

ERNESTO S. DIZON, JR., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, SECOND DIVISION, HON. LABOR ARBITER VIRGINIA G. SON, AGUINALDO DEVELOPMENT CORPORATION, JOSE G. RICAFA...*G.R. No. 69018. January 29, 1990*

Ponente: REGALADO, J.

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Petitioner Ernesto S. Dizon, Jr. was an employee of respondent Aguinaldo Development Corporation (ADECOR, for short) serving as Assistant to the President. He worked for respondent company for about seventeen (17) years, starting from September 10, 1964 up to the time of his cessation from employment on October 31, 1981. ADECOR is a duly organized corporation engaged in the business of logging, saw-milling and plywood manufacturing in Davao City but with a principal office in Makati, Metro Manila.

On February 1, 1982, petitioner filed a complaint seeking reinstatement to his former position and charging private respondents with: "1. Illegal dismissal; 2. Non-payment of 13th month pay for 1979, 1980, & 1981; 3. Non-payment of the supposed salary increase committed by the respondents at the rate of P2,500.00 per month effective August 1, 1976; 4. Non-payment of the accrued vacation and sick leaves in the amount of P40,560.00; 5. Actual, moral and exemplary damages suffered by the complainant by reason of his illegal dismissal the amount of which shall be proven in the course of the hearing." [1]

The complaint was directed not only against ADECOR but also against the other private respondents herein, namely, Jose G. Ricafort, Conrado T. Calalang, Edgardo D. de Castro and Benjamin V. Aritao who are respondent corporation's President, Chairman of the Board of Directors and Treasurer, Vice-President for Finance, and Vice-President for Legal, respectively. They were sought to be held jointly and severally liable for the alleged wrongful acts committed against petitioner.

It appears that after the voluntary resignation of one Jose Velez, petitioner was requested by said employee on October 29, 1981 to prepare the computation of Velez' benefits based on the company's policies and practices. Petitioner claims that respondent Ricafort got mad when he heard of the former's compliance with the request. Respondent Ricafort called petitioner to his office and during the confrontation and in the presence of respondent Aritao, Rogelio M. Carlos and Mario San Juan, respondent Ricafort allegedly ordered petitioner to tender his written resignation. At the same time, Ricafort allegedly promised that if the petitioner would resign, he would be paid all his entitlements and privileges, including backwages and salaries. The averments of petitioner were all denied by private respondents.

On the same day, petitioner prepared his letter of resignation stating that, as instructed by Ricafort, petitioner was tendering his resignation from the company effective October 31, 1981. He further wrote that he would "appreciate the expeditious release of whatever is due" him "by way of entitlement and privileges including unpaid backwages and salaries." [2] Later that same day, petitioner submitted another letter with the modification

that the words "unpaid backwages" were deleted allegedly upon the instructions of Ricafort.

Respondent Ricafort accepted petitioner's resignation in a memorandum dated October 30, 1981. However, said memorandum advised petitioner that "pending completion and/or outcome of the investigations now being conducted regarding your activities in the field, the issuance of your clearance, if ever warranted, will have to be held in abeyance." [3]

On November 4, 1981, petitioner withdrew his resignation stating, inter alia, that:

"When I submitted my resignation, I was of the impression that I have no accountability with the company and clearance will be issued to me accordingly.

"If investigations are going on, regarding my alleged activities, I feel that I should be given the chance to be heard and to explain my side. Since this is your decision and I supposed it is the decision of the management and to be able to defend myself, I am manifesting now that I am withdrawing my resignation and am willing to be present in any investigation." [4]

The withdrawal of the resignation was not given consideration; instead, in a memorandum dated November 9, 1981, respondent Aritao referred him to respondent Ricafort's memorandum of October 30, 1981 which accepted his resignation and declared that petitioner was no longer connected with the company. [5]

The foregoing factual antecedents led to the filing of the complaint for illegal dismissal of herein petitioner, which was docketed as NLRC-NCR Case No. 2-2036-82 and assigned to Labor Arbiter Virginia G. Son.

On February 17, 1983, a decision was rendered by said labor arbiter dismissing the complaint for lack of merit, except for the claim for payment of unused vacation and sick leaves which was ordered to be paid to petitioner. The labor arbiter found that the circumstances show voluntariness on the part of the petitioner when he resigned. It was held that it was irreconcilable for the petitioner to claim that he was forced to resign and, at the same time, claim that the inducement for his resignation were the entitlements and privileges supposedly promised by respondent Ricafort. [6] The other charges and claims were rejected primarily because of the absence of the requisite evidence to prove the same. The claim of unused vacation and sick leaves was, however, given due course because during the pre-trial of the case it was shown that petitioner was entitled to such vacation and sick leave pay and, in fact, an offer for the settlement thereof was made during said pre-trial.

After both parties received the decision on February 23, 1983, they respectively appealed to the respondent commission. Petitioner filed his appeal on March 4, 1983 while private respondents appealed on March 9, 1983. On March 15, 1983, petitioner moved to dismiss private respondents' appeal for having been filed out of time. The next day, petitioner further moved for the execution of the labor arbiter's decision awarding the unused vacation and sick leave pay.

