

**HARRISON FOUNDRY & MACHINERY AND ALFONSO CHUA,
PETITIONERS, VS. HARRISON FOUNDRY WORKER’S
ASSOCIATION, FELIPE NUFABLE, ET AL., RESPONDENTS.**

G.R. No. 18432. June 29, 1963

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Appeal by certiorari from an order of the Court of Industrial Relations, dated 23 November 1960, the dispositive portion of which is:

"Wherefore, the motion to dismiss respectively filed on December 4, 1959, in case No. 1290-V and on February 11 1960 in case No. 2255-ULP are hereby denied for lack of merits."

The facts are not disputed.

The forty-nine (49) individual respondents are all employees of herein petitioners, and together with eight (8) other co-employees who are union officials, they constitute the total 57 man-membership of herein respondent union, the Harrison Foundry Workers Association.

On 24 May 1958, the eight (8) union officials were dismissed by petitioners, for which reason the 49 respondent employees struck on 27 May 1958. Thereafter, a complaint for unfair labor practice was filed by Acting Prosecutor Francisco de los Reyes of the Court of Industrial Relations, docketed as case No. 1696-ULP and entitled "Harrison Foundry Workers' Association vs. Alfonso Chua and Harrison Foundry & Machinery". Likewise, Acting Prosecutor of the CIR (Ezer R. Yutuc) filed a complaint for unfair labor practice against the Harrison Foundry Workers' Association on behalf of Alfonso Chua and the Harrison & Machinery, docketed as Case No. 1708-ULP., allegedly because the strike declared was illegal

On 26, November 1958, Associate Judge Emiliano Tabigne, in whose sala cases Nos. 1696-ULP and 1708-ULP were tried jointly, rendered his decision, holding that the strike called by the 49 respondent employees was illegal inasmuch as the eight union officials were dismissed for cause. On 10 December 1958, motion to reconsider this decision by way of appeal to the court en banc was perfected, and both cases were submitted for resolution to the court en banc.

On 15 January 1959, pending appeal and resolution by the court en banc, trial Judge Tabigne authorized petitioner Alfonso Chua to hire temporary replacement personnel, in an order ex parte, the dispositive portion of which is as follows:

"Wherefore, the employer-firm, Harrison Foundry and Machinery, is hereby allowed and permitted to re-open its business upon compliance with the filing of the necessary bond fixed in this order and to employ such temporary personnels that may be deemed necessary to accomplish the purpose to which this urgent motion ex parte has been premised. * * *"

However, in its Resolution dated 13 March 1959, the industrial court, en banc, reversed the decision of the trial judge, and declared, among other things, that the strike called by herein 49 respondent employees was justified because of the illegal dismissal of the 8 union officials, who were consequently ordered reinstated with back wages. Nothing was said, however, about the payment of back wages to the 49 strikers, much less about their returning back to work, for which reason respondent union, on 21 August 1959, filed a Second Motion for Reconsideration, apparently for the purpose of clarifying their status. But the court en banc dismissed this second motion for reconsideration on the ground that " * * * only orders or decisions of one Judge are subject to motion for reconsideration but not a resolution of the Court en banc".

This Resolution of 13 March 1959 became final and executory as the appeal therefrom by herein petitioners (G.R. No. L-15848) was dismissed by this Court for having been filed beyond the reglementary period.

Upon repeated refusal of petitioners to accept them back into work, the 49 individual respondents commended Case No. 1290—V, dated 16 November 1959, praying for reinstatement with back wages, and Case No. 2255-ULP, dated; 13, January 1960, for unfair labor practice, signed by Acting Prosecutor Guillermo C. Medina of the CIR, alleging that sometimes in January 1959 petitioners herein employed mere than 60 non-union replacement workers in preference to the 49 strikers. Motions to dismiss these two cases having been rejected as aforesaid, petitioners perfected the instant appeal after reconsideration was denied.

It is an elementary rule of procedure (Rule 41, Sec. 2) that an order denying or rejecting a motion to dismiss is interlocutory and non-appealable, because the order does not terminate the proceedings, nor finally dispose of the contentions of the parties.[1] And it is equally well established that a writ of certiorari can not be made to substitute for an appeal where the latter lies at the proper time.[2]

Since *res judicata* does not touch the lower court's jurisdiction, the obvious remedy for the appellants was to interpose, as defenses in their answer, the objections raised by them in the motion to dismiss, then proceed to trial, and, in case of an unfavorable decision, bring the case to us by appeal in due time, so that this Court may rule on all the issues once and for all. The piecemeal resort to higher courts, unless absolutely indispensable, is a practice that has always been discouraged, because it delays the speedy disposition of cases, and is often resorted to as a means of draining the resources of the poorer party and of compelling it to submit out of sheer exhaustion, even in its demands should be conformable to reason and justice.

The practice adopted by the appellants is, therefore, a plain abuse of legal processes, tending as it does to block the speedy administration of justice to the prejudice of unemployed strikers.

On the merits, the appellants fare no better. The issue in the first two cases (1969-ULP and the countercharge thereto, Case 1708-ULP) was whether the dismissal of eight union officials was unfair, and whether the strike declared to compel their reinstatement was legal or not. The readmission of the strikers, even if actually claimed, could not be ordered therein, because if the strike were legal, the same did not operate to terminate the employer-employee relationship. No question of readmission could, therefore, arise until the strike had been declared lawful by the industrial court, and the employer should, in spite thereof, refuse to readmit the strikers, an act that would constitute in itself a separate case of unfair labor practice and it is this aspect that is being litigated in the present case, dearly, the defense of *res judicata* does not lie.

It thus appearing that the petitioners-appellants have managed to delay the speedy settlement on the merits of these cases to the prejudice of the strikers, and has-compelled them to litigate a totally improper appeal, equity demands that the right of the laborers to recover damages and attorney's fees therefor should be reserved to them. We are the more inclined to do so because public policy demands an effective curb upon the abusive delays obtained through appeals from interlocutory orders of trial courts.

Wherefore, the orders concerned are hereby affirmed, without prejudice to the right of respondents laborers and Union to recover damages and attorney's fees as stated in this opinion. Costs against petitioners.

Padilla, Bautista Angelo, Labrador, Concepcion, Paredes, Dizon, Regala and Makalintal, JJ., concur.

[1] Yu Goat vs. Hugo, 93 Phil., 613; Hodges vs. Villanueva, 90 Phil., 255; Chua Bun vs. Court 92 Phil., 1029; 50 Off. Gaz. 1094.

[2] David vs. Miranda, L-6215, Aug. 31, 1954; Partieco vs. Tumangday, 108 Phil., 238; Grospe vs. CA, 106 Phil., 1144; Meralco Emp. vs. Rep., 95 Phil., 61; Phil. Surety vs. Tiburcio, 108 Phil., 177.

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