

PHILIPPINE AIRLINES, INC., PETITIONER, VS. ALEXANDER P. BICHARA, RESPONDENT.*G.R. No. 213729. September 02, 2015*

Ponente: PERLAS-BERNABE, J.

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Assailed in this petition for review on certiorari[1] are the Decision[2] dated January 24, 2014 and the Resolution[3] dated July 30, 2014 rendered by the Court of Appeals (CA) in CA-G.R. SP. No. 118777, which reversed and set aside the Decision[4] dated November 23, 2010 and the Resolution[5] dated January 21, 2011 of the National Labor Relations Commission (NLRC) in NLRC NCR 00-04-03414-94 (CA No. 013528-97) (AE-03-09), and thereby, ordered petitioner Philippine Airlines, Inc. (PAL) to pay respondent Alexander P. Bichara (Bichara) salary differentials, backwages, and retirement benefits.

The Facts

On October 28, 1968, PAL hired Bichara as a flight attendant. Sometime in 1971, PAL implemented a retrenchment program. By April of that year, Bichara voluntarily resigned. On May 15, 1975, he was rehired.[6]

In August 1993, Bichara was included in PAL's Purser Upgrading Program in which he graduated on December 13, 1993. As flight purser, he was required to take five (5) check rides for his performance evaluation and earn at least an 85% rating for each ride. However, Bichara failed in the two (2) check rides with ratings of 83.46% and 80.63%. Consequently, on March 21, 1994, Bichara was demoted to the position of flight steward.[7]

On March 22, 1994, Bichara appealed his demotion to PAL, but no action was taken; hence, he filed a complaint for illegal demotion against PAL[8] before the NLRC-Regional Arbitration Branch, docketed as NLRC NCR 04-03414-94 (illegal demotion case). Eventually, or on June 16, 1997, Labor Arbiter Ricardo C. Nora (LA Nora) issued a Decision[9] (June 16, 1997 Decision) declaring Bichara's demotion as illegal, and accordingly, ordered PAL to reinstate Bichara to his position as flight purser.[10] PAL filed an appeal before the NLRC and later before the CA, both of which, however, upheld LA Nora's finding. PAL no longer appealed to the Court, thus, it rendered the June 16, 1997 Decision final and executory on February 5, 2004.[11]

During the pendency of the illegal demotion case[12] before the CA, however, or on July 15, 1998, PAL implemented another retrenchment program that resulted in the termination of Bichara's employment.[13] This prompted him, along with more than 1,400 other retrenched flight attendants, represented by the Flight Attendants and Stewards Association of the Philippines (FASAP), to file on June 22, 1998, a separate complaint for unfair labor practice, illegal retrenchment with claims for reinstatement and payment of salaries, allowances, backwages, and damages[14] against PAL, docketed as NLRC-NCR Case No. 06-05100-98[15] (illegal retrenchment case)[16] This case was appealed all the way to this Court, docketed as G.R. No. 178083 entitled "Flight Attendants and Stewards Assn. of the Phils, v. PAL, Patria T. Chiong, and CA" (FASAP case), which remains pending as of this time.[17]

On July 9, 2005, Bichara reached the 60 year-old compulsory retirement age under the PAL-FASAP Collective Bargaining Agreement (CBA).[18]

On January 31, 2008, Bichara filed a motion for execution of LA Nora's June 16, 1997 Decision,[19] which PAL opposed[20] by arguing that the "complaint for illegal demotion x x x was overtaken by supervening events, i.e., the retrenchment of [Bichara] in 1998 and his having reached [the] compulsory retirement age in 2005." [21]

The LA Ruling

In an Order[22] dated February 4, 2009 (February 4, 2009 Order), Labor Arbiter Antonio R. Macam (LA Macam) granted Bichara's motion for execution, thus, directing the issuance of a writ of execution against PAL and/or a certain Jose Garcia to jointly and severally pay Bichara: (a) separation pay in lieu of reinstatement equivalent to one (1) month's pay for every year of service counting from October 28, 1968 up to the present, excluding the period from April 1, 1971 until May 15, 1975, or a period of 35 years; and (b) attorney's fees in the amount of P20,000.00.[23]

LA Macam declared that, notwithstanding the pendency before this Court of the illegal retrenchment case, i.e., FASAP case, Bichara's termination was invalid, given that: (a) PAL did not use a fair and reasonable criteria in effecting the retrenchment; (b) PAL disregarded the labor arbiters' rulings in the illegal demotion and illegal retrenchment cases which were both immediately executory; and (c) retrenchment was made during the pendency of the illegal demotion case without the permission of the court where the case was pending.[24] For these reasons, Bichara was entitled to reinstatement to his position as flight purser. However, since Bichara may no longer be reinstated in view of his compulsory retirement in accordance with the CBA, LA Macam, instead, ordered PAL to pay Bichara separation pay with the salary base of a flight purser.[25]

Aggrieved, PAL appealed to the NLRC.

