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SUPREME COURT
EN BANC

ARRASTRE SECURITY ASSOCIATION — TUPAS, AGUSTIN TIBO and 350 INDIVIDUAL MEMBERS,
***Petitioners*,**

-versus-

G.R. No. L-45344
February 20, 1984

HON. BLAS F. OPLE, NATIONAL LABOR RELATIONS COMMISSION, GUACODS MARINE INC., E. RAZON INC., and ACTING DEPUTY CUSTOMS COMMISSIONER PEDRO MENDOZA,
***Respondents*.**
x--x

D E C I S I O N

GUTIERREZ, JR., *J*.:

This is a Petition for *Certiorari* to Set Aside the Order and Resolution of Minister of Labor Blas F. Ople denying the payment of backwages to the petitioners and the decision of the Ad Hoc National Labor Relations Commission considering them as temporarily laid off without compensation until their actual reinstatement. This petition is an offshoot of an unfair labor practice case.

The background facts of the case are not in dispute. In the words of the mediator-fact finder of the NLRC, they are:

> "It appears that the Arrastre Security Association-TUPAS, ASA in short, is a duly registered labor organization with Registration Certificate No. 1159-IP, issued on December 22, 1954 having as members security employees in the arrastre service at South Harbor, Port Area, Manila, and was under the employ of the Delgado Brothers, Inc., Arrastre operator.
>
> "That the Court of Industrial Relations repeatedly certified it on August 6, 1955 and May 14, 1957 as the sole and exclusive contractor.
>
> "That in May, 1966 Guacods Marine Terminal and E. Razon, Inc., arrastre contractors, took over the arrastre service at South Harbor, Port Area, Manila, by virtue of winning the bid. The former as the new acknowledged employers of the ASA signed their respective collective bargaining agreements with the latter.
>
> "That on April 11, 1972 the Court of Industrial Relations certified the ASA as the sole and exclusive agent of all the security employees of respondent Guacods Marine Terminal for purposes of collective bargaining as regards wages, hours of work, terms and other conditions of employment.
>
> "That on May 9, 1972 the Court of Industrial Relations likewise certified the ASA as the exclusive representative of all the watchmen employed with respondent E. Razon, Inc. in respect to rates of pay, wages, hours of work and other terms and conditions of employment for collective bargaining purposes.
>
> "That on October 9, 1972 the Philippine Constabulary issued Letter Directive M-10, by virtue of, and pursuant to, Proclamation No. 1081, requiring company guards being employed by private firms companies and corporations to acquire the necessary 'License to Exercise Profession' as watchmen or security guards. To secure such license, applicant must submit, among others, 'certification under oath of the Proprietor/personnel or Administrative Manager of

firm/corporation as to the date the company guard was first employed and that he is still employed by said firm/corporation.

"That on October 13, 1972 the ASA sent letters to the Guacods Marine Terminal and E. Razon, Inc. requesting them to give the necessary individual certification of employment to all its members- security guard and/or watchmen.

x x x

"That on October 13, 1972, respondent Guacods Marine Terminal in its reply-letter refused to 'issue said certification of employment for the simple reason that we consider the members of your association as your employees and not that of our corporations. However, it acknowledged on October 23 conference that the members of the ASA are their employees.

"That on October 14, 1972, employer E. Razon, Inc. in its reply-letter likewise refused to give the certificate of employment in view of the memorandum of October 13, 1972 of the Acting Deputy Commissioner of Customs'. Nevertheless, it also acknowledged on Oct. 23 conference among the parties before the undersigned that an employer-employee relationship existed between them.

"That on October 13, 1972, Atty. Pedro Mendoza, Acting Deputy Commissioner of Customs, by virtue of the decision of the Department of National Defense authorities thru the chief of Staff, in consonance with the enforcement of Republic Act 5487 (The Private Agency Law) as amended by Presidential Decree No. 11, issued a memorandum for the commissioner of Customs directing the Customs Metropolitan Police Service (CMPS) to take over the function of the Arrastre Security Association." (Rollo, pp. 33-35)

x x x

Questioning the respondent corporations' refusal to make the required certifications of employment, the petitioner-union in

representation of the 350 security guards filed with the Bureau of Labor Relations a "Request for Assistance In Dispute Settlement" alleging union busting discrimination, harassment, violation of collective bargaining agreement, and other acts constituting unfair labor practices.

