

LEPANTO CONSOLIDATED MINING COMPANY, PETITIONER, VS. THE HONORABLE EXECUTIVE LABOR ARBITER NORMA C. OLEGARIO, TOMAS SIMONGO, THE SHERIFF OF THE CITY OF BAGUIO AND BENGUET, RESPO...

G.R. No. 77437. June 23, 1988

Ponente: GANCAYCO, J.

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GANCAYCO, J.

The sole issue involved in this case is whether or not a decision of the Labor Arbiter for the reinstatement of an employee and the payment of his back wages from the time of dismissal to the date of reinstatement which has become final and executory may be enforced in spite of the consistent rulings of this Court that the back wages that can be awarded in such instance shall in no case exceed three (3) years.

On March 3, 1982, private respondent Tomas Simongo filed a complaint with the National Labor Relations Commission (NLRC), Sub-regional Arbitration Branch I, Baguio City, against petitioner claiming that he was illegally dismissed and asking for reinstatement and payment of full back wages. On January 15, 1986, labor arbiter Saturnino Orate rendered a decision ordering petitioner to reinstate private respondent to his former position without loss of seniority rights and with full back wages from the time his salary was withheld from him up to the time of his reinstatement.

Petitioner complied with said decision on June 11, 1986 by reinstating private respondent to his previous position without loss of seniority rights and paying full backwages, without qualification or deduction, equivalent to three (3) years, in accordance with the policy and rulings mandated by this Court in *Lepanto Consolidated Mining Company vs. Encarnacion*.^[1]

Nevertheless, private respondent on August 1, 1986 filed a motion for the issuance of a writ of execution to enforce the aforesaid decision claiming that he is entitled to full backwages over and beyond the three years backwages he already received. The motion was granted in an order issued by the executive labor arbiter on December 5, 1986. On December 17, 1987, petitioner filed a motion to quash the writ of execution to which an opposition was filed by private respondent. On January 16, 1987, respondent executive labor arbiter issued an order denying the motion. Hence this petition.

The rule awarding illegally dismissed employees backwages equivalent to three (3) years without qualification or deduction has been adhered to by this Court for a long time and has been affirmed and reaffirmed in an array of cases in the interest of justice and expediency.^[2]

In *Mercury Drug Co., Inc. vs. Court of Industrial Relations* ^[3] then Justice Teehankee in his concurring and dissenting opinion made the following disquisition:

"x x x

X X X

X X X.

"As observed by the Court in another case such general award for back wages tended to breed idleness on the part of a discharged employee who would 'with folded arms, remain inactive in the expectation that a windfall would come to him' and therefore directed that 'in mitigation of the damages that the dismissed respondents (employees) are entitled to, account should be taken of whether in the exercise of due diligence respondents might have obtained income from suitable remunerative employment.'

"On the other hand, it is to be noted that unscrupulous employers have with unrelenting attrition against their unwanted employees who successfully obtained judgments for reinstatement with back wages seized upon the further proceedings in the industrial court (to determine the actual earnings of their wrongfully dismissed employees for purposes of deduction from the back wages award) to hold unduly protracted and extended hearings for each and every employee found entitled to back wages and thereby practically render nugatory such judgments and force the employees to agree to unconscionable settlements of their judgment award.

"This new principle formally adopted by the Court now in fixing the amount of back wages at a reasonable level without qualification and deduction so as to relieve the employees from proving their earnings during their lay-offs and the employer from submitting counter-proofs, and thus obviate the twin evils of idleness on the part of the employees and attrition and undue delay in satisfying the award on the part of the employer is thus to be hailed as a realistic, reasonable and mutually beneficial solution.

"X X X

X X X

X X X.

"I believe that some ground rules should be laid down in implementing the new formula now adopted of granting a fixed back wages award without further qualification and deduction of earnings during the lay-off so as to expedite the immediate execution of judgment in satisfaction of the award and for reinstatement of the wrongfully dismissed employee(s) (whose reinstatement, as stressed in *East Asiatic Co.*, supra, should be immediately effected upon finality of the judgment without waiting for the computation and determination of the back wages). Normally, the trial of the case and resolution of the appeal should be given preference and terminated within a period of three years (one year for trial and decision in the industrial court and two years for briefs, etc., and decision in this Court).

