

**KAPISANAN NG MANGGAGAWANG PINAGYAKAP (KMP), ISAGANI GUTIERREZ, FLORENCIA CARREON, JOSE FLORES, DENNIS ALINEA, ELADIO DE LUNA AND CRISANTO DE VILLA, PETITIONERS, VS. THE HONORABL...**

*G.R. No. 62306. January 21, 1985*

Ponente: RELOVA, J.

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**RELOVA, J.:**

Petitioners seek to annul the resolution and order, dated August 13 and October 19, 1982, respectively, of public respondent Director Cresenciano B. Trajano of the Bureau of Labor Relations, Ministry of Labor and Employment, in BLR Case No. A-0100-82 (RO4-A-LRD-M-9-35-81), entitled: "Catalino Silvestre, et al., vs. Kapisanan ng Manggagawang Pinagyakap (KMP) Labor Union and its Officers" affirming Med-Arbiter Antonio D. Cabibihan's order dated April 28, 1982, directing the said Union to hold and conduct, pursuant to its constitution and by-laws and under the supervision of the Bureau of Labor Relations, a general membership meeting, to vote for or against the expulsion or suspension of the herein petitioner union officers.

Records show that on June 30, 1981 a written request for accounts examination of the financial status of the Kapisanan ng Manggagawang Pinagyakap (KMP) Labor Union (Union for brevity), the existing labor union at Franklin Baker Company in San Pablo City, was filed by private respondent Catalino Silvestre and thirteen (13) other employees, who are also members of the said Union. Acting on said request, Union Account Examiner Florencio R. Vicedo of the Ministry of Labor and Employment conducted the necessary investigation and, thereafter, submitted a report, with the following findings:

"A. Disallowed expenditures - P1,278.00, as reflected in the following break-down:

1. January 9, 1980

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Excess claim for refund P1.00

2. March 13, 1980

-

Payment for sound system P90.00

3. March 12, 1980

-

Picture taking, entrance fee in Manila Zoo with Atty. Delos Santos P75.00

4. March 24, 1980

-

Payment for sound system P90.00

5. July 16, 1980

-

Jeep hired P264.00

6. August 30, 1980

-

Partial payment of travelling expenses disallowed P68.00

7. October 30, 1980

-

Representation expenses P180.00

8. May 31, 1981

-

Payment for long distance call P10.00

9. May 31, 1981

-

Payment for legal expenses P500.00

TOTAL . . . . .

P1,278.00

"B. Respondent union officers failed to keep, maintain and submit for verification the records of union accounts for the years 1977, and 1978, 1979, or purposely suppressed the same;

"C. Respondent union officers failed to maintain segregated disbursement receipts in accordance with the five (5) segregated union funds (general fund, educational funds, mutual aid fund, burial assistance fund and union building fund) for which they maintained a distinct and separate bank accounts for each.

"D. The Union's constitution and by-laws is not ratified by the general membership hence, illegal." (pp. 27-28, Rollo)

Based on the foregoing revelations, private respondents filed with the Regional Office No. IV-A, Quezon City, Ministry of Labor and Employment, a petition docketed as RO4-A-LRD-M-9-35-81, for the expulsion of the union officers on the ground that they committed gross violation of the Labor Code, specifically paragraphs (a), (b), (g), (h), (j) and (k) of Article 242; and, the constitution and by-laws of the Union, particularly the provisions of Sections 6 and 7 thereof.

In their Answer, the union officers denied the imputation and argued that the disallowed expenditures were made in good faith; that the same conduced to the benefit of the members; and, that they are willing to reimburse the same from their own personal funds. They likewise asserted that they should not be held account-able for the non-production of the books of accounts of the Union for the years 1977, 1978 and 1979 because they were not the officers then and not one of the former officers of the Union had turned over to them the records in question. Further, they averred that the non-ratification of the constitution and by-laws of the Union and the non-segregation of the Union funds occurred before they became officers and that they have already been correcting the same.

On April 28, 1982, Med-Arbiter Antonio D. Cabibihan ordered the holding of a referendum, to be conducted under the supervision of the Bureau of Labor Relations, to decide on the issue of whether to expel or suspend the union officers from their respective positions.

