

NEW MANILA LUMBER CO., INC., PETITIONER, VS. FERMIN CENTINO AND THE COURT OF INDUSTRIAL RELATIONS., RESPONDENTS.*G.R. No. 20438. September 27, 1966*

Ponente: ZALDIVAR. J.

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Herein respondent Fermin Centino and herein petitioner New Manila Lumber Co. Inc. were complainant and respondent respectively in an unfair labor practice case, docketed as Case No. 2178-ULP, in the Court of Industrial Relations. After hearing, the Court of Industrial Relations rendered a decision, on March 24, 1961, ordering herein petitioner to reinstate herein respondent Centino to his work and to pay him back wages from August 10, 1959 up to his actual reinstatement. This decision was affirmed by the Court of Industrial Relations en banc on April 17, 1961. On May 24, 1961 this Court, in G. R. No. L-18337, dismissed the petition for certiorari to review said decision. On September 1, 1961 the Court of Industrial Relations issued a writ of execution.

On September 21, 1961, petitioner herein filed in the court below an urgent motion praying: (1) that the case be reopened on the grounds that it had found out, only after the Honorable Supreme Court had denied the appeal, that respondent Centino had been employed in the Manila Mahogany Manufacturing Corporation during the pendency of the ULP case so that his earnings therefrom should be deducted from the back wages that were due him, and that a further study of the evidence and the jurisprudence pertinent to the case shows that Centino was not entitled to reinstatement; and (2) that a hearing on the issues thus raised be ordered.

The urgent motion was heard on June 7, 1962, and petitioner herein adduced evidence regarding the earnings of respondent Centino at the Manila Mahogany Manufacturing Corporation. After presenting said evidence petitioner moved for the continuance of the hearing to enable it to present evidence of earnings of Centino in other establishments. This motion for continuance was denied verbally by the trial Judge on the ground that the urgent motion did not allege about earnings other than those from the Manila Mahogany Manufacturing Corporation. This verbal denial was later embodied in a written order on June 20, 1962. A motion for reconsideration of the verbal order of June 7, 1962 alleging, among others, "that discovery of other employment and source of livelihood of complainant were only recently made" was filed on June 13, 1962, and in support thereof were filed a memorandum on June 20, 1962 and a supplemental memorandum on June 23, 1962. The motion for reconsideration was denied by the Court en banc on July 17, 1962.

Counsel for respondent Centino filed, on August 16, 1962, with respondent court an ex parte motion for partial execution of the decision of March 24, 1961. Respondent court, without previous hearing, issued on September 8, 1962 an order granting the ex parte motion for execution, directing the chief of the examining division of the court, or his duly authorized representative, "to compute the amount due to petitioner Fermin Centino representing as back wages from August 10, 1959 up to September 27, 1961, inclusive, at the rate of P6.90 a day, deducting therefrom the sum of P226.95 as the amount earned by him during the days he worked with the Manila Mahogany Manufacturing Corporation." [1]

Petitioner herein received on September 13, 1962 a copy of the order of September 8, 1962, and on September 18, 1962 filed a motion for the reconsideration of said order; and on September 27, 1962 he filed a memorandum in support of its motion, alleging among other things that the order of denial of June 7, 1962 had never become final and executory. The motion for reconsideration was denied by the Court of Industrial Relations en banc in a resolution dated October 2, 1962 on the ground that the motion for reconsideration of the order dated September 8, 1962 was only a reiteration of the previous motion for reconsideration of the order of June 7, 1962 which had already been denied by the court en banc.

On October 19, 1962 petitioner herein received a copy of the above-mentioned resolution of October 2, 1962, and on October 27, 1962 it filed with the respondent court a notice of its intention to appeal from the order dated September 8, 1962 (Annex I) and from the resolution dated October 2, 1962 (Annex K).

This petition for certiorari was filed on November 16, 1962 praying that the order (Annex I) and the resolution (Annex K), above adverted to, be set aside and that an order issue directing respondent court to allow petitioner to adduce additional evidence on deductible earnings of respondent Centino during the pendency of CIR case No. 2178-ULP.

In this appeal, the contention of the petitioner may be reduced to the following propositions, to wit: That the respondent Court of Industrial Relations committed a grave abuse of discretion: (1) in holding that the order of June 7, 1962 had become final and executory, when not all the issues raised in the urgent motion of September 21, 1962, had been resolved; (2) in denying petitioner's motion to adduce evidence on deductible earnings of respondent Centino from other firms; and (3) in issuing the writ of execution without having previously given petitioner its day in court.

We find no merit in this appeal.

The decision of the Court of Industrial Relations in Case No. 2178-ULP, dated March 24, 1961, ordering respondent therein, now petitioner New Manila Lumber Co., Inc, (a) to reinstate complainant Fermin Centino and (b) to pay him his back wages from August 10, 1959 to the date of his actual reinstatement, and affirmed by this Court on May 24, 1961, had long become final and executory, and on September 1, 1961 the CIR issued a writ of execution of the decision in said case. In spite of the fact that the decision had become final and a writ of execution had been issued, still the Court of Industrial Relations, exercising its powers under Sections 14 and 17 of Commonwealth Act 103, entertained the urgent motion of petitioner dated September 21, 1961 alleging that after the decision had become final and executory it had found out that respondent Centino had been employed during the pendency of the case in the Manila Mahogany Manufacturing Co, from March 21, 1960 to May 20, 1961, and his earnings therefrom should be deducted from the back wages to be paid to him. The so-called urgent motion, however, also alleged that further study of the evidence and jurisprudence in the case shows that Centino was not entitled to reinstatement, and so it was prayed that the case be reopened, and a hearing on the issues thus raised be ordered.

