

TALISAY-SILAY MILLING CO., INC., PETITIONER, VS. COURT OF INDUSTRIAL RELATIONS AND TALISAY EMPLOYEES AND LABORERS ASSOCIATION (TELA), RESPONDENTS.

G.R. Nos. 14023 and 14135. January 30, 1960

Ponente: BARRERA, J.

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BARRERA, J.:

These are two petitions for certiorari filed by the Talisay-Silay Milling Co., Inc. seeking to review and set aside the order of the Court of Industrial Relations dated February 10, 1958 and the resolution of the court en banc dated April 11, 1958 in CIR Case No. 788-V (G. R. No. L-14023), and the orders of May 30, 1958 and July 17, 1958 in Case No. 83-ULP Cebu (G. R. No. L-14135). The parties in both cases being the same, and the actions being interrelated and arising out of the same incident, we will take them up jointly and resolve the questions raised therein in a single decision.

On December 17, 1952, the employees and laborers of the Talisay-Silay Milling Co., Inc., members of the Talisay Employees & Laborers Association, hereinafter referred to as the Union, went on strike. On December 24 of the same year, the Talisay-Silay Milling Co., Inc., henceforth to be called the Company, filed with the Court of Industrial Relations a petition to declare the strike illegal (Case No. 788-V). The Union filed its answer and the case was duly heard. During the pendency of the case and by virtue of a stipulation entered into by the parties on February 19, 1953, 400 of the striking laborers and employees were reinstated.

On June 25, 1953, Judge Bautista, sustaining the Company's charge that the strike was illegal, issued an order the dispositive part of which reads:

"For the above considerations, the Court hereby orders that the rest of the strikers who were excluded to return to work in accordance with the stipulation submitted by the parties on February 19, 1953, be immediately reinstated to their former positions in the company.

"The strikers who by virtue of said stipulation returned to their work on February 19, 1953 and those who will return to their former works in the company are not entitled to any compensation during said illegal strike". (Emphasis supplied.)

The parties filed separate motions for reconsideration of said order, both of which were denied by resolution of the court en banc on August 12, 1953. The Company received copy of this order of denial on October 30, 1953.

On November 3, 1953, the Company filed notice to appeal to the Supreme Court from that portion of the decision ordering reinstatement of the strikers to their former positions, and the case was actually filed and docketed in this Court as G. R. No. L-7228[*]. The records show, however, that prior to this appeal, that is, on October 7, 1953, the Company re-admitted to the service 74 more of the laborers and employees who joined the strike.

On March 17, 1954, pending resolution by this Court of the matter on appeal, the Union, invoking Section 14 of Commonwealth Act 103, as amended, filed with the Court of Industrial Relations a motion for execution of the

order of June 25, 1953. The Company opposed this move and offered "to file a bond in the amount (to be fixed by the court) sufficient to cover the wages of the striking laborers who have not been re-admitted to their work in the petitioner company". These motions, however, were not acted upon by the Industrial Court. On November 29, 1955, this Court, holding that the strike was not illegal, affirmed the order of reinstatement this wise:

"We are therefore of the opinion that the respondent court, notwithstanding our diverging point of view, did not err in ordering the reinstatement of the strikers who were excluded by the management without back pay, and, hence, we affirm the decision appealed from, without pronouncement as to costs." (G. R. No. L-7228).

On January 16, 1956, the court issued a writ of execution by virtue of which, of the 185 persons appearing in the list submitted by the Union, 70 were re-instated on January 27 and another group of 46 on January 30, 1956; 10 were refused admission allegedly for having been found unfit for work; 3 separated for cause; 15 were laid off but given separation pay; 3 were already dead; 15 were found already working; 5 were non-strikers; 10 were laid off even before the strike, and 8 were discovered not in the payroll.

