SUPREME COURT
FIRST DIVISION

DANTE NACURAY, ANGELITO ACOSTA and LARRY CLEMENTE,
***Petitioners*,**

-versus-

G.R. Nos. 114924-27
March 18, 1997

NATIONAL LABOR RELATIONS COMMISSION and BMC-BENGUET MANAGEMENT CORPORATION,
***Respondents*.**
x----------x

D E C I S I O N

BELLOSILLO, *J.*:

DANTE NACURAY, ANGELITO ACOSTA AND LARRY CLEMENTE pray that the petition filed by their former counsel be considered null and void, the adverse consequences thereof declared without any force and effect, and that the decision of the National Labor Relations Commission be set aside and the judgment of the Labor Arbiter reinstated.

The antecedents: On various dates, BMC-Benguet Management Corporation (BMC for short) employed petitioners as helpers. They were assigned at the Finishing Section of BMC's Production

Department and worked as "air-grinder operators." The Confirmation of Employment forms issued to them by BMC specifically provided that their employment should only be for three (3) months.[1]

Their employment contracts were nonetheless renewed several times; thrice for Dante Nacuray and Larry Clemente, and twice for Angelito Acosta. Later, however, their services were terminated by the non-extension of their respective contracts.[2] According to BMC, their "performance during the contractual period did not meet the company's standards."[3]

As a consequence, several complaints for illegal dismissal, non-payment of wages and violation of P.D. No. 851 were filed against BMC. Thereafter, upon motion of complainants, and in view of the similarity of the causes of action and the identity of the parties involved, the hearing and the disposition of their complaints were consolidated in the Office of Labor Arbiter Evangeline S. Lubaton.

On 7 March 1990, the Labor Arbiter decided in favor of complainants, petitioners herein. Holding that they were "regular" employees and not "casual" employees, BMC was ordered to reinstate them.

Undaunted by the adverse decision of the Labor Arbiter, BMC appealed to the NLRC on 23 March 1990. The Second Division of the Commission rendered its judgment on 29 October 1993 reversing the decision of the Labor Arbiter. The motion of complainants for reconsideration was denied on 16 December 1993. Thereafter, the resolution of NLRC having become final and executory was entered in the Book of Entry of Judgments on 4 March 1994.

On 26 April 1994 complainants through their new counsel Atty. Eduardo Lopez,[4] filed a special civil action for certiorari before this Court.

The problem actually started on 17 December 1993. A day after the motion for reconsideration was denied by the NLRC, Atty. Francisco Ferraren, the counsel who represented herein petitioners in the proceedings below, instituted a special civil action for certiorari before this Court, docketed as G.R. No. 112834 and assigned to the Third Division.[5]

On 24 January 1994, the Third Division dismissed the petition for certiorari filed by Atty. Ferraren. In a minute resolution, the Third Division ruled —

Accordingly, the Court Resolved to DISMISS the petition for certiorari of the decision dated October 29, 1993 of the National Labor Relations Commission in NLRC NCR Case No. 00-04-01954-89 for failure to comply with requirement No. 2 and with Circular 19-91.

Besides, even if the petition complied with the aforesaid requirements, it would still be dismissed, as the Court finds that no grave abuse of discretion was committed by the public respondent.[6]

The minute resolution became final and executory. It was entered in the Book of Entry of Judgments on 28 February 1994.[7]

Petitioners claim that they have no knowledge whatsoever that a similar petition was filed by their counsel Atty. Ferraren with this Court. According to them they came to know of it only when they received copy of the Manifestation of respondent BMC. According to their undertaking, they immediately filed a Counter-Manifestation informing the Court of the existence of a similar petition before this Court; that after the favorable resolution of the Labor Arbiter was reversed by the NLRC, petitioners terminated the services of Atty. Ferraren verbally and formally thru a letter dated 26 November 1993 copy of which was furnished public respondent NLRC; and that the "best proof" of Atty. Ferraren's lack of authority to file the petition was the fact that he himself verified the same instead of having it verified by any of herein petitioners.[8]

When required by this Court to explain why he filed the 17 December 1993 Petition for Certiorari, Atty. Ferraren replied that he received the letter from petitioners on 21 December 1993, four (4) days after he filed his petition in their behalf. He claimed that petitioners even urged him to file a petition as soon as they received copy of the decision of the Commission. But after he prepared the petition, he could not any more get in touch with his clients so he was constrained to take matters into his own hands.[9]

Petitioners filed a memorandum on 21 November 1994 while respondent filed their supplemental memorandum on 28 April 1995.

