

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
THIRD DIVISION**

EDWIN GESULGON,
Petitioner,

-versus-

G.R. No. 90349
March 5, 1993

**NATIONAL LABOR RELATIONS
COMMISSION and A. A. MARISCOR
CORPORATION,**

Respondents.

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D E C I S I O N

FELICIANO, J.:

In this Petition for *Certiorari*, petitioner seeks to annul the Resolution dated 29 September 1989 of the National Labor Relations Commission (“NLRC”) in NLRC Case No. NCR 7-2934-86 setting aside its own resolution dated 28 July 1989. In that earlier resolution, the NLRC had dismissed A.A. Mariscor Corporation’s Motion to Set Aside an Award by a Labor Arbiter. The Labor Arbiter had declared that petitioner Edwin Gesulgon had been illegally dismissed and awarded him full backwages.

On 26 December 1985, private respondent A.A. Mariscor Corporation (“Mariscor”) hired petitioner Gesulgon as Chief Cook on board its

fishing vessel named “Susan II.” It was agreed that petitioner Gesulgon, aside from his usual monthly salary, was entitled to an additional 3-day incentive pay, based on the daily wage rate, for every one thousand (1,000) tubs of fish brought in by the “Susan II” in excess of petitioner’s quota, both during the in-season and off-season months. Petitioner Gesulgon’s quota was 3,000 tubs for an in-season month and 1,500 tubs for an off-season month.^[1]

On 7 October 1986, petitioner Gesulgon filed with the Labor Arbiter a complaint for illegal dismissal, non-payment of 3-day incentive bonus, non-reimbursement of provident fund payments and damages against private respondent Mariscor. He stated that in the month of April 1986, Susan II had a total catch of 4,000 tubs of fish and that under the company’s salary incentive program he was entitled to additional pay equivalent to three (3) days pay; that on 14 June 1986, private respondent Mariscor’s Assistant Manager Artemio Hermosura met with him and the other crew members of Susan II to distribute their incentive pay for the month of April 1986, but that petitioner Gesulgon protested believing the pay distributed to be inadequate; that on 16 June 1986, he was ordered by private respondent Mariscor to proceed to its office in Manila and there on 19 June 1986, private respondent Mariscor through Assistant Manager Artemio Hermosura informed him that the company had decided to dismiss him as “his act of questioning the incentive pay was conduct unbecoming;” and, that he had insisted on reinstatement and payment of his 3-day incentive pay for April 1986 amounting to P400.00, but private respondent Mariscor simply ignored him.^[2]

The summons and the notices of hearing in respect of that complaint were addressed to the President/Manager of private respondent Mariscor and served by registered mail. These were respectively received by Agnes Trajeco and Dalisay Gardiola, who were clerks in the office of Assistant Manager Hermosura.^[3] However, during the scheduled hearings no one appeared for private respondent Mariscor. Accordingly, the Labor Arbiter allowed petitioner Gesulgon to present his evidence ex parte and, on 11 March 1987, a decision was rendered declaring petitioner Gesulgon’s dismissal to be illegal and ordering his reinstatement. The dispositive portion of that decision states:

“IN VIEW OF THE FOREGOING, judgment is hereby rendered declaring the dismissal of complainant on June 19, 1986 as illegal. Respondent is hereby ordered to reinstate complainant to his former position without loss of seniority rights with full backwages until actual reinstatement.

Respondent is also ordered to pay complainant his three (3) days salary incentive bonus for the month of June, 1986 and provident fund contribution in the total amount of P423.29.

The claims for moral and exemplary damages and expenses of litigation are hereby dismissed for lack of merit.

SO ORDERED.”^[4]

On 27 March 1987, a copy of that decision was served and received by Agnes Trajeco, a clerk of private respondent Mariscor working in the office of Assistant Manager Hermosura.^[5]

On 7 December 1988, the decision of the Labor Arbiter having become final, petitioner Gesulgon filed a Motion for Execution. Notices were served on the parties informing them of a conference scheduled on 19 December 1988. Notwithstanding notification, private respondent Mariscor again failed to appear and the conference had to be reset to 12 January 1989. On the latter date, Mariscor finally appeared through its Assistant Manager Romeo H. Gardiola. In succeeding conferences, Mariscor was represented by its legal counsel Atty. Jose T. Collado.

On 28 February 1989, Mariscor filed with the NLRC a Motion to Set Aside Judgment and Writ of Execution, which motion the NLRC treated as a Petition for Relief from Judgment. Mariscor contended that the decision of the Labor Arbiter was void since summons had been served on Ms. Trajeco, a person not duly authorized to receive summons and other legal process for the company and as such the NLRC had not acquired jurisdiction over the person of Mariscor; that the dismissal of Gesulgon was legal as he had proved during the six-month probationary period to be an inefficient and incompetent cook; and that the decision of the Labor Arbiter was obtained through extrinsic fraud since Artemio Hermosura, as Assistant Manager of

Mariscor to whom the summons was finally turned over by Ms. Trajeco, had failed to act for the company.

