

**SOUTHERN FOOD SALES CORPORATION AND ROBERT JAMES SIAO,
PETITIONERS, VS. HON. BERNARDO LL. SALAS, PRESIDING JUDGE OF
BRANCH VIII, COURT OF FIRST INSTANCE OF CEBU AND RAUL G.
LAUR...**

G.R. No. 56428. February 18, 1992

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This is a petition for certiorari with prayer for the issuance of a writ of preliminary injunction seeking the nullification of the orders issued by the respondent Judge Bernardo Ll. Salas, in his capacity as the presiding judge of the Court of First Instance of Cebu, 14th Judicial District, Branch VIII, Cebu City in Civil Case No. R-18431 entitled "Raul G. Laurente v. Southern Food Sales Corp. and Robert James Siao" dated February 28, 1980 deferring the determination of the motion to dismiss until after trial and November 6, 1980 denying the motion for reconsideration.

The facts which gave rise to the controversy at bar are as follows:

Petitioner Southern Food Sales Corporation (corporation) is a domestic corporation organized and existing under the laws of the Philippines, while co-petitioner Robert James Siao is an office manager of the petitioner corporation. Public respondent Bernardo Ll. Salas is impleaded in his official capacity as the presiding judge of the Court of First Instance of Cebu, 14th Judicial District, Branch VIII, Cebu City, while private respondent Raul G. Laurente was formerly the sales supervisor of the petitioner corporation.

Private respondent Raul G. Laurente was employed as sales supervisor of petitioner Southern Food Sales Corporation from August 15, 1977 to June 29, 1979.

On July 5, 1979, private respondent Laurente was notified and advised of his immediate termination for gross neglect of duty and/or dishonesty arising from the following acts, namely: (1) for the dismissal of four (4) salesmen whose anomalies and irregularities were tolerated by private respondent despite his actual knowledge; (2) for falsifying his meal receipts; (3) for failing to submit proof of his income tax receipt for 1978; and (4) for misrepresenting his itinerary of travel. (see Rollo, p. 15)

On August 27, 1979, private respondent instituted a civil action for damages against petitioner corporation and petitioner Siao with the Court of First Instance of Cebu docketed as Civil Case No. R-18481.

Subsequently, private respondent filed a complaint against petitioner corporation with the Ministry of Labor (now Department of Labor and Employment) for illegal dismissal, reinstatement with backwages, quarterly commissions, incentive leave pay and 13th month pay.

On November 20, 1979, the labor case was assigned for compulsory arbitration with the Regional Office No. X and docketed as ROX Arbitration Case No. 469-79.

On January 7, 1980, petitioners filed a motion to dismiss on Civil Case No. R-18481, claiming that jurisdiction should be vested with the National Labor Relations Commission. (see Rollo, p. 25)

In the meantime, the Executive Labor Arbiter Idefonso G. Agbuya rendered a decision on February 5, 1980 finding that the termination of complainant was for a just and valid cause, the dispositive portion of which provides as follows:

"WHEREFORE, IN VIEW OF THE FOREGOING, we hereby rule and order the termination of the petitioner is for just and valid cause. Further, the respondent, Souther(n) Food Sales Corporation, is hereby ordered to pay the petitioner, Raul Laurente his commission and 5 days Service Incentive Leave Pay subject for computation and the following:

1) Unpaid wages from June 16-30, 1979 ----- P750.00

2) 13th Month Pay for 1979 ----- P750.00

SO ORDERED." (Rollo, p. 16)

Hence, the private respondent interposed an appeal to the National Labor Relations Commission alleging the sole ground, to wit:

"Serious errors were committed in the findings of fact which would cause grave and irreparable damage and injury to the complainant." (Rollo, p. 17)

On February 28, 1980, after finding that the grounds in the motion to dismiss did not appear to be indubitable, the court in Civil Case No. R-18481 deferred the determination of the motion to dismiss until after trial.

Such order prompted the petitioners to file a motion for reconsideration.

However, the respondent judge issued an order dated November 6, 1980 denying the motion for reconsideration and setting the case for further proceedings.

Hence, this petition with prayer for the issuance of a writ of preliminary injunction.

The petitioners maintain that private respondent's labor complaint docketed as ROX Arbitration Case No. 496-79 is a prejudicial question which must take precedence before the civil action for damages may be instituted. In addition, the petitioners stress that it is procedurally absurd for private respondent to seek remedies in two (2) tribunals of competent jurisdiction for that would have the effect of splitting a single cause of action.

