

**SEALAND SERVICE. INC., RAMON ASCUE AND RODNEY MILLER,
PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION,
LABOR ARBITER EVANGELINE LUBATON AND BIENVENIDO A. JUAN,
RESPONDENTS.**

G.R. No. 90500. October 05, 1990

Ponente: REGALADO, J.

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REGALADO, J.:

Petitioners assail the resolution of the National Labor Relations Commission (NLRC) dated September 27, 1989 ordering the execution of its final and executory decision dated April 3, 1986, the present controversy having arisen from the antecedent facts that follow.

The NLRC, in its decision in NLRC-NCR Case No. 10-3532-84 dated April 3, 1986, affirmed with modification the decision of the labor arbiter, declared illegal the suspension and dismissal of herein private respondent by herein petitioners and ordered the latter to reinstate the former to his former position, with backwages from the date of said illegal suspension and dismissal on September 26, 1984 to the date of his actual reinstatement without loss of seniority and other privileges. It however deleted the award of moral and exemplary damages.[1]

The said decision having been brought to us on certiorari, docketed as G.R. No. 75066, we affirmed the same in our resolution of August 15, 1988, as follows:

"G.R. No. 75066 (SEALAND SERVICE. INC. et al. v. BIENVENIDO A. JUAN, et al.). – After deliberating on the petition, the comments thereon of the public and private respondents, and the replies thereto, the Court Resolved to DISMISS the said petition for failure to show that the public respondent committed grave abuse of discretion in holding that the private respondent was invalidly dismissed after a hurried investigation in which he was not given adequate opportunity to defend himself and that his preventive suspension was without legal justification, there being no imminent threat to the life or property of the employer, or its employees. As for the petitioner's claimed newly-discovered evidence, the same constitutes belated charges that cannot be raised in the instant petition, especially after the petitioner had itself earlier limited its ground for discharging the private respondent to his alleged dishonesty in claiming reimbursement for the questioned entertainment expenses. The temporary restraining order dated July 16, 1986, is LIFTED."[2]

and petitioners' motion for reconsideration was denied with finality in our resolution dated September 14, 1988.[3]

The NLRC, after the resolution of September 14, 1988 had become final and executory, issued a computation of the backwages due to private respondent comprising the period, from September 26, 1984 to December 31, 1988 and deducting earnings elsewhere as submitted by the complainant, in the total amount of P643, 388.76.[4]

Thereafter, private respondent filed a motion for the issuance of a writ of execution to enforce the payment of the net amount of P643,388.76 as backwages and his reinstatement. Petitioner, opposed the motion on the ground that the decision had been rendered moot and academic by the fact that private respondent obtained a substantially

equivalent and regular employment elsewhere, aside from the fact that the position formerly occupied by him is presently occupied by another on a permanent and regular basis; and With respect to the computation of the award of backwages, the same should be computed only up to April, 1986, because on such date he was already, employed by the Mabuhay Brokerage, Inc.[5]

Acting on said motion and opposition thereto, respondent labor arbiter issued an order, dated April 26, 1989, granting the issuance of a writ of execution as prayed for by herein private respondent.[6]

Petitioners then appealed to the NLRC seeking the setting aside of the said order of the labor arbiter on the grounds that (1) complainant has obtained a substantially equivalent and regular employment which precludes his reinstatement to his former position with the company; and (2) the award of backwages beyond the date when complainant obtained said substantially equivalent and regular employment constitutes unjust enrichment.[7]

On September 27, 1989, the NLRC issued a resolution with the following dispositive portion:

"WHEREFORE, under the premises, the Order appealed from is hereby AFFIRMED, and the appeal is DISMISSED, for lack of merit.

"Let the records of this case, be remanded to the Arbitration Branch of origin for execution and enforcement of the final and executory decision of the Labor Arbiter, dated 4 October 1985, as affirmed, with modification by the NLRC Decision dated 3 April 1986."[8]

resulting in petitioners' coming to the Court on October 26, 1989 through the instant petition for certiorari with preliminary injunction and prayer for the issuance of a temporary restraining order.

