

ALLIANCE OF GOVERNMENT WORKERS (AGW); PNB-FEMA BANK EMPLOYEES ASSOCIATION (AGW); KAISAHAN AT KAPATIRAN NG MGA MANGGAGAWA AT KAWANI NG MWSS (AGW); BALARA EMPLOYEES LABOR ASSOCIAT...

G.R. No. 60403. August 03, 1983

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Are the branches, agencies, subdivisions, and instrumentalities of the Government, including government owned or controlled corporations included among the "employers" under Presidential Decree No. 851 which are required to pay all their employees receiving a basic salary of not more than P1,000.00 a month, a thirteenth (13th) month pay not later than December 24 of every year?

Petitioner Alliance of Government Workers (AGW) is a registered labor federation while the other petitioners are its affiliate unions with members from among the employees of the following offices, schools, or government owned or controlled corporations:

1. Philippine National Bank (PNB) Escolta Street, Manila
2. Metropolitan Waterworks and Sewerage System (MWSS) Katipunan Road, Balara, Quezon City
3. Government Service Insurance System (GSIS) Arroceros Street, Manila
4. Social Security System (SSS) East Avenue, Quezon City
5. Philippine Virginia Tobacco Administration (PVRTA) Consolacion Building, Cubao, Quezon City
6. Philippine Normal College (PNC) Ayala Boulevard, Manila
7. Polytechnic University of the Philippines (PUP) Hippodromo Street, Sta. Mesa, Manila

On February 28, 1983, the Philippine Government Employees Association (PGEA) filed a motion to come in as an additional petitioner.

Presidential Decree No. 851 provides in its entirety:

WHEREAS, it is necessary to further protect the level of real wages from the ravage of world-wide inflation;

WHEREAS, there has been no increase in the legal minimum wage rates since 1970;

WHEREAS, the Christmas season is an opportune time for society to show its concern for the plight of the working masses so they may properly celebrate Christmas and New Year.

NOW, THEREFORE, I, FERDINAND E. MARCOS, by virtue of the powers vested in me by the Constitution do hereby decree as follows:

SECTION 1. All employers are hereby required to pay all their employees receiving a basic salary of not more than P1,000 a month, regardless of the nature of their employment, a 13th-month pay not later than December 24 of every year.

SECTION 2. Employers already paying their employees a 13th-month pay or its equivalent are not covered by this Decree.

SECTION 3. This Decree shall take effect immediately.

Done in the City of Manila, this 16th day of December 1975.

According to the petitioners, P.D. No. 851 requires all employers to pay the 13th-month pay to their employees with one sole exception found in Section 2 which states that "(E)mmployers already paying their employees a 13th month pay or its equivalent are not covered by this Decree." The petitioners contend that Section 3 of the Rules and Regulations Implementing Presidential Decree No. 851 included other types of employers not exempted by the decree. They state that nowhere in the decree is the Secretary, now Minister of Labor and Employment, authorized to exempt other types of employers from the requirement.

Section 3 of the Rules and Regulations Implementing Presidential Decree No. 851 provides:

"Section 3. Employers covered. -- The Decree shall apply to all employers except to:

- a) Distressed employers, such as (1) those which are currently incurring substantial losses or (2) in the case of non-profit institutions and organizations, where their income in some whether from donations, contributions, grants and other earnings from any source, has consistently declined by more than forty (40%) per cent of their normal income for the last two (2) years, subject to the provision of Section 7 of this issuance;
- b) The Government and any of its political subdivisions, including government-owned and controlled corporations, except those corporations operating essentially as private subsidiaries of the Government;
- c) Employers already paying their employees 13th-month pay or more in a calendar year or its equivalent at the time of this issuance;
- d) Employers of household helpers and persons in the personal service of another in relation to such workers; and
- e) Employers of those who are paid on purely commission, boundary, or task basis and those who are paid a fixed amount for performing a specific work, irrespective of the time consumed in the performance thereof, except where the workers are paid on piece-rate basis in which case the employer shall be covered by this issuance insofar as such workers are concerned. x x x"

The petitioners assail this rule as ultra vires and void. Citing *Philippine Apparel Workers' Union v. NLRC et al.* (106 SCRA 444); *Teoxon v. Members of the Board of Administrators* (33 SCRA 585); *Santos v. Hon. Estenzo et al.* (109 Phil. 419); *Hilado v. Collector of Internal Revenue* (100 Phil 287), and *Olsen & Co. Inc. v. Aldanese and Trinidad* (43 Phil 259), the petitioners argue that regulations adopted under legislative authority must be in harmony with the provisions of the law and for the sole purpose of carrying into effect its general provisions. They state that a legislative act cannot be amended by a rule and an administrative officer cannot change the law. Section 3 is challenged as a substantial modification by rule of a Presidential Decree and an unlawful exercise of legislative power.