On 28 July 1989, the NLRC issued a Resolution dismissing Mariscor's Motion on the ground that the Labor Arbiter's decision had attained finality, the summons and notice of hearing having been admittedly received by the clerks of Mariscor who thereafter delivered them to a responsible officer, the company's Assistant Manager.^[6]

Not satisfied, Mariscor moved for reconsideration, mainly reiterating its earlier arguments.

In its Resolution dated 29 September 1989, the NLRC reversed and set aside its original Resolution of 28 July 1989 and the Decision of the Labor Arbiter dated 1 March 1989. The NLRC instead ordered the case remanded to the Labor Arbiter for appropriate action. The dispositive portion of that Resolution states:

“WHEREFORE, in view of all the foregoing considerations, the Resolution of this Commission promulgated on July 28, 1989 as well as the decision of the Labor Arbiter below dated March 1, 1987 should be, as they are hereby, set aside and another one entered, remanding the case to the Labor Arbiter of origin for further appropriate action.

“The Labor Arbiter is requested to re-hear the case continuously and resolve the same soonest.

“So Ordered.”^[7]

In this Petition for Certiorari, petitioner Gesulgon raises the following issues:

1. whether or not the motion to set aside judgment/petition for relief was filed on time and had merit; and
2. whether or not the principles of fair play and due process had been violated.

The Court considers that respondent NLRC gravely abused its discretion in treating the Motion to Set Aside Judgment and Writ of Execution as a petition for relief from judgment. Respondent NLRC had, without sufficient basis, extended the reglementary period for filing a petition for relief from judgment contrary to the prevailing rule and case law. The Revised Rules of Court^[8] which are of supplementary application in respect of the New Rules of Procedure of the NLRC^[9] provide that:

“SECTION 3. Time for filing petition; contents and verification. — A petition provided for in either of the preceding sections of this rule must be verified, filed within sixty (60) days after the petitioner learns of the judgment, order, or other proceeding to be set aside, and not more than six (6) months after such judgment or order was entered, or such proceeding was taken; and must be accompanied with affidavits showing the fraud, accident, mistake, or excusable negligence relied upon, and the facts constituting the petitioner’s good and substantial cause of action or defense, as the case may be.”
(Emphasis supplied)

A party filing a petition for relief from judgment must strictly comply with two (2) reglementary periods: (a) the petition must be filed within sixty (60) days from knowledge of the judgment, order or other proceeding to be set aside; and (b) within a fixed period of six (6) months from entry of such judgment, order or other proceeding.^[10] Strict compliance with these periods is required because provision for a petition for relief from judgment is a final act of liberality on the part of the State, which remedy cannot be allowed to erode any further the fundamental principle that a judgment, order or proceeding must, at some definite time, attain finality in order at last to put an end to litigation. In *Turqueza vs. Hernando*,^[11] this Court stressed once more that:

“the doctrine of finality of judgments is grounded on fundamental considerations of public policy and sound practice that at the risk of occasional error, the judgments of courts must become final at some definite date fixed by law. The law gives an exception or ‘last chance’ of a timely petition for relief from judgment within the reglementary period (within 60 days

from knowledge and 6 months from entry of judgment) under Rule 38, supra, but such grave period must be taken as ‘absolutely fixed, inextendible, never interrupted and cannot be subjected to any condition or contingency. Because the period fixed is itself devised to meet a condition or contingency (fraud, accident, mistake or excusable neglect), the equitable remedy is an act of grace, as it were, designed to give the aggrieved party another and last chance’ and failure to avail of such last chance within the grace period fixed by the statute or Rules of Court is fatal.”^[12] (Emphases in the original)

The record here discloses that Mariscor was furnished a copy of the decision of the Labor Arbiter on 27 March 1987. A decision of a Labor Arbiter becomes final and executory ten (10) calendar days from receipt thereof, unless within that period the decision is appealed to the NLRC. Since Mariscor did not appeal the decision of the Labor Arbiter to the NLRC, that decision attained finality on 6 April 1987. Mariscor filed its Motion to Set Aside Judgment and Writ of Execution on 28 February 1989. Clearly, that Motion was not only filed beyond the period of sixty (60) days from the time Mariscor was notified of the decision of the Labor Arbiter; the Motion was also filed one (1) year and eleven (11) months after the decision of the Labor Arbiter became final and executory. The NLRC clearly and gravely abused its discretion when it granted a remedy not provide by law and in obvious disregard of the reglementary periods established by the Rules of Court, setting aside in the process a final and executory decision of the Labor Arbiter.

