

**ADAMSON OZANAM EDUCATIONAL INSTITUTION, INC., ALSO
KNOWN AS ADAMSON UNIVERSITY, PETITIONER, VS. ADAMSON
UNIVERSITY FACULTY AND EMPLOYEES ASSOCIATION AND
CONRADO MAGLAYA, COMMISS...**

G.R. No. 86819. November 09, 1989

Ponente: GANCAYCO, J.

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GANCAYCO, J.

The Adamson Ozanam Education, Institution, Inc. also known as the Adamson University (AU) was granted by the then Ministry of Education, Culture & Sports (MECS), the authority to increase their tuition fees by 10% and 5% for the school year 1983-84. The Adamson University Faculty and Employees Association (AUFEA) believing that under P.D. No. 451 60% thereof should be allocated for the increase in salaries and wages of the members of the faculty and other members of the school filed a complaint in the Ministry of Labor & Employment (MOLE) against the AU for the recovery of the said 60%.

The contention of the AU is that P.D. 451 was repealed by the Educational Act of 1982, which took effect on September 12, 1982, and that assuming that B.P. No. 451 was not repealed, complainant is not entitled to any benefit considering that there was no actual increment proceeds in the tuition fee increase for the school year 1983-84 upon which to base the 60% allocation.

In the decision of the labor arbiter dated March 31, 1986 the complaint was dismissed for lack of merit. The AUFEA appealed therefrom to the National Labor Relations Commission (NLRC) wherein in due course a decision was rendered on September 30, 1988 setting aside the appealed decision and ordering the AU to remit to the members of the AUFEA the amount of P1,298,160.00 representing the 60% share in the increment proceeds of the tuition fees collected for the school year 1983-84. A motion for reconsideration of the said decision filed by the AU was denied in a resolution dated January 30, 1989 for having been filed out of time.

Hence, the herein petition for certiorari filed by the AU. On February 22, 1989, the court dismissed the petition for failure to sufficiently show the respondent commission had committed a grave abuse of discretion in rendering its questioned judgment. A motion for reconsideration hereof was filed by petitioner to which respondents were required to file their comment. The desired comments having been submitted and the reply thereto filed by petitioner, the court finds a cogent basis to grant the motion for reconsideration. The petition is based on the following arguments:

"SERVICE OF THE DECISION UPON THE SECURITY GUARD OF THE TOEFEMI BUILDING, WHERE RESPONDENT'S FORMER COUNSEL USED TO HOLD OFFICE, IS INEFFECTIVE AND DOES NOT CAUSE THE RUNNING OF THE 10-DAY PERIOD FOR AN APPEAL.

BASED ON THE MERITS OF THE CASE, THE SUBJECT DECISION PROMULGATED ON 30 SEPTEMBER 1988 IS CONTRARY TO THE DOCTRINE LAID DOWN IN CEBU INSTITUTE OF

TECHNOLOGY ET AL. VS. HON. BLAS OPLE, ET AL."

On the first issue, it appears that the decision of the NLRC dated September 30, 1988 was served to the office of the counsel for petitioner on October 11, 1988 through the security to the office of the counsel for petitioner on October 11, 198 through the security guard of the building. The office of then counsel for petitioner, Atty. Adres Narvasa (now member of this Court), was located at the TOEFEMI building. The copy of the decision was addressed to Atty. Roberto I. Santos of said law office. However, at the time of said service the said law office was already dissolved as Atty. Narvasa was appointed as a member of this Court. Nevertheless, a copy of said decision was transmitted by the former office of now Mr. Justice Narvasa to the present counsel of record for petitioner on November 5, 1988 who promptly filed a motion for reconsideration on November 15, 1988.

In denying for the motion for reconsideration the NLRC observed that the former counsel of petitioner did not withdraw nor file a manifestation that his office had been dissolved so he cannot continue to act as counsel thereof.

Thus the question that arises is whether the service of the copy of the decision upon the security guard of the building where the former office of petitioner's counsel was located was sufficient compliance with the requirements of the law. Section 4, Rule 13 of the Rules of Court which is suppletory to the rules of the NLRC, provides as follows:

"Section 4. Personal Service. — Service of the papers may be made by delivering personally a copy to the party or his attorney, or leaving it in his office with his clerk or with a person having charge thereof. If no person is found in his office, or his office is not known, then by leaving the copy, between the hours of eight in the morning and six in the evening, at the party's or attorney's residence, if known, with a person of sufficient discretion to receive the same." (Italics supplied)

Under the foregoing rule, service of papers should be delivered personally to the party or attorney or by leaving it at his office with his clerk or with a person having charge thereof. The service of the court's order upon any person other than the party's counsel is not legally effective.[1] Where the copy of the decision is served on a person who is neither a clerk or one in charge of the attorney's office, such service is invalid and the decision does not therefore become executory.[2] The security guard of the building where the attorney is holding office is neither the office clerk nor a person in charge thereof as contemplated in the rules. In *PLDT vs. NLRC*, [3] this Court ruled that the service of the decision at the ground floor of a party's building when the office is at the 9th floor is not a valid service.

