

**AMERICAN EXPRESS PHILIPPINES LOCAL EMPLOYEES
ASSOCIATION, ELLA BLANCO, ELIZABETH ZINGALAOA,
PETITIONERS, VS. THE HON. VICENTE LEOGARDO, JR., DEPUTY
MINISTER OF LABOR, AMERICAN E...**

G.R. No. 75906. May 18, 1993

Ponente: MELO, J.

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MELO, J.:

Petitioners assail the Order (Annex "E", p. 80, Rollo) of public respondent, then Deputy Minister of Labor Vicente Leogardo, Jr. in Case No. NCR-STF-8-4095-81, dated August 12, 1986 on the ground that it was issued without jurisdiction.

Petitioners Ella Blanco and Elizabeth Zingalaoa were employees of the American Express International, Inc. (AMEXCO), assigned at the Clark Air Force Base Tour Extension Office, Travel Division. In separate letters dated May 12, 1981 (pp. 68-69, Rollo) Cresencio Datu, Personnel Manager of AMEXCO, advised petitioners Blanco and Zingalaoa of the termination of their employment due to the closure of the Tour Extension Office. They were further advised in the same letters that they may collect their separation pay even prior to the approval of the clearance application, in which event, the application would be considered without opposition. Petitioners received their separation pay a week later.

On May 28, 1981, AMEXCO filed with the Ministry of Labor and Employment (MOLE) a clearance application (p. 31, Rollo) to terminate the services of petitioners-employees. On August 5, 1981, the American Express Philippines Local Employees Association (AMEXPLEA) and Blanco and Zingalaoa filed with the MOLE a complaint (Annex "A", p. 22, Rollo) against the company and Datu, charging unfair labor practice and illegal dismissal.

On July 28, 1982, Regional Director Severo M. Pucan issued an Order (Annex "C", p. 53, Rollo) denying the clearance application of AMEXCO. Instead, he found AMEXCO guilty of illegal dismissal. He did not, however, sustain the charges of unfair labor practice. He directed AMEXCO to reinstate petitioners-employees in their former positions without loss of seniority rights and with full backwages from date of dismissal to date of actual reinstatement.

Alleging that it received the copy of the Order on August 4, 1982, AMEXCO filed on August 18, 1982, a Motion for Extension of Time to File a Motion for Reconsideration. The motion was granted. On August 25, 1982, AMEXCO filed its Urgent Motion for Reconsideration (Annex D-2; p. 58, Rollo).

On December 29, 1982, petitioners filed a Motion to Implead PCI Travel Corporation (PCI) based on a "Sales and Purchase Agreement" with AMEXCO, under which the latter's Travel Division, to which the employees belong, was sold to the former, which would then own and manage the business effective January 1, 1983.

On January 26, 1983, Director Pucan issued an Order (Annex D-4; p. 77, Rollo) treating AMEXCO's motion for

reconsideration as an appeal, but directing the issuance of a writ of execution for failure of AMEXCO to post a supersedeas bond.

On March 26, 1984, Director Pucan issued a Writ of Execution against AMEXCO. The records do not show why the writ was not immediately implemented. We presume this was due to the change in ownership of AMEXCO's Travel Division and MOLE's inaction on petitioners' Motion to Implead PCI. But on April 11, 1984, AMEXCO filed a Motion to Lift the Writ of Execution, posting at the same time a supersedeas bond.

Petitioners opposed the motion on May 11, 1984, alleging that the supersedeas bond did not stay the execution of the Order of July 28, 1982, since this was not filed together with the appeal or motion for reconsideration. AMEXCO filed a reply on May 25, 1984 to which petitioners filed a rejoinder on June 22, 1984.

Petitioners then filed a motion reiterating their earlier contention that the supersedeas bond should have been filed together with the appeal, which in turn, should have been filed within ten (10) days from receipt of the order, pursuant to Article 223 of the Labor Code and/or Section 8, Rule XIV, Book V of the then Implementing Rules prior to Batas Pambansa Blg. 130 and since the bond was filed almost two (2) years later or on April 11, 1984, petitioners insisted that the order became final and executory.

On October 25, 1985, Director Pucan issued an order declaring petitioners' motion for reconsideration as an appeal and elevated the records of the case to the Labor Appeals and Review Staff of the Ministry of Labor. Thereafter, on November 23, 1984, petitioners filed a Supplemental Motion to Dismiss (Annex D-5; p. 78, Rollo) on the ground that AMEXCO's motion for reconsideration was filed out of time.

On August 12, 1986, after considering the two motions for reconsideration of petitioners and AMEXCO, which were both treated as appeals from separate orders of Director Pucan, public respondent issued the assailed order, the dispositive portion of which provides as follows:

WHEREFORE, the appealed Order of July 28, 1982 is hereby set aside, and a new judgment entered, granting clearance to terminate the services of complainants but ordering respondents to pay complainants their separation pay of one month salary for every year of service less the amount already received by way of separation pay.

