that, prior to the Court of Appeals' reversal in the November 23, 2005 Decision, PFIZER's liability for backwages continued to accrue for the period not covered by the writ of execution dated May 24, 2005 until November 23, 2005.

Lastly, PFIZER exhorts the Court to re-examine the application of Roquero with a view that a mechanical application of the same would cause injustice since, in the present case, respondent was able to gain pecuniary benefit notwithstanding the circumstance of reversal by the Court of Appeals of the rulings of the Labor Arbiter and the NLRC thereby allowing respondent to profit from the dishonesty she committed against PFIZER which was the basis for her termination. In its stead, PFIZER proposes that the Court apply the ruling in *Genuino v. National Labor Relations Commission*[33] which it believes to be more in accord with the dictates of fairness and justice. In that case, we canceled the award of salaries from the date of the decision of the Labor Arbiter awarding reinstatement in light of our subsequent ruling finding that the dismissal is for a legal and valid ground, to wit:

Anent the directive of the NLRC in its September 3, 1994 Decision ordering Citibank "to pay the salaries due to the complainant from the date it reinstated complainant in the payroll (computed at P60,000.00 a month, as found by the Labor Arbiter) up to and until the date of this decision," the Court hereby cancels said award in view of its finding that the dismissal of *Genuino* is for a legal and valid ground.

Ordinarily, the employer is required to reinstate the employee during the pendency of the appeal pursuant to Art. 223, paragraph 3 of the Labor Code, which states:

x x x x

If the decision of the labor arbiter is later reversed on appeal upon the finding that the ground for dismissal is valid, then the employer has the right to require the dismissed employee on payroll reinstatement to refund the salaries s/he received while the case was pending appeal, or it can be deducted from the accrued benefits that the dismissed employee was entitled to receive from his/her employer under existing laws, collective bargaining agreement provisions, and company practices. However, if the employee was reinstated to work during the pendency of the appeal, then the employee is entitled to the compensation received for actual services rendered without need of refund.

Considering that *Genuino* was not reinstated to work or placed on payroll reinstatement, and her dismissal is based on a just cause, then she is not entitled to be paid the salaries stated in item no. 3 of the fallo of the September 3, 1994 NLRC Decision.[34] (Emphases supplied.)

Thus, PFIZER implores the Court to annul the award of backwages and separation pay as well as to require respondent to refund the amount that she was able to collect by way of garnishment from PFIZER as her accrued salaries.

The contention cannot be given merit since this question has been settled by the Court en banc.

In the recent milestone case of *Garcia v. Philippine Airlines, Inc.*,[35] the Court wrote *finis* to the stray posture in

Genuino requiring the dismissed employee placed on payroll reinstatement to refund the salaries in case a final decision upholds the validity of the dismissal. In *Garcia*, we clarified the principle of reinstatement pending appeal due to the emergence of differing rulings on the issue, to wit:

On this score, the Court's attention is drawn to seemingly divergent decisions concerning reinstatement pending appeal or, particularly, the option of payroll reinstatement. On the one hand is the jurisprudential trend as expounded in a line of cases including *Air Philippines Corp. v. Zamora*, while on the other is the recent case of *Genuino v. National Labor Relations Commission*. At the core of the seeming divergence is the application of paragraph 3 of Article 223 of the Labor Code x x x.

x x x x

The view as maintained in a number of cases is that:

x x x [E]ven if the order of reinstatement of the Labor Arbiter is reversed on appeal, it is obligatory on the part of the employer to reinstate and pay the wages of the dismissed employee during the period of appeal until reversal by the higher court. On the other hand, if the employee has been reinstated during the appeal period and such reinstatement order is reversed with finality, the employee is not required to reimburse whatever salary he received for he is entitled to such, more so if he actually rendered services during the period. (Emphasis in the original; italics and underscoring supplied)

In other words, a dismissed employee whose case was favorably decided by the Labor Arbiter is entitled to receive wages pending appeal upon reinstatement, which is immediately executory. Unless there is a restraining order, it is ministerial upon the Labor Arbiter to implement the order of reinstatement and it is mandatory on the employer to comply therewith.

The opposite view is articulated in *Genuino* which states:

If the decision of the labor arbiter is later reversed on appeal upon the finding that the ground for dismissal is valid, then the employer has the right to require the dismissed employee on payroll reinstatement to refund the salaries [he] received while the case was pending appeal, or it can be deducted from the accrued benefits that the dismissed employee was entitled to receive from [his] 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.

Considering that *Genuino* was not reinstated to work or placed on payroll reinstatement, and her dismissal is based on a just cause, then she is not entitled to be paid the salaries stated in item no. 3 of the fallo of the September 3, 1994 NLRC Decision. (Emphasis, italics and underscoring supplied)

It has thus been advanced that there is no point in releasing the wages to petitioners since their dismissal was found to be valid, and to do so would constitute unjust enrichment.

Prior to *Genuino*, there had been no known similar case containing a dispositive portion where the employee was required to refund the salaries received on payroll reinstatement. In fact, in a catena of cases, the Court did not order the refund of salaries garnished or received by payroll-reinstated employees despite a subsequent reversal of the reinstatement order.

