

MD TRANSIT & TAXI CO., INC., PETITIONER, VS. HON. FRANCISCO L. ESTRELLA, ATTY. MINDA A. RIVERA, SHERIFF GREG A. CRUZ, AND FEDERATION OF FREE WORKERS (MD CAM COMPUTER CHAPTER), R...

G.R. No. 52188. March 30, 1982

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

In this special civil action of certiorari with urgent petition for temporary restraining order, petitioner questions the propriety and/or legality of the writ of execution[1] dated December 19, 1979 issued by respondent Francisco Estrella, as Director, National Capital Region, Ministry of Labor, claiming that said respondent has no authority to issue the questioned writ of execution before its "Motion to Set Aside Order and/or Motion for Reconsideration" has been resolved.

Records show that on September 25, 1978, private respondent Federation of Free Workers, through the president of its local union MD CAM Computer Chapter, filed a complaint[2] with the Regional Office of the Ministry of Labor and docketed therein as RF-FSD-9-1614-78, charging petitioner for under-payment of the emergency cost of living allowance of its members provided for under Presidential Decree Nos. 525 and 1123. Answering said complaint, petitioner countered that it has not violated the provisions of the aforementioned decrees and prayed for the dismissal of the complaint on the ground of *res judicata*, alleging that a similar complaint between the same parties involving the same issue of allowance had already been decided under case No. NLRC-LR-1757.

Under date of April 25, 1979, respondent Francisco Estrella issued an Order[3] finding the petitioner guilty of underpayment and ordering the latter to pay its employees the unpaid balance of the cost of living allowance in the aggregate sum of P65,670 and giving petitioner fifteen (15) days from receipt of said Order within which to comply there-with, otherwise a writ of execution would be issued for the enforcement thereof. Petitioner's defense of *res judicata* was rejected upon a finding that the issue of allowance is not included as one of the issues decided by the Voluntary Arbitrator in the aforesaid case No. NLRC-LR-1757.

On May 9, 1979, petitioner filed a motion[4] to reconsider the Order of April 25, 1979 on the ground that it was exempted from the operation of PD 1123 and that said Order overturned or modified the decision in case No. NLRC-LR-1757 which ruled that petitioner's capitalization is less than P1M. In view of said motion for reconsideration to which respondent union filed an opposition (answer),[5] the records of the case were referred to the Minister of Labor on May 11, 1979 for review. Subsequently, or on June 5, 1979, petitioner filed a supplemental motion for reconsideration[6] alleging prescription as an additional defense because "the complaint, which is a money claim for alleged benefit under P.D. 525 from August 1974 to April 1977, was filed after the lapse of more than one (1) year from the accrual of the alleged benefit contrary to the provisions of the Labor Code." To said supplemental motion for reconsideration, respondent union likewise filed an answer[7] traversing the claim of prescription.

Meanwhile, respondent Estrella issued a writ of execution[8] dated May 21, 1979, despite the pendency of petitioner's motion for reconsideration, thus, prompting the latter to file an "Urgent Motion to Quash Writ of Execution with Offer to Post Bond,"[9] which was favorably acted upon by the then Deputy Minister of Labor Amado Inciong, who issued an Order[10] dated May 29, 1979, enjoining the NLRC Sheriff from executing the writ of execution issued by respondent Estrella and at the same time directing petitioner to post a supersedeas bond in the amount of P65,670.

Treating petitioner's motion for reconsideration as an appeal to the Office of the Minister of Labor, then Deputy Minister Inciong, by authority of the Minister, issued an Order[11] dated July 3, 1979, modifying the April 25, 1979 Order of respondent Estrella in the sense that petitioner was ordered to pay the members of respondent union only their "emergency cost of living allowance differentials under P.D. 525 from August 1974 to April 1977 and from May 1, 1978 to November 1978 under P.D. 1123." This order excluded the period between May 1977 and April 1978 from the award, on the ground that petitioner was granted an exemption from the granting of the additional cost of living allowance mandated by P.D. 1123, for one year effective May 1, 1977.

From the above Order of July 3, 1979, petitioner filed a motion for reconsideration[12] on July 31, 1979, seeking its modification on the grounds of *res judicata* and *prescription*. Despite the pendency of this motion for reconsideration, respondent Estrella issued an Alias Writ of Execution[13] dated August 7, 1979 to enforce the judgment amounting to P38,220. The records do not disclose what happened to this Alias Writ of Execution.

