

UNIVERSITY OF PANGASINAN FACULTY UNION, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND UNIVERSITY OF PANGASINAN, RESPONDENTS.

G.R. Nos. 64821-23. January 29, 1993

Ponente: ROMERO, J.

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ROMERO, J.:

In the instant petition for mandamus and certiorari, petitioner union seeks to enjoin the respondent National Labor Relations Commission (NLRC) to resolve, or direct the Labor Arbiter to hear and decide, the merits of three of petitioner's unresolved complaints, and to annul and set aside the resolution of the NLRC affirming the decision of the Executive Labor Arbiter dismissing the petitioner's complaints for violation of certain labor standards laws but requiring respondent university to integrate the cost of living allowance into the basic pay of the covered employees and reminding it to pay its employees at intervals not exceeding sixteen (16) days.

The uncontroverted facts show that on various dates, petitioner filed the following complaints against the University of Pangasinan (University for brevity) before the Arbitration Branch of the NLRC in Dagupan City:

1. October 14, 1980: for nonpayment of benefits under P.D. No. 1713 and emergency cost of living allowance (ecola) to part-time teachers, and for prompt and accurate computation of benefits under P.D. No. 451 and the payment of ecolas;
2. November 7, 1980: for nonpayment of all ecolas to instructors from October 18-31, 1980;
3. November 20, 1980: for nonpayment of ecolas under P.D. Nos. 525, 1123, 1614, 1634, 1678 and 1713 for November 1-15, 1980, and extra loads during typhoons "Nitang" and "Osang" on July 21 and 25, 1980, respectively;
4. April 13, 1981: for violation of P.D. No. 1751 and nonpayment of extra loads on February 12-13, 1980 (Anniversary celebration);
5. April 27, 1981: for nonpayment of all ecolas for April 1-15, 1981 to faculty members who were also members of the union;
6. May 21, 1981: for violation of Wage Order No. 1 and delayed payment of salaries; and
7. June 17, 1981: for nonpayment of salary differentials for summer under P.D. No. 451.[1]

The Regional Director in San Fernando, La Union certified six (6) of these complaints to Labor Arbiter Pedro Fernandez of the Dagupan City District Office of the then Ministry of Labor and Employment for compulsory arbitration.[2] According to the petitioner, it was made to understand by Fernandez that the seventh complaint should also be discussed in its position paper. Accordingly, petitioner filed a position paper discussing the merits of all the seven complaints. On the other hand, the University limited its discussion to only four: the complaints filed on April 13, 1981, April 27, 1981, May 21, 1981 and June 17, 1981. Petitioner was of the view that

Executive Labor Arbiter Sotero L. Tumang adopted the stand of the University on the four complaints and accordingly dismissed them in his decision of January 25, 1982.[3]

Observing that in its position paper, the petitioner included matters which were "beyond the scope of the issues alleged in the complaints," said Labor Arbiter discussed the four complaints individually. On the April 13, 1981 complaint, he ruled that because at the time P.D. No. 1123 took effect on May 1, 1977, the University had not increased its tuition fees, there was "nothing to integrate." [4] However, from June 16, 1979 when the University increased its tuition fees, it was obligated to cause the integration of the across-the-board increase of P60.00 in emergency allowance into the basic pay as mandated by P.D. Nos. 1123 and 1751.

On the alleged nonpayment of extra loads handled by the employees on February 12 and 13, 1981 when classes were suspended, Tumang stated that Consuelo Abad, the petitioner's president, had no cause to complain because her salary was fully paid and that, since there were "no complainants for the alleged nonpayment of extra loads for two days," the issue had become academic.

With respect to the April 27, 1981 complaint, Tumang said that since the salary paid to Consuelo Abad and other faculty members for the April 1-15, 1981 period had been earned "as part of their salary for the ten-month period," she was no longer entitled to an emergency cost of living allowance. He added that "payment of emergency cost of living allowance is based on actual work performed except when they (employees) are on leave with pay." Hence, because classes ended in March 1981, the teachers who did not report for work could not be considered on leave with pay and, therefore, they were not entitled to an emergency cost of living allowance.

As regards the May 21, 1981 complaint alleging violation of Wage Order No. 1, Tumang found that the University had actually implemented the additional living allowance of P2.00 a day required therein. On the alleged delay in the payment of salaries of the employees, he rationalized that delays could not be avoided but he reminded the University to pay its employees on time.