"Hence, an award of back wages equivalent to three years (where the case is not terminated sooner) should serve as the base figure for such awards without deduction, subject to deduction where there are mitigating circumstances in favor of the employer but subject to increase by way of exemplary damages where there are aggravating circumstances (e.g. oppression or dilatory appeals) on the employer's part. Here, where resolution of the case on appeal was delayed without fault of the parties but the facts and circumstances clearly show the lack of merit in the appeal taken by the employer-petitioner and its stubborn insistence on depriving respondent and his co-employees of the extra compensation for Sunday and holiday work justly due them, I submit that the minimum award to which respondent is entitled should be at the very least the equivalent of the proposed base figure of three years pay. Employers should be put on notice as a deterrent that if they pursue manifestly dilatory and unmeritorious appeals and thus delay satisfaction of the judgment. Justly due their employee(s), they run the risk of exemplary and punitive damages being assessed against them by way of an increased award of back wages to the wrongfully discharged employee(s) commensurate to the delay caused by the

appeal process.

"I further submit that since the Court's judgment dismisses the petition, the reinstatement of respondent upon a finding of his physical fitness shall be 'without loss of seniority rights and other privileges appertaining thereto' to which he should have been entitled during the long period that he was wrongfully dismissed from petitioner's employ, as provided in the industrial court's judgment as affirmed in the case at bar."

Private respondent argues however, that in the cases decided by this Court,[4] the application of the Mercury Drug formula is reasonable (payment of 3 years backwages) because the law being applied is Section 5 of the Industrial Peace Act, Republic Act No. 875 which reads:

"Sec. 5. Unfair Labor Practice Cases. —

x x x

x x x

x x x

(c) x x x If, after investigation, the Court (of Industrial Relations) shall be of the opinion that any person named in the complaint has engaged in any unfair labor practice, then the Court shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice and take such affirmative action as will effectuate the policies of this Act, including (but not limited to) reinstatement of employees with or without backpay and including rights of the employees prior to dismissal including seniority." (Italics supplied.)

Private respondent, however, contends that the same formula cannot apply under the Labor Code wherein Article 280 provides as follows:

"Art. 280. (Now renumbered as Art. 279, after Executive Order No. 111). Security of tenure. — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and to his backwages computed from the time his compensation was withheld from him up to the time of his reinstatement."

Private respondent contends that the above provision which assures the right of workers to security of tenure as provided for in the 1973 Constitution is so clear that it needs no interpretation in that the illegally and unjustly dismissed employee is entitled to the following:

"a. A right to reinstatement without loss of seniority rights and;

b. A right to back wages computed from the time his compensation was withheld from him up to the time of his reinstatement."

The private respondent maintains that if the Mercury Drug formula is to be applied, the same will, in effect, be an amendment of Article 280 of the Labor Code which would be an unconstitutional exercise of legislative power by the Court.

It is important to stress that even after the passage of the Labor Code, which became effective on November 1, 1974, this Court reiterated the so-called Mercury Drug formula in that an illegally dismissed employee is not only entitled to reinstatement without loss of seniority rights but is also entitled to backwages for three (3) years without any qualification or deduction.[5]

In the case of Panay Railways, Inc. vs. NLRC,[6] the facts are analogous to the present case in that the complainant was ordered reinstated by the labor arbiter with full backwages from the date of dismissal to the date of actual reinstatement and no appeal was interposed from said order so a writ of execution was issued. The employer attempted to stop the execution claiming that the award of backwages should only be for three (3) years without qualification or deduction. The motion was denied by the labor arbiter and an appeal therefrom was denied by the NLRC. In said case, this Court reiterated that "it has consistently awarded backwages to the maximum of only three, years," and the Court finds no reason why said policy should not apply in the case at bar.[7]

