

AGG TRUCKING AND/OR ALEX ANG GAEID, PETITIONERS, VS. MELANIO B. YUAG, RESPONDENT.

G.R. No. 195033. October 12, 2011

Ponente: SERENO, J.

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SERENO, J.:

In this Petition for Review on Certiorari under Rule 45 with Prayer for Issuance of Writ of Temporary and/or Permanent Injunction, assailed is the 23 June 2010 Decision of the Court of Appeals (CA), Cagayan de Oro City, in CA-G.R. SP No. 01854-MIN.[1] Reversing the 30 November 2006 Resolution of the National Labor Relations Commission and reinstating, with modification, the 30 August 2006 Decision of the labor arbiter, the CA disposed as follows:

WHEREFORE, premises considered, the instant Petition is hereby GRANTED, and the Resolution dated November 30, 2006 is hereby REINSTATED subject to MODIFICATION, thus:

Private respondent Alex Ang Gaeid and/or AAG Trucking is hereby ORDERED to pay petitioner Melanio B. Yuag or his heirs or assigns the following:

(1) FULL BACKWAGES, inclusive of all allowances, other benefits or their monetary equivalent computed from the time petitioner's compensation was withheld from him starting December 6, 2004 until the time he was employed by his new employer (Bernie Ragandang), instead of the date of his supposed reinstatement which We no longer require as explained above.

(2) SEPARATION PAY (in lieu of the supposed reinstatement) equivalent to one-half (½) month pay for every year of service. A fraction of at least six (6) months shall be considered one (1) whole year.

(3) TEMPERATE DAMAGES in the amount of Five Thousand Pesos (Php5,000.00) for the financial loss suffered by the petitioner when he was abruptly dismissed as a truck driver on December 6, 2004 (during or around the Christmas season), although the exact amount of such damage is incapable of exact determination); and

(4) EXEMPLARY DAMAGES in the amount of Five Thousand Pesos (Php5,000.00) as a corrective measure in order to set out an example to serve as a negative incentive or deterrent against socially deleterious actions.

Considering that a person's wage is his/her means of livelihood i.e., equivalent to life itself, this decision is deemed immediately executory pending appeal, should the private respondent decide to elevate this case to the Supreme Court.

SO ORDERED.[2]

The Motion for Reconsideration filed by petitioner was denied by the CA.[3] Hence, this Petition.

The facts of the case are simple. Petitioner Alex Ang Gaeid had employed respondent Melanio Yuag as a driver since 28 February 2002. He alleged that he had a trucking business, for which he had 41 delivery trucks driven by 41 drivers, one of whom was respondent.[4] His clients were Busco Sugar Milling Co., Inc., operating in Quezon,

Bukidnon; and Coca-cola Bottlers Company in Davao City and Cagayan de Oro City.[5] Respondent received his salary on commission basis of 9% of his gross delivery per trip. He was assigned to a ten-wheeler truck and was tasked to deliver sacks of sugar from the Busco Sugar Mill to the port of Cagayan de Oro.[6] Petitioner noticed that respondent had started incurring substantial shortages since 30 September 2004, when he allegedly had a shortage of 32 bags, equivalent to ₱48,000; followed by 50 bags, equivalent to ₱75,000, on 11 November 2004.[7] It was also reported that he had illegally sold bags of sugar along the way at a lower price, and that he was banned from entering the premises of the Busco Sugar Mill.[8] Petitioner asked for an explanation from respondent who remained quiet.[9]

Alarmed at the delivery shortages, petitioner took it upon himself to monitor all his drivers, including respondent, by instructing them to report to him their location from time to time through their mobile phones.[10] He also required them to make their delivery trips in convoy, in order to avoid illegal sale of cargo along the way.[11]

Respondent, along with 20 other drivers, was tasked to deliver bags of sugar from Cagayan de Oro City to Coca-Cola Bottlers Plant in Davao City on 4 December 2004.[12] All drivers, with the exception of Yuag who could not be reached through his cellphone, reported their location as instructed. Their reported location gave evidence that they were indeed in convoy.[13] Afterwards, everyone, except Yuag, communicated that the delivery of their respective cargoes had been completed.[14] The Coca-Cola Plant in Davao later reported that the delivery had a suspiciously enormous shortage.[15]

Respondent reported to the office of the petitioner on 6 December 2004. Allegedly in a calm and polite manner, petitioner asked respondent to explain why the latter had not contacted petitioner for two days, and he had not gone in convoy with the other trucks, as he was told to do.[16] Respondent replied that the battery of his cellphone had broken down.[17] Petitioner then confronted him allegedly still in a polite and civilized manner, regarding the large shortages, but the latter did not answer.[18] Petitioner afterwards told him to "just take a rest" or, in their vernacular, "pahulay lang una." [19] This exchange started the dispute since respondent construed it as a dismissal. He demanded that it be done in writing, but petitioner merely reiterated that respondent should just take a rest in the meanwhile.[20] The former alleged that respondent had offered to resign and demanded separation pay. At that time, petitioner could not grant the demand, as it would entail computation which was the duty of the cashier.[21] Petitioner asked him to come back the next day.