Respondent commission did not act on said motions but in due course promulgated a decision on November 8, 1983 affirming the decision appealed from, with some modifications. It sustained petitioner's claim for travel expenses but limited his right to cash conversion of accrued and unused vacation and sick leaves to the year 1981 only.

Not satisfied with the decision, petitioner filed the present special civil action for certiorari to annul the decision of respondent commission, except its award in favor of the petitioner for the reimbursement of his travel expenses.

It may readily be seen that the petition involves factual questions which are not within the province of the present recourse. Petitioner, however, contends that this case should be considered as falling within the exceptional cases

where the review of the factual findings of an administrative body is allowed.

We do not agree. We find that the findings of respondent commission are amply supported by substantial evidence and, therefore, entitled to respect. The conclusions rest on sufficient and valid evidentiary support and were reached after due consideration of the countervailing evidence of petitioner. Thus, even if others might conceivably opine otherwise, under such circumstances the findings of respondent commission should not be disturbed. In no way can it be regarded as tainted with that grave abuse of discretion which could justify the extraordinary writ prayed for.

Verily, respondent commission cannot be faulted for holding that petitioner's resignation was voluntary. Petitioner himself declared that he resigned on the basis of the alleged commitment of respondent Ricafort to pay him the entitlements and benefits hereinbefore specified.[7] In fact, even conceding that respondent Ricafort asked him to resign, it cannot be denied that petitioner was not forced to draft the two (2) letters of resignation; the contents thereof and the terms therein were formulated personally by him. With petitioner's educational and professional background, it would be absurd to assume that he did not understand the import of his own words and the consequences of his own acts.

Additionally, the tenor of the letter withdrawing the resignation likewise reveals that such resignation was not against his will but that he was withdrawing it only because of his alleged desire to "defend himself" in connection with the investigations consequent to his request for clearance. Thus, respondent commission was correct in observing that the allegation of involuntariness was a mere afterthought "conceived only after his clearance was withheld and after the substantial 'entitlements and privileges including unpaid salaries' he expected to receive were denied." [8]

Regarding petitioner's claim for termination pay, 13th month pay and salary differential, we agree that there is no substantial evidence supporting or justifying his entitlement thereto. Petitioner utterly failed to prove that there was a company policy or practice granting such termination pay nor could it be said that the same was promised by respondent Ricafort or by any of the private respondents for that matter. As to the 13th month pay and salary differential, not only is there a dearth of evidence that petitioner deserves the same but the propriety thereof is made even more dubious by the fact that petitioner never demanded the same over the several years of his employment. His belated claim surfaced only when he filed the illegal dismissal case.

We cannot, however, sustain respondent commission's modification of the decision of the labor arbiter granting conversion to cash of unused vacation and sick leaves of petitioner. The entrenched procedural rule in this jurisdiction is that a party who did not appeal cannot assign such errors as are designed to have the judgment modified. All that said appellee can do is to make a counter-assignment of errors or to argue on issues raised at the trial only for the purpose of sustaining the judgment in his favor, even on grounds not included in the decision of the court a quo nor raised in the appellant's assignment of errors or arguments.[9]

The same result obtains where a party filed his appeal beyond the reglementary period since, as far as the appellate court is concerned, there was no appeal filed by such party over which it could exercise appellate jurisdiction. In this case, it was private respondents who filed their appeal late. Contrary to their position, the filing of an appeal fourteen (14) calendar days from receipt of the decision of the arbiter is beyond the mandatory period provided by law. It is well settled that the ten-day period fixed by Article 223 of the Labor Code for such appeal contemplates calendar days, not working days.[10] Hence, the award in the judgment of the labor arbiter regarding the unused vacation and sick leave pay is final and binding on the part of private respondents and can no longer be modified.

IN VIEW OF THE FOREGOING CONSIDERATIONS, the decision of respondent National Labor Relations

Commission in NLRC-NCR No. 2-2036-82 is MODIFIED with regard to the right of petitioner to cash conversion of his earned, accrued and unused vacation and sick leaves and the award of the labor arbiter on this matter is hereby REINSTATED. In all other respects, the decision of respondent commission is AFFIRMED.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, and Sarmiento, JJ., concur.
Paras, J., no part.

[1] Rollo, 123.

[2] Ibid., 203.

[3] Ibid., 204.

[4] Ibid., 204-205.

[5] Ibid., 205.

[6] Ibid., 216-217.

[7] Ibid. 34, 505.

[8] Ibid., 300.

[9] Aparri vs. Court of Appeals, et al., 13 SCRA 611 (1965); Carillo vs. De Paz, 18 SCRA 467 (1966); La Campana Food Products, Inc. vs. PCIB, et al, 143 SCRA 394 (1986); Carbonel vs. Court of Appeals, et al. 147 SCRA 565 (1987).

[10] Vir-jen Shipping and Marine Services, Inc. vs. National Labor Relations Commission, et al., 115 SCRA 347 (1982); Narag vs. National Labor Relations Commission, et al., 155 SCRA 199 (1987).

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