

**CEBU INSTITUTE OF TECHNOLOGY (CIT), PETITIONER, VS. HON. BLAS OPLE, IN HIS CAPACITY AS MINISTER, MINISTRY OF LABOR AND EMPLOYMENT, JULIUS ABELLA, ARSENIO ABELLANA, RODRIGO ALIWA...**

*G.R. No. 58870. April 15, 1988*

Ponente: CORTES, J.

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**CORTES, J.:**

Motions for Reconsideration and Clarification in four of these six consolidated cases decided by the Court on December 18, 1987 were filed and questions not clearly raised as issues or dealt with in the main petitions but which are necessary for the full resolution of the cases are presented in the following:

I. Fabros case (G. R. No. 70832).

- Petitioners-movants through counsel insist on the following points: (1) that section 42 of B. P. Blg. 232 did not repeal section 3(a) of Pres. Dec. No. 451; (2) that there was undue delegation of absolute power to the Department of Education, Culture and Sports because no sufficient standards are enumerated in section 42 of B. P. Blg. 232; consequently, (3) MECS Order No. 25, series of 1985 is an ultra vires act; and (4) former Minister Onofre D. Corpuz and former President Marcos said that Pres. Dec. No. 451 remained despite B.P. Blg. 232. The other petitioners in this case also moved for reconsideration on two grounds: (1) that the decision is unconstitutional; and (2) that B.P. Blg. 232 is unconstitutional for violation of the rule against undue delegation of legislative power.

These matters raised by the movants have been sufficiently discussed by the Court in the Decision sought to be reconsidered. There is therefore no need to pass upon them again in this resolution. This Court reiterates its ruling that section 42 of B.P. Blg 232 (The Education Act of 1982) has repealed Pres. Dec. No. 451. Furthermore, B.P. Blg. 232 has set the standards to be followed by the Secretary of Education, Culture and Sports in promulgating the necessary rules and regulations to implement the law and which thereby negates any allegation of undue delegation of legislative power.

- As an incident to the main arguments in this motion for reconsideration, petitioners express doubt on the applicability of the three-year period of prescription under the Labor Code. There is no doubt that the three-year period within which to file actions involving money claims arising out of an employer-employee relationship fixed by Article 292 of Pres. Dec. No. 442 (Labor Code), as amended, equally applies to claims for the incremental proceeds arising from tuition fee increases under Pres. Dec. No. 451. The claims which gave rise to all these cases are clearly money claims arising from an employer-employee relationship and thus falls under the coverage of Article 292 of the Labor Code.

II. Biscocho Case (G.R. No. 76521)

- The first matter raised for clarification in this case concerns the award of ten percent (10%) of the backwages payable to all members of the bargaining unit as negotiation fee which covers attorney's fees, agency fee and

the like. This Court in its December 18, 1987 Decision affirmed this award with the modification that only members of the bargaining unit should be made to pay this assessment.

The present source of ambiguity is the basis for computing the ten percent (10%) negotiation fee. Petitioners and respondent Espiritu Santo Parochial School share the opinion that the negotiation fee of ten percent (10%) should not be charged against the sixty percent (60%) incremental proceeds from tuition fee increases on the ground that this is not a bargainable matter as it has already been fixed by law; hence, only thirty percent (30%) should be subject to the computation of the ten percent (10%) negotiation fee. The respondent Espiritu Santo Parochial School Faculty Association takes the contrary view by arguing that the whole ninety percent (90%) incremental proceeds from tuition fee increases should be the basis for computing the ten percent (10%) negotiation fee. This is supported by its allegation that ". . . were it not for the demand made by the union and subsequent notice of strike that ensued arising from the non-implementation of P.D. 451, the school would not grant the benefits thereunder."

There is merit in petitioners' and the School's argument. The whole ninety percent (90%) economic package awarded by the National Labor Relations Commission cannot be the basis for computing the negotiation fees. The law has already provided for the minimum percentage of tuition fee increases to be allotted for teachers and other school personnel. This is mandatory and cannot be diminished although it may be increased by collective bargaining. It follows that only the amount corresponding beyond that mandated by law should be subject to negotiation fees and attorney's fees for the simple reason that it is only this which the school employees had to bargain for. The sixty percent (60%) which is what the law grants them is not a negotiable issue.

- This Court in its Decision affirmed the following award of the National Labor Relations Commission (NLRC):

\* \* \*

(f) the School to deduct the amount equivalent to ten (10%) percent of the backwages payable to all members of the bargaining unit as negotiation fee and to deliver the same to the Union treasurer for proper disposition.

What is sought to be clarified is the term "backwages" as used in the above order. The Solicitor General holds the view that inasmuch as the NLRC Order was issued on April 14, 1986, the "backwages" would refer only to the amount corresponding to the period prior to said date.

