

DAVAO FRUITS CORPORATION, PETITIONER, VS. ASSOCIATED LABOR UNIONS (ALU) FOR AND IN BEHALF OF ALL THE RANK-AND-FILE WORKERS/EMPLOYEES OF DAVAO FRUITS CORPORATION AND NATIONAL LAB...

G.R. No. 85073. August 24, 1993

Ponente: QUIASON, J.

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QUIASON, J.:

This is a petition for certiorari to set aside the resolution of the National Labor Relations Commission (NLRC), dismissing for lack of merit petitioner's appeal from the decision of the Labor Arbiter in NLRC Case No. 1791-MC-XI-82.

On December 28, 1982, respondent Associated Labor Unions (ALU), for and in behalf of all the rank-and-file workers and employees of petitioner, filed a complaint (NLRC Case No. 1791-MC-XI-82) before the Ministry of Labor and Employment, Regional Arbitration Branch XI, Davao City, against petitioner, for "Payment of the Thirteenth-Month Pay Differentials." Respondent ALU sought to recover from petitioner the thirteenth month pay differential for 1982 of its rank-and-file employees, equivalent to their sick, vacation and maternity leaves, premium for work done on rest days and special holidays, and pay for regular holidays which petitioner, allegedly in disregard of company practice since 1975, excluded from the computation of the thirteenth month pay for 1982.

In its answer, petitioner claimed that it erroneously included items subject of the complaint in the computation of the thirteenth month pay for the years prior to 1982, upon a doubtful and difficult question of law. According to petitioner, this mistake was discovered only in 1981 after the promulgation of the Supreme Court decision in the case of *San Miguel Corporation v. Inciong* (103 SCRA 139).

A decision was rendered on March 7, 1984 by Labor Arbiter Pedro C. Ramos, in favor of respondent ALU. The dispositive portion of the decision reads as follows:

"WHEREFORE, in view of all the foregoing considerations, judgment is hereby rendered ordering respondent to pay the 1982 - 13th month pay differential to all its rank-and-file workers/employees, herein represented by complainant Union" (Rollo, p. 32).

Petitioner appealed the decision of the Labor Arbiter to the NLRC, which affirmed the said decision and accordingly dismissed the appeal for lack of merit.

Petitioner elevated the matter to this Court in a petition for review under Rule 45 of the Revised Rules of Court. This error notwithstanding and in the interest of justice, this Court resolved to treat the instant petition as a special civil action for certiorari under Rule 65 of the Revised Rules of Court (P.D. No. 1391, Sec. 5; Rules Implementing P.D. No. 1391, Rule II, Sec. 7; *Cando v. National Labor Relations Commission*, 189 SCRA 666 [1990]; *Pearl S. Buck Foundation, Inc. v. National Labor Relations Commission*, 182 SCRA 446 [1990]).

The crux of the present controversy is whether in the computation of the thirteenth month pay given by employers to their employees under P.D. No. 851, payments for sick, vacation and maternity leaves, premiums for work done on rest days and special holidays, and pay for regular holidays may be excluded in the computation and payment thereof, regardless of long-standing company practice.

Presidential Decree No. 851, promulgated on December 16, 1975, mandates all employers to pay their employees a thirteenth month pay. How this pay shall be computed is set forth in Section 2 of the "Rules and Regulations Implementing Presidential Decree No. 851" thus:

“SECTION 2. x x x

(a) ‘Thirteenth month pay’ shall mean one twelfth (1/12) of the basic salary of an employee within a calendar year.

(b) ‘Basic Salary’ shall include all remunerations or earnings paid by an employer to an employee for services rendered but may not include cost-of-living allowances granted pursuant to Presidential Decree No. 525 or Letter of Instructions No. 174, profit-sharing payments, and all allowances and monetary benefits which are not considered or integrated as part of the regular or basic salary of the employee at the time of the promulgation of the Decree on December 16, 1975.”

The Department of Labor and Employment issued on January 16, 1976 the "Supplementary Rules and Regulations Implementing P.D. No. 851" which in paragraph 4 thereof further defines the term "basic salary," thus:

"4. Overtime pay, earnings and other remunerations which are not part of the basic salary shall not be included in the computation of the 13 month pay."

Clearly, the term "basic salary" includes all remunerations or earnings paid by the employer to the employee, but excludes cost-of-living allowances, profit-sharing payments, and all allowances and monetary benefits which have not been considered as part of the basic salary of the employee as of December 16, 1975. The exclusion of cost-of-living allowances and profit sharing payments shows the intention to strip "basic salary" of payments which are otherwise considered as "fringe" benefits. This intention is emphasized in the catch-all phrase "all allowances and monetary benefits which are not considered or integrated as part of the basic salary." Basic salary, therefore does not merely exclude the benefits expressly mentioned but all payments which may be in the form of "fringe" benefits or allowances (*San Miguel Corporation v. Inciong*, supra, at 143-144). In fact, the Supplementary Rules and Regulations Implementing P.D. No. 851 are very emphatic in declaring that overtime pay, earnings and other remunerations shall be excluded in computing the thirteenth month pay.

