

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
THIRD DIVISION**

**GANDARA MILL SUPPLY and
MILAGROS SY,**
Petitioners,

-versus-

**G.R. No. 126703
December 29, 1998**

**THE NATIONAL LABOR RELATIONS
COMMISSION AND SILVESTRE
GERMANO,**
Respondents.

X-----X

DECISION

PURISIMA, J.:

At bar is a Special Civil Action for *Certiorari* under Rule 65 of the Revised Rules of Court, assailing the Resolution^[1] of the National Labor Relations Commission^[2] (NLRC) promulgated on May 22, 1996, and NLRC Resolution^[3] dated July 23, 1996, denying petitioner's motion for reconsideration in NLRC NCR 00-02-1653-94.

From the records on hand, it appears that:

Milagros Sy, owner of Gandara Mill Supply, at No. 708 Gandara St., Binondo, Manila, was the respondent in NLRC Case No. 02-01653-94 instituted by Silvestre Germano (now the private respondent).

On February 6, 1995, the private respondent, without notifying his employer, Milagros Sy, did not report for work until February 11, 1995. Like any expectant father, he chose to be near his wife who was then about to deliver. The wife gave birth on February 12, 1995. Upon private respondent's request, Milagros Sy extended some financial assistance to the Germano couple.

The petition avers inter alia that Gandara Mill Supply is a small business enterprise with only two (2) employees, including herein private respondent to do manual work. With inadequate manpower, the absence of just one worker can spell untold difficulties in its operations. Matters became even worse when private respondent, without informing his employer, was absent for a long time, so much so that the former incurred the ire of the latter. Two (2) weeks after, private respondent returned to duty, and to his surprise, he was met by his employer to personally tell him that someone had been hired to take his place. He was advised, however, that he was to be re-admitted in June 1996.

On February 27, 1995, a case of illegal dismissal was commenced by the private respondent with the Department of Labor and Employment.

To buy peace, petitioner offered P5,000.00 but to no avail. The offer was flatly rejected by private respondent. When conciliation efforts proved futile, the Labor Arbiter directed the parties to submit their position papers on or before April 28, 1995, which deadline was extended to May 5, 1995. In his Order of May 9, 1995, Labor Arbiter Facundo L. Leda gave petitioner a "last opportunity to file/submit their (sic) Position Paper within seven (7) days from receipt hereof otherwise their (sic) right to be heard are (sic) deemed waived and this case will be decided on the basis of the documents on file."^[4]

Despite receipt of the aforesaid Order, however, petitioner still failed to comply therewith, prompting the Labor Arbiter to hand down a decision on January 29, 1996, disposing, thus:

“WHEREFORE, decision is hereby rendered ordering respondent/s Gandara Mill Supply and/or Milagros Sy to pay complainant Silvestre Germano the sum of SIXTY FIVE THOUSAND SIX HUNDRED EIGHTY FIVE PESOS AND 90/100 (P65,685.90) representing separation pay, backwages, SLIP and attorney’s fee as discussed and computed above.”

On March 4, 1996, petitioner appealed said decision to the NLRC. To the appeal, an Opposition was interposed on March 15, 1996.

On May 22, 1996, the NLRC dismissed petitioner’s appeal for failure to post a cash or surety bond.

The appeal was predicated on the submission that petitioner’s business is small, on which invoked ground petitioner sought exemption from posting a bond. Should its prayer for exemption of a bond be denied, petitioner asked for at least twenty (20) days to put up such bond.

The petition attacks the July 23, 1996 Resolution of public respondent, affirming the decision of the Labor Arbiter dated January 29, 1996. On August 14, 1996, a Motion for Execution was presented by private respondent. NLRC entered its judgment on August 26, 1996.

On September 6, 1996, private respondent sent in an Ex-parte Motion for Execution, which was granted. The corresponding Writ of Execution issued on September 13, 1996.