The Court does not agree with the view taken by the Solicitor General. The term "backwages" as used in the questioned order of the former Minister of Labor apparently refers to whatever back payments will be received by the teachers and other school employees from the economic package which was ordered to be included in the collective bargaining agreement. "Backwages" do not cover only the amount corresponding to the period prior to the promulgation of the Order on April 14, 1986. Hence, the ten percent (10%) negotiation fee should be computed on the amount in excess of that portion allocated by law for increases in salaries of teachers and other school employees for the entire contract period covered by the economic package, starting school year 1985-1986 and ending school year 1987-1988.

### III. Divine Word College Case (G.R. No. 68345)

- The original complaint in this case which covered claims for the school years 1979-1980, 1980-1981, 1981-1982 and 1982-1983 was filed on February 17, 1983 before the Regional Office. Invoking Article 292 of the Labor Code, petitioner school submits that all claims prior to February 17, 1980 have already prescribed.

Article 292 of the Labor Code expressly provides that the period within which to file actions for money claims which accrued during the effectivity of the Labor Code is three (3) years from the accrual of the cause of action.

Money claims which accrued more than three (3) years prior to the filing of the complaint are barred by prescription.

In the instant case, inasmuch as the original complaint was filed on February 17, 1983, the claims prior to February 17, 1980 have indeed already prescribed.

- Another question raised by petitioner is the basis for computing the incremental proceeds of tuition fee increases. It is petitioner's contention that inasmuch as a substantial number of its students do not pay or pay only a part of their tuition and other school fees then only the actual incremental proceeds should be used as the basis for computation and not the rate of increase of tuition fee multiplied by the number of students.

The basis for computing the incremental proceeds accruing to the teachers is provided by Pres. Dec. No. 451 and now the rules and regulations implementing section 42 of B.P. Blg. 232. The portion allocated for teachers and other school personnel is arrived at by multiplying the total amount of the incremental proceeds of the authorized tuition fee increase by sixty percent (60%). The use of the word proceeds in the law implies that the percentage share of the teachers and other school employees should be computed on the actual amount collected from the imposition of tuition fee increases. This is applicable particularly to those schools who allow payment of tuition and other student fees on an installment basis.

#### IV. Far Eastern University Case (G.R. Nos. 69224-25)

- Respondent Far Eastern University brings to the attention of this Court the question of whether or not the Union's claims under Pres. Dec. No. 451 particularly for school year 1974-1975 have already prescribed. Considering that the original complaint was filed on July 7, 1979, then under Article 242 of the Labor Code which sets the limit for filing money claims to three (3) years from the accrual of the cause of action, the claims of the faculty union under Pres. Dec. No. 451 for school year 1974-1975 have indeed prescribed.

The Court notes, however, that the extant claims involve only the underpayment of the sixty percent (60%) share of teacher and other school personnel in the total incremental proceeds of tuition fee increases as a result of the charging of cost of living allowances and other benefits to such sixty percent (60%) portion and not their total sixty percent (60%) portion of the incremental proceeds.

- The Court notes the Motion for Clarification of Judgment filed by counsel for petitioner Union as regards the payment of the "transportation allowance" which was held to be an equivalent to the thirteenth (13th) month pay. Petitioner prays for a modification of the judgment to include an order requiring respondent Far Eastern University to pay its employees who have been paid such transportation allowance less than one-twelfth (1/12) of the latter's basic salary, the amount of the difference.
- A Motion for Issuance of An Order Awarding Attorney's Lien was filed by petitioner Union's former counsel, Atty. Herminio Z. Florendo. Movant alleges that pursuant to an agreement with the members of the Union, he filed the complaint for unpaid holiday pays, underpayment of thirteenth (13th) month pay and for violation of Pres. Dec. No. 451 with the Department of Labor. The agreement which is attached to the motion provides that the prosecution of the Union members' claim is on a contingent fee basis in an amount equivalent to thirty percent (30%) of whatever may be recovered relative to said claim.

The Labor Arbiter in his March 10, 1980 Order awarded the Union's claim for payment of legal holiday and thirteenth (13th) month pay but dismissed its claim under Pres. Dec. No. 451. Atty. Florendo perfected the partial appeal and memorandum for complainants-appellants with the National Labor Relations Commission. Pending the appeal, however, another lawyer entered his appearance for the appellant Union thereby substituting Atty. Florendo.

Atty. Florendo's motion is a claim for payment of his attorney's fees for legal services rendered from the filing of

complaint and other pleadings to the hearing on the merits, up to the perfection of their partial appeal, under the principle of quantum meruit.

