

## **AMERICAN OXYGEN & ACETYLENE COMPANY, INC., PETITIONER, VS. COURT OF INDUSTRIAL RELATIONS AND ISIDRO NATAVIO, RESPONDENTS.**

*G.R. No. 18554. December 27, 1962*

Ponente: LABRADOR, J.

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### **LABRADOR, J.:**

This is a petition to enjoin the Court of Industrial Relations from continuing proceedings in said tribunal in case No. 26-V-Pangasinan, entitled "Isidro Natavio vs. American Oxygen and Acetylene Company."

In the above case No. 26-V-Pangasinan, Natavio's petition contains the following material allegations: That he was employed by respondent American Oxygen and Acetylene Company from 1948 to 1958 at a monthly salary of P265; that sometime in 1959 he was separated from the service because of illness due to the nature of his job; that the matter of his right to compensation and rein statement is now pending before Regional Office No. 3 of Manila; that as an employee he was required to render overtime work from 5 p.m. to 7 p.m. from the year 1949 to the year 1951, for which he was not paid the corresponding overtime pay, and from 1952 to 1956 he was also required to render overtime work from 5 p.m. to 6 p.m. without the corresponding payment; that from 1949 to 1956, he was likewise required to work on Sundays and holidays for which he was not paid; and that petitioner has not been paid the above demands, respondent refusing to do so.

Upon the filing of the above petition, the respondent filed a motion to dismiss, alleging that the court has no jurisdiction over the subject matter; that the petitioner's cause of action has prescribed; and that the petition is barred by the filing of a claim pending in Regional Office No. 3. The original petition was filed on May 6, 1960 and the motion to dismiss on May 18, 1960. An amended petition was filed dated, June 7, 1960, in which the following changes in the complaint were made: (1) an insertion of an allegation that when petitioner was pronounced cured and already ready to work the company refused to readmit him; (2) a change in the period when he rendered overtime work, from "1952 to 1956" to "1952 to 1958;" (3) a change as to the period when he was required to render work during Sundays and holidays from "1949 to 1956" to "1949 to 1958" (4) a new allegation that upon advice of counsel he has desisted from prosecuting in the Regional Office, Department of Labor, his overtime and reinstatement claims leaving for determination by said office his claim for injury.

Upon the filing of the above amended petition counsel for respondent moved to strike out the amended petition on the ground that the same was filed without leave of court and while a motion to dismiss contesting the jurisdiction of the court was pending resolution. The court through Judge Emiliano C. Tabigne of the Court of Industrial Relations granted the motion to dismiss and dismissed Natavio's petition, on the ground that the relation of employer and employee had ceased and because of the absence of a sufficient number of laborers (31). But upon motion for reconsideration the court en banc, Judge Tabigne dissenting, set aside the order of dismissal and gave due course to the petition. It is against this order setting aside the dismissal that the present petition for review is brought before this Court. The petition was given due course by Us.

It will be noted that the original petition is subscribed and sworn to by the petitioner, while the amended petition is not; that the changes were made without permission from the court in which the case was pending and respondent in the case had the right to object thereto. It is also apparent that the changes were made to avoid the defense of prescription and the lack of jurisdiction over the subject matter. Therefore, the present case clearly falls under our ruling in the case of *Campos Rueda Corporation vs. Hon. Jose S. Bautista, et al.*, *supra*, where we declared:

"The allegations made in Muyot's complaint against petitioner show conclusively that his employment with the later was terminated on December 31, 1953—almost five years before said complaint was filed; that, without asking for his reinstatement, neither directly nor indirectly, he only sought to collect what, in his opinion, was due and payable to him for overtime, Sunday and holiday services he had rendered to his former employer during the period of his employment."

Continuing, Mr. Justice Dizon further stated:

"Respondent Muyot must have finally realized that the Court of Industrial Relations had no jurisdiction over his claims for, according to his answer filed in the present case, he had filed on July 14, 1961—more than two years after the filing of his action—a motion for leave to amend his complaint and to admit the amended complaint attached to his motion, the amendment consisting precisely in the addition of a third cause of action where, *inter alia*, he alleged that on May 31, 1953 he was illegally dismissed by herein petitioner and that, as a consequence, he was entitled to reinstatement, with back wages from the date of his illegal dismissal up to his actual reinstatement.

"Obviously the purpose of the amendment was to make his case fall within the jurisdiction of the respondent court. This attempt is, in our opinion, of no avail.

"It is settled in this jurisdiction that the jurisdiction of a court is determined by the allegations made in the complaint or petition. On the other hand, we have also held heretofore that this principle applies to proceedings in the Court of Industrial Relations (*Administrator etc. vs. Alberto et al.*, G. R. No. L-12133, October 31, 1958).

"The insufficiency of the allegations of Muyot's complaint to place his action within the jurisdiction of the respondent court could not be cured by amendment, Nor in *Rosario vs. Carandang*, we clearly held that 'a complaint can not be amended so as to confer jurisdiction on the court in which it is filed, if the cause of action originally set forth was not within the court's jurisdiction.' (*Rosario vs. Carandang*, 96 Phil., 845; 51 Off. Gaz., 2387, April 28, 1955)."

Without passing upon the validity of the reasons given by the Court of Industrial Relations in setting aside the order of dismissal and reinstating the case, we hold that the amendment of the original complaint by the insertion of allegations that would give jurisdiction to the court are unauthorized and such amendments cannot be utilized for the purpose of giving jurisdiction over the amended petition, which we declare to be sham. In consequence, the motion to dismiss filed in the court below should have been granted.

Wherefore, the writ is hereby granted, and the order of the court below denying the motion to dismiss is set aside, and the original petition ordered dismissed. With costs against respondent Isidro Natavio.

So ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Concepcion, Reyes, J. B. L., Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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