The request for assistance prompted the Department of Labor to hold an initial conference regarding the matter. During this conference presided by Undersecretary of Labor Amado Gat Inciong, all the parties were represented by their respective counsel. A conciliation conference among the parties followed.

At the conference, the counsels for Guacods Marine Terminal and E. Razon Inc. manifested their willingness to issue the certifications of employment required before the licenses as watchmen or security guards would be issued by the Philippine Constabulary. Considering the respondents' admission of the employee-employer relationships, the Secretary of Labor was informed by the Chief of his legal staff that it was not necessary to certify the existence of this relationship. The Secretary of Labor then informed the president of the Arrastre Security Association that his members could proceed to secure the certifications from the respondents.

The reinstatement of the petitioners, however, could not be effected because the AFP Military Supervisor told the Bureau of Customs to continue using the Customs Metropolitan Police Service to discharge the functions of the Arrastre Security Association. As a result, the petitioner union filed a complaint with the Ad Hoc National Labor Relations Commission charging the respondent corporations with unfair labor practices. It prayed that the respondent corporations: 1) be declared guilty of unfair labor practices; 2) be ordered to reinstate dismissed/locked out members of complainant union, with full backwages and without loss of seniority and other employees benefits; and 3) be ordered to cease and desist from committing further acts of unfair labor practices against complainant union and members.

After a preliminary fact-finding investigation, the case was assigned to the chief of the legal staff of the Department of Labor who was designated as compulsory arbitrator. After due hearings, a decision

finding respondent corporations guilty of unfair labor practices was promulgated. The dispositive portion of the decision reads:

> "WHEREFORE, respondents Guacods Marine Terminal and E. Razon, Inc. are hereby ordered to reinstate the 360 members of the Arrastre Security Association-TUPAS to their former jobs with full back wages from October 14, 1972 until actually reinstated, to cease and desist from further committing unfair labor practices and finally issue an individual certificate of employment as a requirement in procuring PC permit in accordance with the Private Security Agency Law, as amended."

E. Razon, Inc., appealed the decision to the Ad Hoc Labor Relations Commission. The Commission, despite the fact that Guacods Marine Terminal did not appeal, reviewed the whole decision. In its decision dated March 22, 1973, the Commission modified the arbitrator's decision as follows:

> "First, that it was through no fault of the respondents that the members of the complainant union were barred from working as security guards at the Customs Zone starting 14 October 1972. This happened because the Customs Metropolitan Service, acting pursuant to a Memorandum of Col. Pedro C. Mendoza, Jr., Acting Deputy Commissioner of Customs dated 13 October 1972, took over the functions of the said security guards. The respondents, therefore, did not commit any unfair labor practice.
>
> "Second, that Col. Mendoza issued the said memorandum in compliance with a decision/order of top officials of the Department of National Defense. In this sense, it was an act of a duly authorized representative of the President under martial law and was, therefore, a valid act of state. It was, moreover, a necessary act in the light of the Government's interests and responsibilities at the Customs Zone, on the one hand, and, on the other, the anomalies that used to be daily fare therein, perpetrated by government employees and private persons alike, some of these in the security services not excluded.

> "Third, that the security guards involved in those anomalies and those who otherwise have bad records or not fit for the security service in accordance with the requirements thereof, have no place in such service, even as the rest who are honest and efficient deserve to be returned thereto.
>
> "Fourth and last, that the latter, however, may not be awarded backwages because, as stated earlier, this would amount to penalizing the respondents for a turn of events over which they had no control. They should be considered as temporarily laid off without pay from 14 October 1973 until the date they are actually returned to work pursuant to this decision."

The complainant union appealed the Commission's decision to the Secretary of Labor but limited the appeal to that portion which struck out the claim for backwages from October 14, 1972 until the 350 members would be reinstated to their jobs. The union appellant claimed that the decision was not supported by the facts, law, and jurisprudence. For the first time, Deputy Customs Commissioner Pedro Mendoza was included as a respondent in this appeal.

