

PURE FOODS CORPORATION, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, REMIGIO CLAVIO, ANDRES CATUBAY, VIRGILIO UMALI, ORLANDO REY AND JORGE DEL ROSARIO, RESPONDENTS.

G.R. No. 78591. March 21, 1989

Ponente: REGALADO, J.

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REGALADO, J.:

Petitioner corporation seeks, in this special civil action for certiorari, the annulment of the following:

- (1) Decision[1] of the respondent National Labor Relations Commission in Case No. NCR-4-1947-81, promulgated on March 23, 1987, which modified the decision of the labor arbiter by ordering petitioner to reinstate private respondents Virgilio Umali, Jorge del Rosario, Orlando Rey and Andres Catubay to their former positions without loss of seniority rights and to pay their backwages equivalent to three years each without qualifications and deductions,[2] and its resolution of May 20, 1987 denying petitioner's motion for reconsideration: and
- (2) Decision of the labor arbiter, Raymundo R. Valenzuela, in NLRC-NCR Case No. 11-5333-83-A, dated May 16, 1986, insofar as it ordered the reinstatement of private respondent Remigio Clavio and the payment of his backwages of one and a half years.[3]

The facts as stated in the Comment of the Solicitor General and which appear to be supported by the records are as follows:[4]

Private respondents Remigio Clavio, Andres Catubay, Virgilio Umali, Orlando Rey and Jorge del Rosario were employees of petitioner Pure Foods Corporation.

Petitioner hired private respondents Clavio and Catubay as drivers, starting 1979 and 1976, respectively; Umali as utility man, starting 1978; Rey as delivery man, starting 1973; and Del Rosario as checker, starting 1978. Despite their specific appointments, there were times when respondents Umali and Del Rosario were required by their superiors to perform the duties of a dispatcher.

As drivers, the only duties of Clavio and Catubay were to drive and take care of the trucks assigned to them, such as making minor repairs or fixing tires. During the dispatching of goods from the packaging section, as drivers, they were not allowed to hang around or wait in the area, but they had to go elsewhere leaving their trucks behind. During deliveries, they had no knowledge where their goods would ultimately go and, upon reaching their routes, they would park the trucks in certain areas where they would wait and keep watch that nobody got the products inside the trucks other than the delivery man.

As delivery man, the duties of respondent Rey required him to get the original of the invoices from the table of his supervisor and give the same to the checker, a lady guard. Before loading the goods on the delivery truck for

delivery, he had to detach the duplicates and triplicates of the invoices attached to the sealed boxes and baskets which were to be loaded on the truck. Thereafter, the checker would also count the same boxes and baskets and, after checking, sign the blue copy of the invoice and give the same to respondent Rey who, after closing the delivery truck, had to bring all the invoices to the clerk in the office. The clerk, in turn, computed the total load of the delivery truck on the delivery remittance report (DRR). After such computation, respondent Rey would bring the report to the supervisor for signature and, thereafter, the driver brings the delivery truck to the Toledo weighing ramp. Whenever the said weighing ramp registers an overweight or underweight, the checker inventories the load of the delivery truck. After the discrepancy is remedied or when there is no discrepancy in the total load listed in the DRR and the weight registered in the weighing ramp, respondent Rey and the driver would proceed to deliver the goods to the customers. In the course thereof, this respondent also collected payment from the customers. Should he discover that there are extra goods in the package, he returns the same to petitioner's plant.

When assigned as dispatchers, respondents Umali and Del Rosario had to segregate by order per route the sealed carton boxes, coming from the packing section of the production department, which contain packed products like hotdogs. In making such segregation, they had to get the topmost carton. They were not at liberty to open these sealed boxes unless the order is less than six (6) packages.

During the first shift of duty on March 17, 1981, respondents Umali and Del Rosario were assigned by their superiors as dispatchers. There were ten (10) other employees who were assigned as dispatchers in the area during that time.

When respondent Catubay, who was assigned to the first shift, reported for work on March 17, 1981 at around 5:00 o'clock in the morning, he saw a truck at the ramp being loaded with products by one Donato Monteroso. After it was loaded, he was assigned to drive the said truck and they proceeded to the abattoir to load fresh meat. From the abattoir, he noticed that his right rear tire was deflated, so he proceeded to the motor pool to inflate it, dropping Donato Monteroso, the delivery man, at the billing office. Thereafter, he fetched said Monteroso and they proceeded to the Toledo scale for weighing, from where they were allowed to go out for delivery.