On the contrary, private respondent argues that there can be no prejudicial question involved much less is there a splitting of a single cause of action. Although the two (2) cases filed by private respondent are apparently related to each other, nevertheless, each case has a different subject matter. The labor case involves the legality of the private respondent's termination or dismissal, while the civil case involves the manner of dismissal or how the petitioners carried out the dismissal.

Petitioners claim that the failure of the private respondent to await for the resolution of the NLRC is equivalent to non-exhaustion of administrative remedies. Furthermore, they stress that unless the process of administrative adjudication has been completed, the case is not ready for judicial intervention.

On this point, the private respondent notes that the principle of exhaustion of administrative remedies is not applicable. The private respondent alleges that the filing of Civil Case No. R-18481 is not in any way dependent upon the outcome of the labor case considering that the two cases, as previously discussed, are distinct from each other, each having a different subject matter.

The controversy boils down to the main issue of whether or not the respondent judge committed grave abuse of discretion when it deferred the determination or resolution of the motion to dismiss questioning the jurisdiction of the court over claims for damages.

We already held in the case of *National Union Fire Insurance Company of Pittsburg v. Stolt-Nielsen Philippines, Inc.* (G.R. No. 87958, April 26, 1990, 184 SCRA 682, 686) that "(w)hile a Court Order deferring action on a motion to dismiss until the trial is interlocutory and cannot be challenged until final a judgment, still, where it clearly appears that the trial Judge or court is proceeding in excess or outside of its jurisdiction, the remedy of prohibition (or certiorari) would lie since it would be useless and a waste of time to go ahead with the proceedings." In the case at bar, however, the trial judge did not proceed in excess of his jurisdiction when he issued the order deferring the resolution of the motion to dismiss until after trial, in order for certiorari to lie.

Article 217 (a) (4) of the Labor Code as amended by Section 9 of Republic Act No. 6715 clearly provides that the labor arbiter shall have original and exclusive jurisdiction to hear and decide claims for actual, moral, exemplary and other forms of damages arising from an employer-employee relationship. However, when the civil case for damages was instituted in 1979, the applicable law then was Article 217 (a) (3) of the Labor Code as amended by Presidential Decree No. 1367 (May 1, 1978), the pertinent portions of which provide as follows:

"Art. 217. Jurisdiction of Labor Arbiters and the Commission. - (a) The Labor Arbiters shall have exclusive jurisdiction to hear and decide the following cases involving all workers, whether agricultural or non--agricultural:

"x x x

"(3) All other cases arising from employer-employee relations duly endorsed by the Regional Directors in accordance with the provisions of this Code; Provided, that the Regional Directors shall not endorse and Labor Arbiters shall not entertain claims for moral or other forms of damages.

"x x x."

Time and again, We stress that "(t)he rule is that where a court has already obtained and is exercising jurisdiction over a controversy, its jurisdiction to proceed to the final determination of the cause is not affected by new legislation placing jurisdiction over such proceedings in another tribunal. The exception to the rule is where the statute expressly provides, or is construed to the effect that it is intended to operate as to actions pending before its enactment. Where a statute changing the jurisdiction of a court has no retroactive effect, it cannot be applied to a case that was pending prior to the enactment of the statute." (*Bengzon v. Inciong*, G.R. Nos. L-48706-07, 91 SCRA 248, 256). We find the aforementioned principle applicable to the case at bar. To require the private respondent to file a single suit combining his actions for illegal dismissal and damages in the NLRC would be to sanction the retroactivity of Republic Act No. 6715 which took effect on March 21, 1989, where the same law does not expressly so provide, or does not intend to operate as to actions pending before its enactment, hence prejudicial to the orderly administration of justice. Therefore, the lower court, acting in accordance with the law then prevailing, has jurisdiction over the claim of damages of the private respondent.

All premises considered, the Court is convinced that the act of the respondent judge in deferring the determination of the motion to dismiss questioning the jurisdiction of the court until after trial does not amount to grave abuse of discretion.

ACCORDINGLY, the petition is DISMISSED for lack of merit.

SO ORDERED.

Narvasa, (Chairman), Cruz, and Grino-Aquino, JJ., concur.

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