The NLRC Ruling

In a Decision[26] dated November 23, 2010, the NLRC reversed and set aside LA Macam's February 4, 2009 Order and denied the motion for execution for being moot and academic, considering Bichara's compulsory retirement in 2005,[27] without prejudice to the latter's entitlement to backwages and retirement benefits of a flight steward pursuant to this Court's final decision in the FASAP case.[28]

At the outset, the NLRC ruled that Bichara's reinstatement could have taken effect, if at all, only on January 31, 2008 when he sought the execution of the said relief.[29] In this light, his reinstatement and corresponding backwages prior to said date must therefore be based on the salary rate and other benefits attached to the position of flight steward to which he was demoted/reverted.[30] (However, it declared that reinstatement is no longer possible as the same was rendered moot and academic when he compulsorily retired in 2005.[31] On the other hand, the NLRC concluded that the matter of payment of monetary benefits is not for it to order since it is a relief pertaining to the pending FASAP case; as such, Bichara should pursue payment of backwages when the decision in the FASAP case is due for execution. In this relation, the NLRC remarked that LA Macam exceeded his authority in awarding separation pay in lieu of reinstatement, since such relief is not contemplated in the decision sought to be executed, i.e., the June 16, 1997 Decision.[32]

Both parties moved for reconsideration, which were, however, denied in a Resolution[33] dated January 21, 2011. Dissatisfied, Bichara elevated the case to the CA through a petition for review on certiorari.

The CA Ruling

In a Decision[34] dated January 24, 2014, the CA reversed and set aside the NLRC's ruling. It did not find LA

Macam to have exceeded his authority in ordering the payment of separation pay in lieu of reinstatement since, in a long line of cases, this Court has consistently held that when reinstatement is not possible due to over age, payment of separation pay is in place.[35] The CA, however, observed that since Bichara was one of the retrenched employees involved in the FASAP case, this Court's Decision dated October 2, 2009, wherein it ruled that the retrenchment was illegal and thereby stated that "[f]light attendants who have reached their compulsory retirement age of retirement shall receive backwages up to the date of their retirement only,"[36] should be made to apply. Thus, instead of separation pay, Bichara is entitled to backwages from the time of his retrenchment up to the time he reached the compulsory retirement age of 60. In addition, since the June 16, 1997 Decision, rendered in the illegal demotion case, had already become final and executory, he is entitled to salary differentials of a flight purser from a flight attendant from March 21, 1994, i.e., the date of his demotion, up to the time of his retrenchment in July 1998.[37] He is also entitled to retirement benefits in accordance with the existing CBA at the time of his retirement.[38]

PAL moved for reconsideration[39] which was denied in a Resolution[40] dated July 30, 2014; hence, this petition.

The Issue Before the Court

The essential issue to be resolved is whether or not the CA erred in reversing the NLRC's Decision and thereby awarding Bichara the aforementioned monetary awards.

The Court's Ruling

The petition is partly meritorious.

A judgment should be implemented according to the terms of its dispositive portion is a long and well-established rule.[41] As such, where the writ of execution is not in harmony with and exceeds the judgment which gives it life, the writ has pro tanto no validity.[42]

A companion to this rule is the principle of immutability of final judgments, which states that a final judgment may no longer be altered, amended or modified, even if the alteration, amendment or modification is meant to correct what is perceived to be an erroneous conclusion of fact or law and regardless of what court renders it. Any attempt to insert, change or add matters not clearly contemplated in the dispositive portion violates the rule on immutability of judgments.[43] But like any other rule, this principle has exceptions, namely: (1) the correction of clerical errors; (2) the so-called nunc pro tunc entries which cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable.[44]

In this case, the final judgment sought to be executed is LA Nora's June 16, 1997 Decision, which was confined to the directive that PAL reinstate Bichara as a flight purser in view of his illegal demotion to the position of flight attendant:

IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered declaring the illegality of complainant's [Bichara] demotion/reversion to Flight Steward and ordering the respondents [PAL] to reinstate the complainant to his position as Flight Purser within ten (10) days from receipt of this Decision.