Petitioners appealed the said order of Med--Arbiter Cabibihan to herein public respondent Director Trajano of the Bureau of Labor Relations, Ministry of Labor, Manila, claiming that the same is not in accordance with the facts contained in the records and is contrary to law. They pointed out that the disallowed expenditures of P1,278.00 were made in good faith and not used for the personal benefit of herein union officers but, instead, contributed to the benefit of the members. On the alleged failure to maintain and submit the books of accounts for the years 1977, 1978 and 1979, they argued that they were elected in 1980 only and, therefore, they could not be made responsible for the omissions of their predecessors who failed to turn over union records for the questioned period. Anent their alleged failure to maintain segregated disbursement receipts in accordance with the five (5) segregated funds, petitioners maintained that the same did not result to any loss of funds and such error in procedure had already been corrected. They also demonstrated that there would be a general election on October 4, 1982, at which time, both the election and the desired referendum could be undertaken to determine the membership at minimum expense. They prayed that the resolution on the issue be held in abeyance.

Private respondents, on the other hand, claimed that the Med-Arbiter erred in calling a referendum to decide the

issue. They reiterated that the appropriate action should be the expulsion of the herein union officers.

On August 13, 1982, public respondent Director Trajano dismissed both appeals of petitioners and private respondents and affirmed in toto the order of Med-Arbiter Cabibihan.

Petitioners filed a Motion for Reconsideration of the Resolution of August 13, 1982 of public respondent Director Trajano, reiterating their arguments in their appeal and further clarifying that what the Union Account Officer Florencio R. Vicedo found was that the amount of P1,278.00 was not supported by official receipts and therefore should not be allowed as disbursement from the union funds; and that he did not say that the amount was converted by them for their own personal benefit. They, likewise, informed public respondent Director Trajano that in the general election held on October 4, 1982, all of them, except petitioners Ambrocio dela Cruz and Eliseo Celerio, who ran for the positions of Vice-President and member of the Board of Directors, respectively, were elected by the overwhelming majority of the members, while private respondents Catalino Silvestre and Cesar Alfaro who also ran for the position of Auditor, lost. Thereafter, they moved for the dismissal of the appeal for having been rendered moot and academic by their re-election.

On October 19, 1982, public respondent Director Trajano issued the second questioned order denying petitioners' Motion for Reconsideration.

Hence, this petition which We find meritorious for the following reasons:

1. If herein union officers (also petitioners) were guilty of the alleged acts imputed against them, said public respondent pursuant to Article 242 of the New Labor Code and in the light of Our ruling in *Duyag vs. Inciong*, 98 SCRA 522, should have meted out the appropriate penalty on them, i.e., to expel them from the Union, as prayed for, and not call for a referendum to decide the issue;
2. The alleged falsification and misrepresentation of herein union officers were not supported by substantial evidence. The fact that they dis-bursed the amount of P1,278.00 from Union funds and later on was disallowed for failure to attach supporting papers thereon did not of itself constitute falsification and/or misrepresentation. The expenditures appeared to have been made in good faith and the amount spent for the purpose mentioned in the report, if concurred in or accepted by the members, are reasonable; and
3. The repudiation of both private respondents to the highly sensitive position of auditor at the October 4, 1982 election, is a convincing manifestation and demonstration of the union membership's faith in the herein officers' leadership on one hand and a clear condonation of an act they had allegedly committed.

By and large, the holding of the referendum in question has become moot and academic. This is in line with Our ruling in *Pascual vs. Provincial Board of Nueva Ecija*, 106 Phil. 471, which We quote:

"The Court should never remove a public officer for acts done prior to his present term of office. To do otherwise would be to deprive the people of their right to elect their officers. When the people have elected a man to office, it must be assumed that they did this with knowledge of his life and character, and that they disregarded or forgave his faults or misconduct, if he had been guilty of any. It is not for the court, by reason of such faults or misconduct to practically overrule the will of the people."

ACCORDINGLY, the resolution and order, dated August 13 and October 19, 1982, respectively, of public respondent Director Cresenciano B. Trajano of the Bureau of Labor Relations, Ministry of Labor, Manila in BLR Case No. A-0100-82 (R04-A-LRD-M-9-35-81) are SET ASIDE and, the petition for expulsion of herein union officers in RO4-A-LRD-M-9-35-81 is hereby DISMISSED for having been rendered moot and academic by the election of herein union officers in the general membership meeting/election held on October 4, 1982.

**SO ORDERED.**

Teehankee, (Chairman), Melencio-Herrera, Plana, Gutierrez, Jr., and De la Fuente, JJ., concur.

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