The issues posited for resolution:

FIRST, did the public respondent act with grave abuse of discretion in dismissing petitioner’s appeal and in not giving petitioner a chance to prove that the private respondent was not illegally dismissed but was merely suspended for abandoning his job?; and

SECOND, did the public respondent act with grave abuse of discretion in awarding to the private respondent the amount of

SIXTY-FIVE THOUSAND SIX HUNDRED EIGHTY-FIVE AND 90/100 (65,685.90), which amount petitioner assails as excessive?

To be sure, the petitioner was afforded a chance to show that the private respondent was not illegally dismissed. Unfortunately, petitioner failed to discharge its burden of proof.

In a long line of cases, the Court has consistently ruled that, findings of fact by quasi-judicial agencies like the NLRC are conclusive upon the court in the absence of proof of grave error in the appreciation of facts. Petitioner's bare allegation that it was denied the right to be heard is negated by the Labor Arbiter's extension of much leniency to petitioner by allowing the latter to submit a position paper on April 28, 1995, then on May 5, 1995, and finally, seven (7) days from receipt of the Order dated May 9, 1995. Generally, reglementary periods are strictly observed to the end that orderly administration of justice be safeguarded. In the case under consideration, the public respondent had been quite liberal in observing and enforcing the rules. Consequently, petitioner's protestation of denial of opportunity to be heard is barren of any factual basis. The principle of laches finds a wide room for application here. Laches, in a general sense, is failure or neglect for an unreasonable length of time to do that which by exercising due diligence could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time warranting a presumption that the party entitled to assert it has either abandoned or declined to raise it. The doctrine of laches or "state demands" is based upon grounds of public policy which require for the peace of society, discouragement of stale claims. And unlike the statute of limitations, it is not a mere question of time but is principally a question of inequity or unfairness or permitting a right or claim to be enforced or asserted. (*Tijam vs. Sibonghanoy*, 23 SCRA 29). So also in the Order, dated May 9, 1995, respondent Commission declared in clear and unequivocal terms that "failure to file a position paper is deemed a waiver of the right to be heard and that decisions will be based on the position paper submitted." Evidently, for making good his said Order, the Labor Arbiter cannot be faulted for acting arbitrarily.

Neither can grave error be ascribed to respondent NLRC for handing down its decision without petitioner's Position Paper. By its inaction, petitioner was properly considered to have waived or forfeited the right to refute private respondent's stance. Indeed, petitioner cannot now be permitted to belatedly complain of a denial of due process.

That petitioner was not represented by a lawyer in all the aforesaid proceedings was solely attributable to its own negligence or inattention to the case. While the court has held that representation by a lawyer is a fundamental right of litigants, petitioner has nobody to blame but itself for its failure to secure the services of counsel resulting to the dismissal of its case. In the case under scrutiny, petitioner was represented by a non-lawyer, Ramon Flores, who was present from the beginning of the case but failed to efficiently follow-up the case until the promulgation of judgment. While the right to due process is available to all the parties, it does not countenance self-serving excuses devised to undermine orderly administration of justice.

After a careful study, and a thorough examination of the pleadings and supporting documents, it appears decisively clear that private respondent Silvestre Germano was illegally dismissed. While a prolonged absence without leave may constitute as a just cause of dismissal, its illegality stems from the non-observance of due process. Applying the WenPhil Doctrine by analogy, where dismissal was not preceded by the twin requirement of notice and hearing, the legality of the dismissal in question, is under heavy clouds and therefore illegal. While it cannot be deduced unerringly from the records on hand that private respondent was really dismissed, there is no clear indication that the latter was to be reinstated. In fact, since the inception of the case, what petitioner merely endeavored was to compromise for a measly sum of P5,000.00, and no mention of taking respondent back to his job was ever offered as part of the deal to end the controversy. What can be surmised from petitioners' offer to re-admit the private respondent, was nothing but a polite gesture couched in words intended to make the impact of his so-called suspension less severe. Invoking the plight of a working man, where "no work, no pay" is the rule of thumb, the court cannot sanction an over extended suspension. The Labor Code explicitly provides, that:

“No preventive suspension shall last longer than thirty (30) days. The employer shall thereafter reinstate the worker to his former or substantially equivalent position or the employer may extend the period of suspension provided that during the period of extension, he pays the wages and other benefits due to the worker. In such case, the worker shall not be bound to reimburse the amount paid to him during the extension if the employer decides after completion of the hearing to dismiss the worker.”^[5]

In this case, the supposed suspension was expected to last for more than the period allowed by law, thus making the suspension constitutive of an illegal dismissal. Therefore, the Labor Arbiter’s contention is upheld by the Court.