The claim for damages is dismissed for lack of merit.

SO ORDERED.[45]

Evidently, LA Macam went beyond the terms of the June 16, 1997 Decision when he, in his February 4, 2009 Order, directed the issuance of a writ of execution ordering the payment of separation pay in lieu of reinstatement:

WHEREFORE, finding merit in the complainant's [Bichara] Motion for Execution, the same is hereby GRANTED. Let a Writ of Execution be issued ordering the respondents Philippine Airlines, Inc. and/or Jose Garcia, in lieu of reinstating the complainant to the position of Flight Purser, to jointly and severally PAY to the complainant his separation pay equivalent to one (1) month's pay for every year of service counting from October 28, 1968 up to the present, excluding the period from April 1, 1971 until May 15, 1975, or a period of thirty-five (35) years and to pay the complainant the sum of Twenty Thousand Pesos (P20,000.00) for and as attorney's fees.

SO ORDERED.[46]

Unlike the cases[47] cited by the CA, which all involved illegal dismissal cases, it would not be proper to accord such relief in this case since, in those cases, the awards of separation pay in lieu of reinstatement were all hinged on the validity of the employee's dismissal. Here, the validity of Bichara's termination is the subject matter of a separate case, i.e., the FASAP case, which is still pending before this Court, and is also beyond the ambit of the illegal demotion proceedings. Hence, LA Macam exceeded his authority when he ruled on this issue and directed PAL to pay Bichara separation pay in lieu of reinstatement.

PAL's supervening retrenchment of its employees, which included Bichara, in July 1998, and his compulsory retirement in July 2005, however, prevent the enforcement of the reinstatement of Bichara to the position of flight purser under the June 16, 1997 Decision. Nonetheless, since this Decision had already settled the illegality of Bichara's demotion with finality, this Court finds that Bichara should, instead, be awarded the salary differential of a flight purser from a flight steward from the time of his illegal demotion on March 21, 1994 up until the time he was retrenched in July 1998. Notably, unlike LA Macam's award of separation pay in lieu of reinstatement, the award of salary differential is not dependent on the validity of his termination, as it is, in fact, intrinsically linked to the illegality of Bichara's demotion. Hence, with this direct relation, there should be no obstacle in rendering this award.

Further, it should be pointed out that the principle of immutability of judgments, from which the above-stated rule on writ of executions proceed, allow courts, as an exception, to recognize circumstances that transpire after the finality of the decision which would render its execution unjust and inequitable and act accordingly. Thus, in view of the supervening events above-mentioned, this Court deems the award of salary differential to be the just and equitable award under the circumstances herein prevailing. Jurisprudence holds that courts may modify or alter the judgment to harmonize the same with justice and the facts when after judgment has been rendered and the latter has become final, facts and circumstances transpire which render its execution impossible or unjust,[48] as in this case.

As a last point, it deserves mentioning that since Bichara's illegal demotion has been finally decreed, he should be entitled to (a) backwages, at the salary rate of a flight purser, from the time of retrenchment in July 1998 up until his compulsory retirement in July 2005; (b) retirement benefits of a flight purser in accordance with the existing CBA at the time of Bichara's retirement; and (c) attorney's fees, moral, and exemplary damages, if any, but only if this Court, in the FASAP case, finally rules that the subject retrenchment is invalid. Otherwise, he should only be entitled to the above-stated salary differential, as well as the corresponding separation pay required under the relevant CBA, or Article 297[49] (formerly Article 283) of the Labor Code if no such CBA provision exists. The awards of backwages, and retirement benefits, including attorney's fees, moral, and exemplary damages, if any, cannot, however, be executed in these proceedings since they are incidents which pertain to the illegal retrenchment case, hence, executable only when the FASAP case is finally concluded.

WHEREFORE, the petition is PARTLY GRANTED. The Decision dated January 24, 2014 and the Resolution dated July 30, 2014 of Court of Appeals in CA-G.R. SP. No. 118777 are hereby REVERSED and SET ASIDE. A

new one is entered ORDERING petitioner Philippine Airlines, Inc. to pay respondent Alexander P. Bichara the salary differential of a flight purser from a flight attendant from the time of his illegal demotion on March 21, 1994 up until the time he was retrenched on July 15, 1998.

SO ORDERED.