Our initial reaction was to deny due course to the petition in a minute resolution. However, considering the important issues propounded and the fact, that constitutional principles are involved, we have now decided to give due course to the petition, to consider the various comments as answers and to resolve the questions raised

through a full length decision in the exercise of this Court's symbolic function as an aspect of the power of judicial review.

At the outset, the petitioners are faced with a procedural barrier. The petition is one for declaratory relief, an action not embraced within the original jurisdiction of the Supreme Court. (*Remotigue v. Osmena, Jr.*, 21 SCRA 837; *Rural Bank of Olongapo v. Commission of Land Registration*, 102 SCRA 794; *De la Llana v. Alba*, 112 SCRA 294). There is no statutory or jurisprudential basis for the petitioners' statement that the Supreme Court has original and exclusive jurisdiction over declaratory relief suits where only questions of law are involved. Jurisdiction is conferred by law. The petitioners have not pointed to any provision of the Constitution or statute which sustains their sweeping assertion. On this ground alone, the petition could have been dismissed outright.

Following similar action taken in *Nacionalista Party v. Angelo Bautista* (85 Phil. 101) and *Aquino v. Commission on Elections* (62 SCRA 275) we have, however, decided to treat the petition as one for mandamus. The petition has far reaching implications and raises questions that should be resolved. Have the respondents unlawfully excluded the petitioners from the use and enjoyment of rights to which they are entitled under the law?

An analysis of the "whereases" of P.D. No. 851 shows that the President had in mind only workers in private employment when he issued the decree. There was no intention to cover persons working in the government service.

The decree states:

xxx xxx xxx

WHEREAS, there has been no increase in the legal minimum wage rates since 1970;

xxx xxx xxx

As pointed out by the Solicitor General in his comment for the Minister of Labor and Employment, the Social Security System, the Philippine Normal College, and Polytechnic University, the contention that government owned and controlled corporations and state colleges and universities are covered by the term "all employers" is belied by the nature of the 13th-month pay and the intent behind the decree.

The Solicitor General states:

"Presidential Decree No. 851 is a labor standard law which requires covered employers to pay their employees receiving not more than P1,000.00 a month an additional thirteenth-month pay. Its purpose is increase the real wage of the worker (*Marcopper Mining Corp. v. Ople*, 105 SCRA 75; and *National Federation of Sugar workers v. Ovejera*, G.R. No. 59743, May 31, 1982) as explained in the 'whereas' clauses which read:

""WHEREAS, it is necessary to further protect the level of real wages from the ravage of world-wide inflation;

""WHEREAS, there has been no increase in the legal minimum wage rates in 1970;

""WHEREAS, the Christmas season is an opportune time for society to show its concern for the plight of the working masses so they may celebrate the Christmas and New Year.

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"What the P.D. No. 851 intended to cover, as explained in the prefatory statement of the Decree, are only those in the private sector whose real wages require protection from world-wide inflation. This is emphasized by the 'whereas' clause which states that 'there has been no increase in the legal minimum wage rates since 1970'. This could only refer to the private sector, and not to those in the government service because at the time of the enactment of Presidential Decree No. 851, in 1975, only the employees in the private sector had not been given

any increase in their minimum wage. The employees in the government service had already been granted in 1974 a ten percent across-the-board increase on their salaries as stated in P.D. No. 525, Section 4.

"Moreover, where employees in the government service were to benefit from labor standard laws, their coverage is explicitly stated in the statute or presidential enactment. This is evident in (a) Presidential Decree No. 390, Sec. 1 which granted emergency cost of living allowance to employees in the national government; (b) Republic Act No. 6111, Sec. 10 on medicare benefits; (c) Presidential Decree No. 442, Title II, Article 97 on applicable minimum wage rates; (d) Presidential Decree No. 442, Title II, Article 167(g) on workmen's compensation; (e) Presidential Decree No. 1123 which provides for increases in emergency allowance to employees in the private sector and in salary to government employees in Section 2 thereof; and (f) Executive Order No. 752 granting government employees a year-end bonus equivalent to one week's pay. Thus, had the intention been to include government employees under the coverage of Presidential Decree No. 851, said Decree should have expressly so provided and there should have been accompanying yearly appropriation measures to implement the same. That no such express provision was provided and no accompanying appropriation measure was passed clearly show the intent to exclude government employees from the coverage of P.D. No. 851."

We agree.