The June 17, 1981 complaint was also resolved in favor of the University. Stating that P.D. No. 451 which mandates salary increases is dependent on enrollment and allowable deductions, Tumang ruled that, again, Consuelo Abad had no cause to complain as she had been paid out of the allowable 12.74% for distribution which was a "substantial compliance with P.D. No. 451." [5] The dispositive portion of the decision states:

"IN THE LIGHT OF THE FOREGOING CONSIDERATION, the above-entitled cases are dismissed for lack of merit. Respondent however, is required to integrate the allowance of P60.00 under P.D. 1123 into the basic pay of the covered employees if the same has not as yet been complied with. Respondent is also reminded to pay the employees at intervals not exceeding sixteen (16) days pursuant to Article 102 of the Labor Code.

SO ORDERED."

The petitioner appealed the said decision to the NLRC. In its resolution of June 20, 1983, the NLRC affirmed the decision of Executive Labor Arbiter Tumang. Hence, the instant petition for mandamus and certiorari with the following prayer:

"WHEREFORE, the foregoing premises considered, it is respectfully prayed that this petition be given due course and that judgment issue:

1. Declaring petitioner as possessed with capacity to represent its members in the complaints it filed thru its president, Miss Consuelo Abad, against private respondent, and the complaints are pertaining to the members who are entitled under the law to the claims sought herein, not to Miss Abad alone;
2. Annuling and setting aside the appealed resolution insofar as the issues of nonpayment of Ecola for April 1-15, 1981 and nonpayment of salary differentials for summer of 1981 under P.D. No. 451 are concerned;

3. Ordering private respondent to pay covered members of petitioner their Ecola for April 1-15, 1981 and their salary differentials for summer of 1981 pursuant to the mandate of P.D. 451;
4. Enjoining public respondent to resolve on the merits the issues of nonpayment of extra loads of February 12-13, 1980 and violation of Wage Order No. 1 which were properly brought on appeal to said office;
5. Enjoining public respondent to resolve on the merits the issues or grievances alleged in the complaints filed on October 14, November 7 and November 20, all in 1980, which were not resolved by the labor arbiter but nonetheless appealed to public respondents, or
6. Enjoining public respondent to order or direct the labor arbiter to resolve on the merits the said issues or grievances alleged in the complaints mentioned in the next preceding paragraph;
7. Attorney's fee in such amount as this Honorable Tribunal may deem just and reasonable in the premises;
8. Ordering private respondent to pay costs of suit, including this appeal.

Petitioner further prays for safeguards and/or measures to insure the correct computation of the amount of claims herein sought due to each covered member of petitioner, and for such other reliefs just and equitable in the premises."[6]

We shall first deal with the propriety of the special civil action of mandamus. In this regard, petitioner contends that the NLRC should have, in the exercise of its appellate jurisdiction, resolved the issues raised in the three (3) complaints filed on October 14, November 7 and November 20, 1980 or, in the alternative, ordered the Labor Arbiter to hear and decide the aforementioned three (3) complaints, it having the power of supervision over Labor Arbiters.

Sec. 3, Rule 65 of the Rules of Court provides:

"SECTION 3. Petition for Mandamus. - When any tribunal, corporation, board, or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court alleging the facts with certainty and praying that judgment be rendered commanding the defendant, immediately or at some other specified time, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the defendant."

As succinctly provided in this section, anyone who wishes to avail of the remedy of mandamus must state in a verified petition "the facts with certainty." On account of this requirement, mandamus is never issued in doubtful cases and showing of a clear and certain right on the part of the petitioner is required.[7] Indeed, while the labor arbiter is duty bound to resolve all complaints referred to him for arbitration and, therefore, he may be compelled by mandamus to decide them (although not in any particular way or in favor of anyone),[8] we find that the peculiar circumstances in this case do not merit the issuance of the writ of mandamus.

Petitioner admits that only six of the complaints were certified to Labor Arbiter Fernandez for compulsory arbitration. It failed, however, to allege why this was the case or whether it had exerted any effort to include the remaining complaint in the certification. What it stresses is the alleged assurance of Labor Arbiter Fernandez that the seventh complaint may be discussed in its position paper. It turned out, however, that, according to the un rebutted allegation of the Solicitor General, Labor Arbiter Fernandez inhibited himself from handling the cases referred to him as he was teaching at the University. Hence, Labor Arbiter Fernandez forwarded the complaints to the Assistant Director for Arbitration in Regional Office No. 1 in San Fernando, La Union for appropriate action.

