

DANIEL V. ZARATE, JR., PETITIONER, VS. HON. NORMA C. OLEGARIO, IN HER CAPACITY AS EXECUTIVE LABOR ARBITER; NATIONAL LABOR RELATIONS COMMISSION; AND THE BENGUET ELECTRIC COOPERAT...

G.R. No. 90655. October 07, 1996

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

May a final and executory judgment ordering reinstatement of a dismissed employee be set aside, and may separation pay be granted in lieu thereof? May decisions or orders of labor arbiters be elevated by certiorari to the Supreme Court?

The Court addresses these questions in resolving the instant petition assailing the Order[1] dated August 1, 1989, of Executive Labor Arbiter Norma C. Olegario in NLRC Case No. RAB-I-0015-84 entitled "Daniel V. Zarate, Jr. vs. Benguet Electric Cooperative, Inc., et. al.", where the fallo reads:[2]

"WHEREFORE, the motion for the issuance of an alias writ of execution to enforce the reinstatement aspect of the decision of the Labor Arbiter dated November 20, 1985, is hereby denied.

Respondent cooperative is ordered to pay complainant separation pay of one month for every year of service, a fraction of at least six (6) months being considered as one whole year.

The computation of years of service should include the period from the date of his illegal dismissal up to and until the date of this order, said corresponding with the years during which he should have continued in employment."

Also assailed is the Order[3] dated September 12, 1989, which denied the petitioner's motion for reconsideration for lack of merit.

The Facts

Petitioner was hired by herein private respondent, Benguet Electric Cooperative, Inc. (BENECO), as an accountant by virtue of a probationary appointment effective July 1, 1983 until December 31, 1983. However, in private respondent's plantilla of employees, petitioner's salary was that of a Department Head and under private respondent's Policy No. 3-13, probationary appointments were not to be extended to Department Heads. Learning of this, he confronted private respondent's General Manager, Peter M. Cosalan, regarding his probationary employment. The General Manager then wrote on his appointment paper the words, "designated to the position vacated by Mrs. Rosevida Lopez." Mrs. Lopez happened to be the Manager of the Finance and Administration Department.[4]

On November 28, 1983, the General Manager notified petitioner of the termination of his services effective December 31, 1983 without stating the ground for such termination,[5] prompting petitioner to file on January 13, 1984 a case for illegal dismissal and damages against private respondent and its General Manager before the

respondent National Labor Relations Commission, docketed as NLRC Case No. RAB-I-00115-84.

On April 13, 1985, while the aforementioned case was pending resolution, private respondent through its Board of Directors issued Resolution No. 61-85[6] which recalled petitioner to work and extended to him a temporary appointment in an acting capacity as "Internal Auditor and Supervisor of the Meter Reading, Billing and Collection Division", without prejudice to the outcome of the case he filed against private respondent. Because of this, petitioner reported back to work.

On November 20, 1985, Labor Arbiter Saturnino P. Orate issued a decision in the abovementioned illegal dismissal case finding that the designation of petitioner to the position of Mrs. Lopez was an indication that petitioner had passed the employer's standards during his probationary period thereby making him regular as accountant but not as department head. He thus ordered private respondent "to reinstate the complainant to his former position as accountant without loss of seniority rights, with full backwages from the time his salary was withheld from him up to his actual reinstatement x x x." [7]

Private respondent, on December 16, 1985, appealed the decision to the NLRC. Pending resolution of said appeal, on September 19, 1986, private respondent's Board of Directors, consisting of new members, issued Resolution No. 159-86 terminating the temporary appointment of petitioner "by reason of his defiance of reasonable rules and regulations, aside from the fact that his arrogant attitude towards the Manager (Juan B. Tiongan) and some employees have (sic) caused and continues to cause demoralization, not to mention the fact that discipline in the Cooperative is being prejudiced." [8]

On May 29, 1987, the NLRC issued a decision affirming the findings of the labor arbiter but reducing the award of damages and attorney's fees and limiting the computation of backwages to three (3) years.

On August 27, 1987, private respondent filed a petition for certiorari with this Court docketed as G.R. No. 79529. This Court in an extended resolution dated June 15, 1988 dismissed the petition for lack of merit, "there being no grave abuse of discretion." [9]

The aforestated ruling having become final and executory, herein private respondent satisfied in full the money claims of petitioner. However, in a Manifestation and Motion for Reconsideration dated May 4, 1989 and filed with the Regional Arbitration Branch of NLRC, private respondent alleged that the National Electrification Authority (NEA) had established guidelines for revising the plantillas of electric cooperatives like herein private respondent, in order to achieve cost savings, and in compliance with such NEA guidelines, on July 14, 1987, private respondent revised its plantilla. As a result thereof, the position of accountant formerly occupied by petitioner was not one of those retained, nor was an equivalent one created or provided in the new plantilla. [10] Thus, private respondent moved that it be allowed to pay petitioner separation pay, at the rate of one month for every year of service, in lieu of reinstatement, the latter relief having become unavailable.