It is an old rule of statutory construction that restrictive statutes and acts which impose burdens on the public treasury or which diminish rights and interests, no matter how broad their terms do not embrace the Sovereign, unless the Sovereign is specifically mentioned. (See *Dollar Savings Bank v. United States*, 19 Wall (U.S.) 227; *United States v. United Mine Workers of America*, 330 U.S. 265). The Republic of the Philippines, as sovereign, cannot be covered by a general term like "employer" unless the language used in the law is clear and specific to that effect.

The issue raised in this petition, however, is more basic and fundamental than a mere ascertainment of intent or a construction of statutory provisions. It is concerned with a revisiting of the traditional classification of government employment into governmental functions and proprietary functions and of the many ramifications that this dichotomous treatment presents in the handling of concerted activities, collective bargaining, and strikes by government employees to wrest concessions in compensation, fringe benefits, hiring and firing, and other terms and conditions of employment.

The workers in the respondent institutions have not directly petitioned the heads of their respective offices nor their representatives in the Batasang Pambansa. They have acted through a labor federation and its affiliated unions. In other words, the workers and employees of these state firms, college, and university are taking collective action through a labor federation which uses the bargaining power of organized labor to secure increased compensation for its members.

Under the present state of the law and pursuant to the express language of the Constitution, this resort to concerted activity with the ever present threat of a strike can no longer be allowed.

The general rule in the past and up to the present is that "the terms and conditions of employment in the Government, including any political subdivision or instrumentality thereof are governed by law" (Section 11, the Industrial Peace Act, R.A. No. 875, as amended and Article 277, the Labor Code, P.D. No. 442, as amended). Since the terms and conditions of government employment are fixed by law, government workers cannot use the same weapons employed by workers in the private sector to secure concessions from their employers. The principle behind labor unionism in private industry is that industrial peace cannot be secured through compulsion by law. Relations between private employers and their employees rest on an essentially voluntary basis. Subject to the minimum requirements of wage laws and other labor and welfare legislation, the terms and conditions of

employment in the unionized private sector are settled through the process of collective bargaining. In government employment, however, it is the legislature and, where properly given delegated power, the administrative heads of government which fix the terms and conditions of employment. And this is effected through statutes or administrative circulars, rules, and regulations, not through collective bargaining agreements.

At the same time, the old Industrial Peace Act excepted employees and workers in proprietary functions of government from the above compulsion of law. Thus, in the past, government employees performing proprietary functions could belong to labor organizations imposing the obligation to join in strikes or engage in other concerted action. (Section 11, R.A. 875, as amended). They could and they did engage in concerted activities and various strikes against government-owned and controlled corporations and other government institutions discharging proprietary functions. Among the institutions declared as falling under the exception in Section 11 of the Industrial Peace Act were respondents Government Service Insurance System (*GSISEA v. Alvendia*, 108 Phil. 505) and Social Security System (*SSSEA v. Soriano*, 7 SCRA 1016). And this Court has supported labor completely in the various strikes and concerted activities in firms and agencies discharging proprietary functions because the Constitution and the laws allowed these activities.

The exception, however belongs to the past.

The petitioners state in their counter comment filed July 23, 1982 that the 1973 Constitution is categorical about the grant of the rights to self-organization and collective bargaining to all workers and that no amount of stretched interpretation of lesser laws like the Labor Code and the Civil Service Act can overturn the clear message of the Constitution with respect to these rights to self-organization and collective bargaining.

These statements of the petitioners are error insofar as government workers are now concerned.

Under the present Constitution, government-owned or controlled corporations are specifically mentioned as embraced by the civil service. (Section 1, Article XII-B, Constitution). The inclusion of the clause "including every government-owned or controlled corporation" in the 1973 amendments to the Constitution was a deliberate amendment for an express purpose. There may be those who disagree with the intent of the framers of the amendment but because it is fundamental law, we are all bound by it. The amendment was intended to correct the situation where more favored employees of the government could enjoy the benefits of two worlds. They were protected by the laws governing government employment. They could also engage in collective bargaining and join in strikes to secure higher wages and fringe benefits which equally hardworking employees engaged in government functions could only envy but not enjoy.

Presidential Decree No. 807, the Civil Service Decree of the Philippines has implemented the 1973 Constitutional amendment. It is categorical about the inclusion of personnel of government-owned or controlled corporations in the civil service and their being subject to civil service requirements:

SECTION 56. Government-owned or Controlled Corporations Personnel.- All permanent personnel of government-owned or controlled corporations whose positions are now embraced in the civil service shall continue in the service until they have been given a chance to qualify in an appropriate examination, but in the meantime, those who do not possess the appropriate civil service eligibility shall not be promoted until they qualify in an appropriate civil service examination. Services of temporary personnel may be terminated any time.

