SUPREME COURT
FIRST DIVISION

ARCHILLES MANUFACTURING CORPORATION, ALBERTO YU AND ADRIAN YU,
***Petitioners*,**

-versus-

G.R. No. 107225
June 2, 1995

NATIONAL LABOR RELATIONS COMMISSION, GERONIMO MANUEL, ARNULFO DIAZ, JAIME CARUNUNGAN AND BENJAMIN RINDON,
***Respondents*.**
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R E S O L U T I O N

BELLOSILLO, *J.*:

There are three issues to be resolve in this Special Action for *Certiorari* under Rule 65 of the Revised Rules of Courts, namely: (a) whether a writ of execution is still necessary to enforce the Labor Arbiter's order of immediate reinstatement pending appeal; (b) whether dismissal for cause results in the forfeiture of the employee's right to a 13th month pay; and, (c) whether the award of attorney's fees is proper in the instants case.

Archilles Manufacturing Corporation (ARCHILLES for brevity), Alberto Yu and Adrian Yu are the petitioners, the latter two (2) being the Chairman and the Vice-President of ARCHILLES, respectively. Private respondents Geronimo Manuel, Arnulfo Diaz, Jaime Carunungan and Benjamin Rindon were employed by ARCHILLES as laborers in its steel factory located in Barangay Pandayan, Meycauyan, Bulacan, each receiving a daily wage of P96.00.[1]

ARCHILLES was maintaining a bunkhouse in the work area which served a resting place for its workers including private respondents. In 1988 a mauling incident nearly took place involving a relative of an employee. As a result ARCHILLES prohibited its workers from bringing any member of their family to the bunkhouse. But despite this prohibition, private respondents continued to bring their respective families to the bunkhouse, causing annoyance and discomfort to the other workers.[2] This was brought to the attention of ARCHILLES.

On 11 May 1990 the management ordered private respondents to remove their families from the bunkhouse and to explain their violation of the company rule. Private respondents removed their families from the premises but failed to report to the management as required; instead, they absented themselves from 14 to 18 May 1990. Consequently, on 18 May 1990, ARCHILLES terminated their employment for abandonment and for violation of the company rule regarding the use of the bunkhouse.[3]

Private respondents filed a complainant for illegal dismissal. On 10 July 1991 the Labor Arbiter found the dismissal of private respondents illegal and ordered their reinstatement as well as the payment to them of backwages, proportionate 13th month pay for the year 1990 and attorney's fees.[4] ARCHILLES appealed.

On 10 September 1991 private respondents filed with public respondent National Labor Relations Commission a motion for the issuance of a writ of execution for their immediate reinstatement, pending appeal, either physically or in the company payroll. On 19 September 1991 ARCHILLES opposed the motion.

Since no action was taken by NLRC on the motion of 10 September 1991, private respondents filed a similar motion on 15 July 1992. Both motions however have remained unresolved.

On 11 August 1992 NLRC vacated and set aside the decision of the Labor Arbiter and ruled that the dismissal of private respondents was valid since they wilfully disobeyed a lawful order of their employer requiring them to explain their infraction of a company rule. In the disputed part of its decision, however NLRC ordered ARCHILLES to pay private respondents their "withheld" salaries from 19 September 1991 when its filed its opposition to the motion for issuance of a writ execution until the promulgation of the NLRC Decision (11 August 1992) on the ground that the order of reinstatement of the Labor Arbiter was immediately executory, even pending appeal. And since ARCHILLES in its position alleged that actual reinstatement was no longer possible as it would affect the peace and order situation in the steel factory, clearly, ARCHILLES had opted for payroll reinstatement of private respondents. NLRC also ordered ARCHILLES to pay their proportionate 13th month pay for 1990 and P12, 315.30 representing 10% of the total judgments award of P123,513.00 as attorney's fees.[5]

Their motion for partial reconsideration having been denied by public respondent in its resolution of 8 September 1992, petitioners filed the instant petition praying that the questioned NLRC decision of 11 August 1992 as well as its resolution of 8 September 1992 be partially annulled in connection with the award of "withheld" salaries, proportionate 13th month pay and attorney's fees.

As regards the first issue, i.e., whether a writ of execution is still necessary to enforce the Labor Arbiter's order of immediate reinstatement even when pending appeal, we agree with petitioners that it is necessary. The third paragraph of Art. 223 of the Labor Code provides —

> In any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall be immediately executory, even pending appeal. The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation or, at the option of the employer,

> merely reinstated in the payroll. The posting of the bond by the employer shall not stay the execution for reinstatement provided herein.

