

JUANITO DE ASIS, WILFREDO REBADA, ROGER MATA, ELY MANCAO, ROLLY INARAO, JOEL DE LA CRUZ, ALFREDO ANGELADA, ALFONSO SARZUELO, EDWIN BLANCA AND JOSE BEASONG, PETITIONERS, VS. NATI...*G.R. No. 82478. September 07, 1989*

Ponente: GANCAYCO, J.

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In the herein petition for review on certiorari petitioners seek the annulment of the resolution of the public respondent National Labor Relations Commission (NLRC) dated January 29, 1988. The appropriate remedy is a special civil action for certiorari under Rule 65 of the Rules of Court and not a petition for review under Rule 45 of the same Rule.[1] In the interest of justice, the herein petition is treated as a special civil action for certiorari.[2]

The petitioners are crew members of the F/B Nenita, a fishing boat owned by private respondent. They worked in various capacities such as engine mechanics and fishermen from June 20, 1974 up to the date of their dismissal on May 23, 1981. Private respondent alleged that during the period from December 1980 up to April 1981, petitioners, in violation of a memorandum issued, docked at certain ports and bartered or sold their catch belonging to the private respondent causing him a loss in the amount of P33,750.00. Private respondent filed a complaint for qualified theft against petitioners before the Court of First Instance of Negros Occidental and thereafter in the Regional Trial Court in Masbate. Warrants of arrest were issued and petitioners were detained. The case in Negros Occidental was not pursued, while in the case in Masbate, private respondent asked for the dismissal of the complaint in the spirit of Christmas. Petitioner Juanito de Asis was released after having been jailed from May 23, 1981 to February 6, 1985.

On May 23, 1981, private respondent dismissed the petitioners from employment but he secured a clearance for said termination from the Ministry of Labor & Employment (MOLE) only on May 26, 1981. Thus, petitioners filed a complaint for illegal dismissal in the district office of said Ministry in Bacolod City on July 17, 1981 wherein they prayed for separation pay, holiday pay, overtime pay, service incentive leave pay, leave allowances, unpaid wages and transportation expenses. On July 17, 1986, the labor arbiter rendered his decision, the dispositive part of which reads as follows:

"WHEREFORE, premises considered, judgment is hereby rendered ordering respondents to pay complainants their separation pay as follows:

1. Alfredo Angelada - - 840.00
2. Juanito de Asis - - 900.00
3. Jose Beasong - - 900.00
4. Edwin Blanca - - 210.00

5. Joel de la Cruz - - 210.00
6. Ely Mancao - - 1,470.00
7. Roque Mata - - 1,050.00
8. Wilfredo Rebada - - 840.00
9. Alfonso Sarsuelo - - 1,050.00

TOTAL P6,570.00

The complaints for holiday pay, overtime pay, service incentive leave pay, underpayment of wages and living allowance, unpaid wages and fare reimbursement are hereby dismissed for lack of merit.

SO ORDERED."[3]

Not satisfied therewith, petitioners appealed to the public respondent NLRC, wherein in due course, it affirmed the appealed decision in a resolution dated January 29, 1988.

Hence, the herein petition wherein it is sought that the aforesaid resolution of respondent NLRC be annulled and set aside and that another decision be rendered granting the money claim of petitioners plus backwages.

In the comment of the private respondent he asserts that the questioned resolution is in accordance with law as petitioners were guilty of theft and that petitioners were not dismissed but were only preventively dismissed. The public respondent shares the same view. However, the Solicitor General in his Manifestation in lieu of comment recommends the modification of the resolution by the reinstatement of petitioners with three years backwages and without loss of seniority and employment benefits.

No doubt the petitioners were dismissed from the service by private respondent because of loss of confidence as in fact he charged them of theft although he thereafter withdrew the complaint out of compassion. However, the termination of petitioners suffers from a flaw. Private respondent failed to seek previous clearance of the MOLE for their separation which was then required. Otherwise, the dismissal of petitioner was for a just and lawful cause.

Their reinstatement is therefore out of the question nor are they entitled to separation pay thereby. However, in view of the failure of private respondent to comply with the said requirement of the law then of securing previous clearance of the MOLE the private respondent should indemnify petitioners in the amount of P1,000.00 each.[4]

WHEREFORE, the petition is GRANTED. The resolution of the respondent NLRC of January 29, 1988 is set aside and another judgment is hereby rendered finding petitioners to have been dismissed for a just and lawful cause and requiring private respondent to indemnify petitioners in the amount of P1,000.00 each for failure to comply with the requirement of the law of a previous clearance with MOLE of such dismissal.

SO ORDERED.

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

[1] Asiaworld Publishing House, Inc. v. Ople, 152 SCRA 219 (1987).

[2] Dentech Manufacturing Corporation v. National Labor Relations Commission, G.R. No. 81477, April 19, 1989.

[3] Page 28, Rollo. The correct total should have read P7,470.00 instead of P6,570.00.

[4] Wenphil Corporation vs. National Labor Relations Commission, G.R. No. 80587, February 8, 1989.

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