Personnel of government-owned or controlled corporations are now part of the civil service. It would not be fair to allow them to engage in concerted activities to wring higher salaries or fringe benefits from Government even as other civil service personnel such as the hundreds of thousands of public school teachers, soldiers, policemen, health personnel, and other government workers are denied the right to engage in similar activities.

To say that the words "all employers" in P.D. No. 851 includes the Government and all its agencies, instrumentalities, and government-owned or controlled corporations would also result in nightmarish budgetary problems.

For instance, the Supreme Court is trying its best to alleviate the financial difficulties of courts, judges, and court personnel in the entire country but it can do so only within the limits of budgetary appropriations. Public school teachers have been resorting to what was formerly unthinkable, to mass leaves and demonstrations, to get not a 13th-month pay but promised increases in basic salaries and small allowances for school uniforms. The budget of the Ministry of Education, Culture and Sports has to be supplemented every now and then for this purpose. The point is, salaries and fringe benefits of those embraced by the civil service are fixed by law. Any increases must come from law, from appropriations or savings under the law, and not from concerted activity.

The Government Corporate Counsel, Justice Manuel Lazaro, in his consolidated comment* for respondents GSIS, MWSS, and PVTa gives the background of the amendment which includes every government-owned or controlled corporation in the embrace of the civil service:

"Records of the 1971 Constitutional Convention show that in the deliberations held relative to what is now Section 1(1), Article XII-B, *supra*, the issue of the inclusion of government-owned or controlled corporations figured prominently.

"The late delegate Roberto S. Oca, a recognized labor leader, vehemently objected to the inclusion of government-owned or controlled corporations in the Civil Service. He argued that such inclusion would put asunder the right of workers in government corporations, recognized in jurisprudence under the 1935 Constitution, to form and join labor unions for purposes of collective bargaining with their employers in the same manner as in the private section (see: records of 1971 Constitutional Convention).

"In contrast, other labor experts and delegates to the 1971 Constitutional Convention enlightened the members of the Committee on Labor on the divergent situation of government workers under the 1935 Constitution, and called for its rectification. Thus, in a Position Paper dated November 22, 1971, submitted to the Committee on Labor, 1971 Constitutional Convention, then Acting Commissioner of Civil Service Epi Rey Pangramuyen declared:

"It is the stand, therefore, of this Commission that by reason of the nature of the public employer and the peculiar character of the public service, it must necessarily regard the right to strike given to unions in private industry as not applying to public employees and civil service employees. It has been stated that the Government, in contrast to the private employer, protects the interests of all people in the public service, and that accordingly, such conflicting interests as are present in private labor relations could not exist in the relations between government and those whom they employ.

"Moreover, determination of employment conditions as well as supervision of the management of the public service is in the hands of legislative bodies. It is further emphasized that government agencies in the performance of their duties have a right to demand undivided allegiance from their workers and must always maintain a pronounced esprit de corps or firm discipline among their staff members. It would be highly incompatible with these requirements of the public service, if personnel took orders from union leaders or put solidarity with members of the working class above solidarity with the Government. This would be inimical to the public interest.

"Moreover, it is asserted that public employees by joining labor unions may be compelled to support objectives which are political in nature and thus jeopardize the fundamental principle that the governmental machinery must be impartial and non-political in the sense of party politics.' (see: Records of 1971 Constitutional Convention).

"Similarly, Delegate Leandro P. Garcia, expressing support for the inclusion of government-owned or controlled corporations in the Civil Service, argued:

"It is meretricious to contend that because Government-owned or controlled corporations yield profits, their employees are entitled to better wages and fringe benefits than employees of Government other than Government-owned and controlled corporations which are not making profits. There is no gainsaying the fact that the capital they use is the people's money.' (see: Records of the 1971 Constitutional Convention).

"Summarizing the deliberations of the 1971 Constitutional Convention on the inclusion of Government-owned or controlled corporations, Dean Joaquin G. Bernas, SJ., of the Ateneo de Manila University Professional School of Law, stated that government-owned corporations came under attack as milking cows of a privileged few enjoying salaries far higher than their counterparts in the various branches of government, while the capital of these corporations belongs to the Government and government money is pumped into them whenever on the brink of disaster, and they should therefore come under the strict surveillance of the Civil Service System. (Bernas, *The 1973 Philippine Constitution, Notes and Cases*, 1974 ed., p. 524)."

