**SUPREME COURT**
**THIRD DIVISION**

**GROLIER INTERNATIONAL, INC.,**
***Petitioner*,**

***-versus-***

**G.R. No. 83523**
**August 31, 1989**

**EXECUTIVE LABOR ARBITER ARTHUR L. AMANSEC, THE NLRC SHERIFF and MANUEL L. FERNANDEZ,**
***Respondents*.**
**x----------x**

**D E C I S I O N**

**FELICIANO, *J.*:**

In this Petition for *Certiorari*, Grolier International, Inc. ("Grolier"), a corporation organized under Philippine law, seeks to set aside two (2) Orders dated 19 May 1988 and 31 May 1988, respectively, issued by the respondent Labor Arbiter in NLRC, Case No. RB-IV-7533-76. The dispositive portion of the 19 May 1988 Order reads as follows:

> "WHEREFORE, the computation of the award dated May 10, 1988 due complainant should be, as it is hereby APPROVED. Respondent is hereby directed to pay complainant his award

based on said computation at its Philippine peso equivalent on actual date of payment within five (5) calendar days. Failing at this, let a Writ of Execution issue.

SO ORDERED."[1] (Emphasis supplied)

The 31 May 1988 Order denied Grolier's Motion for Reconsideration.

The antecedents of the instant Petition relate to this Court's Resolution dated 29 December 1987 which resolved herein private respondent Manuel L. Fernandez's motion for reconsideration in the case entitled "Manuel L. Fernandez vs. Grolier International, Inc., et al.," G.R. No. 55312.

Private respondent Fernandez first entered the service of Grolier on 1 July 1964. On 27 July 1974, respondent Fernandez, then occupying the position of Comptroller and Executive Administrator of Grolier with a basic monthly salary of P4,000.00, left for Sydney, Australia. There, he worked for seven (7) months for the Grolier Society, Ltd. of Australia and received a salary of AUS$8,000.00 per annum. On 3 February 1975, Fernandez returned to Manila to follow up his application for immigration to Australia at the Australian Embassy in Manila. He needed immigrant status in Australia to qualify for permanent employment there. However, on 19 February 1975, his application for an immigrant visa was disapproved. As a result, he sought reinstatement to his former position with petitioner Grolier. When he was refused reinstatement, Fernandez brought a case for illegal dismissal before the Labor Arbiter. The Labor Arbiter dismissed his complaint. On Petition for *Certiorari*, this Court upheld the Labor Arbiter and dismissed the Petition in a Decision dated 15 December 1986. Upon respondent Fernandez's Motion for Reconsideration, however, this Court, in a Resolution dated 29 December 1987, set aside its earlier decision and rendered a decision in favor of respondent Fernandez.

In this 29 December 1987 Resolution, the Court ordered petitioner Grolier to reinstate respondent Fernandez, with full backwages from 3 February 1975 for a period of three (3) years, without qualification or deduction. In case reinstatement was no longer possible, Grolier was required to pay instead separation pay to respondent Fernandez,

on the basis of applicable law or company practice, whichever is higher, "effective as of the end of the aforementioned three (3) year period."[2] After denying petitioner Grolier's Motion for Reconsideration, the Court remanded the case to the Executive Labor Arbiter, National Capital Region, Branch No. IV, Department of Labor and Employment. There, respondent Fernandez moved for immediate execution.

On 10 May 1988, the NLRC Research and Information Unit prepared a computation of award which computed the backwages and separation pay awarded to respondent Fernandez on the basis of the salary he was earning in Sydney, Australia working for the Grolier Society, Ltd. of Australia, which was AUS$8,000.00 per annum. His separation pay was computed at one month salary for every year of service from 1 July 1964 until 2 February 1978, resulting, per the NLRC computation, in a total separation pay of AUS$9,333.38. The total amount due as backwages, upon the other hand, was computed on the same basis as AUS$26,000.00, representing basic salary and bonus for three (3) years. The aggregate award to respondent Fernandez accordingly amounted to AUS$35,333.38, plus P6,646.65 for refund of airfare from Sydney to Manila.[3] In his order dated 19 May 1988, respondent Labor Arbiter approved the foregoing computation of award. Petitioner Grolier moved for reconsideration of this order; respondent Labor Arbiter denied the Motion for Reconsideration in an order dated 31 May 1988.

