

**IMPERIAL VEGETABLE WORKERS UNION, GRACIANO NAVA,
JUANITO MERIDA, AMADO SIRIBAN, FRANCISCO SINQUEO, CELSO
REDITO, ANTONIO NORIEGA, ANTONIO SARMIENTO, DEOMIDES
REBUENO, LIBRADO BU...**

G.R. Nos. 57005-07. November 23, 1988

Ponente: CRUZ, J.

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CRUZ, J.:

The petitioners seek by writ of certiorari to reverse the order of the respondent judge dismissing their petition for mandamus to compel the release to them of the sum of P49,626.25 representing the separation pay of the regular employees as awarded by the National Labor Relations Commission in its decision dated May 28, 1980. In this same petition, they have also impleaded the other respondents and claim that they have been illegally dismissed and are entitled to reinstatement with backwages instead of mere separation pay, as decreed by the NLRC.

We declare at the outset that the challenge to the aforesaid decision of the NLRC on the merits was not made seasonably and so should be dismissed. The said decision was rendered on May 28, 1980. The petitioners did nothing about it until September 17, 1980, or more than three and a half months later. Moreover, they sought not to impugn it but to implement it. What they filed on that date was a motion for a writ of execution to carry out the said decision. It does not appear that they protested at that time the ruling that they should not be reinstated but be awarded separation pay instead.

Parenthetically, the decision held that as the striking workers refused to return to work after the strike, the private respondent had the right to hire the needed replacements to prevent the disruption of its operations. To order the reinstatement of the complainants would result in the dislocation of these replacements, numbering around 100, who had been under the private respondent's employ for almost six years already. However, considering the circumstances under which the strike was called and the fact that there was no deliberate abandonment of work on the part of the strikers, they should be paid separation benefits equivalent to one-half month's salary for every year of service.[1]

We may add that if this decision had been seasonably appealed to us, we would have affirmed it just the same as there is no showing that the NLRC committed any grave abuse of discretion in its factual findings and in according separation benefits to the petitioners. At any rate, as already stressed, the petitioners have not appealed this decision on the merits and are therefore bound by it now.

Acceptance of separation pay does not necessarily connote waiver of the right to challenge one's dismissal, as we have held in several cases.[2] In those cases, however, the employees maintained their protest while accepting the separation pay as a necessary practical measure to tide them over their financial difficulties. No surrender of their complaint was involved as they continued to press their demand for reinstatement upon the employer.

But it was not so in the case at bar. Upon receipt of the decision of May 28, 1980, the petitioners took no action

whatsoever to question it. They did not file a motion for reconsideration. They did not appeal the decision to this Court. What they did was to move for the issuance of a writ of execution precisely to carry out the decision. And what is more, when the NLRC refused to release the partial award pending completion of the computations being made by the labor arbiter, they went to the respondent judge to compel the execution of the decision. Now, they are assailing that very decision. It is too late for them to do this now.

The only issue to be resolved, therefore, is the validity of the order of the respondent judge dismissing the petition for mandamus.[3]

We hold that the dismissal was valid.

In the first place, the petition, if at all proper, should have been filed with this Court and not the court of first instance. The respondent court (now the regional trial court) is not superior to but only equal in rank with the NLRC, as we held in *Ambrosio v. Salvador*.^[4] Hence, it had no jurisdiction, as it correctly held, to issue a writ of mandamus against the NLRC.

Secondly, the petition was flawed for lack of a cause of action. Even assuming that the respondent court had jurisdiction over the matter, it could not have acted properly thereon as there was as yet nothing to compel. Indeed, the reason why the NLRC could not approve the release of the partial award was the necessity of determining to whom and in what amounts the said award was to be made. The computations were still being made by the labor arbiter. The petitioners' contention is that these computations involved a question of fact that the respondent court should have itself decided. This does not deserve the serious attention of the Court.

The record shows that on October 14, 1981, this Court, after hearing the parties, issued a resolution reading pertinently as follows:

"x x x after clarifying the issues and the facts, it was agreed by the parties that the P49,626.25 now in the possession of the respondent National Labor Relations Commission should be delivered to private respondent whose paymaster shall take charge directly of paying forthwith the corresponding claimants, since private respondent does not question anymore the propriety of the payment thereof, without prejudice to the continuation of hearing before Arbiter Antonio Tirona to determine whether or not there are other claimants who are entitled to payment, and whatever decision Arbiter Tirona may make may be appealed by the aggrieved party following the ordinary course for the purpose. The respondent NLRC and private respondent are enjoined to COMPLY with this resolution within not more than ten (10) days from notice hereof, this resolution being final."^[5]

This resolution was amended on November 18, 1981, thus:

"x x x considering the manifestation and motion of counsel for petitioners dated November 10, 1981 praying that the resolution of October 14, 1981 be amended directing and authorizing the National Labor Relations Commission cashier and/or her representative to disburse and pay the claimants (38 regular employees) the proceeds of the manager's check in the amount of P49,626.25 for reasons stated therein, the Court Resolved to NOTE and GRANT the aforesaid manifestation and motion."^[6]

We assume that the above resolutions have already been complied with. The petitioners refer to a compromise agreement supposedly signed by the parties on November 29, 1982, on the payment and distribution of the balance of the award of separation pay. However, this does not appear in the records before the Court. We are also informed that the records of this case in the NLRC were among those burned in the fire that destroyed its main office in Intramuros, Manila, on December 13, 1983.^[7] The balance of the award, if not yet fully paid, must now be distributed pursuant to the said agreement, if it can be produced, or to a computation based on available relevant evidence.

WHEREFORE, the petition is DENIED. The National Labor Relations Commission is DIRECTED to distribute the balance of the award in accordance with the said compromise agreement, if it is located and accepted by the parties. Otherwise, the computation hearings shall be resumed immediately and completed within thirty days from notice hereof, following which the release of the awards shall be made forthwith. This decision is immediately executory. No costs.

SO ORDERED.

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

[1] Rollo, pp. 52-59.

[2] Philippine Sugar Institute v. CIR, 109 Phil. 452; Carino v. ACCFA, 18 SCRA 183; Mercury Drug Co. v. CIR, 56 SCRA 694; Firestone Filipinas Employees Association v. Firestone Tire and Rubber Company of the Philippines, 61 SCRA 340; AFP Mutual Benefits Association, Inc. v. AFP-MBAI-EU, 97 SCRA 715; Gregorio Araneta University Foundation v. NLRC, 155 SCRA 301.

[3] Rollo, p. 14.

[4] 87 SCRA 217.

[5] Rollo, p. 92.

[6] Ibid., p. 100.

[7] Per certification issued by NLRC Executive Director Pascual Y. Reyes dated October 4, 1988.

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