On February 5, 1958, the Union represented by a new counsel, filed in the Court of Industrial Relations an urgent ex-parte motion for immediate execution of back wages, claiming that therein subject laborers were entitled to back pay from June 25, 1953, when they were ordered reinstated, up to January 30, 1956, when they were actually re-admitted to the service. And over the Company's opposition thereto, the court in its order of February 10, 1958, directed the Chief Examiner of the court to make the necessary computation of the back wages due the laborers concerned, preparatory to the issuance of the writ prayed for. The Company moved to reconsider said order on the ground that it was not justified either by the order of June 25, 1953 or of the decision of the Supreme Court in G. R. No. L-7228, which motion was denied by resolution of April 11, 1958, although following the ruling laid down by this Court in the case of Rizal Cement Company vs. Bautista, G. R. No. L-10312, promulgated July 26, 1957, the order of February 10, 1958 was modified as to cover back wages due the laborers only from November 10, 1953 (10 days after the Company received notice of the denial of its motion for reconsideration of the order of June 25, 1953) up to the date of their actual reinstatement. The Company thus filed with this Court a petition to review the aforesaid orders (G. R. No. L-14023). Upon petitioner's filing a bond in the sum of P10,000.00, this Court issued a writ of preliminary injunction enjoining the respondent Court of Industrial Relations from executing the orders of February 10 and April 11, 1958 in CIR Case No. 788-V.

Upon the other hand, the records in G. R. No. L-14135 (CIR Case No. 83-ULP-Cebu) disclose that while the Company, in compliance with the writ of execution issued by the lower court, reinstated strikers on January 27 and 30, 1956, these laborers were assigned not to their former positions but were employed on "rotation basis". And a few days after their reinstatement, 143 members of the Union that participated in the strike each received written notice of separation, and in fact were actually dismissed in March, 1956. These acts of the Company became the subject of a new complaint for unfair labor practice lodged by the Union against the Company in the Court of Industrial Relations, which was later docketed as Case No. 83-ULP-Cebu.

In its answer to this complaint, the Company denied the charges of discrimination and unfair labor practice, contending that the dismissal of the complainants was brought about by economic necessity in the sense that with their (the laborers) reinstatement, the Company became overmanned. After due hearing, the court held on December 28, 1957:

"After due consideration of the evidence adduced by the parties, this Court is convinced that the 143 individual complainants in this case were discriminated against by reason of their membership in the complainant union and the intended effect of their dismissal Was to discourage their continuous membership in the said union. It is clear from the said evidence that respondents did not adopt reasonable bases for determining the persons to be laid off assuming that there was an imperative necessity to do so. Instead of apportioning proportionately

among the members of the three (3) unions, the employees to be laid off or taking into consideration seniority and efficiency the respondent singled out all the members of the complainant union. The uncontradicted evidence for the complainants also shows that the majority of those laid off had been working for over ten (10) or fifteen (15) years had been working for thirty (30) or thirty-five (35) years (t.s.n., July 24, 1957, p. 61).

"WHEREFORE, to remedy effects of such unfair labor practice and to effectuate the policies of Republic Act No. 875, the respondent is hereby ordered to reinstate immediately the following 143 individual complainants to their former positions without loss of seniority and other rights and privileges with full back wages from the time of their actual dismissal up to their actual reinstatement: * * *."

The Company sought reconsideration of this order, but was denied. Then it filed a petition in this Court to review the said order; the petition was dismissed by resolution of this Court of March 18, 1958 for being factual and for lack of merit (G. R. No. L-13576).

On March 31, 1958, the lower court directed the Chief Examiner of the Court of Industrial Relations to proceed to the Company premises and make the necessary computation of the back wages due the laborers, and on April 22, 1958, the Examiner submitted his report placing the Company's liability at P298,956.74. The Company interposed an objection to this report, claiming that the computation of back wages should have been based not on the payrolls for 1951 and 1952, but those for 1956 and the years thereafter. It was also alleged that the computation was excessive, because it included wages allegedly due certain laborers named in the motion whose conditions preclude the payment of such back salaries and, by computing the back wages for the off-season period on the basis of 6 working days a week instead of the actual practice of only 5 days a week. The Company, therefore, prayed the Court to reject the report, or that it be modified to the extent indicated in its objection.