Instead of waiting for another day to go back to his employer, Respondent went to the Department of Labor-Regional Arbitration Board X, that very day of the confrontation or on 6 December 2004. There he filed a Complaint for illegal dismissal, claiming his separation pay and 13th month pay.[22] Subsequently, after the delivered goods to the Coca-Cola Plant were weighed on 9 December 2004, it was found out that there was a shortage of 111 bags of sugar, equivalent to ₱166,000.[23]

Respondent argued that he was whimsically dismissed, just because he had not been able to answer his employer's call during the time of the delivery.[24] His reason for not answering was that the battery pack of his cellphone had broken down.[25] Allegedly enraged by that incident, his employer, petitioner herein, supposedly shouted at him and told him, "pahuway naka." [26] When he asked for a clarification, petitioner allegedly told him, "wala nay daghan istorya, pahulay na!" This statement was translated by the CA thus: "No more talking! Take a rest!" [27] He then realized that he was being dismissed. When he asked for his separation pay, petitioner refused.[28] Respondent thus filed a Complaint for illegal dismissal.

Ruling of the Labor Arbiter

On 30 August 2006, labor arbiter Nicodemus G. Palangan rendered his Decision sustaining respondent's Complaint for illegal dismissal.[29] The labor arbiter made a discourse on the existence of an employer-employee

relationship between the parties. In granting the relief sought by petitioner, the labor arbiter held as follows:

For failure on the part of the respondent to substantially prove the alleged infraction (shortages) committed by complainant and to afford him the due process mandated by law before he was eventually terminated, complainant's dismissal from his employment is hereby declared illegal and the respondent is liable to reinstate him with backwages for one (1) year but in view of the strained relationship that is now prevailing between the parties, this Arbitration Branch finds it more equitable to grant separation pay instead equivalent to one (1) month per year of service based on the average income for the last year of his employment CY 2004 which is P9,974.51, as hereby computed: ...[30]

Thus, the labor arbiter awarded respondent separation pay and proportionate 13[th] month pay for 2004 and 13[th] month pay differential for 2003.[31]

Petitioner appealed to the NLRC, alleging that the latter erred in finding that respondent had been illegally dismissed and that the utterance of "pahulay lang una" meant actual dismissal.[32] He also alleged that the pecuniary awards of separation pay, backwages, proportionate 13[th] month pay and differential were erroneous. He argued that pahulay lang una was not an act of dismissal; rather, he merely wanted to give respondent a break, since the company's clients had lost confidence in respondent. Thus, the latter allegedly had to wait for clients other than Busco Sugar Mill and Coca-Cola, which had banned respondent from entering their premises.

Ruling of the NLRC

In a Resolution dated 30 November 2006,[33] the NLRC reversed the labor arbiter's ruling, holding as follows:

While the general rule in dismissal cases is that the employer has the burden to prove that the dismissal was for just or authorized causes and after due process, said burden is necessarily shifted to the employee if the alleged dismissal is denied by the employer, as in this case, because a dismissal is supposedly a positive and unequivocal act by the employer. Accordingly, it is the employee that bears the burden of proving that in fact he was dismissed. It was then incumbent upon complainant to prove that he was in fact dismissed from his job by individual respondent Alex V. Ang Gaeid effective December 6, 2004 when the latter told him: Pahuway naka!" (You take a rest). Sadly, he failed to discharge that burden. Even assuming that Mr. Gaeid had the intention at that time of dismissing complainant from his job when he uttered the said words to him, there is no proof showing of any overt act subsequently done by Mr. Gaeid that would suggest he carried out such intention. There is no notice of termination served to complainant. Literally construing the remarks of Mr. Gaeid as having been dismissed from his job, complainant immediately filed the instant complaint for illegal dismissal on the same day without first ascertaining the veracity of the same. The how, why and the wherefore of his alleged dismissal should be clearly demonstrated by substantial evidence. Complainant failed to do so; hence, he cannot claim that he was illegally dismissed from employment."[34]

The NLRC further held thus:

At best, complainant should be considered on leave of absence without pay pending his new assignment. Not having been dismissed much less illegally, complainant is not entitled to the awarded benefits of backwages and separation pay for lack of legal and factual basis."[35]

The NLRC likewise held that the complainant was not entitled to 13[th] month pay, since he was paid on purely commission basis, an exception under Presidential Decree No. 851 - the law requiring employers to pay 13[th] month pay to their employees.[36]

Respondent moved for reconsideration,[37] in effect arguing that petitioner should not be allowed to change the latter's theory. Supposedly, the argument in the position paper of petitioner was that there was no employer-employee relationship between them, and that he was compelled to dismiss respondent because of the

heavy losses the latter was bringing to petitioner. In this Motion for Reconsideration, respondent admitted that his wife had received the Resolution on 12 January 2007, but that he learned of it much later, on 7 February 2007, justifying the untimely filing of the motion.[38]

The NLRC denied the Motion for Reconsideration for being filed out of time.[39] He and his counsel each received notice of the NLRC's Resolution dated 30 November 2006, reversing the labor arbiter's Decision on 11 January 2007,[40] but they only filed the motion 25 days after the period to file had already lapsed.[41] Respondent, thus, sought recourse from the CA through a Petition for a Writ of Certiorari under Rule 65.

The CA Ruling

On 23 June 2010, brushing aside the "technicality" issue, the CA proceeded to resolve the substantive issues which it deemed important, such as whether there was an employer-employee relationship between petitioner and respondent, and whether it was correct for the NLRC to declare that respondent was not illegally dismissed.[42] It completely reversed the NLRC and came up with the dispositive portion mentioned at the outset.

The Issues

Petitioner is now before us citing factual errors that the CA allegedly committed, such as not appreciating petitioner's lack of intention to dismiss respondent. These factual errors, however, are beyond this Court to determine, especially because the records of the proceedings at the level of the labor arbiter were not attached to the Petition. The Court is more interested in the legal issues raised by petitioner and rephrased by the Court as follows:

I

THE COURT OF APPEALS ERRED IN REVERSING THE NLRC WITHOUT ANY FINDING OF GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION;

II

THE COURT OF APPEALS ERRED IN ENTERTAINING RESPONDENT'S PETITION NOTWITHSTANDING THE FACT THAT HIS MOTION FOR RECONSIDERATION OF THE NLRC'S DECISION WAS FILED OUT OF TIME;

III

THE COURT OF APPEALS ERRED IN GRANTING AWARDS BEYOND WHAT WAS PRAYED FOR IN THE COMPLAINT SUCH AS THE AWARD OF TEMPERATE AND EXEMPLARY DAMAGES

The Court's Ruling

We find the Petition impressed with merit.

A writ of certiorari is a remedy to correct errors of jurisdiction, for which reason it must clearly show that the public respondent has no jurisdiction to issue an order or to render a decision. Rule 65 of the Rules of Court has instituted the petition for certiorari to correct acts of any tribunal, board or officer exercising judicial or quasi-judicial functions with grave abuse of discretion amounting to lack or excess of jurisdiction. This remedy serves as a check on acts, either of excess or passivity, that constitute grave abuse of discretion of a judicial or quasi-judicial function. This Court, in *San Fernando Rural Bank, Inc. v. Pampanga Omnibus Development Corporation and Dominic G. Aquino*,^[43] explained thus:

Certiorari is a remedy narrow in its scope and inflexible in character. It is not a general utility tool in the legal workshop. Certiorari will issue only to correct errors of jurisdiction and not to correct errors of judgment. An

error of judgment is one which the court may commit in the exercise of its jurisdiction, and which error is reviewable only by an appeal. Error of jurisdiction is one where the act complained of was issued by the court without or in excess of jurisdiction and which error is correctible only by the extraordinary writ of certiorari. As long as the court acts within its jurisdiction, any alleged errors committed in the exercise of its discretion will amount to nothing more than mere errors of judgment, correctible by an appeal if the aggrieved party raised factual and legal issues; or a petition for review under Rule 45 of the Rules of Court if only questions of law are involved.

A certiorari writ may be issued if the court or quasi-judicial body issues an order with grave abuse of discretion amounting to excess or lack of jurisdiction. Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or, in other words, where the power is exercised in an arbitrary manner by reason of passion, prejudice, or personal hostility, and it must be so patent or gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law. Mere abuse of discretion is not enough. Moreover, a party is entitled to a writ of certiorari only if there is no appeal nor any plain, speedy or adequate relief in the ordinary course of law.