On the same date during the first shift, respondent Rey reported for work at 3:41 o'clock in the morning. At 5:00 A.M., after the truck was weighed, he loaded the same with sealed boxes coming from the packing section with the help of casual laborers. After the loading, he proceeded to the billing section while the delivery truck was parked at the delivery parking area. After the receipts were finished at the billing section, he returned to the truck and saw that the driver, respondent Clavio, was already at the driver's seat.

Respondent Clavio had reported for work at 3:41 A.M. on March 17, 1981. When he inquired from his supervisor, Antonio Manuel, for his truck assignment, he was told of the possible trucks that may be assigned to him if the corresponding driver would not be available. He knew of his definite truck assignment only after the receipts at the billing section were finished.

From the delivery parking area, respondents Rey and Clavio brought the truck directly to the Toledo scale for weighing. Clavio knew that there was an overweight of 20 kilos when he was told by Rey to go down the scale for inventory of their cargoes. They helped the guards unload the cargoes of the delivery truck.

Of all the employees involved from the packaging to the delivery of the goods, only private respondents were indefinitely suspended for alleged pilferage as early as March 18, 1981, immediately after the aforesaid incident and without prior investigation. Thereafter, their suspension was continued until their dismissal without any notice to them or clearance from the then Ministry of Labor and Employment.

The aforesaid Comment[5] further establishes that on April 2, 1982, private respondents filed a complaint for illegal dismissal and unpaid wages against petitioner.

On May 13, 1983, an order was issued by Director Severo M. Pucan directing petitioner to reinstate private respondents to their former position with full backwages from the date of their dismissal until actual reinstatement, and to pay said complainants their unpaid wages prior to their dismissal.

Petitioner appealed the order to the Office of the then Minister, Ministry of Labor and Employment. Acting on said appeal, former Deputy Minister Vicente Leogardo, Jr. issued an order setting aside the aforesaid order of Director Pucan and indorsing the complaint to the NLRC-NCR-Arbitration Branch for compulsory arbitration as the nature of the case was not suited for summary proceeding, the issues involved being evidentiary in nature which could only be threshed out in a formal hearing.

The case was assigned to Labor Arbiter Raymundo R. Valenzuela who conducted several hearings. The labor arbiter rendered a decision[6] on May 16, 1986, the dispositive portion of which reads:

"WHEREFORE, finding that except for Remigio Clavio, the dismissal of the other ccmplainants to be justified, their complaint impugning the same should be, as it is hereby DISMISSED. However, for failure to furnish them with a clearance application for their termination as well as the belated filing of the same with MOLE, respondent Pure Foods Corporation, should (sic) as it is hereby, ordered to pay Virgilio Umali, Jorge del Rosario, Orlando Rey and Andres Catubay their separation pay of one-half (1/2) month pay for every year of service (sic) their respective services and to reinstate Remigio Clavio to his former position with one and half (sic) (1-1/2) years of backwages."

Both parties appealed to the National Labor Relations Commission. On March 23, 1987, public respondent NLRC rendered a decision[7] unanimously holding for the private respondents, to wit:

"WHEREFORE, premises considered the Decision appealed from is, as it is hereby modified as aforesaid. Consequently, respondent is hereby ordered to reinstate VIRGILIO UMALI, JORGE DEL ROSARIO, ORLANDO REY and ANDRES CATUBAY to their former positions without loss of seniority rights and to pay their backwages equivalent to three (3) years each without qualifications and deductions. Further, respondent is directed to show proof of immediate compliance to the mandate of this Decision after ten (10) days from receipt thereof."

As pointed out by public respondent,[8] based on its records the aforesaid decision was received on April 15, 1987 by the respective counsels of both parties. It became final without any motion for reconsideration or any other remedy having been filed or taken by petitioner.

On April 28, 1987, private respondents moved for the issuance of a writ of execution with a copy of the motion furnished counsel for petitioner on the same date.

On April 30, 1987, petitioner opposed the above motion, filing at the same its motion for reconsideration. On May 18, 1987, public respondent issued a resolution denying petitioner's motion for reconsideration for having been filed out of time and for lack of merit.

Thus has spawned the present petition.

Petitioner contends that respondent commission committed a grave abuse of discretion in totally reversing the findings of facts of the labor arbiter.

On the other hand, respondents preemptively contend that the questioned decision of the public respondent has long become final and executory, for failure of petitioner to file its motion for reconsideration within the 10-day reglementary period, hence the same is no longer legally susceptible of any amendment, alteration and/or

modification. Respondents consequently pray for the dismissal of this special civil action for certiorari.

We find merit in respondents' contentions.

Presidential Decree No. 442, otherwise known as the Labor Code of the Philippines, formerly granted, under Article 223 thereof, an aggrieved party the remedy of appeal from a decision of the National Labor Relations Commission to the Secretary of Labor. Presidential Decree No. 1391, however, amended said Article 223 and abolished appeals to the Secretary of Labor.

