

EDWARD DIAZ, PETITIONER, VS. LABOR ARBITER RICARDO C. NORA, THE NATIONAL LABOR RELATIONS COMMISSION AND THE MERALCO TRANSIT ORGANIZATION, INC., RESPONDENTS.

G.R. No. 89324. October 11, 1990

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

This is a petition for mandamus to compel the public respondents to issue a writ of execution of the decision of respondent labor arbiter.

On June 16, 1988, petitioner filed a complaint for illegal suspension and damages with the arbitration branch of respondent National Labor Relations Commission (NLRC). The case was assigned to respondent labor arbiter. Both parties submitted their position papers and hearings were held.

On April 28, 1989, a decision was rendered by the said arbiter the dispositive portion of which reads as follows:

"WHEREFORE, respondent is hereby ordered to reinstate complainant to his former position as Token Vendor with full backwages from the time he was illegally dismissed on May 25, 1986 (sic) until actually reinstated in the amount of THIRTY THOUSAND TWO HUNDRED FIFTY PESOS (P30,250.00) plus the sum of ONE THOUSAND EIGHT HUNDRED THIRTY THREE PESOS and 20/100 (P1,833.20) representing complainant's salary for twenty (20) days of suspension or the aggregate sum of THIRTY TWO THOUSAND EIGHTY THREE PESOS and 20/100 (P32,083.20) within ten days from receipt of this decision.

"The backwages shall be subject to future computation until actually reinstated but not to exceed three (3) years period.

"All other issues are hereby DISMISSED for lack of merit.

"SO ORDERED." [1]

A copy of the decision was received by private respondent Meralco Transit Organization, Inc. on May 15, 1989 and it filed a timely appeal from the decision on May 25, 1989 to the NLRC.

On May 29, 1989, petitioner filed a motion for execution with the respondent labor arbiter alleging that the appeal was not perfected for failure of private respondent to file a bond as prescribed in Republic Act No. 6715. The labor arbiter did not act on the motion and forwarded the records to the respondent NLRC before which the case is now pending appeal.

Hence, this petition was filed to compel the remand of the records of the case to the respondent labor arbiter in order that a writ of execution may be issued. The following issues are raised in this petition:

"I Did the Decision rendered by the respondent Labor Arbiter become final and executory when the private respondent failed to post a bond in order to perfect its appeal?

"II Does the respondent Labor Arbiter have any discretion to refuse to resolve petitioner's Motion for Execution and to elevate the records of the case on appeal to respondent NLRC when his Decision has already become final and executory?

"III Is it discretionary for respondent NLRC to treat a case as if an appeal has been perfected when the Decision appealed from involves a monetary award and the employer has not posted any bond?"[2]

Petitioner cites Section 12 of Republic Act No. 6715 which reads as follows:

"SEC. 12. Article 223 of the same Code is amended to read as follows:

"ART. 223. Appeal. - Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards or orders. Such appeal may be entertained only on any of the following grounds:

"(a) If there is prima facie evidence of abuse of discretion on the part of the Labor Arbiter;

"(b) If the decision, order or award was secured through fraud or coercion, including graft and corruption;

"(c) If made purely on questions of law; and

"(d) If serious errors in the findings of facts are raised which would cause grave or irreparable damage or injury to the appellant.

"In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from. x x x".

Considering the foregoing provision of the law, petitioner alleges that because of the failure of private respondent to post a bond the decision has become final and executory.

Petitioner argues that a motion for reconsideration cannot be filed with the respondent labor arbiter as the latter merely failed to resolve the motion for execution and sent the records of the case to respondent NLRC. Petitioner further contends that he cannot seek a reconsideration from respondent NLRC as it has no jurisdiction over the appeal private respondent having failed to perfect its appeal. Petitioner asserts that it is the ministerial duty of the respondent NLRC to remand the records and for the respondent labor arbiter to execute his decision.

The proper step that the petitioner should have taken was to file a motion to dismiss appeal and to remand the records with the respondent NLRC alleging therein that the decision had become final and executory. It is not true that respondent NLRC has no jurisdiction to act on this case at all. It has the authority to dismiss the appeal if it is shown that the appeal has not been duly perfected. It is only when the respondent NLRC denies such motion and the denial appears to be unlawful that this petition for mandamus should be filed in this Court.

Under Section 3, Rule 65 of the Rules of Court, it is provided:

"SEC. 3. Petition for mandamus.- When any tribunal, corporation, board, or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court alleging the facts with certainty and praying that judgment be rendered commanding the defendant, immediately or at some other specified time, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the defendant."

In this case it has not been shown that either the respondent labor arbiter or respondent NLRC has unlawfully neglected the performance of an act which the law specifically enjoins them as a duty to perform or has otherwise unlawfully excluded petitioner from a right he is entitled to. In the case of the respondent labor arbiter, he has not denied the motion for execution filed by the petitioner. He merely did not act on the same. Neither had petitioner urged the immediate resolution of his motion for execution by said arbiter. In the case of the respondent NLRC, it was not even given the opportunity to pass upon the question raised by petitioner as to whether or not it has jurisdiction over the appeal, so the records of the case can be remanded to the respondent labor arbiter for execution of the decision.

Obviously, petitioner had a plain, speedy and adequate remedy to seek relief from public respondents but he failed to avail himself of the same before coming to this Court. To say the least, the petition is premature and must be struck down.

WHEREFORE, the petition is DISMISSED without pronouncement as to costs.

SO ORDERED.

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

[1] Pages 20 to 21, Rollo.

[2] Pages 6 to 7, Rollo.

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