At the hearings held on private respondent's motion, it submitted its new plantilla, together with job descriptions pertaining to the positions of chief of the accounting division, bookkeeper, and manager of the administration and accounting department, as sought by petitioner. On the other hand, petitioner filed his Comments with Motion for Issuance of Alias Writ of Execution, to enforce that portion of the decision of the arbiter directing his reinstatement.

After due deliberation, Executive Labor Arbiter Olegario issued her questioned Order holding that reinstatement of the petitioner had become an impossibility because of a supervening event, viz., the abolition of the position he once occupied, and because of the absence of a substantially equivalent position in the new plantilla; furthermore, the respondent executive arbiter ruled that petitioner was not qualified for any of the available existing positions

in the new plantilla. She thus ordered payment of separation pay instead of reinstatement.

A motion for reconsideration[11] filed by petitioner was subsequently denied for lack of merit. Hence, the instant petition, raising the following issues:

The Issues

"1. That the respondent Executive Labor Arbiter acted with grave abuse of discretion when she did not consider private respondent's Board Resolution no. 61-85 (Annex 'A' of the petition) despite the obvious and clear terms thereof.

2. That the respondent Executive Labor Arbiter acted with grave abuse of discretion in issuing the (herein assailed) order (Annex 'L' of the petition) in total disregard to the final and executory judgment that petitioner be reinstated to his former position.

3. That petitioner's constitutional right of security of tenure will be violated if he will not be reinstated to his former position or to an equivalent or substantial position." [12]

In short, petitioner contests the correctness of the Executive Labor Arbiter's order denying reinstatement and granting separation pay instead.

Petitioners avers that it is not true that the position of accountant was abolished, and that the Executive Labor Arbiter's view that reinstatement was no longer possible is untenable aside from raising a new matter.[13] He alleges that the private respondent's personnel groupings (i.e., new plantilla) will show that his position was not abolished and/or that there exist similar or equivalent positions available for him.[14] Also, it is the ministerial duty of the executive labor arbiter to implement the final and executory decision (granting reinstatement) without modification.[15]

The Court's Ruling

Preliminary Issue: Certiorari to SC Improper

At the outset, we note that the petition is dismissible outrightly for being improper, since petitioner ought to have elevated the matter to the National Labor Relations Commission, instead of directly having recourse to this Court. The Labor Code provides for the proper mode of appeal:

"Art. 223. Appeal -- Decisions, awards or orders of the Labor Arbiter are final and executory unless appealed to the Commission [NLRC] by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. x x x"

Moreover, we have repeatedly emphasized, far too many times to recall, that the extraordinary remedy of certiorari will lie only if there be no appeal or any other plain, speedy and adequate remedy available in the ordinary course of law against the acts of respondent.[16] In the instant case, such plain, speedy and adequate remedy consists in appealing the executive arbiter's Order to the NLRC within ten days from receipt thereof. And precisely because of petitioner's failure to avail of the correct remedy expressly provided by law, the subject Order has become final and executory after the lapse of the ten day period. On this count alone, the instant petition should be dismissed outright. Nevertheless, inasmuch as the petition raises a substantial issue, this Court has decided to resolve the same on the merits.

Jurisdiction of this Court in Certiorari

The rule is settled that the original and exclusive jurisdiction of this Court to review a decision of respondent NLRC (or Executive Labor Arbiter as in this case) in a petition for certiorari under Rule 65 does not normally include an inquiry into the correctness of its evaluation of the evidence. Errors of judgment, as distinguished from errors of jurisdiction, are not within the province of a special civil action for certiorari, which is merely confined

to issues of jurisdiction or grave abuse of discretion. It is thus incumbent upon petitioner to satisfactorily establish that respondent Commission or executive labor arbiter acted capriciously and whimsically in total disregard of evidence material to or even decisive of the controversy, in order that the extraordinary writ of certiorari will lie.[17] By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, and it must be shown that the discretion was exercised arbitrarily or despotically. For certiorari to lie, there must be capricious, arbitrary and whimsical exercise of power, the very antithesis of the judicial prerogative in accordance with centuries of both civil law and common law traditions.[18]

Nowhere can we find any grave abuse of discretion by the respondent executive arbiter. What petitioner considers and characterizes as grave abuse are the arbiter's findings that the former position of petitioner had already been abolished, and that there was no equivalent position to which he could be appointed. In respect thereof, we must once more reiterate our much-repeated but not well-heeded rule that findings of fact made by the labor tribunals below which have acquired expertise in matters within their specific and specialized jurisdiction, and which findings are supported by substantial evidence on record (as in this case), are generally entitled to and accorded great respect and even finality and are binding upon this Court,[19] unless petitioner is able to show that the labor arbiter and the NLRC simply and arbitrarily disregarded evidence before them or had misapprehended evidence of such a nature as to compel a contrary conclusion, if properly appreciated.[20] This the petitioner has failed to do.