The appeal and a subsequent motion for reconsideration were denied by the Secretary of Labor. At the same time, the Secretary ordered the respondents to extend financial assistance equivalent to one month salary to each of the laid off workers. This assistance was justified as follows:

> "We believe, however, that while the law must be fully implemented in conformity with its letter and spirit, the same must nonetheless be tempered with mercy and humane considerations. It should not be overlooked that the individual members of complainant union whose reinstatement may no longer be possible had, for many years, been in the service of respondents. While they are not entirely without fault such that they can no longer be reinstated, much less may they qualify for separation pay, it would be in keeping with the social justice policy of the State that some measure of financial assistance be extended to them."

The petitioners not satisfied with the foregoing order, filed this petition and underlined the following issues:

"1. That the Decision of Arbitrator Porfirio E. Villanueva dated January 26, 1973 (Annex 'E') ordering the reinstatement of 350 individual petitioners is final and executory against respondents Guacods, the Deputy Commissioner of Customs and E. Razon, Inc.

"2. That the Decision ('Annex 'E') of Arbitrator Porfirio E. Villanueva dated January 26, 1973 is supported by preponderant evidence and is in accordance with law and jurisprudence laid down by this Honorable Court.

"3. That the Decision (Annex 'G') of the Ad Hoc National Labor Relations Commission denying the reinstatement of some of the individual petitioners and the non-payment of backwages is without any factual and legal basis, and constitutes a grave abuse of discretion amounting to lack of jurisdiction, and is therefore null and void ab initio.

"4. That the Resolution dated July 31, 1974 (Annex 'I') and the Order dated July 25, (Annex 'K') are capricious and whimsical issued in grave abuse of discretion in excess of jurisdiction, contrary to and in violation of the Constitution.

"5. That respondents Guacods and E. Razon, Inc., are guilty of unfair labor practice.

"6. Section 11, Rule II, Book V of the Rules and Regulations Implementing the Labor Code of the Philippines and Article 244 of the Labor Code of the Philippines (PD 442) as amended) is unconstitutional.

"7. That individual petitioners were deprived of their property rights to employment without due process of law.

"8. That individual petitioners are entitled to reinstatement with full backwages and those who cannot be reinstated

due to old age or physical disability are additionally entitled to severance or termination pay.

"9. That the defenses and arguments put up by respondents are without any basis both in fact and in law and is devoid of merits.

"10. That petitioners are entitled to the reliefs prayed for and they have no other plain, speedy and adequate remedy in the ordinary course of law than the instant petition.

All of the above issues revolve around one main issue — whether or not the 350 complainants-petitioners may be reinstated to their former positions with full backwages from October 14, 1972 until actual reinstatement and whether or not the private respondents are guilty of unfair labor practice.

We first resolve two preliminary issues. The respondents contend that appeals from decisions of the Secretary of Labor should be elevated to the President and, therefore, this Court has no jurisdiction over the case.

The contention is without merit.

The case before us is a petition for certiorari asking for the nullification of the Secretary of Labor's resolution affirming the decision of the respondent Commission and for the reinstatement of the arbitrator's decision. We ruled in Kapisanan Ng Mga Manggagawa Sa La Suerte Foitaf vs. Noriel (17 SCRA 414) that under the Labor Code, a jurisdictional question arising from an allegation of lack of power or arbitrary or improvident exercise of authority may be passed upon by this Court in an appropriate certiorari proceeding.

Earlier, we ruled in San Miguel Corporation vs. Secretary of Labor (64 SCRA 56, 60):

> "Yangley raised a jurisdictional question which was not brought up by respondent public officials. He contends that this Court has no jurisdiction to review the decisions of the NLRC and the Secretary of Labor 'under the principle of separation of powers'

and that judicial review is not provided for in Presidential Decree No. 21.

"That contention is a flagrant error. 'It is generally understood that as to administrative agencies exercising quasi-judicial or legislative power there is an underlying power in the courts to scrutinize she acts of such agencies on questions of law and jurisdiction even though no right of review is given by statute' (73 C.J.S. 506, note 56).

