

**LEPANTO CONSOLIDATED MINING COMPANY, PETITIONER, VS. THE HONORABLE LABOR ARBITER RICARDO Q. ENCARNACION, AND EUFRONIO OMANITO, ELPIDIO ANCHETA, RODOLFO PALITOG, SATURNINO ANTES,...**

*G.R. Nos. 67002-03. April 30, 1985*

Ponente: GUTIERREZ, JR., J.

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**GUTIERREZ, JR., J.:**

The private respondents were employed by petitioner Lepanto Consolidated Mining Company for its Tubo Shaft Project. After almost three years of construction work in the said project the petitioner terminated their services, alleging that they were project workers and their phase of the project had been completed.

Sometime in December, 1974, the private respondents filed complaints for illegal dismissal. After due proceedings, Labor Arbiter Julio Andres, Jr., rendered a decision dated December 11, 1975, ordering the reinstatement of the private respondents to their former positions without loss of seniority rights and other benefits, and to pay them their full backwages from the time they were illegally dismissed until they are actually reinstated.

The petitioner appealed the aforesaid decision to the National Labor Relations Commission (NLRC) which affirmed it in a resolution dated December 15, 1976.

The petitioner appealed the NLRC resolution to the Minister of Labor who, in his order dated June 9, 1978 also affirmed the earlier decision.

Upon petitioner's motion for reconsideration, the Minister of Labor rendered an order dated December 17, 1979, which set aside the order dated June 9, 1978 and affirmed the validity of private respondents' dismissal.

Upon private respondents' motion for reconsideration, the Minister of Labor issued an order dated July 7, 1981, setting aside the order dated December 17, 1979 and reviving the decision dated December 11, 1975, the resolution dated December 15, 1976 and the order June 9, 1978 with the declaration that since the petitioner received the order dated June 9, 1978 on September 14, 1978, it became final and beyond reconsideration on September 28, 1978, no appeal having been filed within the ten working days period under the Rules Implementing the Labor Code.

On October 21, 1981, the petitioner filed a petition for certiorari with preliminary injunction and/or restraining order (G.R. Nos. 58456-57) in this Court. The petitioner asked for the setting aside of: (a) the decision of the Labor Arbiter dated December 11, 1975 declaring the dismissal of private respondent as illegal and directing their reinstatement to their former positions with full backwages; (b) the NLRC resolution dated December 15, 1976 affirming the decision of the Labor Arbiter; (c) the order of the Minister of Labor dated June 9, 1978 denying petitioner's appeal from and affirming the resolution dated December 15, 1976; and (d) the order of the Minister of Labor dated July 7, 1981 setting aside his earlier order dated December 17, 1979 and reviving the decision

dated December 11, 1975, the resolution dated December 15, 1976 and the order dated June 9, 1978.

On April 25, 1983, this Court denied the petition for lack of merit. Petitioner's motion for reconsideration was likewise denied on July 11, 1983.

On September 7, 1983, the private respondents filed with the NLRC a "Motion for Computation of Backwages and for the Issuance of a Writ of Execution" of the decision dated December 11, 1975.

In an order dated September 14, 1983, the Labor Arbiter ordered both the petitioner and the private respondents to submit their computations of the backwages and benefits due the private respondents under the aforementioned decision. He also ordered the petitioner to comply with said judgment and to reinstate the complainants immediately and to inform his office of the dates when the complainants were actually reinstated.

On November 3, 1983, the petitioner submitted its computation of backwages amounting to a total of P279,760.28 equivalent to three years backwages without qualification and deduction, and manifested its readiness to reinstate those employees who were still willing to work and who would signify their intention to do so within thirty (30) days from their receipt of notice.

On November 15, 1983, the private respondents submitted their own "Computation of the Backwages Due to Each of the Complainants in Accordance with the Dispositive Portion of the Final and Executory Decision". A "Supplemental Computation" was filed on November 17, 1983. Their computations correspond to their full backwages and benefits from the date of their dismissal up to October 3, 1983, inclusive, without any allowance for deduction of whatever income they may have earned during the intervening period.

On November 22, 1983, the private respondents filed a "Motion for the Issuance of a Partial Writ of Execution Subject to the Final Outcome of the Case".

On December 3, 1983, the petitioner released individual checks payable to each of the private respondents and submitted them to the Labor Arbiter on December 8, 1983 for payment to the individuals concerned.

On December 9, 1983, the private respondents filed their "Manifestation of Intention for Reinstatement" setting up the condition that they first want to receive their full backwages before their reinstatement.

On December 28, 1983, the petitioner filed a "Motion to Declare Complainants to Have Waived Their Rights to Reinstatement" and requested for the issuance of subpoena for the attendance of the private respondents during the hearing of January 10, 1984 wherein those present reiterated the condition that their reinstatement was subject to their first receiving their full backwages.