On August 27, 1979, respondent union filed a Petition for Clarification[14] of the Order of July 3, 1979, praying that an order be issued "to categorically order respondent company (herein petitioner) to pay the individual complainants (members of respondent union) their emergency living allowance in the amount of P50.00 each from August 1974 to May 1976 AND the allowance differential in the amount of P20.00 each of the individual complainants from June 1976 to April 30, 1979, to conform with our real claim."

Resolving petitioner's motion for reconsideration of July 31, 1979 and respondent union's petition for clarification, then Deputy Minister Inciong issued an Order[15] dated November 8, 1979, denying for lack of merit petitioner's motion for reconsideration of the order of July 3, 1979 and clarifying the said order by stating that the modification of the order of respondent Estrella pertained only to petitioner's one year exemption from paying its covered employees the additional emergency cost of living allowance under P.D. 1123, and that the same did not involve a deduction from the award already due to the said employees under P.D. 525. The dispositive part of said Order is as follows:

"WHEREFORE, with the above-clarification, the Order of July 3, 1979 stands.

"Accordingly, the Regional Director concerned is hereby directed to issue a writ of execution upon proper motion of its issuance, corresponding to complainant union's claim of the emergency cost of living allowance in the amount of P50.00 each from August 1974 to May 1977, and the emergency living allowance differential in the amount of P20.00 each member from June 1977 to November 1978.

"SO ORDERED."

On December 4, 1979, petitioner filed a "Motion to Set Aside Order and/or Motion for Reconsideration"[16] on the ground of *prescription* and on the alleged error of the then Deputy Minister in holding that the members of the respondent union are entitled to P50 each as emergency allowance for the period from August 1974 to May 1977.

On December 11, 1979, respondent union filed a motion for execution[17] of the Order of November 8, 1979 to which the petitioner filed an opposition and motion to elevate the records to the Minister of Labor,[18] on the ground of the pendency of its motion to set aside order and/or motion for reconsideration and that the issuance of

the writ would work in-justice and irreparable damage to petitioner, which had al-ready posted a bond in the amount of P65,670 to guarantee the judgment amount.

On December 19, 1979, respondent Francisco Estrella issued the herein questioned writ of execution to implement the Order of November 8, 1979. Hence, the present petition.

Apart from the alleged lack of jurisdiction on the part of respondent Estrella to issue the questioned writ of exe-cution during the pendency of its motion to set aside order and/or motion for reconsideration, as adverted to earlier, as put forth by petitioner in this petition for certiorari, it likewise argued that public respondents Francisco Estrella and Minda Rivera have no authority to amend the complaint, which was filed and instituted in the name of respondent union only without including the names of the real parties-in-interest, the individual complainants, by making it appear that the same was filed and instituted in the name of said individual com-plainants.

We find the foregoing arguments of petitioner to be devoid of persuasive force.

Article 223 of the new Labor Code, as amended by P.D. 1367, and Section 2 of Rule XV, Book V of the Implementing Rules and Regulations of the Labor Code, in no uncertain terms, provide as follows:

"Art. 223 Appeal. - x x x The decision of the Secretary (now Minister) of Labor shall be immediately executory: Provided, that the President of the Philippines may assume jurisdiction over any cases which he considers national interest cases."

"Sec. 2. Decisions of Secretary of Labor Executory. - The decisions of the Secretary (now Minister) of Labor shall be immediately executory pending appeal, unless stayed by an order of the President of the Philippines."

Considering the aforequoted provisions of law, the autho-rity of the respondent Regional Director to issue the herein questioned writ of execution even before petitioner's motion to set aside order and/or motion for reconsideration can be resolved is put beyond dispute, it appearing that said writ of execution was merely to implement the order dated July 3, 1979 as clarified by the subsequent order dated November 8, 1979, of then Deputy Minister Inciong, issued upon authority of the Minister of Labor. Significantly, the later order of November 8, 1979 specifically directed the Regional Director to issue the appropriate writ of execution upon proper motion for its issuance, precisely to enforce said orders.

But petitioner would insist, invoking Section 2, Rule 39 of the Rules of Court, regarding execution pending appeal, and citing decisional precedents laid down by this Court, that execution pending appeal is permissible only when special reasons exist therefor, a situation, according to the petitioner, not obtaining in the present case.