Sereno, C.J., Leonardo-De Castro, Bersamin, and Perez, JJ., concur.

[1] Rollo, pp. 33-46.

[2] Id. at 8-16. Penned by Associate Justice Elihu A. Ybañez with Associate Justices Japar B. Dimaampao and Melchor Quirino C. Sadang concurring.

[3] Id. at 29-30.

[4] Id. at 83-100. Penned by Presiding Commissioner Raul T. Aquino.

[5] Id. at 102-104. Penned by Presiding Commissioner Raul T. Aquino with Commissioners Teresita D. Castillon-Lora and Napoleon M. Menese concurring.

[6] Id. at 72-73.

[7] Id. at 9.

[8] Id.

[9] Not attached to the rollo.

[10] Rollo, pp. 9, 35, 72, and 84.

[11] Id. at 9-10 and 35.

[12] Docketed as CA-G.R. SP No. 50119 entitled "Philippine Airlines, Inc. v. Alexander P. Bichara"; see id. at 69.

[13] Id. at 69 and 84.

[14] See FASAP v. PAL, 581 Phil. 228, 246 (2008).

[15] See rollo, p. 35.

[16] Id. at 19.

[17] The Court rendered a decision over the FASAP case in its Decision dated July 22, 2008 (see FASAP v. PAL, supra note 13). Aggrieved, PAL filed a Motion for Reconsideration which was denied by the Court in a Resolution dated October 2, 2009 (see FASAP v. PAL, 617 Phil. 687 [2009]). Subsequently, PAL filed a Second Motion for Reconsideration which was denied by the Court in a Minute Resolution dated September 7, 2011 (issued by Division Clerk of Court Ma. Luisa L. Laurea). Thereafter, the Court, in A.M. No. 11-10-1-SC (Re: Letters of Atty. Estelito P. Mendoza re: G.R. No. 178083, FASAP v. PAL, et al.) issued a Minute Resolution dated October 4, 2011, which recalled the September 7, 2011 Minute Resolution (issued by then Clerk of Court Enriqueta E. Vidal).

[18] Rollo, p. 36.

[19] Id. at 10.

[20] See Opposition to Motion for Execution dated December 4, 2014; *id.* at 63-66.

[21] *Id.* at 63.

[22] *Id.* at 68-81.

[23] *Id.* at 80-81.

[24] *Id.* at 77.

[25] *Id.* at 78-79.

[26] *Id.* at 83-100.

[27] In the NLRC Decision, it mentioned that Bichara reached the retirement age of 60 in 2006. See *id.* at 96 and 99-100.

[28] *Id.* at 99-100.

[29] *Id.* at 94

[30] *Id.* at 95.

[31] *Id.* at 96

[32] See *id.* at 98-99.

[33] *Id.* at 102-104.

[34] *Id.* at 8-16.

[35] *Id.* at 13-14.

[36] *Id.* at 15.

[37] See *id.* at 12 and 15.

[38] *Id.* at 15-16.

[39] See Motion for Reconsideration dated February 19, 2014; *id.* at 18-24.

[40] *Id.* at 29-30.

[41] *Lim v. HMR Philippines, Inc.*, G.R. No. 201483, August 4, 2014, 731 SCRA 576, 590.

[42] *Green Acres Holdings, Inc. v. Cabral*, G.R. Nos. 175542 and 183205, June 5, 2013, 697 SCRA 266, 285, citing *Ingles v. Cantos*, 516 Phil. 496, 506 (2006).

[43] See *Lim v. HMR Philippines, Inc.*, *supra* note 41, at 590.

[44] *Ptyce Corporation v. China Banking Corporation*, G.R. No. 172302, February 18, 2014, 716 SCRA 207, 222, citations omitted.

[45] See rollo, pp. 35, 72, and 84; words in bracket supplied.

[46] *Id.* at 80-81; word in bracket supplied.

[47] *Benguet Corporation v. NLRC*, 376 Phil. 216 (1999); *Sagales v. Rustan's Commercial Corporation*, 592 Phil. 468 (2008); *Espejo v. NLRC*, 325 Phil. 753 (1996); and *Jaculbe v. Silliman University*, 547 Phil. 352 (2007).

[48] See *Medado v. CA*, 263 Phil. 774, 779 (1990), citation omitted. See also *David v. CA*, 375 Phil. 177, 186-187 (1999).

[49] ART. 297. Closure of establishment and reduction of personnel. - The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year. (Emphases and underscoring supplied)

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