

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**D.M. CONSUNJI, INC.,
*Petitioner,***

-versus-

**G.R. No. L-71413
March 21, 1988**

**HON. SEVERO M. PUCAN, ACTING
DEPUTY SHERIFF ALFREDO
ANTONIO, JR., and PONCIANO
FELICIA,**

Respondents.

X-----X

DECISION

PARAS, J.:

This is a Petition for *Certiorari* and Prohibition with Preliminary Injunction seeking: (a) to annul and set aside the Alias Writ of Execution dated July 2, 1985 issued by public respondent Ministry of Labor and Employment Director Severo Pucan (respondent director for brevity) in Case No. R4-STF-3359-78 entitled "Ponciano Felicia vs. D. M. Consunji, Inc." awarding an additional amount of backwages to and the reinstatement of the private respondent Ponciano Felicia (private respondent for brevity), and (b) to restrain and prohibit the public respondent director from issuing further alias

writs of execution for the payment of additional backwages and reinstatement of the private respondent by petitioner.

Private respondent was a regular employee of D. M. Consunji, Inc., (petitioner for brevity) since 1959. He was a finishing carpenter assigned to all carpentry work such as setting partitions, installing cabinets, office fixtures, etc. with a daily salary of P20.60 at petitioner's main office in Pandacan, Manila for eight (8) years. On May 8, 1978, he received a Memorandum (transferring him to the Cainta Workshop) when he reported back to work after a brief period of rest and hospitalization due to a heart attack. The relevant part of the Memorandum reads:

“This assignment is only temporary. You can be recalled when the need for your services at the main office is required.” (Rollo, p. 14).

Private respondent, however, refused to accept the new assignment based on his belief that it was a scheme to ultimately dismiss him and a penalty for being absent from March 21 to April 10, 1978. Such refusal was interpreted as insubordination by petitioner which alleged that the assignment was temporary and based on the ground that carpentry work at the main office had ceased. Having been prevented to work at the main office, private respondent filed a complaint for illegal dismissal and violation of P.D. 851 with the Department of Labor against petitioner in the above-mentioned Case No. R4-STF-3359-78. Finding in favor of private respondent, namely, that: (a) the assignment was for an indefinite period; (b) the private respondent in no instance can effectively insist on his recall to the main office, as the petitioner irrespective of the existence of work at the main office retained the option to recall or not private respondent; and (c) the alleged cessation of work was not sufficiently proven (Rollo, p. 15), the Acting Director ordered the reinstatement and payment of full backwages to private respondent Ponciano Felicia. The Order of the Acting Director, dated August 20, 1978 reads:

“WHEREFORE, premises considered, respondent is hereby ordered to reinstate complainant to his former position at the main office and to pay in full backwages from May 11, 1978 up to the time of actual reinstatement. Respondent is hereby given

ten (10) days to comply with this order, otherwise a Writ of Execution shall issue.

“SO ORDERED.” (Rollo, p. 16).

On appeal, the Office of the Minister of Labor affirmed the decision of the Acting Director and dismissed the appeal for lack of merit on June 2, 1981 (Rollo, pp. 17-18).

On February 6, 1984, or 2 years and 7 months after private respondent received a copy of the June 2, 1981 Order, a motion for the issuance of a writ of execution was filed on the ground that the Orders of June 2, 1981 and August 20, 1978 had become final and executory. Consequently, public respondent Director issued a writ of execution on February 20, 1984, the relevant portion of which states:

“Now, therefore, you are hereby commanded to proceed to the premises of D. M. CONSUNJI, CO., INC., located at 1881 Quirino Ave., Ext., Pandacan, Manila and require respondent to reinstate complainant to his former position without loss of seniority rights and pay him the amount of FIFTY EIGHT THOUSAND FIVE HUNDRED SEVENTY TWO PESOS & 19/100 (P58,572.19) representing his backwages from May 11, 1978 to December 31, 1983 plus a backwage from January 1, 1984 until actual reinstatement.” (Rollo, p. 21).

Formal objections and oppositions filed by petitioner, based on the excessive amount of backwages which was for a period of 5 years and 7 months and the timeliness of the execution which should have been done earlier in 1981, were denied (Rollo, p. 5).

By virtue of an Order dated March 28, 1984 issued by public respondent to the Philippine National Bank (PNB), Pandacan, Manila Branch, depository bank of petitioner, respondent acting deputy sheriff Alfredo Antonio, Jr. was able to garnish and collect the full amount of P58,572.19 (Rollo, p. 24).