The Government Corporate Counsel cites the precedent setting decision in *Agricultural Credit and Cooperative Financing Administration (ACCFA) v. Confederation of Unions in Government Corporations and Offices (CUGCO) et al.* (30 SCRA 649) as giving the rationale for coverage of government-owned or controlled corporations by the civil service. We stated in *ACCFA v. CUGCO* that:

"x x x. The ACA is a government office or agency engaged in governmental, not proprietary functions. These functions may not be strictly what President Wilson described as 'constituent' (as distinguished from 'ministrant'), [*Bacani vs. National Coconut Corporation*, G.R. No. L-9657, Nov. 29, 1956, 53 O.G. p. 2800] such as those relating to the maintenance of peace and the prevention of crime, those regulating property and property rights, those relating to the administration of justice and the determination of political duties of citizens, and those relating to national defense and foreign relations. Under this traditional classification, such constituent functions are exercised by the State as attributes of sovereignty, and not merely to promote the welfare, progress and prosperity of the people — these latter functions being ministrant, the exercise of which is optional on the part of the government.

"The growing complexities of modern society, however, have rendered this traditional classification of the functions of government quite unrealistic, not to say obsolete. The areas which used to be left to private enterprise and initiative and which the government was called upon to enter optionally, and only 'because it was better equipped to administer for the public welfare than is any private individual or group of individuals,' (*Malcolm, The Government of the Philippines*, pp. 19-20; *Bacani vs. National Coconut Corporation*, *supra*) continue to lose their well-defined boundaries and to be absorbed within activities that the government must undertake in its sovereign capacity if it is to meet the increasing social challenges of the times. Here as almost everywhere else the tendency is undoubtedly towards a greater socialization of economic forces. Here of course this development was envisioned, indeed adopted as a national policy, by the Constitution itself in its declaration of principle concerning the promotion of social justice."

Chief Justice Fernando, then an Associate Justice of this Court, observed in a concurring opinion that the traditional classification into constituent and ministrant functions reflects the primacy at that time of the now discredited and repudiated *laissez-faire* concept carried over into government. He stated:

"The influence exerted by American constitutional doctrines unavoidable when the Philippines was still under American rule notwithstanding, an influence that has not altogether vanished even after independence, the *laissez-faire* principle never found full acceptance in this jurisdiction, even during the period of its full flowering in the United States. Moreover, to erase any doubts, the Constitutional Convention saw to it that our fundamental law embodies a policy of the responsibility thrust on government to cope with social and economic problems and an earnest and sincere commitment to the promotion of the general welfare through

state action. It would thus follow that the force of any legal objection to regulatory measures adversely affecting property rights or to statutes organizing public corporations that may engage in competition with private enterprise has been blunted. Unless there be a clear showing of any invasion of rights guaranteed by the Constitution, their validity is a foregone conclusion. No fear need be entertained that thereby spheres hitherto deemed outside government domain have been encroached upon. With our explicit disavowal of the 'constituent-ministrant' test, the ghost of the laissez-faire concept no longer stalks the juridical stage."

Our dismissal of this petition should not, by any means, be interpreted to imply that workers in government-owned and controlled corporations or in state colleges and universities may not enjoy freedom of association. The workers whom the petitioners purport to represent have the right, which may not be abridged, to form associations or societies for purposes not contrary to law. (Constitution, Article IV, Section 7). This is a right they share with all public officers and employees and, in fact, by everybody living in this country. But they may not join associations which impose the obligation to engage in concerted activities in order to get salaries, fringe benefits, and other emoluments higher than or different from that provided by law and regulation.

The very Labor Code, P.D. No. 442 as amended, which governs the registration and provides for the rights of legitimate labor organizations states:

ART. 277. Government employees. - The terms and conditions of employment of all government employees, including employees of government-owned and controlled corporations, shall be governed by the Civil Service Law, rules and regulations. Their salaries shall be standardized by the National Assembly as provided for in the new constitution. However, there shall be no reduction of existing wages, benefits, and other terms and conditions of employment being enjoyed by them at the time of the adoption of this code.

Section 6, Article XII-B of the Constitution gives added reasons why the government employees represented by the petitioners cannot expect treatment in matters of salaries different from that extended to all other government personnel. The provision states:

"SEC. 6. The National Assembly shall provide for the standardization of compensation of government officials and employees, including those in government-owned or controlled corporations, taking into account the nature of the responsibilities pertaining to, and the qualifications required for the positions concerned."

It is the legislature or, in proper cases, the administrative heads of government and not the collective bargaining process nor the concessions wrung by labor unions from management that determine how much the workers in government-owned or controlled corporations may receive in terms of salaries, 13th-month pay, and other conditions or terms of employment. There are government institutions which can afford to pay two weeks, three weeks, or even 13th-month salaries to their personnel from their budgetary appropriations. However, these payments must be pursuant to law or regulation.