Petitioner Grolier is now before us assailing the order of the public respondent Labor Arbiter which approved the computation of award dated 10 May 1988, as constituting a grave abuse of discretion. Grolier submits two (2) principal arguments in its petition, to wit:

(1) the award of backwages and separation pay should be based on private respondent's last salary with petitioner at P4,000.00 per month and not AUS$8,000.00 per annum; and

(2) the award of separation pay must cover only the period beginning 3 February 1978 to 19 May 1988, because the Resolution of this Court in G.R. No. 55312 speaks of

payment of separation pay "effective as of the end of the above three (3) year period."

We find substantive merit in the first argument of petitioner. We believe that the Labor Arbiter had no factual or legal basis for computing the award upon the basis of AUS$8,000.00 per annum salary received by private respondent while he was working in Sydney, Australia. The backwages and separation pay should have been computed on the basis of the P4,000.00 per month salary received by Fernandez while employed in the Philippines by petitioner Grolier. Respondent Fernandez sought reinstatement to his old position with Grolier in the Philippines, from which he could expect to receive only his old salary of P4,000.00. He could not have reasonably expected to receive as salary the Philippine peso equivalent of the number of Australian dollars he was receiving as salary in Australia had petitioner Grolier allowed him to resume his former position in the Philippines.

Reinstatement means restoration to a state or condition from which one had been removed or separated.[4] One who is reinstated assumes the position he had occupied prior to his dismissal and is, as an ordinary rule, entitled only to his last salary in that position. Had private respondent Fernandez been reinstated either upon his initial request or as required by this Court, he would have occupied his former position in Grolier in the Philippines as Comptroller and Executive Administrator, and as such would have been entitled only to his previous salary of P4,000.00 per month.

Further, it seems important to note that salary scales are based upon or reflect, as economic facts, the standard of living prevailing in the country and the purchasing power of the domestic currency. The P4,000.00 monthly salary which respondent received from petitioner prior to his stay in Australia, was presumably a reasonable and satisfactory remuneration for the work done by him, taking into account the standard of living and the cost of living in the Philippines at that time. It cannot be supposed that private respondent was promoted when he was sent to the Sydney offices of the Grolier Society, Ltd. of Australia. The Court in its Resolution in G.R. No. 55132 dated 27 December 1987 had stated that respondent Fernandez went to Australia on company business, which means that his trip to

Australia was related to the duties of the position he was then holding in Grolier in the Philippines. The apparently higher salary given to him while working in Australia, must be viewed in the light of the fact that the cost of living and the standard of living in Australia are higher than those prevailing in the Philippines; he was paid his salary in Australian dollars; but he had to pay for his expenses in Australian dollars too. There was in reality no increase in respondent's salary that was effected merely because he was in Australia; what had in truth been effected was merely the adjustment of his salary on account of the different, higher costs of living while in Australia. Put a little differently, the AUS$8,000.00 per annum salary of private respondent while in Australia was equivalent to his P4,000.00 per month salary he had been receiving in the Philippines. Respondent does not pretend that the functions he was discharging in Australia (as an "accountant or financial officer")[5] were qualitatively different from the work he was carrying out in the Philippines (as comptroller and executive administrator) or that his Australian job involved much greater responsibility or required much higher technical capabilities than his job here. In fact, it would appear that his job in Sydney was more modest and less important than his job in Manila.