"The purpose of judicial review is to keep the administrative agency within its jurisdiction and protect substantial rights of parties affected by its decisions' (73 C.J.S. 507, Sec. 165). It is part of the system check and balances which restricts the separation of powers and forestalls arbitrary and unjust adjudication.

"'Judicial review is proper in case of lack of jurisdiction, grave abuse of discretion, error of law, fraud or collision (Timbancaya vs. Vicente, 62 O.G. 9424; Macatangay vs. Secretary of Public Works and Communications, 63 O.G. 11236; Ortua vs. Singson Encarnacion, 59 Phil. 440).

"'The courts may declare an action or resolution of an administrative authority to be illegal (1) because it violates or fails to comply with some mandatory provision of the law or (2) because it is corrupt, arbitrary or capricious' (Borromeo vs. City of Manila and Rodriguez Lanuza, 62 Phil, 512, 516; Villegas vs. Auditor General, 18 SCRA 877, 891)."

The petitioners contend that the respondents failed to make a timely appeal of the arbitrator's decision to the National Labor Relations Commission.

The records show that E. Razon received the arbitrator's decision on February 12, 1972 and on this same day filed its appeal with the National Labor Relations Commission. (p. 146, Rollo). In its Order dated February 22, 1973, the National Labor Relations Commission gave due course to the appeal and ordered the parties to submit to the Commission, ". . . ' if they so desire, their memorandum in support of

or in opposition to the said Appeal within five (5) days from receipt by them of this Order." (Annex "2", Comment E. Razon, p. 284, Rollo) In compliance with the said Order, E. Razon, Inc. filed its memorandum on March 2, 1973. Petitioners likewise filed their memorandum. An examination of their memorandum shows that they did not raise as an issue the timeliness of E. Razon's appeal.

Moreover, the petitioners upon appeal of the National Labor Relations Commission's decision to the Secretary of Labor recognized the timeliness of E:. Razon's appeal to the Commission because in their COMPLAINANT'S APPEAL, they merely alleged that only respondent E. Razon, Inc. has appealed while co-respondent Guacods Marine Terminal and Acting Commissioner Mendoza both failed to appeal.

The issue of the timeliness of E. Razon's appeal from the arbitrator's decision to the National Labor Relations Commission surfaces only in this petition. This issue being entirely new and an unpleaded matter in the proceedings below may not now be raised for the first time before this Court. (Davao Free Workers Front vs. C.I.R., 50 SCRA 508). Furthermore, after considering the foregoing circumstances there can be no doubt that E. Razon's appeal to the National Labor Relations Commission was within the reglementary period provided for in Section 23 of the National Labor Relations Commission Rules and Regulations.

It is not mandatory that for the appeal to be perfected a memorandum should also be submitted within the same five-day period to appeal.

The argument that the arbitrator's decision has become final and executory against the Deputy Commissioner of Customs is out of order. The Deputy Commissioner of Customs was not impleaded as a respondent in the petitioner' s initial complaint before the Department of Labor. Moreover, the October 13, 1972 Memorandum issued by the Deputy Commissioner was not even made an issue in the said complaint.

Respondent Guacods, Inc. did not appeal the arbitrator's decision. Nevertheless, the National Labor Relations Commission "in the

interest of justice" reviewed the whole case as if Guacods appealed for the reason "that they (respondent corporations) are uniformly situated in so far as this case is concerned and, considering the whole context thereof, to hold otherwise would bring about an untenable situation which even the technical rules would frown upon."

It is true that a decision becomes final and executory upon the lapse of the period to file an appeal if no such appeal was perfected. In the instant cases however, the respondent Commission was correct because the decision ordering reinstatement could not be enforced. There were no more positions to which the security guards could be reinstated. The arbitrator had rendered, in effect, a decision over a moot issue and against the wrong party.