On June 3, 1985, a Motion for the issuance of Writ of Execution” was filed alleging that petitioner has failed and refuses to reinstate the private respondent. Accordingly, an “Alias Writ of Execution dated

July 2, 1985 was issued by public respondent director wherein the amount of P22,327.58 is sought to be collected from petitioner as backwages of private backwages from June 1, 1985 until actual reinstatement (Rollo, pp. 25-26), relevant portion of which states:

“Now, therefore, you are hereby commanded to proceed to the premises of D. M. Consunji, Co., Inc., located at 1881 Quirino Avenue Ext., Pandacan, Manila and require respondent to reinstate complainant to his former position without loss of seniority rights and pay the amount of TWENTY TWO THOUSAND THREE HUNDRED TWENTY SEVEN PESOS & 58/100 (P22,327.58) representing his accrued backwages from January 1, 1984 to May 31, 1985 plus backwages from June 1, 1985 until actual reinstatement” (Rollo, p. 26).

Hence, this petition, praying among others for the setting aside of the alias writ of execution of July 2, 1985 which it alleged as having “gone beyond legal bounds which merits the intervention of this Honorable Court” (Rollo, pp. 2-13).

Without giving due course to the petition, the Supreme Court (First Division) resolved to require the respondent to comment on the petition, and as prayed for, a temporary restraining order was issued enjoining the respondent from enforcing the alias Writ of Execution dated July 2, 1985 (Rollo, p. 27).

Private respondent filed his comment on August 27, 1985 (Rollo, 35-58) while public respondents’ comment was filed on October 14, 1985 (Rollo, pp. 65-74).

In conformity with the resolution dated October 28, 1985 (Rollo, p. 76) petitioner filed its Consolidated Reply to: (a) Comment of the private respondent; and (b) Comment of the public respondents on December 2, 1985 (Rollo, pp. 80-91).

The Court resolved: (a) to give due course to the petition; and (b) to require the parties to submit simultaneous memoranda, in the resolution of January 6, 1986 (Rollo, p. 92).

The petitioner submitted its memorandum on March 12, 1986 (Rollo, pp. 105-121) and private respondent, on April 11, 1986 (Rollo, pp. 125-141). Public respondents in its Manifestation and Motion prayed that their Comment dated October 8, 1985 be considered as their memorandum (Rollo, p. 102).

The following are the issues raised by the petitioner in its petition:

I.

APPLICABLE DECISIONS OF THE HON. SUPREME COURT HAVE CONSISTENTLY FIXED THE AWARD OF BACKWAGES TO THE MAXIMUM OF THREE YEARS ONLY AND THE COLLECTION OF ADDITIONAL BACKWAGES FOR THE PRIVATE RESPONDENT UNDER THE ALIAS WRIT OF EXECUTION IS WITHOUT VALID AND LEGAL JUSTIFICATION AND IN GRAVE ABUSE OF DISCRETION.

II.

THE PRIVATE RESPONDENT SHOULD BE DEEMED TO HAVE FORFEITED HIS RIGHT TO REINSTATEMENT.

The main issue in this case is whether or not private respondent is entitled to additional backwages from May 1, 1984 to May 31, 1985 despite the payment of previous backwages equivalent to five (5) years and seven (7) months.

Petitioner invokes the established policy of this Court to fix the award of backwages to the maximum of three (3) years and contends that the alias writ of execution of July 2, 1985 sought to be enforced, is an attempt of private respondent to collect additional backwages from January 1, 1984 to May 31, 1985 in the amount of P22,327.58 equivalent to one (1) year and five (5) months and to allow private respondent to collect additional backwages under the alias writ of execution will yield him backwages equivalent to seven (7) years (Rollo, p. 118), which would make a mockery of the above-mentioned limitation (Rollo, p. 114).

Private respondent, on the other hand, presses for continuing backwages up to the time of actual reinstatement, no matter how long it takes, to serve as exemplary damages to punish the petitioner for persistently refusing to reinstate him. He further contends that petitioner can afford to delay reinstatement knowing it is not obligated to pay a single centavo if it finally decides to reinstate him (Rollo, pp. 138-139).

Public respondents argue that the three years rule in the award of backwages has no application in the case at bar where petitioner has failed and refused and still fails and refuses to reinstate private respondent (Rollo, p. 70) despite the writ of execution dated February 20, 1984 (Rollo, p. 72).

The Solicitor General further points out that there is no showing whatsoever that in issuing the questioned alias writ due to the refusal of petitioner to reinstate private respondent, which is a clear non-compliance with or defiance of the writ of execution dated February 20, 1984 (Rollo, p. 70), public respondent MOLE Director acted without jurisdiction, or in excess thereof or with grave abuse of discretion amounting to lack of jurisdiction.