SO ORDERED. (p. 86, Rollo.)

Hence, the instant petition.

Petitioners insist that public respondent did not acquire jurisdiction over the case since the Order of July 28, 1982 had become final and executory due to AMEXCO's failure (a) to file its motion for reconsideration or appeal within ten (10) calendar days, or on August 14, 1992, pursuant to Section 8, Rule XIV, Book V of the then Implementing Rules which provides as follows:

Rule XIV

CLEARANCE TO SHUT DOWN OR TO DISMISS

x x x x x x x x

Sec. 8. x x x.

An order denying the application for clearance or lifting the preventive suspension shall be executory unless stayed by the Secretary of Labor. Such order may be appealed to the Secretary of Labor within ten (10) days from notice thereof. The appeal shall be filed with the Regional Director.

x x x x x x x x

and (b) to post a supersedeas bond to stay execution pending appeal, pursuant to Policy Instructions No. 38, S. of 1978 thus:

POLICY INSTRUCTIONS NO. 38

TO: All Concerned

SUBJECT: EXECUTION OF DECISIONS,

AWARDS AND ORDERS;

STAY OF EXECUTION

Pursuant to the provisions of P.D. 1391 and to insure uniformity in the execution of decisions, awards and order of Regional Directors and Labor Arbiters, the following guidelines are hereby established for the guidance and compliance of all concerned:

x x x x x x x x

3. Execution/Stay in Termination and Unfair Labor Practice Cases

(a) Execution of decisions in termination cases not involving unfair labor practice may be stayed pending appeal, with respect to both the reinstatement and monetary award aspects thereof, if a supersedeas bond is filed by the losing party together with the appeal.

x x x x x x

(d) These rules on execution and stay thereof shall be applicable also to decisions rendered by Regional Directors in cases cognizable by them.

x x x x x x

On the other hand, petitioners maintain, if the motion for reconsideration were treated as such and not as an appeal, the same should have been filed within five (5) days from receipt of the order pursuant to Policy Instructions No. 21, S. of 1977:

POLICY INSTRUCTIONS NO. 21

TO: All Regional Directors

SUBJECT: MOTION FOR RECONSIDERATION

Effective immediately, Regional Directors are hereby authorized to entertain and resolve all motions for reconsideration filed by the parties in connection with decisions, orders or awards rendered by them on termination cases, labor standards cases, preventive suspension cases, strikable cases, and foreign intervention in trade union activities cases. A motion for reconsideration should be filed within five (5) days from receipt of the decision, order or award of the Regional Director. The Regional Director shall resolve such motion within ten (10) working days from receipt thereof.

x x x x x x x x

(Emphasis ours.)

The Solicitor General agrees with petitioners, but focuses mainly on AMEXCO's failure to interpose an appeal

within the reglementary period prescribed in Section 8, Rule XIV, Book V of the then Implementing Rules.

Citing the case of *Vir-Jen Shipping and Marine Services, Inc. v. NLRC* (115 SCRA 347 [1982]) which ruled that the 10-day appeal period under the Labor Code contemplates calendar days and not working days, the Solicitor General points out:

... Thus, when respondent AMEXCO received the notice on August 4, 1982, it had only until August 14, 1982 within which to file its appeal. The respondent however filed a pleading, a motion for extension at that, on August 18, 1982 or four days late from the legal period of appeal. The Order/decision of July 28, 1982 had by then achieved finality and it was erroneous for Director Pucan to have given due course to the motion because he no longer had authority over the case. For the same reason, the matter of the filing of the supersedeas bond in this case is immaterial. The bond is supposed to stay the execution of a decision pending appeal, but there is here no pending appeal to speak of. None was perfected so that execution should have issued in favor of petitioners long ago. (p. 138, Rollo.)

AMEXCO disputes the stand of the Solicitor General, claiming that the *Vir-Jen* case became final and executory only on April 9, 1984, per Entry of Judgment (Annex "1"; p. 156, Rollo) since in the interim, the case was subjected to three motions for reconsiderations, and elevated to *us en banc*.

On the Solicitor General's reliance on the case of *RJL Martinez Fishing Corp. v. NLRC* (127 SCRA 455 [1984]) which clarified that the effectivity of the *Vir-Jen* Shipping ruling was on July 20, 1982, AMEXCO pleads that it could not have anticipated in 1982 (when it filed its motion/appeal) said RJL ruling which was promulgated only in 1984. AMEXCO'S counsel likewise points out that he relied on the ten-working-day period of appeal (then applicable) on assurances of MOLE officials that the *Vir-Jen* case was still the subject of a motion for reconsideration (Counter-Comment, p. 151, Rollo).

The Solicitor General further believes that petitioners should not be prejudiced by public respondent's failure to rule on their Motion to Implead PCI, since the case records (p. 177) would show that in the Sale Agreement, "PCI committed to offer employment to employees with no less than one year of service in the Travel Division of AMEXCO at terms equal to, if not better than those they presently enjoy" and that petitioners-employees would have continued with their regular employment with AMEXCO were this not disrupted by the illegal dismissal and, that as regular employees, petitioners-employees would have been benefited by PCI's commitment to AMEXCO (p. 140, Rollo).