On November 6, 1989, the labor arbiter issued a writ of execution for the payment of P643,388.76, representing full backwages of private respondent. On December 7, 1989, private respondent, moved for an alias writ of execution alleging that, petitioners refused to reinstate him as directed and stopped payment of the garnished amount of P432,475.64 intended as partial satisfaction of the unpaid balance of the award in the amount of P617,681.82. An alias writ of execution was granted on December 13, 1989.[9]

On December 13, 1989 we issued a temporary restraining order enjoining respondents from enforcing the NLRC resolution dated September 27, 1989, in NLRC-NCR No. 10-3532-84.[10]

A review of the records of the case shows that the labor arbiter, pursuant to the questioned resolution of the NLRC, issued a writ of execution based on the computation made by the Acting Chief of the Research and Information Unit of the NCR-Arbitration Branch, awarding full backwages beyond three (3) years to private respondent, less earnings obtained by him elsewhere.

We have constantly adopted the policy of awarding backwages to illegally dismissed employees to three (3) years without qualification or deduction,[11] This policy applies even to final decisions awarding backwages in excess of three years.[12] The fact that the original judgment omitted the three year restriction is of no moment. The omission must be considered a clerical error and the three-year limitation should be considered as written into the judgment.[13]

As we ruled in *Mansalay Catholic High School vs. National Labor Relations Commission, et al.* :[14]

"x x x Even if the decision of the NLRC that was being enforced through execution has become final and executory, the same should be interpreted and implemented in that in cases of illegal dismissal, the backwages that the employee, should be entitled to should be for a period of not exceeding three (3) years. The excuse of the NLRC that the decision has become final and executory and cannot be modified is puerile. Such decision is subject to this rule. Any decision or order granting backwages in excess of three (3) years is null and void as to

the excess. A departure therefrom constitutes a grave abuse of discretion."

Hence, in the case at bar, the open-ended duration prescribed 'in the decision sought to be enforced by the questioned resolution should be subject to said limitation and the award of backwages should therefore be limited to three (3) years without qualification or deduction. The computation of the award made by the labor arbiter in excess of this limit is null and void and the writ of execution issued pursuant thereto should be set aside.

It may be mentioned in passing that the amendatory provision, in Republic Act No. 6715, which entitles an employee who is unjustly dismissed from work "to his full backwages inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement," has no application in the case at bar, said amendment having taken effect on March 21, 1989,[15] after the decision sought to be enforced in the case had become final and executory. We have ruled in *Lanton et al vs. National Labor Relations, Commission, et al.*[16] that said amendment has no retroactive application.

We reject the contention of petitioner that the award of backwages should be further limited to a period of one (1) year and seven (7) months, or not beyond April 1986 when private respondent supposedly obtained a substantially equivalent and regular employment.

Firstly, petitioners failed to present sufficient evidence to prove said allegation. The claim of Atty. Sofronio Larcia, petitioner's personnel officer, that private respondent had been employed with Mabuhay Brokerage, Inc. as early as April, 1986 is merely based on the latter's application for employment, in response to the anonymous advertisement of petitioners of a then vacant managerial position, wherein private respondent allegedly stated that he was employed with Mabuhay Brokerage Inc. This is not sufficient, in the absence of other, evidence to support the conclusion that private respondent was actually employed in a substantially equivalent and regular employment.

Secondly, to take cognizance of said issue will defeat the very reason for the Court's adoption of the three-year limit without qualification or deduction, that is, to avoid protracted delay in the execution of the award for backwages due to inevitable extended hearings and unavoidable delays and difficulties in determining the deductible earnings pendente lite of laid-off employees ordered to be reinstated with backwages but subject to said deductions.

The three-year limit was adopted, to relieve the employees from proving or disproving their earnings during their lay-off and the employers from submitting counterproofs, and obviates the twin evils of idleness on the part of the employee "who would with folded arms, remain inactive in the expectation that a windfall would come to him" and attrition and protracted delay in satisfying such award on the part of unscrupulous employers who have seized upon the further proceedings to determine the actual earnings of ' the wrongfully dismissed or Laid-off employees to hold unduly extended hearings for each and every employee awarding backwages and thereby render practically nugatory such award and compel the employees to agree to unconscionable settlements of their backwages award in order to satisfy their dire need.[17]

Thirdly, the fact now being alleged by petitioners was already existing at the time the main case was pending hence petitioners should have raised the same before the decision therein awarding full backwages to private respondent and ordering his reinstatement became final and executory. Subject to settled exceptions, this issue raised by petitioners is not one of them, once a judgment becomes final all the issues between the parties before it are deemed resolved and laid to rest.[18]

