

ALEJANDRO MONTAÑER, PETITIONER, VS. THE NATIONAL LABOR RELATIONS COMMISSION, LABOR ARBITER PORFERIO REYES, BENJAMIN M. MUÑASQUE AND MINANDANG GUIWAN, RESPONDENTS.

G.R. Nos. 55834-35. February 21, 1983

Ponente: VASQUEZ, J.

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VASQUEZ, J.:

Private respondent Minandang Guiwan who claimed to be employed as a security guard in the petitioner's logging business filed a complaint for illegal dismissal without prior clearance from the Ministry of Labor, and for recovery of overtime and 13th month pay, with the labor arbiter in Davao City. Eventually, the labor arbiter rendered a decision in the case on December 21, 1979 ordering the petitioner to pay Guiwan his full backwages from the date of his illegal dismissal up to the time of his death at the rate of P240.00 a month, the sum of P3,105.00 as overtime pay, and P240.00 as the 13th month pay for 1975.

On May 19, 1980, the labor arbiter issued a writ of execution pursuant to which the Provincial Sheriff of Davao levied on some personal and real properties of the petitioner and scheduled the auction sale thereof on January 9, 1981.

Petitioner claims that he received a copy of said decision only on October 7, 1980. A week later, or on October 14, 1980, he filed an appeal therefrom to the respondent National Labor Relations Commission, a cash appeal bond of P50.00, and asked that the bond to stay execution be fixed so that he could also file the same without unnecessary delay.

Petitioner further avers that after taking an appeal from the decision of the labor arbiter, he was surprised to receive copies of the writ of execution and the notice of auction sale scheduled by the Provincial Sheriff on January 9, 1981. In view thereof, on January 5, 1981, petitioner instituted the instant proceedings for certiorari, prohibition and mandamus with preliminary injunction, praying that the writ of execution be annulled for having been issued prematurely, and that the respondent NLRC be ordered to give due course to the appeal taken by him.

After the public respondent filed its comment to the petition, the same was given due course in the Resolution dated August 5, 1981, and the parties were ordered to submit simultaneously memoranda. Petitioner filed a memorandum in his behalf, but private and public respondents merely adopted the comment of the latter to the petition as their memoranda.

A closer look at this case has led Us to reconsider the giving of due course to the petition. The decision of the labor arbiter has been appealed by the petitioner to the National Labor Relations Commission. It is that body that is called upon to decide the merit of the case on appeal, as well as the timeliness thereof which is being questioned by the public respondent in its comment, but is being upheld by the Executive Labor Arbiter of the public respondents Regional Arbitration Branch No. XI in Davao City.

It appears that this petition was filed in the Supreme Court for the primary purpose of stopping the execution sale scheduled on January 9, 1981. This remedy could have been availed of in the course of the appeal taken to the NLRC, as expressly provided for in Policy Instruction No. 38-A of the Ministry of Labor and Employment dated December 4, 1978, as follows:

"4. Stay of Execution by the NLRC

"Where a verified petition is filed in National Labor Relations Commission, seeking to restrain the enforcement of a decision or order of any Labor Arbiter which has been appealed thereto, a preliminary restraining order or order of stay of execution may be issued in the name of the Commission by the Chairman, the Vice-Chairman, or any of the Presiding Commissioners of its Division, should he find the same to be necessary to prevent undue damage or prejudice to the petitioner, and after filing of a supersedeas bond to be likewise determined by him in accordance with these Instructions."

This issuance shall take effect immediately.

Signed in the City of Manila, this 4th day of December, 1978.

(SGD.) BLAS F. OPLE

Minister"

Inasmuch as the execution sale had been stopped by virtue of the temporary restraining order issued by Us in the Resolution of January 7, 1981, the petitioner may still avail of the remedy referred to above.

We may not pass upon the prayer of the petitioner that public respondent NLRC be ordered to give due course to his appeal, it not appearing that said body had refused to entertain the said appeal for any reason whatsoever.

WHEREFORE, the petition is hereby DISMISSED, without prejudice to the petitioner pursuing the appeal he had taken to the NLRC and, in connection therewith, to apply therein for the stay of the execution ordered by the labor arbiter. The temporary restraining order issued by Us in the Resolution of January 7, 1981 shall be deemed dissolved upon public respondent NLRC taking a contrary action in the proceedings before it.

Teehankee (Chairman), Melencio-Herrera, Plana, Relova and Gutierrez, Jr., JJ., concur.

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