From the foregoing, it is clear that the service of the decision dated October 11, 1988 on the security guard of the building where the then counsel for petitioner was holding office was an invalid service and the running of the period within which to appeal therefrom or file a motion for reconsideration cannot be deemed to commence thereby.

While it is true that said former counsel of petitioner failed to withdraw his appearance, the NLRC can take judicial notice of the fact that Mr. Justice Narvasa can take judicial notice of the fact that Mr. Justice Narvasa was already elevated to the Supreme Court at the time the decision in this case was promulgated. Since its decisions are reviewable by the Supreme Court such matter of public knowledge should be within the judicial notice of the NLRC because of the nature of their functions.[4]

On the second issue, the order of respondent NLRC to petitioner to remit to te respondent AUFEA the sum of P1,298,160.00 representing its 60% share in the increment tuition fees collected for the school year 1983-84 is predicated on the argument that: 1) MECS Order No. 25 took effect on April 1, 1985 and prior thereto this Court has ruled that the 60% incremental proceeds should be applied to the basic salaries and wages; and 2) inasmuch as

the CBA was concluded two (2) days after petitioner was granted the authority to increase its tuition fees, it does not necessarily follow that the parties intended that the CBA benefits will be taken from the said incremental proceeds.

We disagree.

In the case of Cebu Institute of Technology vs. Hon. Blas Ople,[5] this Court ruled that P.D. No. 451 was repealed by B.P. Blg. 232 effective September 11, 1982. From the said date the governing law on the disposition of the 60% incremental proceeds on the tuition fees are the appropriate provisions of B.P. Blg. 233, which, in pertinent part provides as follows:

"Not less than sixty (60) percent of the incremental tuition proceeds shall be used for salaries or wages, allowances and fringe benefits of faculty and support staff, including cost of living allowance, imputed costs of contributed services, thirteenth (13th) month pay, retirement fund contributions, social security, medicare, unpaid school personnel claims, and payment as may be prescribed by mandated wage orders, collective bargaining agreements and voluntary employer practices x x x." (Sec. 42; Italics supplied)"

Accordingly, as of September 11, 1982, Section 3(a) of P.D. 451 which limits the disposition of said 60% incremental proceeds increase in tuition fees to those of salaries and wages is deemed abrogated by way of repeal.[6] Indeed even prior thereto this Court ruled in the University of the East vs. UE Faculty Association[7] as follows:

" ' We are underscoring such modification because as We see it, it settles the second main issue We had stated at the outset as to whether or not increase of salaries or wages or allowances or benefits secured by collective bargaining may be charged against the incremental proceeds (60%) under P.D. 451. We read the latest Malacañang decision to mean that increase of salaries even those secured by collective bargaining may be charged to the 60% incremental proceeds of MEC authorized tuition fees increases. x x x' (Italics supplied.)"

MECS Order No. 25 finds legal support in B.P. Blg. 232, otherwise known as the Educational Act of 1982 as said MECS Order is an implementing administrative rule interpretative of a pre-existing statute and not declarative of certain rights with obligation thereunder. The same should be given retroactive effect and its effectivity should be on September 11, 1982, which is the date of effectivity of B.P. Blg. 232, not April 1, 1985. Remedial or curative statutes are by nature intended to be retroactive.⁸

And this is as it should be as rules and regulations are and should be for the sole purpose of carrying into effect a general provision of the law.[9] Thus guided by the Cebu Institute of Technology which declared the automatic repeal of P.D. 451 respondent NLRC committed a grave error in ruling that petitioner cannot charge to the 60% incremental proceeds the items under paragraph 7.4 of the MECS Order No. 25 including collective bargaining.

WHEREFORE, the motion for reconsideration is granted and the resolution of February 22, 1989 is set aside; the petition is GRANTED so that the questioned decision of the NLRC dated September 30, 1988 and its resolution dated January 20, 1989 are hereby REVERSED AND SET ASIDE while the decision of the labor arbiter dated March 31, 1986 dismissing the complaint for lack of merit is hereby AFFIRMED without pronouncement as to costs.

SO ORDERED.

Cruz, Grino-Aquino, and Medialdea, JJ., concur.

Narvasa, J., (Chairman), no part.

[1] Vecino vs. Court of Appeals, 76 SCRA 98 (1977).

[2] Tuazon vs. Court of Appeals, 76 SCRA 98 (1977).

[3] 128 SCRA 402 (1984).

[4] Section 1, Rule 129, Rules of Court.

[5] 156 SCRA 629 (1987).

[6] LICHAUCO & COMPANY, INC. VS. SILVERIO APOSTOL, ET AL., 44 Phil. 138 (1922) and Compania General de Tabacos vs. Collector of Customs, 46 Phil. 8 (1924)

[7] 117 SCRA 554 (1982).

[8] Victorias Milling, Inc. vs. Social Security Commission, 114 Phil. 555 (1962).

[9] U.S. vs. Molina, 29 Phil. 119 (1914); People vs. Santos, 63 Phil. 300 (1936).

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