

RAMON V. MERANO, PETITIONER, VS. JUDGE EDUARDO C. TUTAAN, BRANCH V, COURT OF FIRST INSTANCE OF QUEZON CITY; SAN MIGUEL CORPORATION, ANTONIO TRIA TIRONA, LABOR ARBITER, AND NATIO...

G.R. No. 56833. July 20, 1982

Ponente: AQUINO, J.

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AQUINO, J.:

The National Labor Relations Commission in a decision dated November 9, 1979 ordered San Miguel Corporation to reinstate Ramon V. Merano to his former position without loss of seniority rights and other rights and benefits to which he is entitled under existing laws and with backwages from December 16, 1977 up to his reinstatement (Case No. 13799-T).

This Court in its resolution of April 30, 1980 dismissed the petition of San Miguel Corporation for the review of that decision (G.R. No. 52157). Hence, it became final and executory.

Pursuant to that decision, Merano was paid P53 ,949.16 as monetary award up to August 31, 1980 but he was not reinstated. San Miguel Corporation opposed the reinstatement due to his supervening physical unfitness and asked that it be allowed to pay Merano separation pay in lieu of reinstatement (pp. 124--125, Rollo).

The NLRC in its en banc resolution of June 11, 1981 ruled that because Merano could no longer be reinstated due to his illness, he should be paid his additional backwages from September 1 to November 19, 1980, the date of the medical evaluation made by the Chief of the National Orthopedic Hospital, and separation pay up to that date at the rate of one month's salary for every year of service, a fraction of at least six months being considered as one year (pp. 128-129, Rollo).

Even before the issuance of that NLRC resolution of June 11, 1981, or on February 10, 1981, Merano filed in the Court of First Instance at Quezon City a special civil action of mandamus against San Miguel Corporation and the Labor Arbiter who functioned as the execution arm of the NLRC.

Merano prayed that the respondents be ordered to execute solidarily the judgment of the NLRC and, on failure to do so, San Miguel Corporation should be required to pay him the sum of P616 ,560 as his "expected income until he reaches the age of 60 years" plus his unpaid back salaries, to deposit in court his monthly salary, to pay P35,000 as moral and exemplary damages and P30,000 as attorney's fees and to defray the expenses for his surgical operation.

After receiving the comments of the respondents, the learned trial judge, Hon. Eduardo C. Tutaan, in his order of April 20, 1981, dismissed Merano's petition on the ground that he had no jurisdiction over the subject-matter of the case which falls within the competence of the NLRC.

That order of dismissal was appealed by Merano to this Court in his petition for review under Republic Act No.

5440 which he filed on June 2, 1981. The appeal was given due course. The NLRC was impleaded as a respondent.

We hold that respondent judge did not err in dismissing Merano's petition for mandamus on the ground of lack of jurisdiction. The Court of First Instance is not the proper tribunal to pass upon Merano's complaint against the failure of the Labor Arbiter to enforce the NLRC's decision to reinstate him to his former position of sales staff assistant.

His remedy against the refusal or inaction of the Labor Arbiter, who is in charge of executing the awards of the NLRC, is to call the NLRC's attention to the alleged nonfeasance and not to file a mandamus action in the Court of First Instance which has no jurisdiction to interfere with the execution of a final judgment of the NLRC. That labor tribunal has the same rank and is in the same category as the Court of First Instance. (See *Ambrocio vs. Salvador*, L-47651, December 11, 1978, 87 SCRA 217; *Nation Multi Service Labor Union vs. Agcaoili*, L-39741, May 30, 1975, 64 SCRA 274.)

Articles 217 and 223 of the Labor Code indicate that the NLRC has jurisdiction to review the decisions, awards and orders of the Labor Arbiter. It is elementary that mandamus does not lie if the petitioner has another plain, speedy and adequate remedy in the ordinary course of law.

As already noted, the NLRC on June 11, 1981, acting on the Labor Arbiter's report that Merano could not be reinstated because of the supervening fact that he was suffering from aseptic necrosis of the hip, held that he should not be reinstated and should be given separation pay in addition to his back salaries.

Another supervening fact is that on November 11, 1981 Merano and San Miguel Corporation executed a notarized agreement whereby, in consideration of certain additional payments, Merano released San Miguel Corporation from any further liability and manifested that the instant appeal should be dismissed because he was no longer interested in his claim for reinstatement and damages (pp. 199-204, Rollo).

However, Merano's counsel said that he was not bound by that agreement. He prayed that this case be decided. Merano in his comment dated June 28, 1982 asked that this case be decided notwithstanding that settlement.

Whether that settlement should terminate the case between Merano and San Miguel Corporation is a point which is not decided in this case.

WHEREFORE, the petition is dismissed. The order of dismissal issued by respondent Judge is affirmed. Costs against the petitioner.

SO ORDERED.

Barredo, (Chairman), Concepcion, Jr., Guerrero, Abad Santos, De Castro, and Escolin, JJ., concur.

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