The *raison d'être* for the rule is that when a court exercises its jurisdiction, an error committed while so engaged does not deprive it of the jurisdiction being exercised when the error was committed. If it did, every error committed by a court would deprive it of its jurisdiction and every erroneous judgment would be a void judgment. In such a situation, the administration of justice would not survive. Hence, where the issue or question involved affects the wisdom or legal soundness of the decision - not the jurisdiction of the court to render said decision - the same is beyond the province of a special civil action for certiorari.^[44](citations omitted)

Petitioner is correct in its argument that there must first be a finding on whether the NLRC committed grave abuse of discretion and on what these acts were. In this case, the CA seemed to have forgotten that its function in resolving a petition for certiorari was to determine whether there was grave abuse of discretion amounting to lack or excess of jurisdiction on the part of public respondent NLRC. The CA proceeded to review the records and to rule on issues that were no longer disputed during the appeal to the NLRC, such as the existence of an employer-employee relationship. The pivotal issue before the NLRC was whether petitioner's telling respondent to take a rest, or to have a break, was already a positive act of dismissing him. This issue was not discussed by the CA.

A reading of the assailed Decision will readily reveal the patent errors of the CA. On page 11 of its Decision, it held as follows: "The NLRC likewise concluded that petitioner was not entitled to separation pay because he was not a regular employee of private respondent, he (the petitioner) being paid on purely 'commission' or 'pakyaw' basis." The CA took off from that point to give a discussion on regular employment and further held:

To Us, private respondent's "advice to take a rest" theory is nothing but a mere ploy to reinforce his hypothesis that the petitioner is not a regular employee. What makes this worse is that the NLRC bought private respondent's aforesaid theory hook, line and sinker and ruled that the petitioner was neither dismissed from work, he (the petitioner) being considered merely on "leave of absence without pay", nor is he (the petitioner) entitled to separation pay on the ground that he was paid on purely "commission" or "pakyaw" basis which is in legal parlance, in effect, implies that the petitioner is not a regular employee of the private respondent, but a mere seasonal worker or independent contractor.

It is most disturbing to see how the CA regarded labor terms "paid on commission," "pakyaw" and "seasonal worker" as one and the same. In labor law, they are different and have distinct meanings, which we do not need to elaborate on in this Petition as they are not the issue here. It should also be remembered that a regular status of employment is not based on how the salary is paid to an employee. An employee may be paid purely on

commission and still be considered a regular employee.[45] Moreover, a seasonal employee may also be considered a regular employee.[46]

Further, the appreciation by the CA of the NLRC Resolution was erroneous. The fact is that the refusal by the NLRC to grant separation pay was merely consistent with its ruling that there was no dismissal. Since respondent was not dismissed, much less illegally dismissed, separation pay was unnecessary. The CA looked at the issue differently and erroneously, as it held that the NLRC refused to grant the award of separation pay because respondent had not been found to be a regular employee. The NLRC had in fact made no such ruling. These are flagrant errors that are reversible by this Court. They should be corrected for the sake not only of the litigants, but also of the CA, so that it would become more circumspect in its appreciation of the records before it.

We reviewed the NLRC Resolution that reversed the LA Decision and found nothing in it that was whimsical, unreasonable or patently violative of the law. It was the CA which erred in finding faults that were inexistent in the NLRC Resolution.

On the issue of the propriety of entertaining the Petition for Certiorari despite the prescribed Motion for Reconsideration with the NLRC, we find another error committed by the CA. The pertinent provisions of the 2005 Rules of Procedure of the NLRC are as follows:

Rule VII, Section 14. Motions for Reconsideration. -- Motions for reconsideration of any order, resolution or decision of the Commission shall not be entertained except when based on palpable or patent errors, provided that the motion is under oath and filed within ten (10) calendar days from receipt of the order, resolution or decision, with proof of service that a copy of the same has been furnished, within the reglementary period, the adverse party and provided further, that only one such motion from the same party shall be entertained.

Rule VIII, Section 2. Finality of decisions of the Commission. -- (a) Finality of the decisions, resolutions or orders of the Commission. Except as provided in Rule XI, Section 10, the decisions, resolutions orders of the Commission/Division shall become executory after (10) calendar days from receipt of the same.