He should have forwarded all of the complaints to the said Assistant Director, but it appears that Fernandez turned over only four of them. In turn, the Assistant Director referred only complaints Nos. 5, 6 and 7, which had been docketed as RBI-C-24-81, LS-42-81 and LS-43-81, to Executive Labor Arbiter Sotero L. Tumang for compulsory arbitration. However, while only these three docket numbers appear on the caption of the decision, the same actually resolved four complaints, as earlier mentioned.[9]

From these facts, one may infer that there must have been a mishandling of the complaints and/or the records of the cases. However, the petitioner failed to substantiate by evidence such negligence on the part of the public respondents as to warrant the issuance of a writ of mandamus.[10] Its officials even neglected the simple act of verifying from the MOLE office in Dagupan City whether the records of all the cases filed had been forwarded to the proper official who should resolve them.[11] In fact, nowhere in its pleadings[12] is there an allegation to that effect.

On the contrary, the petitioner took Fernandez' words seriously and allowed the proceedings to reach its inevitable conclusion. When it received a copy of the decision, the petitioner should have taken note of Executive Labor Arbiter Tumang's observation therein that it had discussed matters "beyond the scope of the issues alleged in the complaints." In its memorandum of appeal, it should have prayed for the inclusion of the three complaints inasmuch as in labor cases, an appeal may be treated as a motion for reconsideration or vice-versa.[13] The fact that three complaints had been omitted did not escape the attention of the NLRC which stated in its resolution that "since those cases were not consolidated it is now too late to consolidate them" with the four decided cases.[14] We agree with the NLRC that the said complaints should proceed separately as long as their resolution would not conflict with the resolved cases.[15] It should be added that under Art. 217(b) of the Labor Code, the NLRC has "exclusive appellate jurisdiction over all cases decided by the Labor Arbiters." Needless to say, the NLRC could not have acted on matters outside of the cases appealed to it.

Petitioner's contention that the cases filed by Consuelo Abad as its president should affect, not only herself, but all the other union members similarly situated as she was, is well taken. The uncontroverted allegation of the petitioner is that it is the holder of Registration Certificate No. 9865-C, having been registered with the then Ministry of Labor and Employment on February 16, 1978. As such, petitioner possessed the legal personality to sue and be sued under its registered name.[16] Corollarily, its president, Consuelo Abad, correctly filed the complaints even if some of them involved rights and interest purely or exclusively appertaining to individual employees, it appearing that she signed the complaints "for and in behalf of the University of Pangasinan Faculty Union." [17]

The University's contention that petitioner had no legal personality to institute and prosecute money claims must, therefore, fail. To quote then Associate Justice Teehankee in *Heirs of Teodelo M. Cruz v. CIR*, [18] "[w]hat should be borne in mind is that the interest of the individual worker can be better protected on the whole by a strong union aware of its moral and legal obligations to represent the rank and file faithfully and secure for them the best wages and working terms and conditions x x x." Although this was stated within the context of collective bargaining, it applies equally well to cases, such as the present wherein the union, through its president, presented its individual members' grievances through proper proceedings. While the complaints might not have disclosed the identities of the individual employees claiming monetary benefits, [19] such technical defect should not be taken against the claimants, especially because the University appears to have failed to demand a bill of particulars during the proceedings before the Labor Arbiter.

On the merits of the petition, the NLRC did not abuse its discretion in resolving the appeal from the decision of Executive Labor Arbiter Tumang except for the disallowance of the emergency cost of living allowance to members of the petitioner. The Rules Implementing P.D. No. 1713 which took effect on August 18, 1980 provide:

"Section 6. Allowances of full-time and part-time employees. - Employees shall be paid in full the monthly allowance on the basis of the scales provided in Section 3 hereof, regardless of the number of their regular working days if they incur no absences during the month. If they incur absences without pay, the amounts corresponding to the absences may be deducted from the monthly allowance provided that in determining the equivalent daily allowance of such deduction, the applicable monthly allowance shall be divided by thirty (30) days."

x x x x x x x x"

(Underscoring supplied).