Presidential Decree No. 985 as amended provides:

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"SEC. 2. Declaration of Policy. - It is hereby declared to be the policy of the national government to provide equal pay for substantially equal work and to base differences in pay upon substantive differences in duties and responsibilities, and qualification requirements of the positions. In determining rates of pay, due regard shall be given to, among others, prevailing rates in private industry for comparable work. For this purpose, there is hereby established a system of compensation standardization and position classification in the national government for all departments, bureaus, agencies, and officers including government-owned or controlled corporations and financial institutions: Provided, That notwithstanding a standardized salary system established for all employees, additional financial incentives may be established by government corporations and financial institutions for their employees to be supported fully from their corporate funds and for such

technical positions as may be approved by the President in critical government agencies."

The Solicitor-General correctly points out that to interpret P. D. No. 851 as including government employees would upset the compensation levels of government employees in violation of those fixed according to P. D. No. 985.

Here as in other countries, government salaries and wages have always been lower than salaries, wages, and bonuses in the private sector. However, civil servants have no cause for despair. Service in the government may at times be a sacrifice but it is also a welcome privilege. Apart from the emotional and psychic satisfactions, there are various material advantages. The security of tenure guaranteed to those in the civil service by the Constitution and statutes, the knowledge that one is working for the most stable of employers and not for private persons, the merit system in appointments and promotions, the scheme of vacation, sick, and maternity leave privileges, and the prestige and dignity associated with public office are only a few of the joys of government employment.

Section 3 of the Rules and Regulations Implementing Presidential Decree No. 851 is, therefore, a correct interpretation of the decree. It has been implemented and enforced from December 22, 1975 to the present. The petitioners have shown no valid reason why it should be nullified because of their petition filed six and a half years after the issuance and implementation of the rule.

WHEREFORE, the petition is hereby DISMISSED for lack of merit.

SO ORDERED.

Concepcion, Jr., Guerrero, and Relova, JJ., concur.

Fernando, C.J., concurs pro hac vice in a brief separate opinion.

Teehankee, J., concurs with the dissent of Justice Makasiar.

Makasiar, J., see dissent.

Aquino, Melencio-Herrera, and Plana, JJ., in the result.

Abad Santos, J., no part.

De Castro, J., on sick leave.

Escolin, J., reserves his vote.

Vasquez, J., on official leave.

* For a more complete treatment of the change effected by the constitutional amendment, see Lazaro, "May Employees of Government Corporations Unionize and Strike," 6 Philippine Law Gazette No. 7, pp. 64-70 and Lazaro, "Legal Restraints On Labor Rights of Civil Servants Are Based On Sound Policy" Bulletin Today, March 16, 1983, p. 7 and succeeding issues.

AGW vs Minister of Labor and Employment : 60403 : August 3, 1983 : C.J. Fernando : En Banc : Concurring Pro Hac-Vice Clean 6 pt 6 pt 0 3 MicrosoftInternetExplorer4 st1:#{behavior:url(#ieooui) } /* Style Definitions */ table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0; mso-style-noshow:yes; mso-style-parent:""; mso-padding-alt:0in 5.4pt 0in 5.4pt; mso-para-margin:0in; mso-para-margin-bottom:.0001pt; mso-pagination:widow-orphan; font-size:10.0pt; font-family:"Times New Roman";}

CONCURRING PRO HAC-VICE

FERNANDO, C.J.:

The plurality opinion for the Court of Justice Gutierrez, Jr. and the dissent of Justice Makasiar are to be commended for their scholarship and comprehensiveness.

The approach taken by opinion of the Court is distinguished by its conformity to the prevailing doctrine of statutory construction that unless so specified, the government does not fall within the terms of any legislation or decree. There is an equally compelling force to the reliance by Justice Makasiar on the social justice mandate and the protection to labor provision of the Constitution.

If therefore I cannot subscribe to such a dissent, it is due to the presence of two other constitutional provisions, which in this case exert a countervailing thrust. The first is found in the first section of Article XIII. Thus: "Public office is a public trust. Public officers and employees shall serve with the highest degree of responsibility, integrity, loyalty, and efficiency, and shall remain accountable to the people." [1]

If, as is correctly pointed out in the opinion of Justice Gutierrez, Jr., the scope of government functions has expanded with the emphasis on the state being a welfare or a service agency, petitioner labor unions, insofar as they would assert rights ordinarily enjoyed by workers in private firms, cannot be sustained. It seems clear to me that under the Constitution there can be no right to strike by them nor to take a mass leave which is a way of doing indirectly what is not legally allowable.

This approach to my mind is reinforced by this other constitutional provision: "The Civil Service embraces every branch, agency, subdivision, and instrumentality of the Government, including every government-owned or controlled corporation." [2] That makes it evident that the personnel of the government, including those employed in government-owned or controlled corporations, can petition for redress of grievances or seek the improvement of their working conditions and increase their wages.