Granting *arguendo* that private respondent’s absence engendered undue difficulty to the smooth operations of petitioner’s business, considering the predicament of respondent Silvestre Germano, his dismissal is unwarranted. In holding the constitutional mandate of protection to labor, the rigid rules of procedure may sometimes be dispensed with to give room for compassion. The doctrine of “compassionate justice” is applicable under the premises, private respondent being the breadwinner of his family. “The Social Justice policy mandates a compassionate attitude toward the working class in its relation to management. In calling for the protection to labor, the Constitution does not condone wrongdoing by the employee, it nevertheless urges a moderation of the sanctions that may be applied to him in the light of the many disadvantages that weigh heavily on him like an albatross on his neck.”^[6]

The timeliness of petitioner’s appeal is an issue which this court endeavors to pass upon. While the rule governing the instant Petition does not fix a period within which to file an appeal, “the yardstick to measure the seasonableness of a Petition for *Certiorari* is the reasonableness of the duration of time that expired from the commission of the act complained of, to the institution of the proceedings to annul the same.”^[7] The court has the occasion to hold that where no law can be applied, resort to the fundamental law can be had. The Constitution provides that:

“All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial and administrative bodies.”^[8]

Taking into account the interval of time that elapsed from the receipt of the assailed Resolution by petitioner, to the time the court received the present petition, an interregnum of almost three (3) months, the irresistible conclusion is that the Petition was not filed on time.

All things studiously considered, we are of the view that public respondent NLRC did not act with grave abuse of discretion in awarding to private respondent the amount of P65,685.90 which is not at all excessive under the facts and circumstances of the case. Time and again, the court held that factual findings by the Labor Arbiter are to be treated as final absent any showing that he erred in his evaluation. The familiarity with the parties, circumstance and opportunity to observe their demeanor is something the court did not have the privilege to witness.

Untenable is petitioner's contention that the said amount awarded, representing backwages, separation pay and attorney's fee is excessive and tantamount to a deprivation of petitioner's property without due process of law. Once a finding of illegal dismissal is established, an award of separation pay and backwages is in order and binding upon the court, unless the contrary is proved. The court shares the Labor Arbiter's observation and ratiocination that the amount of the questioned award is not excessive in light of prevailing economic conditions.

WHEREFORE, the Petition for Certiorari under consideration is hereby **DISMISSED** on the grounds, that: (1) It was filed out of time; (2) It is devoid of merit; and (3) It was interposed for purposes of delay.

Accordingly, the NLRC Resolution of July 23, 1996 is **AFFIRMED** in toto; the writ of execution issued on September 13, 1996 upheld; and petitioner's prayer for a restraining order **DENIED**.

No pronouncement as to costs.

SO ORDERED.

Romero, Kapunan and Pardo, *JJ.*, concur.

[1] See 1st paragraph, “Annex A”, Roll, p. 15.

[2] NLRC Third Division, Queen City composed of Presiding Comm. Lourdes G. Java; Comm. Ireneo B. Bernardo, Ponente; and Comm. Joaquin A. Tanodra, member.

[3] “Annex A,” p. 15.

[4] See Solicitor General’s Comment, p. 7; Rollo, p. 52.

[5] Rule XXIII, Sec. 9, Imp. Rules of the Labor Code.

[6] Diosdado de Vera vs. NLRC, 191 SCRA 633 1990.

[7] San Juan vs. Cuento, 160 SCRA 277, Toledo vs. Pardo, 118 SCRA 566, 1982.

[8] Art. III, Sec. 16, The 1987 Philippine Constitution.