Again, in the case of Durabuilt Recapping Plant and Co. vs. NLRC,[8] the facts are also similar as the present case and this Court reiterated that in no case shall the award of backwages exceed three (3) years back pay.[9]

The contention of private respondent that this Court is, in effect, amending Article 280 of the Labor Code is untenable. Precisely, it is because of the need to apply said provision of the law justly and reasonably and pursuant to the role of this Court of interpreting the law that this long established policy and rule has been made applicable even under the Labor Code to the effect that such backwages shall not exceed three (3) years without any qualification or deduction. The rationale for this policy has been aptly stated by the Court in Panay Railways, Inc. as follows:

"As has been noted, this formula of awarding reasonable net backwages without deduction or qualification relieves the employees from proving or disproving their earnings during then lay-off and the employers from submitting counterproofs, and obviates the twin evils of idleness on the part of the employee who would 'with folded arms, remain inactive in the expectation that windfall would come to him' (Itogon Suyoc Mines, Inc. vs. Sañgilo-Itogon Workers' Union, 24SCRA 873 (1968), cited in Diwa ng Pagkakaisa vs. Filtex International Corp., 43 SCR A 217(1972) and attrition and protracted delay in satisfying such award on the part of unscrupulous employers who have seized upon the further proceedings to determine the actual earnings of the wrongfully dismissed or laid-off employees to hold unduly extended hearing for each and every employee awarded backwages and thereby render practically nugatory such award and compel the employees to agree to unconscionable settlements of their backwages award in order to satisfy their dire need. (See La Campana Food Products, Inc. vs. CIR, 28 SCRA 314 (1969) and Kaisahan ng mga Manggagawa vs. La Campana Food Products, Inc., 36 SCRA 142 (1970))."

The court serves notice on the National Labor Relations Commission (NLRC), labor arbiters and other responsible officials of the Department of Labor and Employment to take their bearings from this rule that illegally dismissed employees or laborers shall be entitled to reinstatement without loss of seniority and to payment of back wages of not more than three years without any qualification or deduction. Although this policy had been consistently adhered to by the court even after the passage of the present Labor Code, there are still many instances, as in this case and other cases decided by the court, where the labor arbiters and/or the NLRC still awarded back wages beyond the 3-year limit set by the Court. The governing principle, which has given consistency and stability to the law, is stare decisis et non movere (follow past precedents and do not disturb what has been settled).[10]

WHEREFORE, the petition is hereby GRANTED. The questioned Order of January 16, 1987 and the writ of execution of December 5, 1986 issued by the public respondent are hereby set aside and declared null and void, the decision of January 15, 1986 of the National Labor Relation Commission (NLRC) having been fully satisfied by the payment of three (3) years back pay to private respondent without any qualification or deduction. The restraining order that this Court issued on March 2, 1987 is hereby made permanent.

SO ORDERED.

Narvasa (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] 136 SCRA 256.

[2] Mercury Drug Co., Inc. vs. Court of Industrial Relations, 56 SCRA 694; People's Bank & Trust Co. vs. PBTC Employees Union, 69 SCRA 10; Insular Life Assurance Co., Ltd. Employees Assn. NATU vs. Insular Life Assurance Co., Ltd., 76 SCRA 50; Monteverde vs. Court of Industrial Relations, 79 SCRA 259; Davao Development Corp. vs. National Labor Relations Commission, 81 SCRA 489; I.R. Aguinaldo, Inc. vs. Court of Industrial Relations, 82 SCRA 309; Liberty Cotton Mills Workers Union vs. Liberty Cotton Mills, Inc., 90 SCRA 391; Litex Employees Assn. vs. Court of Industrial Relations. 1 16 SCRA 459; Associated Anglo-American Tobacco Corp. vs. Lazaro, 125 SCRA 463; PAL, Inc. vs. NLRC. 126 SCRA 223; Union of Supervisors (RH) NATU vs.-Secretary of Labor, 128 SCRA 442; Lepanto Consolidated Mining Company vs. Encarnacion. 136 SCRA 256; Panay Railways, Inc. vs. National Labor Relations Commission, 137 SCRA 480; and many others.