The dearth of authority supporting *Genuino* is not difficult to fathom for it would otherwise render inutile the rationale of reinstatement pending appeal.

x x x x

x x x Then, by and pursuant to the same power (police 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 his family.[36]

Furthermore, in *Garcia*, the Court went on to discuss the illogical and unjust effects of the "refund doctrine" erroneously espoused in *Genuino*:

Even outside the theoretical trappings of the discussion and into the mundane realities of human experience, the "refund doctrine" easily demonstrates how a favorable decision by the Labor Arbiter could harm, more than help, a dismissed employee. The employee, to make both ends meet, would necessarily have to use up the salaries received during the pendency of the appeal, only to end up having to refund the sum in case of a final unfavorable decision. It is mirage of a stop-gap leading the employee to a risky cliff of insolvency.

Advisably, the sum is better left unspent. It becomes more logical and practical for the employee to refuse payroll reinstatement and simply find work elsewhere in the interim, if any is available. Notably, the option of payroll reinstatement belongs to the employer, even if the employee is able and raring to return to work. Prior to *Genuino*, it is unthinkable for one to refuse payroll reinstatement. In the face of the grim possibilities, the rise of concerned employees declining payroll reinstatement is on the horizon.

Further, the *Genuino* ruling not only disregards the social justice principles behind the rule, but also institutes a scheme unduly favorable to management. Under such scheme, the salaries dispensed pendente lite merely serve as a bond posted in installment by the employer. For in the event of a reversal of the Labor Arbiter's decision ordering reinstatement, the employer gets back the same amount without having to spend ordinarily for bond premiums. This circumvents, if not directly contradicts, the proscription that the "posting of a bond [even a cash bond] by the employer shall not stay the execution for reinstatement."

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-à-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. x x x.[37] (Emphasis supplied.)

In sum, the Court reiterates the principle that reinstatement pending appeal necessitates that it must be immediately self-executory without need for a writ of execution during the pendency of the appeal, if the law is to serve its noble purpose, and any attempt on the part of the employer to evade or delay its execution should not be allowed. Furthermore, we likewise restate our ruling that an order for reinstatement entitles an employee to receive his accrued backwages from the moment the reinstatement order was issued up to the date when the same was reversed by a higher court without fear of refunding what he had received. It cannot be denied that, under our statutory and jurisprudential framework, respondent is entitled to payment of her wages for the period after December 5, 2003 until the Court of Appeals Decision dated November 23, 2005, notwithstanding the finding therein that her dismissal was legal and for just cause. Thus, the payment of such wages cannot be deemed as unjust enrichment on respondent's part.

WHEREFORE, the petition is DENIED and the assailed Resolution dated October 23, 2006 as well as the Resolution dated April 10, 2007 both issued by the Court of Appeals in CA-G.R. SP No. 88987 are hereby AFFIRMED.

SO ORDERED.

Corona, C.J., (Chairperson), Velasco, Jr., Del Castillo, and Perez, JJ., concur.

[1] Rollo, pp. 42-44.

[2] Id. at 65-66.

[3] Id. at 307-323; penned by Associate Justice Rosmari D. Carandang with Associate Justices Andres B. Reyes, Jr. and Monina Arevalo-Zenarosa, concurring.

[4] Id. at 187-201.

[5] Id. at 307-310.

[6] Id. at 201.

[7] Id. at 234-248; penned by NLRC Commissioner Ernesto C. Verceles with Presiding Commissioner Lourdes C. Javier and Commissioner Tito F. Genilo, concurring.

[8] Id. at 247.

[9] Id. at 265-266.

[10] Id. at 322-323.

[11] Id. at 43.

[12] Rollo (G.R. No. 175122), p. 238.

[13] Id. at 403.

[14] 449 Phil. 437 (2003).

[15] Id. at 446.

[16] Rollo, pp. 394-415.

[17] Id. at 405.

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

[19] Rollo, p. 411.

[20] Id. at 304.

[21] 345 Phil. 1057 (1997).

[22] 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.

[23] Pioneer Texturizing Corporation v. National Labor Relations Commission, *supra* note 21 at 1075-1076.

[24] Rollo, p. 304.

[25] Asian Terminals, Inc. v. Villanueva, G.R. No. 143219, November 28, 2006, 508 SCRA 346, 352.

[26] Norkis Trading Co., Inc. v. Gnilo, G.R. No. 159730, February 11, 2008, 544 SCRA 279, 289.

[27] Urbanes, Jr. v. Court of Appeals, G.R. No. 138379, November 25, 2004, 444 SCRA 84, 95.

[28] Rollo, pp. 305-306.

[29] 495 Phil. 140 (2005).

[30] Id. at 159.

[31] F.R.F. Enterprises, Inc. v. National Labor Relations Commission, 313 Phil. 493, 502 (1995).

[32] Golden Ace Builders v. Talde, G.R. No. 187200, May 5, 2010.

[33] Supra note 18.

[34] Id. at 363-364.

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

[36] Id. at 488-491.

[37] Id. at 491-493.

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