As a consequence of this opposition, an amended report was submitted on May 29, 1958, computing the amount due the laborers whose claims were not objected to at P234,974.96, while those claims that were opposed amounted to P41,291.84.

On May 30, 1958, upon motion of the Union, the court ordered the Company to deposit in said court the sum of P234,974.96. The Company once again moved to reconsider this order and prayed that the computation of the back wages be referred to the Wage Administration Service of the Bureau of Labor. This motion having been denied on July 17, 1958, the Company filed in this Court a petition to review the aforementioned orders (of May 30 and July 17, 1958, docketed as G. R. No. L-14135). As prayed for by petitioner, this Court also issued a writ of preliminary injunction enjoining the respondent court from carrying into effect the said orders.

It may well be remembered, before proceeding with the discussion of the issues raised herein that the petitioner in these cases is seeking to review only the orders of February 10, 1958 (computation of back wages) and April 11, 1958 (denying the motion for reconsideration in CIR Case No. 788-V), and the orders of May 30, 1958 (requiring the Company to deposit in court the sum of P234,974.96) and of July 17, 1958 (denying its motion for reconsideration). Thus, the questions presented for our determination are: (1) whether the strikers who were ordered reinstated on June 25, 1953 but were actually returned to the service only on January 27 and 30, 1956 are entitled to back wages for the duration of the appeal instituted by the Company; (2) whether the Company has the right to dismiss these strikers, reinstated by order of the court, because of a retrenchment policy adopted by the Company and after complying with the 30-day notice of separation required by Republic Act 1052; and (3) whether the Court of Industrial Relations may lawfully order the Company to deposit the amount allegedly due the striking laborers.

(1) Regarding the first question, that is, whether the laborers are entitled to their wages from the time their immediate reinstatement to their former positions was ordered up to their actual re-instatement in January, 1956, after this Court affirmed the said order, the Company contends that neither the order of June 25, 1953 nor the

decision of this Court affirming the latter order justified the payment of such back wages, because although the order of June 25, 1953, as affirmed by this Court, specifically provides for the immediate reinstatement of the laborers, yet no obligation on its part to pay the laborers any such wages was created until the order of reinstatement was affirmed by the Supreme Court. We find no merit in this contention.

Section 14 of Commonwealth Act 103, as amended by Commonwealth Act 559, provides:

"SEC. 14. Enforcement of awards, orders, and decisions. At the expiration of ten days from the date of the award, order, or decision, in cases brought under the provisions of section four hereof, judgment shall be entered in accordance therewith, unless during said ten days an aggrieved party shall appeal therefrom to the Supreme Court of the Philippines by writ of certiorari as hereinafter provided. The institution of such an appeal shall not, however, stay the execution of the award, order, or decision sought to be reviewed, unless for special reasons the Court shall order that the execution be stayed, in which event the Court in its discretion, may require the appellant to deposit with the clerk of the Court such amount of salaries or wages due the employees, laborers, tenants or farm laborers concerned under the award, order, or decision appealed from or require him to give bond in such form and of such amount as to insure compliance with the award, order, or decision in case of the same is affirmed. The Court may also require the appellant to deposit with the clerk of the Court every week, on a day therein to be fixed by the Court, an amount equivalent to the salaries or wages to be earned during the time of the appeal by the employees or laborers, or tenants or farm laborers whose reinstatement in, or readmission to, their employment has been decreed by the Court. The failure to make such deposit shall vacate the order for stay of execution. When writs of execution are so issued the proceeds thereof shall be kept by the Clerk of the Court of Industrial Relations in his custody, pending decision of the appeal, to be disposed of in conformity with the final judgment of the Supreme Court. (*Italics supplied.*)