[3] Sec supra.

[4] Manila Hotel Corporation v. NLRC, No.53453, January 22, 1986, 141 SCRA 169 (1986); Akay Printing Press v. Minister of Labor and Employment, No. 59651, December 6, 1985, 140 SCRA 381 (1985); Magtoto v. National Labor Relations Commission, No. 63370, November 18, 1985, 140 SCRA 58 (1985); Panay Railways, Inc. v. National Labor Relations Commission, No. 69416, July 11, 1985, 137 SCRA 480 (1985); Lepanto Consolidated Mining Company v. Encarnacion, Nos. 67002-03, April 30, 1985, 136 SCRA 256 (1985); Medical Doctors, Inc. (Makati Medical Center) v. NLRC, No. 56633, April 24, 1985, 136 SCRA 1 (1985); Insular Life Assurance Co., Ltd. v. NLRC, No. 49071, April 17, 1985, 135 SCRA 697 (1985); Flexo Manufacturing Corp. v. NLRC, No.55971, February 28, 1985, 135 SCRA 145 (1985); Philippine Airlines, Inc. v. NLRC, No. 64809, November 29, 1983, 126 SCRA 223 (1983); Associated Anglo American Tobacco Corporation v. Lazaro, No. 63779, October 27, 1983, 125 SCRA 463 (1983); Capital Garment Corporation v. Ople, No. 53627, September 10, 1982, 117 SCRA 473 (1982); Litex Employees Association v. CIR, No. 39154, September 9, 1982, 115 SCRA 459 (1982); Yucoco v. Inciong, No. 49061, March 29, 1982, 113 SCRA 245 (1982); People's Industrial and Commercial Employees and Workers Org. (FFLU) v. People's Industrial and Commercial Corp., No. 37687, March 15, 1982, 112 SCRA 440 (1982); Kapisanan ng Manggagawa sa Camara Shoes v. Camara Shoes, No. 50985, January 30, 1982, 111 SCRA 477 (1982); Pepito v. Secretary of Labor, No. 49418, February 29, 1980, 96 SCRA 454 (1980); Citizen's League of Free Workers v. CIR, No. 38293, February 21, 1980, 9~6 SCRA 225 (1980); Liberty Cotton Mills Workers Union v. Liberty Cotton Mills, Inc., No. 33987, May 31, 1979, 90 SCRA 391 (1979); Dy Keh Beng v. International Labor, 90 SCRA 161 (1979); Bachrach Motor Co., Inc. v. Court of Industrial Relations, No. 26136, October 30, 1978, &6 SCRA 27 (1978); L.R. Aguinaldo & Co., Inc. v. Court of Industrial Relations, No. 31909, April 3. 1978, 82 SCRA 309 (1978); Davao Development Corporation v. NLRC. Nos. 40706 & 40700, February 16, 1978, 81 SCRA 487 (1978); Monteverde v. Court of Industrial Relations, No. 32975, September 30, 1977, 79 SCRA 259 (1977); Insular Life Assurance Co., Ltd. Employees Association-Natu v. Insular Life Assurance Co., Ltd., No. 25291, March 10, 1977. 76 SCRA 50(1977); People's Bank and Trust Company v. People's Bank and Trust Co. Employees Union, 69 SCRA 10 (1976); Luzon Stevedoring v. Court of Industrial Relations, No. 34300, November 22. 1974. 62 SCRA 154 (1974); Feati University Club (Paflu) v. Feati University, No. 31503, August 25. 1974, 58 SCRA 395 (1974).

[5] Supra.

[6] Supra.

[7] Supra, page 483.

[8] 152 SCRA 328 (July 27, 1987).

[9] Supra, page 836.

[10] J.M. Tuason & Co. v. Mariano, 85 SCRA 644 (1978). Preface of all SCRA's by then Chief Justice Fred Ruiz. Castro.

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