This Section, which is a virtual reproduction of Section 12 of the old Rules Implementing P.D. No. 1123, has been interpreted by this Court as requiring that the full amount of the cost of living allowance mandated by law should be given monthly to each employee if the latter has worked continuously for each month, regardless of the number of the regular working days.[20] But more apropos is the ruling of this Court in *University of Pangasinan Faculty Union v. University of Pangasinan and NLRC*,[21] a case involving the same parties as in the instant petition and dealing with a complaint filed by the petitioner on December 18, 1981 seeking, among other, the payment of emergency cost of living allowances for November 7 to December 5, 1981, a semestral break.

The Court held therein:

"x x x. The 'No work, no pay' principle does not apply in the instant case. The petitioner's members received their regular salaries during this period. It is clear from the x x x law that it contemplates a 'no work' situation where the employees voluntarily absent themselves. Petitioners, in the case at bar, certainly do not, ad voluntatem absent themselves during semestral breaks. Rather, they are constrained to take mandatory leave from work. For this, they cannot be faulted nor can they be begrudged that which is due them under the law. To a certain extent, the private respondent can specify dates when no classes would be held. Surely, it was not the intention of the framers of the law to allow employers to withhold employee benefits by the simple expedient of unilaterally imposing 'no work' days and consequently avoiding compliance with the mandate of the law for those days."

As interpreted and emphasized in the same case, the law granting emergency cost of living allowances was designed to augment the income of the employees to enable them to cope with the rising cost of living and inflation. Clearly, it was enacted in pursuance of the State's duty to protect labor and to alleviate the plight of the workers. To uphold private respondent's interpretation of the law would be running counter to the intent of the law and the Constitution.

WHEREFORE, the petition for mandamus is hereby DISMISSED. The decision of the NLRC is AFFIRMED subject to the MODIFICATION that private respondent University of Pangasinan shall pay its regular and fulltime teachers and employees emergency cost of living allowance for the period April 1-15, 1981. Costs against private respondent.

SO ORDERED.

Gutierrez, Jr., (Chairman), Bidin, Davide, Jr., and Melo, JJ., concur.

[1] Petition, pp. 3-4; Rollo, pp. 4-5.

[2] Rollo, p. 42.

[3] Petition, pp. 4-5; Rollo, pp. 5-6.

[4] P.D. No. 1751 increased "the statutory daily minimum wage at all levels by P4.00 after integrating the

mandatory emergency living allowances under Presidential Decrees 525 and 1123 into the basic pay of all covered workers."

[5] Decision. Rollo, pp. 62-67.

[6] Petition, pp. 35-36; Rollo, pp. 36-37.

[7] Marcelo v. Tantuico, Jr., G.R. No. 60074, July 7, 1986, 142 SCRA 439, 445 citing Taboy v. Court of Appeals, L-47472, July 24, 1981, 105 SCRA 758.

[8] Per Kant Kwong v. PCGG (G.R. No. 79484, December 7, 1987, 156 SCRA 222), the writ of mandamus may be issued to direct an official with discretionary powers "to act but not to act one way or the other."

[9] Comment, pp. 2-3; Rollo, pp. 126-127.

[10] See: Taboy v. Court of Appeals, *supra*.

[11] In Perez v. City Mayor of Cabanatuan (L-16786, October 31, 1961, 3 SCRA 431), the Court held that special civil actions like mandamus are not entertainable if a superior administrative officer could grant a relief.

[12] See: Tangonon v. Paño, L-45157, June 27, 1985, 137 SCRA 245 where the Court held that a petition for mandamus, which demands expeditious determination, may be decided on the pleadings filed.

[13] While in its memorandum of appeal, petitioner revealed the fact that three complaints had been disregarded by Labor Arbiter Tumang and alleged that "the same ought to have been considered, passed upon and decided on their merits," it merely prayed for the reversal and setting aside of the decision and that "a new one be entered in accordance with the prayers in the various complaints filed." Rollo, pp. 68-84.

[14] NLRC Resolution, p. 39.

[15] *Ibid.*, pp. 38-39.

[16] Art. 242(e), Labor Code, as amended.

[17] Solicitor General's Comment, p. 9, Rollo, p. 133.

[18] G.R. No. L-23331-32, December 27, 1969, 30 SCRA 817, 946.

[19] Private Respondent's Comment, p. 1; Rollo, p. 103.

[20] Needle Queen Corporation v. Nicolas, G.R. Nos. 60741-43, December 22, 1989, 180 SCRA 568.

[21] G.R. No. 63122, February 20, 1984, 127 SCRA 691.

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