In other words, whatever compensation an employee receives for an eight-hour work daily or the daily wage rate is the basic salary. Any compensation or remuneration other than the daily wage rate is excluded. It follows therefore, that payments for sick, vacation and maternity leaves, premium for work done on rest days and special holidays, as well as pay for regular holidays, are likewise excluded computing the basic salary for the purpose of determining the thirteenth month pay.

Petitioner claims that the mistake in the interpretation of "basic salary" was caused by the opinions, orders and rulings rendered by then Acting Labor Secretary Amado G. Inciong, expressly including the subject items in computing the thirteenth month pay. The inclusion of these items is clearly not sanctioned under P.D. No. 851, the governing law and its implementing rules, which speak only of "basic salary" as the basis for determining the thirteenth month pay.

Moreover, whatever doubt arose in the interpretation of P.D. No. 851 was erased by the Supplementary Rules and

Regulations which clarified the definition of “basic salary.”

As pointed out in *San Miguel Corporation v. Inciong*, (supra):

“While doubt may have been created by the prior Rules and Regulations Implementing Presidential Decree 851 which defines basic salary to include all remunerations or earnings paid by an employer to an employee, this cloud is dissipated in the later and more controlling Supplementary Rules and Regulations which categorically, exclude from the definition of basic salary earnings and other remunerations paid by employer to an employee. A cursory perusal of the two sets of Rules indicates that what has hitherto been the subject of a broad inclusion is now a subject of broad exclusion. The Supplementary Rules and Regulations cure the seeming tendency of the former rules to include all remunerations and earnings within the definition of basic salary.

The all-embracing phrase 'earnings and other remunerations' which are deemed not part of the basic salary includes within its meaning payments for sick, vacation, or maternity leaves, premium for work performed on rest days and special holidays, pay for regular holidays' and night differentials. As such they are deemed not part of the basic salary and shall not be considered in the computation of the 13th-month pay. If they were not so excluded, it is hard to find any 'earnings and other remunerations' expressly excluded in the computation of the 13th-month pay. Then the exclusionary provision would prove to be idle and with no purpose.”

The "Supplementary Rules and Regulations Implementing P.D. No. 851," which put to rest all doubts in the computation of the thirteenth month pay, was issued by the Secretary of Labor as early as January 16, 1976, barely one month after the effectivity of P.D. No. 851 and its Implementing Rules. And yet, petitioner computed and paid the thirteenth month pay, without excluding the subject items therein until 1981. Petitioner continued its practice in December 1981, after promulgation of the afore-quoted *San Miguel* decision on February 24, 1981, when petitioner purportedly "discovered" its mistake.

From 1975 to 1981, petitioner had freely, voluntarily and continuously included in the computation of its employees' thirteenth month pay, the payments for sick, vacation and maternity leaves, premiums for work done on rest days and special holidays, and pay for regular holidays. The considerable length of time the questioned items had been included by petitioner indicates a unilateral and voluntary act on its part, sufficient in itself to negate any claim of mistake.

A company practice favorable to the employees had indeed been established and the payments made pursuant thereto, ripened into benefits enjoyed by them. And any benefit and supplement being enjoyed by the employees cannot be reduced, diminished, discontinued or eliminated by the employer, by virtue of Section 10 of the Rules and Regulations Implementing P.D. No. 851, and Article 100 of the Labor Code of the Philippines, which prohibit the diminution or elimination by the employer of the employees' existing benefits (*Tiangco v. Leogardo, Jr.*, 122 SCRA 267, [1983]).

Petitioner cannot invoke the principle of *solutio indebiti* which is a civil law concept that is not applicable in Labor Law. Besides, in *solutio indebiti*, the obligee is required to return to the obligor whatever he received from the latter (Civil Code of the Philippines, Arts. 2154 and 2155). Petitioner in the instant case, does not demand the return of what it paid respondent ALU from 1975 until 1981; it merely wants to "rectify" the error it made over these years by excluding unilaterally from the thirteenth month pay in 1982 the items subject of litigation. *Solutio indebiti*, therefore, is not applicable to the instant case.

WHEREFORE, finding no grave abuse of discretion on the part of the NLRC, the petition is hereby **DISMISSED**, and the questioned decision of respondent NLRC is **AFFIRMED** accordingly.

Cruz, (Chairman), Griño-Aquino, Davide, Jr., and Bellosillo, JJ., concur.

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