There were also other supervening events which render the award of backwages and reinstatement impossible. In Virata vs. Bocar (50 SCRA 468) a final award to operate the arrastre services for all the piers in the Manila South Harbor was granted in favor of Guacod's co-respondent, E. Razon, Inc. In connection with this decision, an agreement dated July 9, 1973 approved by the NLRC Chairman was executed among E. Razon, Inc., Bureau of Customs and Tupas. The terms of the agreement are as follows:

> "1. E. Razon will accept the eleven already licensed former GUACODS security guards subject to medical examination.
>
> "2. E. Razon will prepare a list of acceptable former GUACODS security guards and then submit the list to the Bureau of Customs for screening. E. Razon representatives will go over the 201 files of former GUACODS employees which are in possession of the Bureau of Customs.
>
> "3. The screening committee will go over the list prepared by E. Razon for the purpose of updating it.
>
> "4. All security guards approved by the Bureau of Customs shall have 90 days from the time of the issuance of certification of employment by E. Razon within which to secure licenses. This period maybe modified depending upon the circumstances as verified by the union."

The basic ground for our affirming the resolution of the respondent Secretary with some clarificatory modifications is that the 350 security guards who filed this petition together with their union were barred from the customs area and their functions were turned over to the customs police. This was a martial law measure taken under the then newly promulgated Proclamation No. 1081. The Bureau of Customs had prior consultations with the Secretary of National Defense before taking over all security work in the customs area.

The memorandum barring the petitioners from customs premises effective October 14, 1972 reads:

> "By virtue of the decision of the Department of National Defense authorities, thru the Chief of Staff, in consonance with the enforcement of Republic Act 5487 (The Private Agency Law) as amended by Presidential Decree No. 11 dated October 3, 1972, it is hereby directed that the Customs Metropolitan Police Service (CMPS) take over the functions of the Arrastre Security Association (ASA) inasmuch as this association is not exempted from the restrictive provisions of said RA 5487, as amended by Presidential Decree No. 11.
>
> "As any further operations by the Arrastre Security Association within the Customs jurisdictional zone are construed to be contrary to the aforecited Presidential Decree, you are hereby directed to assume full command and immediate take-over of the functions of the members of the Arrastre Security Association until further orders from this Office."

If the respondent Commission and Secretary of Labor ordered E. Razon and Guacods to reinstate the security guards, the private respondents would have 350 security guards on their payrolls with nothing to do because they were barred from working in the customs zone where they used to work.

As stated by the public respondents in their memorandum:

> "Even if the Commission and the Secretary of Labor ordered the reinstatement of all the security guards, if the Bureau of

Customs refused to allow them to work in the customs zone, the order would be futile. It is not because the Commission and the Secretary of Labor have no authority over the Bureau of Customs. It is because they have not acquired jurisdiction over the Bureau of Customs or Deputy Commissioner Mendoza who were not made parties in the unfair labor practice proceeding. And even if the Bureau of Customs and Deputy Commissioner Mendoza were made parties, still the Commission and the Secretary of Labor would have no jurisdiction over them as the security guards have no employer-employee relationship with them.

"If the Commission and the Secretary of Labor went out of their way to strike a happy compromise between the security guards on the one hand and Guacods and E. Razon on the other hand, by using their moral suasion (sic) on the Bureau of Customs to allow selected security guards to be reemployed by Guacods and E. Razon and work in the customs zone, they deserve to be thanked rather than be charged with grave abuse of discretion. The Commission and the Secretary of Labor could have simply ruled that Guacods and E. Razon did not commit unfair labor practice in terminating the employment of the security guards because they were forced by a martial law measure, i.e., the memorandum of Deputy Commissioner Mendoza barring the security guards from the customs zone and transferring their functions to the Customs Police. But they did not. Having in mind the welfare of the Security guards, they endeavored to save some of them from the difficult plight of the unemployed.

"The decision of Deputy Commissioner Mendoza to bar the security guards from the customs zone is of course not subject to question in this proceeding. The labor arbiter, the National Labor Relations Commission and the Secretary of Labor have jurisdiction only over cases arising from employer-employee relations. The barring of the security guards from the customs zone is not a matter involving employer-employee relations. As aforesaid, the Bureau of Customs is not the employer of the security guards.