The second point raised by petitioner Grolier is centered on the interpretation of a phrase in our Resolution on the Motion for Reconsidering ordering Grolier "to pay [Fernandez] separation pay based on the applicable law or company practice, whichever is higher, effective as of the end of the above three (3) year period."[6] Petitioner contends that the underscored phrase referred to the period beginning 3 February 1978 up to 19 May 1988, a period of ten (10) years and three (3) months. We cannot sustain this reading of our Resolution, for it would collide with present law and jurisprudence. Section 4 (b), Rule 1, Book VI of the Implementing Rules of the Labor Code provides that:

> "Sec. 4 (b). In case the establishment where the employee is to be reinstated has closed or ceased operations or where his former position no longer exists at the time of reinstatement for reasons not attributable to the fault of the employer, the employee shall be entitled to separation pay equivalent at least to one month salary or to one month salary for every year of

> service whichever is higher, a fraction of at least six months being considered as one whole year." (Emphasis supplied)

Respondent is entitled to separation pay equivalent to one (1) month salary for every year of service since petitioner could no longer reinstate him in his old position. The period to be considered, therefore, is that from 1 July 1964 - when he commenced his employment with the petitioner — until 2 February 1978, which is the terminal date of the three (3) year period set by this Court in determining the backwages he is entitled to. In other words, respondent Fernandez is deemed to have been in the employment of petitioner Grolier until the expiry of the three (3) year period during which he was entitled to backwages, or a total period of fourteen (14) years and seven (7) months. This conclusion is in line with the rulings of this Court too numerous to list here, where awards of separation pay were computed from the start of employment up to the time of termination thereof,[7] including the period of imputed service for which he is entitled to backwages.

Thus, when the Court stated that private respondent was entitled to "separation pay based on the applicable law or company practice, whichever is higher, effective as of the end of the above three (3) year period," it meant only that in the computation of separation pay, the three (3) year period in respect of which backwages are awarded, must also be included (although private respondent had not actually served during the last three [3] years), and that the salary rate prevailing at the end of the three (3) year period of putative service should be used in such computation. There is no showing that the monthly salary attached to the old position of respondent Fernandez in petitioner Grolier had been upgraded to some amount higher than P4,000.00 per month.

We conclude that the public respondent Labor Arbiter acted in excess of his jurisdiction in computing the backwages and separation pay due to the private respondent on the basis of his pay in Sydney of AUS$8,000.00 per annum. Upon the other hand, public respondent correctly determined that private respondent is entitled to separation pay on the basis of his entire service to petitioner Grolier, actual and putative: 1 July 1964 to 2 February 1978.

**WHEREFORE**, we **AFFIRM** the Order of the respondent Labor Arbiter dated 19 May 1988, insofar as it found that respondent's separation pay should be computed at the rate of one (1) month's salary for every year of service, from 1 July 1964 to 2 February 1978. We, however, **MODIFY** and **SET ASIDE** said order to the extent that it approved the computation of respondent's backwages and separation pay on the basis of AUS$8,000.00 per annum and hereby DIRECT that said backwages and separation pay be computed on the basis of P4,000.00 per month. No pronouncement as to costs.

**Fernan, *C.J.*, Gutierrez, Jr., Bidin and Cortes, *JJ.*, concur.**

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[1] Order dated 19 May 1988, p. 3; Rollo, p. 20.
[2] Fernandez vs. Grolier International, Inc., et al., 156 SCRA at 837-838 (1987).
[3] Rollo, p. 45.
[4] Union of Supervisors (RB) NATU vs. The Secretary of Labor and Republic Bank, 128 SCRA 442 (1984).
[5] 156 SCRA at p. 836.
[6] Id., at 838.
[7] See e.g. Soriano vs. NLRC, 155 SCRA 124 (1987); Santos vs. NLRC, 154 SCRA 166 (1987); San Miguel Corporation vs. Deputy Minister of Labor and Employment, 145 SCRA 199 (1986); General Bank and Trust Co. vs. Court of Appeals, 135 SCRA 569 (1985).

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