We have fully explained the legal basis for this conclusion in Maranaw Hotel Resort Corporation (Century Park Sheraton Manila) vs. NLRC and Gina G. Castro[6] thus —

> It must be stressed, however, that although the reinstatement aspect of the decision is immediately executory, it does not follow that it is self-executory. There must be a writ of execution which may be issued motu proprio or on motion of an interested party. Article 224 of the Labor Code provides:
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> > Art. 224. Execution of decisions, orders or awards. — (a) The Secretary of Labor and Employment or any Regional Director, the Commission or any Labor Arbiter, or med-arbiter or voluntary arbitrator may, motu proprio or on motion of any interested party, issue a writ of execution on a judgment within five (5) years from the date it becomes final and executory.

The second paragraph of Section 1, Rule XVIII of the New Rules of Procedure of the NLRC also provides:

> The Labor Arbiter, POEA Administrator, or the Regional Director, or his duly authorized hearing officer of origin shall, motu proprio or upon motion of any interested party, issue a writ of execution on a judgment only within five (5) years from the date it becomes final and executory. No motion for execution shall be entertained nor a writ be issued unless the Labor Arbiter is in possession of the records of the case which shall include an entry of judgment.
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> In the absence of an order for the issuance of a writ of execution on the reinstatement aspect of the decision of the Labor Arbiter, the petitioner was under no legal obligation to admit back to work the private respondent under the terms and conditions prevailing prior to her dismissal or, at the petitioner's option, to merely reinstate her in the payroll. An option is a right of

election to exercise a privilege, and the option in Article 223 of the Labor Code is exclusively granted to the employer. The event that gives rise for its exercise is not the reinstatement decree of the Labor Arbiter, but the writ for its execution commanding the employer to reinstate the employee, while the final act which compels the employer to exercise the option is the service upon it of the writ of execution when, instead of admitting the employee back to his work, the employer chooses to reinstate the employee in the payroll only. If the employer does not exercise this option, it must forthwith admit the employee back to work, otherwise it may be punished for contempt.

In the case at bench, there was no occasion for petitioners to exercise their option under Art. 223 of the Labor Code in connection with the reinstatement aspect of the decision of the Labor Arbiter. The motions of private respondents for the issuance of a writ of execution were not acted upon by NLRC. It was not shown that respondents exerted efforts to have their motions resolved. They are deemed to have abandoned their motions for execution pending appeal. They cannot now ask that the writ of execution be issued since their dismissal was found to be for cause.

On the second issue, which refers to the propriety of the award of a 13th month pay, paragraph 6 of the Revised Guidelines on the Implementation of the 13th Month Pay Law (P. D. 851) provides that "(a)n employee who has resigned or whose services were terminated at any time before the payment of the 13th month pay is entitled to this monetary benefit in proportion to the length of time he worked during the year, reckoned from the time he started working during the calendar year up to the time of his resignation or termination from the service. The payment of the 13th month pay may be demanded by the employee upon the cessation of employer-employee relationship. This is consistent with the principle of equity that as the employer can require the employee to clear himself of all liabilities and property accountability, so can the employee demand the payment of all benefits due him upon the termination of the relationship."

Furthermore, Sec. 4 of the original Implementing Rules of P. D. 851 mandates employers to pay their employees to pay their employees a 13th month pay not later than the 24th of December every year. In effect, this statutory benefit is automatically vested in the employee who has at least worked for one month during the calendar year. As correctly stated by the Solicitor General, such benefit may not be lost or forfeited even in the event of the employee's subsequent dismissal for cause without violating his property rights.

With respect to the third issue, the disputed attorney's fees can only be assessed in cases of unlawful withholding of wages.[7] It cannot be said that petitioners were guilty of unlawfully withholding private respondent's salaries since, as earlier discussed, the occasion never arose for them to exercise that option under Art. 223 of the Labor Code. Clearly, the award of attorney's fees is baseless.

WHEREFORE, the instant petition is partly granted. The challenged Decision of the National Labor Relations Commission dated 11 August 1992 is **MODIFIED** by deleting that portion ordering petitioners to pay private respondents their salaries from 19 September 1991 to 20 September 1992 as well as that portion awarding 10% of the total judgment award as attorney's fees for lack of legal and factual basis. In other respects, the Decision is **AFFIRMED**.

SO ORDERED.

Padilla, Davide, Jr. and Kapunan, *JJ.*, concur.
Quiason, *J.*, is on leave.

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[1] Rollo, pp. 3-4 and 29.
[2] Reportedly the corridors of the bunkhouse were littered with children's bowels and urine, and that children often cried at night and in the early hours of the morning.
[3] Rollo, pp. 30-31 and 33.
[4] Annex "A," Petition; Rollo, pp. 80-88.
[5] Rollo, pp. 27-38.
[6] G. R. No. 110027, 16 November 1994.

[7] Art. 111. Attorney's fees. — (a) In cases of unlawful withholding of wages the culpable party may be assessed attorney's fees equivalent to 10% of the amount of wages recovered. (Labor Code).