We cannot agree. As can be clearly seen from the provisions hereinabove quoted, which provisions are specially promulgated to govern the proceedings in labor cases, the decisions of the Minister of Labor are, as a general rule, immediately executory even pending appeal. Being a special law, the same must govern the present labor case and the provisions of the Rules of Court, being of general application, and subject even to amendment by law, must give way. The above labor law provisions should thus be considered in the light of such amendment of the Rules of Court, assuming there is conflict but which does not actually exist, for in the Rules of Court, execution pending appeal is only permissive, but in the law, it is mandatory.

Neither will petitioner's claim that the questioned writ of execution is unnecessary as it had allegedly posted a supersedeas bond equivalent to the award, be sustained since the aforequoted applicable legal provisions are quite clear and explicit that, as already stated, the decisions of the Minister of Labor are generally immediately executory even pending appeal unless stayed by an order of the President of the Philippines. There is no showing that this case comes under the specific exception as so provided, hence, it must be regarded as coming within the purview of the general rule. *Exception firmat regulam in casibus non exceptis*. At any rate, all doubts in the

implementation and interpretation of the provisions of the Labor Code, including its implementing rules and regulations, shall be resolved in favor of labor, as expressly provided by Article 4 of said Code. A contrary ruling would be a dilution and emasculation of the protection to labor clause of the Constitution.

Petitioner then contends that there is an unwarranted amendment of the complaint in the sense that the questioned writ of execution contains the names of the individual claiming employees while the complaint was merely filed and instituted in the name of the respondent union. This contention likewise deserves scant consideration. For one, the respondent union in filing the complaint below, merely acted in a representative capacity, as may be gleaned from the allegations of said complaint, for the benefit of the individual complainants, who are the members of said union and the employees of petitioner. The action is in the nature of a class suit sanctioned by law and jurisprudence. For another, the inclusion of the names of said individual complainants, who are the real parties-in-interest, does not necessarily amount to an amendment of the complaint but rather, as correctly pointed out by the Solicitor General, "only for the purpose of computation-to arrive at the exact figure that is due them, to facilitate the distribution of the amount due to the claiming employees represented by the union." [19]

Prescription would neither work in petitioner's favor as to call for a different conclusion. As noted earlier, the defense of prescription was raised by petitioner only for the first time in its supplemental motion for reconsideration of June 5, 1979, after the case was elevated for review to the Office of the Minister of Labor on May 11, 1979. Not having been timely raised before or during the hearing conducted by respondent Regional Director, the defense of prescription cannot be raised for the first time on appeal; it is deemed waived upon the petitioner's failure to plead it before or during the hearing. [20]

With the above conclusion, We find it unnecessary to dwell on the other points raised by the respondents, both public and private, for the same would in no way affect the resolution of the principal issues involved in this petition.

WHEREFORE, this petition is hereby dismissed and the temporary restraining order issued per resolution of January 9, 1980 is hereby lifted, with costs against the petitioner.

This decision is immediately executory.

SO ORDERED.

Barredo, (Chairman), Concepcion, Jr., Ericeta, and Escolin, JJ., concur. Aquino, J., in the result. Abad Santos, J., on official leave.

[1] Annex "U" Petition, pp. 93-95, Rollo.

[2] Annex "A" Petition, pp. 18-19, Id.

[3] Annex "E" Petition, pp. 27-30, Id.

[4] Annex "F" Petition, pp. 35-37, Id.

[5] Annex "G" Petition, pp. 38-40, Id.

[6] Annex "H" Petition, pp. 41-42, Id.

[7] Annex "I" Petition, pp. 43-44, Id.

[8] Annex "J" Petition, pp. 45-46, Id.

- [9] Annex "K" Petition, p. 49, Id.
- [10] Annex "L" Petition, p. 50, Id.
- [11] Annex "M" Petition, pp. 51-52, Id.
- [12] Annex "N" Petition, pp. 55-56, Id.
- [13] Annex "O" Petition, pp. 57-58, Id.
- [14] Annex "P" Petition, pp. 61-66, Id.
- [15] Annex "Q" Petition, pp. 70-72, Id.
- [16] Annex "R" Petition, pp. 73-88, Id.
- [17] Annex "S" Petition, p. 89, Id.
- [18] Annex "T" Petition, pp. 90-91, Id.
- [19] p. 14, Memorandum for Public Respondents, p. 204, Id.
- [20] Blanco v. WCC, 29 SCRA 7, citing cases.

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