As clearly explained by this Court, the normal consequences of a finding that an employee has been illegally dismissed are: (1) reinstatement to his former position without loss of seniority rights and (2) payment of backwages corresponding to the period from his illegal dismissal up to actual reinstatement. Reinstatement restores the employee to his status before his dismissal while the grant of backwages allows him to recover from the employer what he has lost because of the illegal dismissal. These twin remedies which give meaning and substance to the constitutional right of labor to security of tenure (Art. II (9) 1973 Constitution and Art. XIII (3), second paragraph 1987 Constitution), are distinct and separate, one from the other. Although the grant of reinstatement commonly carries with it an award of backwages, the inappropriateness or non-availability of one does not carry with it the inappropriateness or non-availability of the other (Lydia Santos vs. NLRC, et al., G.R. No. 76721, September 21, 1987).

Reinstatement with full backwages for an indefinite and prolonged period of time is viewed with disfavor by this Court. Thus, it has been held that “A ruling that would permit a dismissed laborer to earn backwages 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.” (*Lepanto Consolidated Mining Company vs. Encarnacion*, 186 SCRA 262 [1985]; *Sta. Cecilia Sawmills Inc. vs. Court of Industrial Relations* (10 SCRA 433 [1964])).

Consequently, in the computation of backwages, this Court has 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 earning of each and every employee elsewhere (*Lepanto Consolidated Mining Co. vs. Encarnacion*, supra; *Mercury Drug Co., Inc. vs. Court of Industrial Relations*, 56 SCRA 694 [1974]). In view thereof, this Court has consistently awarded backwages in the maximum of only three (3) years (*Lepanto Consolidated Mining Co. vs. Encarnacion*, supra, citing *People’s Bank and Trust Company, et al. vs. People’s Bank and Trust Company Employees Union, et al.*, 69 SCRA 10; *Insular Life Insurance Co., Ltd. Employees Association NATU vs. Insular Life Assurance Co., Ltd.*, 76 SCRA 50; *Monteverde, et al. vs. CIR, et al.*, 79 SCRA 259; *Danao Development Corporation vs. NLRC, et al.*, 81 SCRA 489; *L.R. Aguinaldo, Inc. vs. CIR, et al.*, 82 SCRA 309; *Liberty Cotton Mills Workers Union vs. Liberty Cotton Mills, Inc.*, 90 SCRA 391; *Litex Employees Assoc., et al. vs. CIR, et al.*, 116 SCRA 459).

Briefly stated, the announced rationale for this policy is to do away with the attendant delay in awarding backwages and obviate the twin evils of idleness on the part of the employee and the attrition and protracted delay in satisfying such award on the part of unscrupulous employers (*Panay Railways Inc. vs. National Labor Relations Commission*, 137 SCRA 482 [1985]).

It will be observed that in laying down the three years backwages rule, the Court seeks to avoid delay in the disposition of cases. In the case at bar, however, the delay is not in the disposition but in the execution of a final order which has been continuously obstructed by the petitioner.

The records show that petitioner ignored the Order of Deputy Minister Vicente Leogardo, Jr. dated June 2, 1981 which have become final and executory and the Writ of Execution dated February 20, 1984 and the Alias Writ of Execution dated July 2, 1985, both issued by MOLE Director Severo N. Pucan, all requiring the payment of backwages and reinstatement of private respondent. Such facts were not denied by petitioner which merely limited itself to the contention that private respondent failed to insist on his reinstatement under the writ of execution of February 20, 1984.

On the other hand, there is merit in private respondent's contention that the Order to reinstate was clearly directed to the petitioner who was given ten (10) days to comply. However, such requirement was never enforced because not only did petitioner refuse to do so but it chose to question the Writ of Execution by way of a Motion for Reconsideration before the Office of the respondent Director and after the denial thereof, resorted to another Motion for Reconsideration which was treated as an appeal which was eventually denied (Rollo, pp. 40-50). As a result of all the objections and opposition raised by the petitioner, private respondent has not, been returned to his former position. To collect his wages for 5 years and 7 months, he had to resort to garnishment while at the same time he had to parry off all dilatory maneuvers resorted to by the petitioner (Rollo, p. 134). To ensure compliance with the court's order, and realizing the stubborn refusal to reinstate him, petitioner should have resorted to more drastic remedies such as the filing of a motion to cite petitioner in contempt. In this way, prompt compliance could have resulted.

We have no desire to change the three-year maximum backwages rule. To allow more years of backwages only serves to encourage the employee to delay his reinstatement. The aggrieved employee must act at once. Besides, We note that in the instant case, the employee has already received a considerable sum as backwages. This amount should be enough.

WHEREFORE, the Petition is hereby **GRANTED**. Petitioner is hereby ordered to immediately **REINSTATE** the private respondent,

but the writs of execution granting an additional sum are hereby **SET ASIDE.**

SO ORDERED.

Yap, Melencio-Herrera, Padilla and Sarmiento, JJ., concur.

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