When respondent failed to file a Motion for Reconsideration of the NLRC's 30 November 2006 Resolution within the reglementary period, the Resolution attained finality and could no longer be modified by the Court of Appeals. The Court has ruled as follows:

[I]t is a fundamental rule that when a final judgment becomes executory, it thereby becomes immutable and unalterable. The judgment may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest Court of the land. The only recognized exceptions are the correction of clerical errors or the making of so-called nunc pro tunc entries which cause no prejudice to any party, and, of course, where the judgment is void. Any amendment or alteration which substantially affects a final and executory judgment is null and void for lack of jurisdiction, including the entire proceedings held for that purpose.[47]

It cannot be argued that prescriptive periods are mere procedural rules and technicalities, which may be brushed aside at every cry of injustice, and may be bent and broken by every appeal to pity. The Court's ruling in *Videogram Regulatory Board v. Court of Appeals* finds application to the present case:

There are certain procedural rules that must remain inviolable, like those setting the periods for perfecting an appeal or filing a petition for review, for it is doctrinally entrenched that the right to appeal is a statutory right and one who seeks to avail of that right must comply with the statute or rules. The rules, particularly the requirements for perfecting an appeal within the reglementary period specified in the law, must be strictly followed as they are considered indispensable interdictions against needless delays and for orderly discharge of judicial business. Furthermore, the perfection of an appeal in the manner and within the period permitted by

law is not only mandatory but also jurisdictional and the failure to perfect the appeal renders the judgment of the court final and executory. Just as a losing party has the right to file an appeal within the prescribed period, the winning party also has the correlative right to enjoy the finality of the resolution of his/her case.

These periods are carefully guarded and lawyers are well-advised to keep track of their applications. After all, a denial of a petition for being time-barred is a decision on the merits.

Similarly, a motion for reconsideration filed out of time cannot reopen a final and executory judgment of the NLRC. Untimeliness in filing motions or petitions is not a mere technical or procedural defect, as leniency regarding this requirement will impinge on the right of the winning litigant to peace of mind resulting from the laying to rest of the controversy.

As to the third issue, since the CA could no longer modify the NLRC Resolution, it logically follows that the modification of the award cannot be done either. Had the Resolution not yet attained finality, the CA could have granted some other relief, even if not specifically sought by petitioner, if such ruling is proper under the circumstances. Rule 65 of the Rules of Court provides:

Section. 8. Proceedings after comment is filed. After the comment or other pleadings required by the court are filed, or the time for the filing thereof has expired, the court may hear the case or require the parties to submit memoranda. If after such hearing or filing of memoranda or upon the expiration of the period for filing, the court finds that the allegations of the petition are true, it shall render judgment for such relief to which the petitioner is entitled.

However, the NLRC Resolution sought to be set aside had become final and executory 25 days before respondent filed his Motion for Reconsideration. Thus, subsequent proceedings and modifications are not allowed and are deemed null and void.

IN VIEW OF THE FOREGOING, the Petition is GRANTED. The assailed 23 June 2010 Decision of the Court of Appeals and its 20 December 2010 Resolution are hereby SET ASIDE. The 30 November 2006 and 30 March 2010 Resolutions of the NLRC are AFFIRMED and sustained.

SO ORDERED.

Carpio, (Chairperson), Brion, Reyes, and Perlas-Bernabe,[*] JJ., concur.

[*] Designated as additional member of the Second Division vice Associate Justice Jose P. Perez per Special Order No. 1114 dated October 3, 2011.

[1] Penned by Associate Justice Leoncia R. Dimagiba and concurred in by Associate Justices Edgardo A. Camello and Nina G. Antonio-Valenzuela.

[2] Rollo, pp. 99-100.

[3] Id. at 39.

[4] Id. at 9

[5] Id.

[6] Id.

[7] Id.

- [8] Id. at 10.
- [9] Id. at 9.
- [10] Id. at 10.
- [11] Id.
- [12] Id.
- [13] Id.
- [14] Id.
- [15] Id. at 11.
- [16] Id. at 11.
- [17] Id.
- [18] Id.
- [19] Id.
- [20] Id. at 12.
- [21] Id.
- [22] Id. at 41.
- [23] Id. at 12.
- [24] Id. at 146.
- [25] Id.
- [26] Id.
- [27] Id.
- [28] Id. at 147.
- [29] Id. at 44-51.
- [30] Id. at 50.
- [31] Id.
- [32] Id. at 52-62.
- [33] Id. at 67-71.
- [34] Id. at 70.
- [35] Id. at 70-71.
- [36] Id. at 71.
- [37] Id. at 72-75.

[38] Id. at 74.

[39] Id. at 77-78.

[40] Respondent claimed that his wife had received it on 12 January 2007. The NLRC, however, based the date of 11 January 2007 on the registry receipt.

[41] Rollo at 77.

[42] Id. at 85-89.

[43] G.R. No. 168088, 3 April 2007, 520 SCRA 564.

[44] Id. at 591-592.

[45] 332 Phil 804 (1996).

[46] 344 Phil. 268 (1997); 360 Phil. 218 (1998).

[47] 360 Phil. 122 (1998).

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