The fact that both the summons and the copy of the decision of the Labor Arbiter had been served upon Mariscor by delivery thereof to Ms. Trajeco, a clerk in the office of Mariscor’s Assistant Manager Hermosura, is of no moment. Under Section 13 of Rule 14 of the Rules of Court, summons may be served upon a domestic corporation like Mariscor by service made on “the president, manager, secretary, cashier, agent, or any of its directors.” In *Villa Rey Transit, Inc., et al vs. Far East Motor Corporation, et al*,^[13] the Court held that service of summons made on petitioner corporation through delivery of summons to its Assistant General Manager for Operations was valid service which vested the trial court with jurisdiction over the person of the corporation, and that an Assistant General Manager for

Operations is properly regarded as falling within the term “manager” or “agent” used in Section 13, Rule 14 of the Rules of Court. We note that in the Villa Rey Transit, Inc. case, the papers were delivered by the sheriff not personally to the Assistant General Manager for Operations, but rather were left with one of the night tellers of the corporation. It was stressed by the Court in Villa Rey Transit, Inc. that –

“the rationale of all rules for service of process on corporation(s) is that service must be made on a representative so integrated with the corporation sued as to make it a priori supposable that he will realize his responsibilities and know what he should do with any legal papers served on him.”^[14]

Mariscor also contended that the adverse decision of the Labor Arbiter must be nullified for reason of extrinsic fraud, that it had been deprived of due process because Assistant Manager Hermosura, who had in fact received these copies of the summons, notices and the decision of the Labor Arbiter, had not turned them over to the appropriate officers of the corporation but had instead kept them in his personal file.

Whether or not Assistant Manager Hermosura actually turned over the papers received by him in his office to unspecified “appropriate officers” of Mariscor, does not appear in the record. In any case, Mariscor cannot be relieved of responsibility for the acts or omissions of its officers. Mariscor is bound by the service of summons effected upon its Assistant Manager. It would be contrary to public policy to permit a corporation to free itself from the consequences of service upon it of legal process by pleading the supposed failure of one of its officers to carry out duties incumbent upon such officer. The public is entitled to assume that an Assistant General Manager of a corporation, like Mr. Hermosura in the case at bar, will in fact do what was necessary to be done in respect of a summons and a complaint like that filed by petitioner Gesulgon. In litigations before the regular courts, the rules on service of summons and other legal processes are liberally construed so long as actual receipt and knowledge of the summons and process is shown.^[15] We will not apply a more technical and stringent rule in quasi-judicial administrative proceedings.

The services of petitioner Gesulgon were terminated allegedly because he was inefficient and incompetent as a cook and because on 9 June 1986 he had supposedly failed to board "Susan II." Petitioner controverted this by filing a complaint with the Labor Arbiter. Due to its own inexcusable negligence, Mariscor was unable to present evidence to substantiate the alleged ground(s) for dismissal. The settled rule is that in termination cases, the burden of proving that the termination was for a valid or authorized cause rests on the employer;^[16] failure on the part of the employer Mariscor to discharge that burden required the Labor Arbiter and the NLRC, and this Court as well, to hold that petitioner's dismissal was without authorized cause.^[17]

WHEREFORE, the Court Resolved to **GRANT** the Petition for Certiorari. The Resolution of the National Labor Relations Commission dated 29 September 1989 is hereby **SET ASIDE**. Private respondent A.A. Mariscor, Inc. is **ORDERED** to reinstate petitioner Edwin Gesulgon to his former position without loss of seniority rights, with three (3) years backwages without deduction or qualification, to return the provident fund contributions and to pay the incentive pay found due and payable by the Labor Arbiter in his decision dated 11 March 1987. Petitioner is also hereby **AWARDED** attorney's fees equivalent to ten percent (10%) of the total amount due him. Costs against private respondent.

SO ORDERED.

Bidin, Davide, Jr., Romero and Melo, JJ., concur.

[1] Rollo, pp. 19-21.

[2] Record, pp. 1-5.

[3] Id., p. 37.

[4] Rollo, p. 21.

[5] Record, p. 39.

[6] Rollo, pp. 32-36.

[7] Id., pp. 47-48.

[8] Section 3, Rule 38, Revised Rules of Court.

[9] Section 3, Rule 1, New Rules of Procedure of the NLRC.

- [10] See *Philippine Rabbit Bus Lines, Inc. vs. Arciaga*, 148 SCRA 433 (1987); *Abao vs. Hon. Virtucio*, 109 SCRA 819 (1960).
- [11] 97 SCRA 483 (1980).
- [12] 97 SCRA at 490. See also *Arcilla vs. Arcilla*, 138 SCRA 56 (1985); *Canete vs. Court of First Instance of Zamboanga del Sur*, 23 SCRA 543 (1961).
- [13] 81 SCRA 298 (1978).
- [14] 81 SCRA at 303.
- [15] *Rebollido vs. Court of Appeals*, 170 SCRA 800 (1989); *G & G Trading Corporation vs. Court of Appeals*, 158 SCRA 466 (1988).
- [16] Art. 277, Labor Code, as amended.
- [17] *Egyptair vs. National Labor Relations Commission*, 148 SCRA 125 (1987); *Polymedic General Hospital vs. National Labor Relations Commission*, 134 SCRA 420 (1985).