It is clear from the foregoing legal provision that a decision, award, or order of the Court of Industrial Relations becomes self-executory 10 days after its promulgation notwithstanding the institution of an appeal therefrom, unless at the discretion of the court, the execution thereof is expressly ordered suspended (1) for special reasons, and (2) upon the appellant's depositing in court either the amount of salaries or wages due the laborers or employees under the order, decision or award appealed from, or a bond of such amount that would insure its compliance. It must be for this purpose that the Company, in opposing the execution of the order of reinstatement during the pendency of the appeal, prayed for by the Union, offered to file a bond in an amount sufficient to cover the wages of the striking laborers, which bond, pursuant to Commonwealth Act 103, as amended, would guarantee full satisfaction of the order appealed from in the event that the same is affirmed by the appellate court. The petitioner Company at this stage cannot, therefore, deny the existence of the laborers' right to reinstatement and compensation from the date such order became executory because by offering to file a bond, it had in effect recognized the existence of such right. And although it is true that the lower court failed to act on the Union's motion, neither did it order the stay of the execution of the order of reinstatement. Hence, 10 days after the Company was notified of the resolution denying its (the Company's) motion for reconsideration of the order of June 25, 1953, the laborers' right to re-employment and wages accrued.^[1] Consequently, and by reason of its failure to abide by the aforesaid order, the Company is liable for back wages due the laborers from the date their right to reinstatement accrued up to the time they were actually reinstated.

Petitioner Company's contention that the aforementioned Section 14 of Commonwealth Act 103, as amended, is unconstitutional when it provides that appeal of an award, order, or decision of the Court of Industrial Relations to the Supreme Court shall not stay the execution of the award, order, or decision unless the Court of Industrial Relations shall order such execution stayed, because it infringes upon the Supreme Court's plenary jurisdiction under the Constitution to review, revise, reverse, modify or affirm on appeal, certiorari or writ of error, final judgments and decrees of inferior courts, needs no serious consideration. The questioned section of Commonwealth Act 103, as amended, is similar to the provisions of the Rules of Court empowering the courts of

first instance to order the execution of their judgment pending the appeal if for some special reasons, such execution is warranted.[2] This rule has been applied in cases without number and to our knowledge it has never been seriously contended that it imposes a limitation upon the constitutional appellate jurisdiction of the Supreme Court.

(2) With respect to the subsequent separation of 143 of the striking laborers after their reinstatement as ordered by the Court, the Company claims that such action can not be considered as an unfair labor practice because aside from the fact that the dismissal was brought about by economic necessity, Republic Act 1052 allows such termination of employment upon serving notice on the employee at least one month in advance, which was complied with in these cases. This theory cannot be sustained.

Passing upon the identical question of whether an employee who was previously dismissed by the employer but was reinstated by court order may again be dismissed under Republic Act 1052, this Court said:

"* * *. While Republic Act No. 1052 authorizes a commercial establishment to terminate the employment of its employee by serving notice on him one month in advance, or, in the absence thereof, by paying him one month compensation from the date of the termination of his employment, such Act does not give to the employer a blanket authority to terminate the employment regardless of the cause or purpose behind such termination. Certainly, it cannot be made use of as a cloak to circumvent a final order of the court or as a scheme to trample upon the right of an employee who has been the victim of an unfair labor practice. In other words, the privilege given by that Act to an employer cannot be resorted to if to do so would infringe the law that Congress had enacted to protect labor as against the abuses of capital. One of such abuses which our law condemns, and which has given rise to the many social problems which mar the relationship of labor and capital is unfair labor practice, and this is the act of which said petitioners were condemned. To allow them to take refuge under that Act and obtain by indirect action what they had been expressly enjoined by an express order of the court would be a mockery of law and a travesty of justice. * * *." (Yu Ki Lam, et al. vs. Micaller, 99 Phil., 902; 52 Off. Gaz. (14), 6146.