But, the losing party is not without recourse. Under the New Rules of the National Labor Relations Commission, a party is allowed to file a motion for reconsideration of any order, resolution or decision of the commission based on palpable or patent errors, provided that the motion is under oath and filed within ten (10) calendar days from receipt of the order, resolution or decision.[9] In addition, the party may also seasonably avail of the special civil action for certiorari, where the tribunal, board or officer exercising judicial functions has acted without or in excess of its jurisdiction, or with grave abuse of discretion, and praying that judgment be rendered annulling or modifying the proceedings, as the law requires, of such tribunal, board or officer.[10]

In the case at bar, a motion for reconsideration was belatedly filed by petitioner by reason of which the motion was denied by public respondent. In a futile attempt to elide and gloss over an obvious mistake or fatal omission, petitioner then filed this special civil action for certiorari by imputing to public respondent a supposed grave abuse of discretion in reversing the findings of facts of the labor arbiter.

This procedural maneuver is fatally flawed and unavailing on both counts. The unquestioned rule in this jurisdiction is that certiorari will lie only if there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law against the acts of respondent. In the present case, the plain and adequate remedy expressly provided by law was a motion for reconsideration of the assailed decision and the resolution thereof, which was not only expected to be but would actually have provided adequate and more speedy remedy than the present petition for certiorari.[11] This remedy was actually sought to be availed of by petitioner when it filed a motion for reconsideration albeit beyond the 10-day reglementary period. For all intents and purposes, petitioner cannot now be heard to say that there was no plain, speedy and adequate remedy available to it and that it must, therefore, be allowed to seek relief by certiorari. This contention is not only untenable but would even place a premium on a party's negligence or indifference in availing of procedural remedies afforded by law.

The filing of such a motion is intended to afford public respondent an opportunity to correct any actual or fancied error attributed to it by way of a re-examination of the legal and factual aspects of the case. Petitioner's inaction or negligence under the circumstances is tantamount to a deprivation of the right and opportunity of the respondent commission to cleanse itself of an error unwittingly committed or to vindicate itself of an act unfairly imputed. An improvident resort to certiorari cannot be used as a tool to circumvent the right of public respondent to review and purge its decision of an oversight, if any. Neither should this special civil action be resorted to as a shield from the adverse consequences of petitioner's own negligence or error in the choice of remedies. Having allowed the decision to become final and executory, petitioner cannot by an overdue strategy question the correctness of the decision of the respondent commission when a timely motion for reconsideration was the legal remedy indicated.

Petitioner further argues that public respondent committed a grave abuse of discretion in reversing the findings of facts of the labor arbiter. Assuming *ex gratia argumenti* that this is true, its petition can neither prosper nor subserve its purpose.

In asserting that there was grave abuse of discretion, petitioner adverts to alleged variances in the factual findings of the labor arbiter and the respondent commission. This is inapt and erroneous. Firstly, errors of judgment, as

distinguished from errors of jurisdiction, are not within the province of a special civil action for certiorari. Secondly, a careful perusal of the records of this case readily reveals that if there is any error by public respondent in its analysis of the facts and its evaluation of the evidence, it is not of such a degree as may be stigmatized as a grave abuse of discretion. By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction[12], and it must be shown that the discretion was exercised arbitrarily or despotically.[13] For certiorari to lie, there must be a capricious, arbitrary and whimsical exercise of power, the very antithesis of the judicial prerogative in accordance with centuries of both civil law and common law traditions.[14]

It is settled to the point of being elementary that the only question involved in certiorari is jurisdiction, either the want or excess thereof, and abuse of discretion warrants the issuance of the extraordinary remedy of certiorari only when the same is so grave, as when the power is exercised in an arbitrary or despotic manner by reason of passion, prejudice or personal hostility, and it must be so patent and so gross as to amount to an evasion of positive duty, or to a virtual refusal to perform a duty enjoined, or to act at all, in contemplation of law,[15] as to be equivalent to having acted without jurisdiction.

It is, therefore, incumbent upon petitioner to adduce a sufficiently strong demonstration that the respondent commission acted whimsically in total disregard of evidence material to and even decisive of the controversy, before certiorari will lie. In this, petitioner has failed.