> "But even if it is subject to question in the unfair labor case proceeding, its wisdom must have to be uphold. The decision was not arrived at the spur of the moment. It was arrived at after mature deliberations involving no less than the Secretary of National Defense. It was precipitated by the long observed existence of extensive pilferages, graft and corruption in the customs zone traceable partly to activities of the security guards. When martial law presented the opportunity to correct this pervasive anomaly, the Bureau of Customs grabbed it by barring the security guards from the customs zone and transferring their functions to the Customs Police.
>
> "Since the termination of the employment of the security guards was caused by a measure to protect the national interest and to improve public service — not the union activities of the security guards — it can not be unfair labor practice. Dismissal of an employee, to be unfair labor practice, must be in derogation of his right to self organization or interference with his union activities. (Sterling Products International, Inc. vs. Sol, 7 SCRA 446)."

As early as February 13, 1973, the respondent Deputy Commissioner made it clear in a letter addressed to the counsel of E. Razon that the order of take over by the customs police was in full force and effect notwithstanding any NLRC decision in the reinstatement with backwages case. He stated:

> "Anent your letter of the 12th instant, please be informed that the Order Memorandum dated October 13, 1972 stands, and the same shall continue to be in full force and effect, the Decision of the National Labor Relations Commission in NLRC Case No. 0320 entitled 'Arrastre Security Association-Tupas, Complainants, versus E. Razon, Inc., et al., Respondents' notwithstanding, until and unless otherwise finally ordered by a court/tribunal of competent jurisdiction. We are constrained to take this stand in view of the provisions of Presidential Decree No. 11 and related decrees."

Considering all of the foregoing, the respondent companies could not be declared to have been guilty of unfair labor practice through

locking out the petitioners, in violation of their collective bargaining agreement. Hence, the respondent-corporations could not be ordered to reinstate much less pay backwages. As the Secretary of Labor stated:

x x x

> "We affirm the Commission's judgment that the members of the complainant Union may not recover back wages during their temporary lay-off. This lay off was clearly brought about by sudden changes introduced under the Martial Law by authorities of the government within the Customs jurisdictional zone by virtue of which respondents were virtually deprived of control and management over their area of operation. Thus, under these emergency conditions, no unfair labor practice charges could be levelled against respondents for failure of the unionists to work. Given their choices, respondents would have in all probability allowed members of the complainant Union to continue with their work, considering their existing collective bargaining agreement. But, during this interregnum, respondents were left no choice at all but to submit to the overriding requirements of the public interest and national security. Certainly, requiring respondents to assume the additional burden of paying backwages to complainant unionists during this period, like cause of which was not attributable to them, would indeed be unfair and unjust."

The Secretary of Labor ordered the private respondents to extend financial assistance equivalent to one month salary to each laid off worker. Under the circumstances and equities of this case, it is more appropriate to consider the termination of employment as part of a reduction in force occasioned by the cessation of operations in the customs premises. The petitioners are, therefore, entitled to separation pay according to the provisions of their collective bargaining agreement and, if there is none, according to the pertinent provisions of the Labor Code and applicable rules and regulations.

We see no need to pass upon the alleged unconstitutionality of Article 244 of Presidential Decree No. 442 as amended and Section 11, Rule Two, Book V of the Rules and Regulations implementing the Labor

Code. This petition may be resolved without touching upon the constitutional issue.

WHEREFORE, the petition calling for the nullification and setting aside of the questioned decision and resolution is dismissed for lack of merit. The resolution of the respondent Secretary of Labor is modified to entitle the three hundred fifty (350) security guards-petitioners to separation pay according to the terms of their collective bargaining agreement or the pertinent provisions of the Labor Code and implementing rules and regulations but in no event to be less than the one month salary ordered by the respondent Secretary.

SO ORDERED.

Fernando, *C.J.*, Concepcion, Jr., Guerrero, De Castro, Melencio-Herrera, Plana, Escolin and Relova, *JJ.*, concur.
Makasiar, *J.*, concurs in the result.
Teehankee, Aquino and Abad Santos, *JJ.*, took no part.

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