Granting arguendo that the reinstatement of the strikers, as ordered by the court, made the dismissal of a certain number of laborers imperative, the fact that those who were laid off were precisely the reinstated strikers can hardly be considered merely coincidental especially if we take into account the finding of the lower court that petitioner Company did not adopt reasonable bases to determine the persons to be so separated from the service. That the notice of separation was furnished the laborers a few days after their much delayed, much resisted reinstatement further supports the finding that the dismissal was resorted to rid the Company of the service of these strikers. Certainly, such course of action contravenes the spirit of the Industrial Peace Act, and the court a quo, therefore, committed no error in declaring the same discriminatory and in ordering the reinstatement of the laborers affected to their former positions without losing their seniority and other privileges.

(3) The third issue raised is the correctness and validity of the court's order approving the examiner's computations of back salaries based on the 1951 and 1952 payrolls. The Company contends that as the laborers should have been re-admitted in 1956, their back wages must be based on the payroll for said year and thereafter.

In the first place, the laborers should have been reinstated since November 10, 1953, when the order of immediate reinstatement became executory. Secondly, an order of reinstatement issued by the court after investigating a complaint for unfair labor practice, includes not only back salaries but also other rights and privileges prior to dismissal (Sec. 5-c, Rep. Act 875). The working conditions in the Company in 1951 and 1952, i.e., before the introduction of the so-called retrenchment policy, and wherein the laborers worked on full time basis cannot be but looked at as a right and, therefore, contemplated by the order of the court declaring the complainants entitled not only to reinstatement but to "other rights and privileges with full back wages from the time of their actual dismissal up to their reinstatement".

Furthermore, it may be observed that in the stipulation entered into by the parties on February 19, 1953, the Company even obligated itself to reinstate strikers to "their salaries and their status should be the same as that which they enjoyed before the strike." This means not only reinstatement to their formal status but also to the salaries that they enjoyed before the strike^[3] was declared, that is, before the so-called retrenchment policy was implemented by the Company. As the respondent Industrial Court observed, the computation undertaken by the Court Examiner was in consonance with the leading doctrine in American jurisprudence, thus:

"In determining the rate of pay to be used in computing the award, where there is no fixed wage, or where the work is seasonal or part time, the Board customarily uses as the criterion the employee's average pay in a given period prior to his improper discharge". (Rothenberg on Labor Relations, p. 583, citing authorities).

Anent the validity of the retrenchment system, introduced by the Company after the Court of Industrial Relations took cognizance of the dispute (CIR Case No. 788-V), the record reveals that it was never sanctioned nor authorized by said court. Such actions contravenes Section 19, Commonwealth Act No. 103, as amended by Commonwealth Acts Nos. 335 and 559, which provides that during the pendency of a dispute between the employer and employee, the employer or landlord shall refrain from accepting other employees, and shall permit the continuation in the service of his employees under the last terms and conditions existing before the dispute arose, unless expressly authorized by the court, otherwise the same shall constitute contempt of the Court of Industrial Relations,

In view of all the foregoing, and finding no error in the appealed orders of the Court of Industrial Relations, the same are hereby affirmed, and the writs of preliminary injunction heretofore issued are dissolved, with costs against the petitioner in both cases. So ordered.

Paras, C. J., Bengzon, Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia and Gutierrez David, JJ., concur.

Montemayor, J., took no part.

[*] Talisay-Silay Milling Co. vs. C.I.R., 98 Phil., 17, 51 Off. Gaz., (12), 6200.

[1] Rizal Cement Company vs. Bautista, G. R. No. L-10276, promulgated July 27, 1957.

[2] SEC. 2. Execution discretionary.—Before the expiration of the time to appeal, execution may issue, in the discretion of the court, on motion of the prevailing party with notice to the adverse party, upon good reasons to be stated in a special order. If a record on appeal is filed thereafter, the special order shall be included therein. Execution issued before the expiration of the time to appeal may be stayed upon the approval by the court of a sufficient supersedeas bond filed by the appellant, conditioned for the performance of the judgment or order appealed from in case it be affirmed wholly or in part. (Rule 39, Rules of Court).

[3] Although the strike was declared illegal by the Court of Industrial Relations, nevertheless, the Supreme Court reversed this finding considered the strike legal. See G. R. No. L-7228, *supra*.

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