Thereafter, the Labor Arbiter issued an order dated March 30, 1984, ordering the petitioner to pay the private respondents their full backwages and other benefits computed from the date of their dismissal up to December 31, 1983 in the net total amount of P1,312,157.80 after deducting the amount of P279,760.28 already paid by the petitioner.

From the foregoing order, the petitioner filed on April 16, 1984 the present petition for certiorari with preliminary injunction and prayer for the issuance of a temporary restraining order.

On May 8, 1984, a temporary restraining order was issued by this Court restraining the Labor Arbiter from enforcing and/or carrying out the order dated March 30, 1984.

In its resolution dated November 20, 1984, the Second Division of this Court resolved to refer the case to BANC.

In the present petition, the petitioner argues that the award of full backwages cannot be summarily executed without giving the Company its right to deduct interim earnings and to consider the recurring periods of

commercial inactivity during which its employees were validly laid off. It states that the Labor Arbiter's execution order disregards established precedents of this Court that an award of backwages should only be for a limited period without qualification or deduction.

The petitioner argues further that when the Company sought a review of the decision of the Labor Arbiter dated December 11, 1975, it simply raised in issue the status of private respondents whom the Company claimed to be project employees whose employment was co-terminus with and terminated upon the completion of the Tubo Shaft Project for which they were hired. The issue of the amount of backwages was not relevant at that point in time for the simple reason that if the Company's contention that private respondents were project employees were to be sustained, the award of backwages would logically have to be eliminated. Thus, the issue on the amount of backwages would have to be taken up in the course of execution proceedings.

On the other hand, the private respondents contend that when this Court affirmed, through minute resolutions dated April 25, 1983 and July 11, 1983, the decision of the Labor Arbiter awarding full backwages it became final and executory and constituted the law of the case, and nothing remains to be done but its execution.

The petition is granted.

Reinstatement with full backwages for an indefinite and prolonged period of time is viewed with disfavor by this Court. In the case of *Sta. Cecilia Sawmills, Inc. v. Court of Industrial Relations* (10 SCRA 433) we held:

"A ruling that would permit a dismissed laborer to earn back wages for all time, or for a very long period of time, is not only unjust to the employer but the same would foster indolence on the part of the laborers. The laborer is not supposed to be relying on a court judgment for his support, but should do everything a reasonable man would do; he should find employment as soon as an employment has been lost, especially when the employment has to depend on a litigation. He should try to minimize the loss that may be caused to the employer by looking for other work in which he can be employed.

"In consonance with this view We find a period of three months should be enough time for a laborer to locate another work - different from which he was separated. Consequent with this opinion, the backwages that should be awarded respondents laborers should be limited to three months, and not for an indefinite period as the decision seems to imply."

With respect to the right of the employer to deduct whatever an employee has earned elsewhere from the backwages, this Court in the case of *East Asiatic Company, Ltd. v. Court of Industrial Relations* (40 SCRA 521) ruled:

"Now, turning to the deductions claimed by petitioners, although the basic decision in this case did not say so expressly, it is well settled that an employer is entitled to deduct from what the court orders to be paid as backwages, privileges, etc., whatever an employee has earned elsewhere during the period for which backwages are supposed to be paid, hence such qualification must be considered implied in all judgments ordering reinstatement, unless otherwise expressly ordered for reasons the court may deem justified. In a rather long line of decisions involving payment of backwages to employees who have been illegally dismissed in consequence of unfair labor practices on the part of their employers, We have uniformly held that whatever the dismissed laborers had actually earned during the period of his illegal dismissal should be deducted from his computed backwages for the same period (*Macleod & Co. v. Progressive Federation of Labor*, 97 Phil. 205, 211; *Durable Shoe Factory v. CIR and NLU*, 99 Phil. 1043; *Phil. Air Lines v. PALEA*, 108 Phil. 1129, 1133; and cases cited therein. See also: *Mindanao Motor Line, Inc. v. CIR*, 6 SCRA 710, 715-716; *Rizal Labor Union v. Rizal Cement Co., Inc.*, 17 SCRA 858, 863; *Republic Savings Bank v. CIR*, 21 SCRA 661, 665; *Itogon-Suyoc Mines, Inc. v. Sangilo-Itogon Workers' Union*, 24 SCRA 873, 888; *G. Liner v. National Labor Union*, 26 SCRA 282; *Northwest Airlines Employees Assoc. v. Northwest Airlines, Inc.*, 33 SCRA 143, 146; *Dy Pac Pakiao Workers Union v. Dy Pac & Co., Inc.*, L-27377, March 31, 1971; *Elegance, Inc. v. CIR, et al.*,