Furthermore, it should be noted that private respondent adopted its new plantilla on July 14, 1987, in compliance with the directive of NEA, whereas it was only on June 15, 1988 that this Court dismissed the appeal of private respondent in G.R. No. 79529 and ordered with finality the reinstatement of petitioner. Obviously, under the circumstances obtaining, no bad faith can be attributed to private respondent for adopting said new plantilla, especially since this was done at the instance of the NEA and in compliance with its guidelines. As an electric cooperative, petitioner is bound by NEA's orders.

Arbiter's Findings Supported by Substantial Evidence

Moreover, with respect to petitioner's allegation that there were other positions to which he could have been appointed, such as that of Manager of the Finance Department, petitioner had been found by the respondent executive arbiter to be not qualified therefor, which finding stands unrebutted, and all the more demonstrates that his prayer for reinstatement cannot be granted. We quote the executive arbiter thus:[21]

"Indeed, there still exists in respondent cooperative the position of 'Chief, Accounting Division' the qualifications for which are:

'EDUCATION - BSC, Major in Accounting or preferably a CPA

EXPERIENCE - 2 Years experience in Accounting
1 year as Chief Accountant'

but this position is not the one from which complainant was removed, nor is it equivalent to that one. Complainant, at the time of dismissal, was occupying the position of accountant. Furthermore, the job above described very clearly requires experience which complainant admits he does not possess.

Complainant also suggests that he be reinstated to an equivalent position, that of 'Manager, Finance Department', to which he was designated at the time of dismissal.

As shown in the 'position description', the requirements for such a job are the following:

'EDUCATION - BSBA or BSC -- Major in Accounting/Management Preferably a CPA

EXPERIENCE - At least three (3) years in a supervisory position in an

electric cooperative, private electric franchise or in a comparable business enterprise.'

Complainant is wrong. Not only does he lack the necessary requirements for the position, as he confesses, but also such position is not the equivalent of accountant. As clearly reasoned out by Labor Arbiter Orate in his decision of November 20, 1985, he was not a department head at the time of his employment. Thus -

'Viewed from the foregoing, it is our opinion that the complainant is a regular accountant of the respondent but not as Department head as he was only a designated Manager, Finance and Administration, also his salary and Policy No. 3-13 does not govern the nature of his appointment but the appointment to be given by respondent that controls x x x '(Underscoring supplied).'"

To recapitulate, the findings of the respondent executive arbiter are fully supported by substantial evidence, that amount of evidence required to justify a conclusion of an administrative body. Thoroughly discussed are the allegations of both petitioners and private respondent, and in arriving at the conclusion that reinstatement is not possible, the executive arbiter cannot be faulted for any abuse of discretion.

Separation pay in lieu of Reinstatement?

Petitioner avers that the assailed Order of the executive labor arbiter to pay separation pay runs counter to the dispositive portion of the final and executory decision which directs reinstatement.[22] We however agree with the arbiter's disquisition on the matter:

"The rule has always been that where the judgment or order has become executory, a tribunal cannot refuse to issue a writ of execution. But where subsequent facts and circumstances transpire which render such execution unjust or impossible in view of a supervening cause, an official can stop its issuance (see *Butuan City vs. Ortiz, et. al.*, L-18054, December 22, 1961).

This labor Arbiter shares respondents' view that the reinstatement of complainant has become an impossibility because of a supervening cause, the abolition of the position he once occupied.

xxx xxx xxx

There is only one remedy for the situation complainant (herein petitioner) is in. It is certainly not to ram the execution through in spite of the abolition of his former position, but the payment to him of separation pay."[23] [underscoring ours]

"The rule that once a decision becomes final and executory, it is the ministerial duty of the court to order its execution, admits of certain exceptions as in cases of special and exceptional nature where it becomes imperative in the higher interest of justice to direct the suspension of its execution (*Vecine vs. Geronimo*, 59 O.G. 579); whenever it is necessary to accomplish the aims of justice (*Pascual vs. Tan*, 85 Phil. 164); or when certain facts and circumstances transpired after the judgment became final which could render the execution of the judgment unjust (*Cabrias vs. Adil*, 135 Phil. 354)." [24]

The above rule is observed not only in civil cases but in our jurisdiction, also in labor cases. In *Industrial Timber Corp. vs. NLRC*, [25] we held:

"It is true that after a judgment has become final and executory, it can no longer be modified or otherwise disturbed. However, this principle admits of exceptions, as where facts and circumstances transpire which render its execution impossible or unjust and it therefore becomes necessary, 'in the interest of justice, to direct its modification in order to harmonize the disposition with the prevailing circumstances.'"

