

**MARINDUQUE MINING & INDUSTRIAL CORPORATION,
PETITIONER, VS. HON. MINISTER OF LABOR AND EMPLOYMENT
(BLAS F. OPLE), REGIONAL DIRECTOR OF REGIONAL OFFICE NO. 8,
TACLOBAN CITY (CARM...**

G.R. No. 58692. February 25, 1982

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TEEHANKEE, J.:*

Petitioner company in its petition has complained of respondent public officials' orders, with regard to its first clearance application to dismiss its employee, private respondent Ponciano Dabuet, on grounds of habitual absenteeism and for being AWOL since December 18, 1976, whereby it was ordered "to reinstate him and pay him backwages at the rate of P14.25 a day from August 1, 1977 until the date of his actual reinstatement, notwithstanding that during the course of its appeal therefrom, the same respondents officials had a week thereafter granted a second clearance application of petitioner to terminate 460 employees, among them the same respondent Ponciano Dabuet, on grounds of "serious reverses, "which clearance order was not appealed and long became final and has already been executed.

The Solicitor General and his assistants in their comment of January 6, 1982, as counsel for public respondents, agree that petitioner has valid cause for complaint and that the challenged orders were issued "with grave abuse of discretion and in excess of jurisdiction," thus:

"It should be emphasized here that the first and second clearance applications were filed by the petitioner corporation barely one month between each other, with the same MOLE Regional Office; both were heard by the same labor arbiter, Marianito Dilao, and decided by the same regional director, Carmelo Yanuario. The decision in the first clearance application, CDO-STF-APP Case No. 7-5-77, was issued on September 22, 1977 while the decision in the second clearance application, CDO-STF-APP Case No. 8-10-77 was issued on September 29, 1977, which is barely five days between each other. The decision in the first clearance was seasonably appealed by the petitioner corporation on October 10, 1977 to the Minister of Labor and Employment (See Annex 'C', id.) while the decision in the second clearance application became final and executory, since not one of the 460 employees affected by the shutdown or termination appealed from said decision.

"Consequently, the aforesaid Order dated September 22, 1977 in CDO-STF-APP Case No. 7-5-77 is legally considered pending appeal, which was its status, when the Order dated September 29, 1977 in CDO-STF-APP Case No. 8-10-77 became final and executory, which was also before respondent Minister of Labor & Employment issued his Order dated December 22, 1980, dismissing petitioner corporation's appeal in CDO-STF-APP Case No. 7-5-77 (see Exhibit 'E', Petition). Such being the case, the final and executory Order dated September 29, 1977 in CDO-STF-APP Case No. 8-10-77 may be deemed to have mooted the Order dated September 22, 1977 in CDO-STF-APP Case No. 7-5-77 which was pending appeal. And this latter order is the subject of the instant petition before this Honorable Supreme Court. The former Order, which had already become final and executory, has superseded and rendered unenforceable the latter Order, even if the instant petition is granted.

"In his Order dated December 22, 1980, respondent Minister of Labor & Employment stated, in denying the motion for reconsideration of his previous order dismissing the appeal of the petitioner corporation in CDO-STF-APP Case No. 7-5-77, that nothing is shown from the records that an Order had already been issued, approving the second clearance application of the petitioner corporation to terminate the services of 460 employees, one of whom is employee Ponciano Dabuet himself. Such observation is inaccurate. Precisely, in its motion for reconsideration and/or appeal dated October 19, 1977 filed in CDO-STF-APP Case No. 7-5-77, petitioner corporation called the attention of the respondent Minister of Labor & Employment to this fact. Respondent Minister of Labor & Employment, it being an administrative proceeding, should have directed the regional office to forward to him the records of CDO-STF-APP Case No. 8-10-77 to verify the allegations of the petitioner corporation of the existence of such final and executory order.

"C. Employee Ponciano Dabuet not having been illegally dismissed, is not entitled to reinstatement nor to backwages in view of the circumstances obtaining, involving the two clearance applications of the petitioner corporation.

"In view of the circumstances obtaining, involving the two clearance applications of the petitioner corporation insofar as they affect employee Ponciano Dabuet, the herein questioned orders in CDO-STF-APP Case No. 7-5-77 are no longer enforceable.

"Unless employee Dabuet has some leave credits to set-off for his absences from work during the periods of his verbal sick leaves from May 10, 1977 to May 16, 1977 and from May 18, 1977 to July 31, 1977, and his absences without leave (AWOL) on May 17, 1977 and from August 1, 1977 to September 5, 1977, including his previous absences and those without leave of absence which were the basis of the first clearance application filed by the petitioner corporation, he cannot be entitled to any compensation for those days under the principle of 'no-work-no-pay.'

"Consequently, employee Ponciano Dabuet cannot be legally entitled to backwages from August 1, 1977 'until date of his actual reinstatement' because: (1) from August 1, 1977 to September 5, 1977, he has been absent without leave, and not entitled to any compensation under the principle of 'no-work-no-pay'; and (2) from September 6, 1977 and up to the present, he can no longer be validly and legally reinstated to his former position with the petitioner corporation because he was included in the Order dated September 29, 1977 issued by Regional Director Yanuario in CDO-STF-APP Case No. 8-10-77, which had already become final and executory, approving the second clearance application to terminate the employment of 460 employees, one of whom is employee Dabuet himself, due to business reverses.

"x x x

"All the foregoing demonstrate clearly that herein public respondents committed grave abuse of discretion and in excess of jurisdiction in issuing the questioned orders in CDO-STF-APP Case No. 7-5-77, subject of the instant petition, insofar as employee Ponciano Dabuet is concerned, more particularly, the directives therein to reinstate him to his former position with petitioner corporation and to pay him backwages from August 1, 1977 until actual reinstatement."^[1]

The Court finds the foregoing considerations to be in accordance with law and the record, and dispensing with the filing of memo-randa, grants the petition.

One final observation. The Court is not inclined to act favorably on the Solicitor General's recommendation that "if at all," respondent be deemed "entitled to collect separation pay ... as a result of his being included in the partial shutdown or partial termination of employees, he being considered legally and finally terminated from employment as of September 5, 1977" for two reasons: first, such separation pay should have been sought but was

not granted in the long final and executed order of September 29, 1977 granting the second clearance application, under the provisions of Article 284 of the Labor Code on reduction of personnel; and secondly, the record of his absences without leave as shown above[2] shows him clearly to be culpable of habitual absenteeism and gross neglect of his duties, so much so that on July 22, 1977, petitioner was constrained to file its first clearance application to terminate officially his services since he had been absent and had not reported for work since May 17, 1977 to the time of his termination on September 5, 1977 under the clearance given in public respondents' Order of September 29, 1977 in the second clearance application. Thus, even conceding his alleged oral sick leave from May 18, 1977 to July 31, 1977, there was no justification for his continued failure to report for work since August 1, 1977 and thereafter, and the first clearance application should likewise have been granted for just cause under Article 283 of the Labor Code, forfeiting his right to any separation pay.

ACCORDINGLY, the Orders of December 22, 1980 and August 13, 1981 of respondent Minister affirming respondent director's Order of September 22, 1977 are hereby set aside and the restraining order of November 8, 1981 against their enforcement is hereby made permanent. SO ORDERED.

Makasiar, Fernandez, Guerrero, Melencio-Herrera, and Plana, JJ., concur.

[1] Solicitor General's Comment, pages 14-18.

[2] Supra, at page 3 hereof.

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