To repeat, though, there can be no reliance on concerted labor activities of employees in private firms. The opinion of the Court speaks with clarity. Thus: "Since the terms and conditions of government employment are fixed by law, government workers cannot use the same weapons employed by workers in the private sector to secure concessions from their employers. The principle behind labor unionism in private industry is that industrial peace cannot be secured through compulsion by law. Relations between private employers and their employees rest on an essentially voluntary basis. Subject to the minimum requirements of wage laws and other labor and welfare legislation, the terms and conditions of employment in the unionized private sector are settled through the process of collective bargaining." [3]

The distinction in the situation of government employees and those employed in private firms is emphasized in this manner: "In government employment, however, it is the legislature and, where properly given delegated power, the administrative heads of government which fix the terms and conditions of employment. And this is effected through statutes or administrative circulars, rules, and regulations, not through collective bargaining agreements." [4]

The assumption implicit in the Constitution is that the political branches would not be heedless of legitimate demands of government personnel for measures intended for their welfare. It is manifest that the increase in wages is one of them. At this time, as pointed out in the dissent, "the savages of inflation" are easily discernible. They have not spared those working for the government. [5]

If, as held by the Court then, Presidential Decree No. 851 cannot be so construed to include government personnel

that, for me, is not the end of the matter. There is Presidential Decree No. 985, cited in the opinion to fall back on. It affords the appropriate remedy. Nor is there any doubt in my mind that it would be properly implemented.

On matters that where not only by law and practice but also by legitimate expectations, the Administration can act adequately and fairly, there being due responsiveness to the pleas of labor, there is wisdom as well as conformity to law in the ruling that resort to the judiciary be made only after full exhaustion of administrative remedies.

The decision of the Court can be so read. In that light, the just claims of labor to social justice and to government protection would be granted.

I therefore concur pro hac vice.

[1] Article XIII, Section 1 of the Constitution.

[2] Article XII, B, Section 1(1) of the Constitution.

[3] Alliance of Government Workers (AGW) v. Minister of Labor and Employment, G.R. No. 60403, 7.

[4] Ibid, 7-8.

[5] It is precisely such realization that led me as ponente in Marcopper Mining Corporation v. Ople, G.R. No. 51254, June 11, 1981, 105 SCRA 75, that to construe Presidential Decree No. 851 liberally and to dissent in National Federation of Sugar Workers v. Ovejera, G.R. No. 59743, May 31, 1982, 114 SCRA 354, when it was overruled.

AGW vs Minister of Labor and Employment : 60403 : August 3, 1983 : J. Makasiar : En Banc : Dissenting Opinion
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DISSENTING OPINION

MAKASIAR, J.:

The petition should be granted.

Presidential Decree No. 851 promulgated on December 16, 1975 reads thus:

"WHEREAS, it is necessary to further protect the level of real wages from the ravage of world-wide inflation;

"WHEREAS, there has been no increase in the legal minimum wage rates since 1970;

"WHEREAS, the Christmas season is an opportune time for society to show its concern or the plight of the working masses, so they may properly celebrate Christmas and New Year.

"NOW, THEREFORE, I, FERDINAND E. MARCOS, by virtue of the powers vested in me by the Constitution do hereby decree as follows:

"SECTION 1. All employers are hereby required to pay all their employees receiving a basic salary of not more than P1,000 a month, regardless of the nature of their employment, a 13th-month pay not later than

December 24 of every year.

"SEC. 2. Employers already paying their employees a 13th-month pay or its equivalent are not covered by this Decree.

"SEC. 3. This Decree shall take effect immediately" (underscoring supplied).

Section 3 of the rules and regulations promulgated by the Ministry of Labor implementing Presidential Decree No. 851 states:

"Section 3. Employers covered. - The Decree shall apply to all employers except to:

"a) Distressed employers, such as (1) those which are currently incurring substantial losses or (2) in the case of non-profit institutions and organizations, where their income, whether from donations, contributions, grants and other earnings from any source, has consistently declined by more than forty (40%) percent of their normal income for the last two (2) years, subject to the provision of Section 7 of this issuance;

"b) The Government and any of its political subdivisions, including government-owned controlled corporations, except those corporations operating essentially as private subsidiaries of the Government;

"c) Employers already paying their employees 13th-month pay or more in a calendar year or its equivalent at the time of this issuance;

"d) Employers of household helpers and persons in the personal service of another in relation to such workers; and

"e) Employers of those who are paid on purely commission, boundary, or task basis and those who are paid a fixed amount for performing a specific work, irrespective of the time consumed in the performance thereof, except where the workers are paid on piece-rate basis in which case the employer shall be covered by this issuance insofar as such workers are concerned. x x x" (underscoring supplied).