An "Opposition To Motion of Atty. Herminio Z. Florendo for an Order Awarding Attorney's Lien" dated March 1, 1988 was filed by the petitioner Union through its incumbent president, Carmelito B. Nocon. Petitioner Union refutes Atty. Florendo's prayer for recording of his attorney's lien by alleging that although the latter was involved in the initial stages of the proceedings concerning the Union's claims, he abandoned and did nothing more for the Union after his brother-in-law, Troadio Carbungco, the former president of the Union was replaced in the presidency in 1982.

The present counsel of record for petitioner Far Eastern University Employees' Labor Union (FEU-ELU), Atty. Carlos M. Ortega, also filed his "Motion to Enter Attorney's Lien Upon the Records". He alleges that his contract with the FEU-ELU provides for a contingent fee of ten percent (10%) of all the benefits due the petitioners' members (Annex "A"); that counsel has also been accorded individual authorization to check-off such ten percent (10%) of the benefits due each employee; and, that he foresees difficulties in implementing the contract because of the changes in the membership of petitioner's Governing Board. In a Manifestation dated January 26, 1988, petitioner Union through its President, Carmelito B. Nocon, made known to this Court that it has no objection to the motion to enter lien to the extent of ten percent (10%) of the benefits to be received.

A careful examination of the FEU-ELU Resolution dated July 6, 1983 granting Atty. Ortega a ten percent (10%) contingent fee and the allegations in the opposition filed by the Union President, Carmelito Nocon, reveals a disclaimer by the Union of any contract with Atty. Herminio Z. Florendo for and in behalf of the FEU-ELU. The appearance of Atty. Florendo for and in behalf of the Union was allegedly a private arrangement between said Atty. Florendo and his brother-in-law, Mr. Troadio Carbungco, when the latter was then the FEU-ELU President.

The Court notes the motion filed by Atty. Herminio Z. Florendo for a recording of his attorney's lien on a quantum meruit basis and the motion filed by Atty. Carlos M. Ortega for a recording of his attorney's lien on a contingent fee basis. In view, however, of the conflict presented by the FEU-ELU Resolution dated July 3, 1983, the Court deems it necessary to remand the settlement of this matter to the National Labor Relations Commission.

IN VIEW OF THE FOREGOING, the Court RESOLVED:

- In the Fabros case (G.R. No. 70832), to DENY the motion for reconsideration for lack of merit;
- In the Biscocho case, (G.R. No. 76521), to CLARIFY the following points:
  - The ten percent (10%) negotiation fee should be computed only on the amount in excess of the sixty percent (60%) portion allocated for teachers and other school employees under the law;
  - The ten percent (10%) negotiation fee should be computed on the above amount for the period starting school year 1985-1986 and ending school year 1987-1988.
- In the Divine Word College of Legaspi case (G.R. No. 68345), (1) to MODIFY the Court's Decision of December 18, 1987 so that all claims of private respondents prior to February 17, 1980 shall be considered prescribed; and (2) to ORDER a recomputation of the actual incremental proceeds received from tuition fee increases.
- In the Far Eastern University case (G.R. No. 69224-25), (1) to MODIFY the Court's Decision of December 18, 1987 so that claims for the school year 1974-1975 shall be considered prescribed; (2) to CLARIFY that Far Eastern University's remaining liability for the sixty percent (60%) allotment of the incremental proceeds shall be limited only to the portion of said sixty percent (60%) which answered for the increases in allowances and other benefits under Pres. Dec. No. 451; (3) to ORDER respondent Far Eastern University to pay its employees

who have been paid the transportation allowance in an amount less than one-twelfth (1/12) of their basic salary, the amount of the difference in thirteenth (13th) month pay subject to the three-year period of prescription under the Labor Code; (4) to NOTE the two (2) motions for recording of attorney's lien and to REMAND to the National Labor Relations Commission the matter of recording attorney's lien and the determination of the matter of entitlement of Atty. Herminio Z. Florendo to attorney's fees.

- The following guidelines apply to all the other private schools involved in these cases, mutatis mutandis:
- The time for filing actions involving the incremental proceeds from tuition fee increases under Pres. Dec. No. 451 and B. P. Blg. 232 shall be governed by Article 292 of the Labor Code which limits the time for filing money claims arising out of an employer-employee relationship to three years from the time the cause of action accrued.
- The percentage share of teachers and other school employees from tuition fee increases should be computed on the actual amount collected therefrom.

Teehankee, C.J., Yap, Melencio-Herrera, Gutierrez, Jr., Paras, Feliciano, Gancayco, Bidin, Sarmiento, and Griño-Aquino, JJ., concur.

Fernan, J., no part. Formerly counsel for Cebu Institute of Technology.

Narvasa, J., no part. Made prior public statements re matters involved prior to appointment to Court.

Cruz, J., no part. Former member of the UE faculty affected by the Decision.

Padilla, J., no part. Related to counsel for private co-respondent in G.R. No. 76521.

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