L-24096, April 30, 1971; Castillo, et al. v. CIR, et al., L-26124 & 32725, May 29, 1971), on the principle that no one should be allowed to enrich himself at the expense of another. (Northwest Airlines Employees Association v. Northwest Airlines, Incorporated, supra, and cases therein cited.) And in this connection, We stated in precise terms the guidelines to be observed in the ascertainment of total backwages payable in Itogon-Suyoc Mines Inc., supra, thus -

'Since the dismissal of respondents in 1958, more than ten years had elapsed. It would not seem out of place to restate the guidelines to be observed in the ascertainment of the total backwages payable under the judgment below. These are:

'First. To be deducted from the backwages accruing to each of the laborers to be reinstated is the total amount of earnings obtained by him from other employment(s) from the date of dismissal to the date of reinstatement. Should the laborer decide that it is preferable not to return to work, the deduction should be made up to the time judgment becomes final. And these, for the reason that employees should not be permitted to enrich themselves at the expense of their employer. (Philippine Airlines, Inc. v. Philippine Airlines Employees Association, L-15544, July 26, 1960 and cases cited therein. Besides, there is the 'law's abhorrence for double compensation.' (Republic Savings Bank v. Court of Industrial Relations, 1967 D. Phil. 198, 202 (Resolution).

'Second. Likewise, in mitigation of the damages that the dismissed respondents are entitled to, account should be taken of whether in the exercise of due diligence respondents might have obtained income from suitable remunerative employment. (Sotelo v. Behn, Meyer & Co., H. Mig., 57 Phil. 775, 778-779, citing Garcia Palomar v. Hotel de France Co., 42 Phil. 660. See: Sta. Cecilia Sawmills, Inc. v. Court of Industrial Relations, L-19273 & L-19274, February 29, 1964; Mindanao Motor Line, Inc. v. Court of Industrial Relations (L-18418) and Aboitiz and Company, Inc. v. Court of Industrial Relations (L-18419) November 29, 1962; Durable Shoe Factory v. Court of Industrial Relations, 99 Phil. 1043; Aldaz v. Gay, 7 Phil. 268, 271.) We are prompted to give out this last reminder because it is really unjust that a discharged employee should, with folded arms, remain inactive in the expectation that a windfall would come to him. A contrary view would breed idleness; it is conducive to lack of initiative on the part of the laborer. Both bear the stamp of undesirability. (See also: Union of Supervisors (RB) - NATU v. Secretary of Labor and cases cited therein, 128 SCRA 442). (Emphasis supplied)

Realizing that the employee in proving his income during the period he was out of service and the employer submitting counter-proofs would cause delay in the execution of the decision in claims for reinstatement, this Court in the case of Mercury Drug Co., Inc. v. Court of Industrial Relations (56 SCRA 694), adopted the policy of fixing the amount of backwages to a just and reasonable level without qualification and deduction to do away with the attendant delay in awarding backwages because of the extended hearing to prove the earnings elsewhere of each and every employee.

In view of this policy, we have consistently awarded backwages to the maximum of only three (3) years. (People's Bank and Trust Company, et al. v. People's Bank and Trust Company Employees Union, et al., 69 SCRA 10; Insular Life Insurance Co., Ltd. Employees Association-NATU v. Insular Life Assurance Co., Ltd., 76 SCRA 50; Monteverde, et al. v. CIR, et al., 79 SCRA 259; Danao Development Corporation v. NLRC, et al., 81 SCRA 489; L.R. Aguinaldo, Inc., v. CIR, et al., 82 SCRA 309; Liberty Cotton Mills Workers Union v. Liberty Cotton Mills, Inc. 90 SCRA 391; Litex Employees Assoc., et al. v. CIR., et al. 116 SCRA 459) We see no reason why a different rule should apply in this case.

Under the aforecited rulings of this Court, the petitioner rightly paid the private respondents three years backwages without qualification and deduction. In all judgments ordering reinstatement it is implied that, given the same or similar circumstances, the payment of backwages should not exceed the maximum limits stated by this Court. The private respondents are entitled to three (3) years backwages without qualification or deduction.

WHEREFORE, the petition is hereby GRANTED and the order of the Labor Arbiter dated March 30, 1984, is

SET ASIDE. The temporary restraining order dated May 8, 1984 is made PERMANENT. The private respondents are given a period of thirty (30) days within which to apply for reinstatement subject to their qualifying in medical and physical examinations for jobs similar to those held by them when terminated from employment.

**SO ORDERED.**

Makasiar, Melencio-Herrera, Plana, Escolin, Relova, De La Fuente, Cuevas, and Alampay, JJ., concur.  
Fernando, C.J., Teehankee, Aquino, and Santos, JJ., no part.  
Concepcion, Jr., J., on official leave.

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