It must emphatically be reiterated, since so often is it overlooked, that the special civil action for certiorari is a remedy designed for the correction of errors of jurisdiction and not errors of judgment.[16] The reason for the rule is simple. When a court exercises its jurisdiction, an error committed while so engaged does not deprive it of the jurisdiction being exercised when the error is committed. If it did, every error committed by a court would deprive it of its jurisdiction and every erroneous judgment would be a void judgment. This cannot be allowed. The administration of justice would not survive such a rule. Consequently, an error of judgment that the court may commit in the exercise of its jurisdiction is not correctible through the original civil action of certiorari.[17]

At any rate, in rejecting the decision of the labor arbiter and in finding that there was no pilferage committed, respondent commission held that:

"After painstaking scrutiny and diligent review of the record of the instant case giving due consideration to the points raised by the complainants in relation to the supporting documents submitted and relied upon by the respondent, it is Our considered view that the Labor Arbiter below was careless, short of being remiss in his duty, for his failure to analyze and appreciate the import of the evidence on record specially so that in the resolution of the issue of whether complainants are guilty of the charge of pilferage or not hinges on mere affidavits of the Security guards as well as the Lady Security guard-checkers. x x x"[18]

Respondent commission noted serious discrepancies in the affidavits of the witnesses presented by herein petitioner,[19] to wit:

Lorna Manriquez a lady guard, alleged that the truck with Plate No. 757 of respondent Andres Catubay was stopped at the gate and found with an excess of 12 bags of hotdogs; whereas, Crispulo Migano, another guard, alleged that the truck with Plate No. 757 was parked at the motor pool; while Capt. Gonzales, of the security detachment, stated that the truck driven by respondent Catubay had left the company premises.

The two lady security guard-checkers, Lorna Manriquez and Fe Somera, and security guard Crispulo Magano stated in their affidavits that upon discovering the suspicious activities of herein private respondents, they reported the matter to the security detachment. Respondent commission's factual finding is that their reporting to the security detachment was orchestrated. It is noteworthy that the affidavits of said lady security guard-checkers are

identical in their allegations regarding the incident except as to the names of those involved, their places of assignment, and truck plate numbers.

Security guard Crispulo Magano stated that he saw several persons bringing down a package at the motor pool, whereas the investigation conducted by the security detachment revealed that respondent Catubay was the only person who went to the motor pool.

As pointedly commented by the Solicitor General, "to sustain the petitioner would lead the court to speculate on the possibilities of the commission of pilferage by private respondents as a ground for their dismissal. There is no clear, positive and convincing evidence to point that private respondents were guilty as charged." [20]

The foregoing considerations convince Us that the decision and resolution complained of should not be disturbed.

WHEREFORE, the petition for certiorari is DISMISSED. The decision of Labor Arbiter Raymundo R. Valenzuela, dated May 16, 1986, insofar as it orders the reinstatement of private respondent Remigio Clavio and the payment of his backwages of one and a half years is AFFIRMED. The decision of respondent National Labor Relations Commission of March 23, 1987 and its resolution of May 20, 1987 are likewise AFFIRMED.

Should the reinstatement of the private respondents to their previous or substantially equivalent positions without loss of seniority rights as herein ordered be rendered impossible by the supervention of circumstances which prevent the same, the petitioner is further ordered to pay private respondents separation pay equivalent to one (1) month's salary for every year of service rendered by them to petitioner, computed at the rate of their respective salaries on March 18, 1981.

SO ORDERED.

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

[1] Penned by Comm. Domingo H. Zapanta and concurred in by Presiding Comm. Daniel M. Lucas, Jr. and Comm. Oscar Abella.

[2] Rollo, 23-24

[3] Ibid., 36-47.

[4] Ibid., 90-95.

[5] Ibid., 87-90.

[6] Ibid., 36-47.

[7] Ibid., 23-34.

[8] Ibid., 90.

[9] Sec. 9, Rule X, New Rules of the National Labor Relations Commission.

[10] Sec. 1, Rule 65, Rules of Court.

[11] Plaza, et al. vs. Mencias, et al., 6 SCRA 562 (1962).

[12] Imutan vs. Court of Appeals, 102 SCRA 286 (1981).

[13] Francisco vs. Mandi, 152 SCRA 711 (1987).

[14] Gamboa vs. Hon. Alfredo Cruz, G.R. No. 56291, June 27, 1988.

[15] F.S. Divinagracia Agro-Commercial, Inc. vs. Court of Appeals, et al., 104 SCRA 180 (1981); Arguelles vs. Young, et al., 153 SCRA 690 (1987); Franklin Baker Company of the Philippines vs. Trajano, 157 SCRA 416 (1987).

[16] Philippine Rabbit Bus Lines, Inc. vs. Galauran & Pilaes Construction Co., 118 SCRA 664 (1982).

[17] Mercado, et al. vs. Court of Appeals, et al. G.R. No. 44001, June 10, 1988.

[18] Rollo, 28.

[19] Ibid., 29-32.

[20] Ibid., 99.

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