On the issue, of reinstatement, however, notwithstanding finality of the decision thereon, we believe that to the

same at this juncture would no longer serve any prudent purpose. The non-enforcement of this particular relief is dictated and justified by the consideration that supervening facts and circumstances have transpired which execution on that score unjust or render such execution equitable.[19] As we have observed' in previous cases, the relationship between petitioners and private respondent has severely strained by reason of their respective imputations of bad faith which is very evident from the vehement and consistent stand of petitioners in refusing to reinstate private respondent. For the same reason stated in said cases, that is to prevent further delay in the execution of the decision to the prejudice of private respondent and to save him from the agony of having work anew with the petitioners under an atmosphere of antagonism, and so that the latter do not have to endure the continued services of private respondent for whom they have lost confidence, private respondent should be awarded separation pay as an alternative to reinstatement.[20]

The separation pay is hereby ordered to be computed from the start of the employment up to the time of 'termination thereof, including the period of imputed service from which private respondent is entitled to backwages. The salary rate prevailing at the end of the three-year period of putative service should be used in such computation.[21]

WHEREFORE, conformably with the foregoing considerations, the resolution of respondent National Labor Relations Commission of September 27, 1989 is hereby MODIFIES pro tanto and it is hereby directed to limit the award of backwages to private respondent to three (3) years without qualification or deduction, and to require petitioners to pay private respondent separation pay, as hereinbefore indicated and ordered in lieu of reinstatement. The writ of execution dated November 6, 1989 and the alias writ of execution of December 13, 1989, both granted and issued by the labor arbiter, are hereby NULLIFIED and SET ASIDE. The temporary restraining order issued on December 13, 1989 is hereby made permanent. This judgment is immediately executory.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, and Sarmiento, JJ., concur.
Paras, J., on leave.

[1] Rollo, G.R. No. 75066, 27-31.

[2] Ibid., id., 113.

[3] Ibid., id., 133.

[4] Rollo, 80-81.

[5] Ibid., 22.

[6] Ibid., 18-19.

[7] Ibid., 18-19.

[8] Ibid., 25.

[9] Comment of Public Respondents, 9; Rollo, 82.

[10] Rollo, 48-50.

[11] Mercury Drug. Co., Inc. et al. vs. Court of Industrial Relations, et al., 56 SCRA. 694 (1974); Associated Anglo-American. Tobacco Corporation and/or Ngo Ching vs. Lazaro, etc. et al., 125 SCRA 463 (1983);

Philippine Airlines, Inc. vs. National Labor Relations Commission, et al.: 126 SCRA 223 (1983); Panay Railways, Inc. vs. The National Labor Relations Commission, et al. 137 SCRA 480 (1985), to mention a few.

[12] Lepanto Consolidated Mining Company vs. Encarnacion, et al., 136 SCRA 256 (1985); Lepanto Consolidated Mining Company vs. Olegario, et al. 162 SCRA 512 (1988); St. Louis College of Tuguegarao vs. National Labor Relations Commission, et al., G.R. No. 74214 August 31, 1989.

[13] Mariners Polytechnic School, et al. vs. Leogardo, Jr. etc., et al., 171 SCRA 597 (1989).

[14] 172 SCRA 465 (1989)

[15] Development Bank of the Philippines vs. The Hon. Secretary of Labor, et al., G.R. No. 79351, November 28, 1989; Development Bank of the Philippines vs. National Labor Relations Commission, et al., G.R. No. 86932, June 27, 1990.

[16] G.R. No. 82028, January 29, 1990.

[17] Mariners Polytechnic School, et al vs. Leogardo, Jr., etc., et al., ante citing Feati University Faculty Club (PAFLU) vs. Feati University, et al., 58 SCRA 395 (1974).

[18] Zansibarian Residents Association, etc. vs. Municipality of Makati, et al., 135 SCRA 235 (1985); Republic, etc. vs. Reyes, etc., et al., 155 SCRA 313 (1987).

[19] See Vda. de Albar, et al. vs. Carandang, et al., 6 SCRA 211 (1962); Heirs of Guminpin, etc., et al. vs. Court of Appeals, et al., 120 SCRA 687 (1983); Luna, et al. vs. Intermediate Appellate Court. et al., 137 SCRA 7 (1985).

[20] CityTrust Finance Corporation, etc. vs. National Labor Relations Commission, et al., 157 SCRA 87 (1988); Philippine Associated Smelting and Refining Corporation (PASAR) vs. National Labor Relations Commission. et al., 174 SCRA 551 (1989); Esmalin vs. National Labor Relations Commission. etc. et al., G.R. No. 67880, September 15, 1989.

[21] Grolier International, Inc. vs. Amansec, et al., G.R. No. 83523. August 31, 1989.

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