It will be noted that the aforesaid Presidential Decree No. 851 provides only one exception in its Section 2, to wit: "Employers already paying their employees a 13th-month pay or its equivalent x x x." Hence, all other employers, whether of the private sectors or of government-owned and -controlled corporations and government agencies, are thereunder obligated to pay their employees receiving a basic salary of not more than P1,000, a month, a 13th-month pay not later than December 24th of every year.

But the implementing rule added four (4) exempted employers.

Petitioners are correct in challenging the aforesaid implementing rule as ultra vires and therefore void, following the principle established in *Philippine Apparel Workers' Union v. NLRC, et al.* (106 SCRA 444), *Teoxon v. Members of the Board of Administrators* (33 SCRA 585), *Santos v. Hon. Estenzo, et al.* (109 Phil. 419), *Hilado v. Collector of Internal Revenue* (100 Phil. 288), and *Olsen & Co., Inc. v. Aldanese and Trinidad* (43 Phil. 259).

It is patent that the Minister of Labor and Employment assumed the authority to legislate by amending the decree and promulgated Section 3 of the implementing rules, which is not a valid subordinate regulation by any standard.

WE cannot subscribe to the view taken by respondents through their counsel that the intention of the President in promulgating Presidential Decree No. 851 was to favor only employees of the private sector, relying merely on the second "WHEREAS" stating that "there has been no increase in the legal minimum wage rates since 1970" and conveniently omitting the other two "WHEREASES" that "It is necessary to further protect the level of real wages from the ravage of world-wide inflation" and that "the Christmas season is an opportune time for society to show its concern for the plight of the working masses so they may properly celebrate Christmas and New Year" (underscoring supplied).

All three "WHEREASES" are the premises of the decree requiring all employers to pay all their employees receiving a basic salary of not more than P1,000 a month, "regardless of the nature of their employment, a 13th-month pay not later than December 24 of every year." All the working masses, without exception - whether of the private sector or government agencies, instrumentalities, including government-owned and -controlled corporations - are also suffering from the ravages of world-wide inflation and are likewise entitled to properly celebrate Christmas and New Year every year.

If the President intended to favor only employees of the private sector, he could have easily inserted the phrase "in the private sector" between the words "wages" and "from" in the first WHEREAS, and between the words "masses" and "so" in the third WHEREAS; or the President could have included the other four classes of employers in the questioned Section 3 (paragraphs a, b, d and e) of the implementing rule, which the Minister of Labor included with such ease and facility.

Instead of exercising by himself the power to amend Presidential Decree No. 851, the Minister of Labor should and could have drafted the proposed amendments for the signature of the President or for the approval of the Batasang Pambansa.

Moreover, the position taken by public respondents is repugnant to the social justice guarantee under the new Constitution expressed in Section 6 of Article II thereof, which provides:

"Sec. 6. The State shall promote social justice to ensure the dignity, welfare, and security of all the people. Towards this end, the State shall regulate the acquisition, ownership, use, enjoyment, and disposition of private property, and equitably diffuse property ownership and profits" (underscoring supplied).

The afore-quoted guarantee commands the State to "promote social justice to ensure the dignity, welfare and security of all the people x x x" and to "equitably diffuse x x x profits." The laboring masses of the government-owned and -controlled agencies are entitled to such dignity, welfare and security as well as an equitable share in the profits of respondents which will inevitably contribute to enhancing their dignity, welfare and security, as much as those of the workers and employees of the private sector.

The fact that Section 3 of the implementing rules of the Ministry of Labor has been enforced from December 22, 1975 to the present, does not justify the denial of the right of the members of the petitioners to insist on the compliance by respondents with Presidential Decree No. 851.

Neither estoppel nor implied waiver can be interposed against the claim of petitioners. Any waiver of the right of laborers and employees is frowned upon by the law and the requisites of estoppel are not present in the case at bar, even assuming argumenti gratia, that estoppel is a valid defense against a compensation claim of labor.

The basic rule is that all doubts should be interpreted in favor of labor.

Furthermore, to deny the petitioners the right to 13th-month pay secured to them by Presidential Decree No. 851, would render the State culpable of failing to "afford protection to labor, promote x x x equality in employment, x x x" as well as "just and humane conditions of work." It is not just to deprive them of the right accorded by Presidential Decree No. 851 by limiting the enjoyment thereof only to employees of the private sector. It would be rank and odious discrimination condemned by the equal protection clause of the Constitution as there is no substantial basis therefor. Both the employees of the respondents and the employees of the private sector are similarly situated and have collective bargaining agreements with their respective employers.

To repeat, the employees of the private sector and those of the private respondents are all workers without any essential or material distinction between them insofar as the right to the 13th-month pay is concerned.

I therefore vote to grant the petition.

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