On the other hand, the payment of separation pay as an alternative relief for petitioner is permitted under paragraph (b) of Section 4, Rule I, Book Six of the Omnibus Rules Implementing the Labor Code, [26] which provides:

"Section 4. Reinstatement to former position --

x x x x x

"(b) In case the establishment where the employee is to be reinstated has closed or ceased operations or where his position no longer exists at the time of reinstatement for reasons not attributable to the fault of the employer, the employee shall be entitled to separation pay equivalent at least to one month salary or to one month salary for every year of service, whichever is higher, a fraction of at least six months being considered as one whole year."

This Court has previously upheld the validity of the alternative remedy of separation pay where reinstatement is not possible. Thus we said in *Kingsize Manufacturing Corporation vs. NLRC, et. al.*:^[27]

"x x x. In general, the remedy for illegal dismissal is the reinstatement of the employee to his former position without loss of seniority rights and the payment to him of backwages. But there may be instances where reinstatement is not a viable remedy as where in the meantime the business of the employer has closed or where the relations between the employer and employee have been so severely strained that it is not advisable to order reinstatement, or where the employee decides not to be reinstated. In such events the employer will be instead be ordered to pay separation pay."

Elsewhere we have held that an illegally dismissed employee is entitled to (1) either reinstatement, if viable, or separation pay if reinstatement is no longer viable, and (2) backwages.^[28]

WHEREFORE, in view of the foregoing, the instant Petition is hereby DISMISSED and the assailed Orders are hereby AFFIRMED. Costs against petitioner.

SO ORDERED.

Narvasa, C.J. (Chairman), Davide, Jr., Melo, and Francisco, JJ., concur.

[1] Rollo, pp. 80-85.

[2] Rollo, pp. 84-85.

[3] Rollo, pp. 97-99.

[4] Rollo, pp. 6-7.

[5] Rollo, p. 45.

[6] Rollo, pp. 42-43.

[7] Rollo, p. 9.

[8] Rollo, p. 119.

[9] Rollo, pp. 44-47.

[10] Rollo, pp. 49-54.

[11] Rollo, pp. 86-93.

[12] Rollo, p. 22.

[13] Rollo, p. 28.

[14] Rollo, p. 29-30.

[15] Rollo, p. 32.

[16] See, for instance, *Restituto C. Palomado vs. NLRC, et. al.* G.R. No. 96520, June 28, 1996.

[17] Vide: *Sta. Fe Construction Co. vs. NLRC, et. al.*, 230 SCRA 593, 597, March 2, 1994, citing *Pan Pacific Industrial Sales Co., Inc. vs. NLRC*, 194 SCRA 633, March 4, 1991.

[18] Cf. *Pure Foods Corporation vs. NLRC, et. al.* 171 SCRA 415, 425-426, March 21, 1989.

[19] *Sta. Fe Construction Co. vs. NLRC, et. al.*, supra.; see also *Loadstar Shipping Co., Inc. vs. Gallo*, 229 SCRA 654, February 4, 1994; *Associated Labor Unions-TUCP vs. NLRC*, 235 SCRA 395, August 16, 1994; *Association of Marine Officers and Seamen of Reyes and Lim Co. vs. Laguesma*, 239 SCRA 460, December 27, 1994; *Maya Farms Employees Organization vs. NLRC*, 239 SCRA 508, December 28, 1994.

[20] *Catatista vs. NLRC, et. al.*, 247 SCRA 46, 55-56, August 3, 1995.

[21] Rollo, pp. 82-83.

[22] Rollo, p. 33.

[23] Rollo, pp. 81-A, 83-A and 84.

[24] *Cruz vs. Leabres*, 244 SCRA 194, 200-201, May 22, 1995, citing *Lipana vs. Development Bank of Rizal*, 154 SCRA 257.

[25] 233 SCRA 597, 601, June 30, 1994, citing *Seavan Carrier, Inc. v. GTI Sportwear Corp.*, 137 SCRA 580; *Lee vs. Hon. De Guzman*, 187 SCRA 276.

[26] Approved on February 16, 1976.

[27] 238 SCRA 349, 357, November 24, 1994.

[28] *Torillo vs. Leogardo, Jr.*, 197 SCRA 471, 477, May 27, 1991.

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