The records show, and petitioner itself had so stated in his instant petition for certiorari, that the urgent motion was heard on June 7, 1962 and it had introduced evidence to prove the employment of respondent in the Manila Mahogany Manufacturing Co. Inc. as alleged in its urgent motion; but after petitioner had thus presented its evidence it orally moved for continuance of the hearing to enable it to present other evidence showing the earnings of respondent in other companies. This "other evidence" appears to be evidence allegedly gathered after the urgent petition was filed on September 21, 1961. The motion for continuance was verbally denied in open court, and this verbal denial was affirmed in a written order that was issued on June 20, 1962. A motion for reconsideration of the verbal order of June 7, 1962, as embodied in the order of June 20, 1962, was denied by the

Court en banc on July 17, 1962. These orders of June 7, 1962 and July 17, 1962 had determined what earnings of respondent should be deducted from the back wages due him and they became final in so far as they relate to the deductible earnings. The petitioner did not appeal from those orders, so that they had thereby become final. These orders being corollary to the decision of March 24, 1961 in Case 2178-ULP which had become final and which the respondent court had in fact ordered to be executed on September 1, 1961, there was nothing left for the Court of Industrial Relations to do but to order its execution, which it did by order dated September 8, 1962. The Court of Industrial Relations can order the execution of its decision or order which is already final and executory upon a motion ex-parte by the prevailing party, or even motu proprio. It is not necessary that notice of the motion for a writ of execution be served on herein petitioner in a case like this, much less is a hearing on the motion for execution necessary. The matters in issue in Case 2178-ULP had been finally disposed of. Section 23 of Commonwealth Act No. 103, as amended, provides that:

"In case of non-compliance with any award, order or decision of the Court of Industrial Relations after it has become final, conclusive, and executory, the judgment may be enforced by a writ of execution or any other remedy provided by law in respect to enforcement and execution of orders, decisions or judgments of the Courts of First Instance."

Execution should issue as matter of right upon a final judgment or order, and is mandatory. Sec. 1 of Rule 39 of the Rules of Court so provides:

"Execution shall issue only upon a judgment or order that finally disposes of the action or proceeding. Such execution shall issue as a matter of right upon the expiration of the period to appeal therefrom if no appeal has been duly perfected."

We believe that the Court of Industrial Relations had acted within its jurisdiction, and neither did it abuse its discretion, when it issued the order of September 8, 1962 granting the ex-parte motion for execution, and the action of the respondent court in this respect cannot be corrected in the present action for certiorari.

It is urged by herein petitioner that had it been previously notified of the issuance of the writ of execution it could have brought to the attention of the court that there was an agreement between the parties that the "judgment of back wages shall only be made after the hearing of said urgent motion on the merits." [2] But there was already a hearing on the merits of that urgent motion. There was no reason, therefore, for herein petitioner to complain.

Petitioner also claims that the issues raised in its urgent motion of September 21, 1961 had not been resolved before the order of execution was issued, and that the denial of its motion to adduce evidence on earnings of respondent in firms other than the Manila Mahogany Manufacturing Corporation was an abuse of discretion. This claim is untenable. The issue raised in the urgent motion was the earnings of herein respondent in the Mahogany Manufacturing Corporation. This issue was heard and the court found that respondent earned P226.95. Earnings from other companies were not alleged in the urgent motion. Even under Section 17 of Commonwealth Act No. 103, whereby the Court of Industrial Relations is empowered to modify, alter or reopen any award, order, or decision, on application of an interested party, during the period of its effectiveness, this power can be exercised only upon grounds coming into existence after the decision was rendered, not upon grounds already directly or impliedly litigated and decided, or which were, or could be, available to the parties during the original hearings. To hold otherwise would give way to vicious and vexatious repetitions of proceedings. [3]

The petitioner also claims that the respondent court abused its discretion when it denied the motion for the continuance of the hearing of the urgent motion of September 21, 1961, with a view to a reopening of the case upon the ground "that a further study of the evidence and jurisprudence, pertinent to this case, show that complainant is not entitled to reinstatement." This claim of petitioner deserves no consideration, because the

matter about the right of respondent Fermin Centino to be reinstated had been conclusively and finally decided in the decision of the respondent court in Case No. 2178-ULP which had been affirmed by this Court in L-18337 on May 24, 1961.

IN VIEW OF THE FOREGOING, the instant petition is dismissed, and the writ of certiorari prayed for is denied; with costs against the petitioner.

Concepcion, C.J., Reyes, J.B.L., Barrera, Dizon, Makalintal, Bengzon, J.P., Sanchez, and Ruiz Castro, JJ., concur. Regala, J., on leave.

[1] As copied from the order, Annex I to the petition.

[2] This refers to the urgent motion of September 21, 1961.

[3] Rattan Art and Decorations Inc. vs. Rattan Art and Decorations Union, L-6466, May 21, 1954, citing the case of Pepsi Cola Bottling Co. etc. vs. Philippine Labor Organization, G.R. No. L-3506, January 31, 1951.

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