For their part, petitioners cite Case No. NCR-8-4290-81 (*Ma. Victoria Lacson, et al vs. American Express Int'l., Inc. and PCI Travel Corp.*, Annex "F", p. 87, Rollo), wherein the NLRC directed the reinstatement of Lacson (a co-employee) in PCI, as successor-in-interest of AMEXCO, in view of PCI's offer of employment in the Sale and Purchase Agreement, claiming that since they had a pending case for reinstatement at the time of the sale, PCI was bound to absorb them (Sur-Rejoinder, p. 196, Rollo).

PCI, on the other hand, claims denial of due process, not having been impleaded and thus prays for dismissal of the claim for reinstatement against it.

We uphold public respondent's jurisdiction.

The jurisdictional issue is being raised for the first time.

The rule on written clearances prior to termination was dispensed with by *Batas Pambansa Blg. 130*. Instead, the employer is required to serve a written notice of termination upon the employee.

At any rate, in consonance with the prevailing rule, AMEXCO had ten (10) working days from receipt of the

order denying its clearance application, within which to appeal.

We agree with AMEXCO that since Entry of Judgment of the Vir-Jen case was on April 9, 1984, the ten-calendar day appeal period contemplated in said case could not, as yet, apply to the firm, especially where MOLE officials had explicitly assured AMEXCO's counsel that the case was still the subject of a motion for reconsideration.

Thus, since AMEXCO's counsel received Director Pucan's Order on August 4, 1982, which was a Wednesday, AMEXCO had up to August 18, 1982, Friday, and the 10th working day from August 4, within which to file its motion/appeal. AMEXCO's appeal was therefore timely.

The RJL ruling which supposedly clarified the effectivity of the Vir-Jen case as of July 20, 1982, date of promulgation, despite entry of judgment in 1984 should not prejudice AMEXCO whose counsel could clearly not have anticipated said 1984 pronouncement in 1982.

On their claim that AMEXCO's motion for reconsideration should have been filed within five days from receipt of the order pursuant to Policy Instructions No. 21, S. of 1977, we believe that petitioners are guilty of laches. When AMEXCO filed a motion for extension to file a motion for reconsideration of Director Pucan's Order, petitioners kept silent and did not oppose the motion for extension, nor the motion for reconsideration itself which was filed 21 days later. What petitioners did was to abide by Director Pucan's Order treating the motion for reconsideration as an appeal. They questioned the absence of a supersedeas bond two years later or on May 11, 1984, when AMEXCO filed a Motion to Lift the Writ of Execution. Parenthetically, it must be observed that petitioners' Motion to Dismiss, filed on November 23, 1984, after the writ was issued, had become irrelevant by then.

On petitioners' acceptance of separation pay as a bar to reinstatement, we agree with public respondent's ruling setting aside the Order of July 28, 1982 and granting clearance to terminate petitioners, thus:

The principle that acceptance of separation pay is not a bar to the dismissal case has no application in this case. When complainants collected their separation pay, they had not as yet been dismissed or their dismissal was not yet effective. In their notice of termination, it is clearly stated that their dismissal would be effective upon approval of the application to be filed with the Ministry, and that they were advised to continue rendering service in the meanwhile, but they may collect their separation pay even prior to the approval of the application in which event the clearance would be considered unopposed. They collected their separation pay without protest. It was therefore by their own doing that made their separation from the service effective outright. Under such circumstances, complainant[s] may not claim that they had no alternative but to accept their separation pay. And as a matter of fact, they voluntarily signed release and quitclaim papers. (p. 85, Rollo; emphasis ours.)

Appropriately, petitioners-employees are entitled to separation pay, but as correctly emphasized by public respondent:

... Under the "Personnel Terms and Conditions of Employment" prevailing at the time complainants entered the service in 1975, the benefit in case of retrenchment was one month pay for every year of service. They may not unilaterally be revised by respondents to the prejudice of the complainants, or in a manner that would diminish the benefit provided under the terms and conditions of employment prevailing as of complainants' hiring because that would constitute a violation of the specific provision of the Labor Code against diminution of benefit. Respondents' contention therefore that the 1980 Personnel Policy Manual of the company granting 15 days separation pay should be applied cannot be upheld. (p. 85, Rollo; emphasis ours.)

Finally, we agree that public respondent's inaction on petitioners' Motion to Implead PCI should not prejudice the former. We, however, believe that petitioners' reinstatement is no longer relevant. Clearance having been granted, their absorption by PCI as successor-in-interest of AMEXCO has become a moot issue.

WHEREFORE, the petition is DISMISSED and public respondent's Order is hereby AFFIRMED.

No costs.

SO ORDERED.

Feliciano, (Chairman), Bidin, Davide, Jr., and Romero, JJ., concur.

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