The following interrelated procedural issues were raised by petitioners: First, was there a valid substitution of counsel so that at the time Atty. Ferraren filed his petition he was no longer authorized to do so; Second, were petitioners guilty of forum shopping; and, Third, what is the effect of the minute resolution of the Third Division dismissing the first petition for certiorari?

As regards the first issue, we hold that there was no valid substitution of counsel in accordance with the Rules. For a valid substitution of counsel the following elements must concur: (a) there must be a written request for substitution; (b) it must be filed with the written consent of the client; (c) it must be with the written consent of the attorney to be substituted; and, (d) in case the consent of the attorney to be substituted cannot be obtained, there must be at least a proof of notice that the motion for substitution was served on him in the manner prescribed by the Rules of Court.[10]

In the instant case, the process of substitution of counsel was not yet complete when Atty. Ferraren filed the first petition in view of the absence of the third and fourth elements. If at all, it became complete and effective only after Atty. Ferraren received the letter from petitioners formally terminating his services as counsel. For, it was only then could he be considered to have been notified of the substitution. In the absence of clear and convincing proof, the allegation of petitioners that there was prior verbal notice is insufficient and cannot even be considered as substantial compliance with the requirements.

Thus when Atty. Ferraren filed his petition on 17 December 1993 he continued to enjoy the presumption of authority granted to him by petitioners because as of that date he was still their counsel of record. Petitioners cannot now be allowed to disown the negligence and mistake of their counsel which resulted in the dismissal of their petition as they are bound by them no matter how prejudicial they may be to their cause.[11]

It must be stressed that while petitioners have the right to terminate their relations with their counsel and make substitution or change at any stage of the proceedings, the exercise of such right is subject to compliance with the prescribed requirements. Otherwise, no substitution can be effective and the counsel who last appeared in the case before the substitution became effective shall still be responsible for the conduct of the case.[12] The rule is intended to ensure the orderly disposition of cases. Without it there will be confusion in the service of processes, pleadings and other papers.

This brings us to the second issue. Perhaps hoping to exculpate themselves from the adverse consequences of their misdeed, petitioners want us to believe that they have nothing to do with the first petition. To this end, they impute bad faith on their former counsel and deny his authority. A careful scrutiny of the records however reveals that they have not been candid with this Court.

It is very unnatural for Atty. Ferraren to continue prosecuting the case despite having been verbally notified of the termination of his services; much more, in not informing his clients of the status of the case. Moreover, judging from the vigor with which this case has been prosecuted, it strains our imagination to discover that the instant petition was filed by petitioners only after more than four (4) months from the date of the NLRC resolution denying their motion for reconsideration. As if confirming our suspicion, the petitioners' letter of 26 November 1993 addressed to Atty. Ferraren was "coincidentally" mailed on the same date the petition was filed by Atty. Ferraren.

As we view it, petitioners were aware all along that Atty. Ferraren was actively pursuing their case, and that the latter had their express, if not at least, tacit approval. The alleged substitution of counsel was a subterfuge to resurrect a case that is now "too dead" to be revived.

Time and again it has been ruled that the deplorable practice of forum shopping tends to degrade the administration of justice, adds to the congestion of the already heavily burdened dockets of the courts,[13] and wreaks havoc upon the orderly judicial procedure.[14] For this matter, petitioners are sternly warned that a repetition of this act will be dealt with more severely.

One of the overriding considerations that militate against this petition is the fact that the Third Division of this Court has finally disposed of the first petition of Atty. Ferraren, albeit in a minute resolution only. As such, the present petition is now barred under the time-honored principle of res judicata, the requirements of which are: (a) the former judgment must be final; (b) the court which rendered it had jurisdiction over the subject matter and the parties; (c) it must be a judgment on the merits; and, (d) there must be, between the first and second actions, identity of parties, subject matter, and causes of action.[15]

All the elements of res judicata are present in this case. In fact, the 17 December 1993 petition is identical with the one before us, the only difference being the names of counsels who prepared and filed each petition. Moreover, the decision of the Third Division of this Court on the first petition is already final and executory the same having already been entered. Lastly, the pronouncement of the Court in the first petition to the effect that the NLRC committed no grave abuse of discretion was for all purposes an adjudication on the merits.

Res judicata requires that stability be accorded to judgments. Controversies once decided on the merits shall remain in repose for there should be an end to litigation which, without the doctrine, would be endless.[16] Furthermore, there are two entries of judgment: the Resolution of the Third Division of this Court entered on 28 February 1994, and the Decision of the Second Division of the NLRC on 4 March 1994, thereby clearly suggesting that both judgments are already final and executory. Nothing is more settled in law than that when a judgment becomes final and executory it becomes immutable and unalterable. The same may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and whether made by the highest court of the land.[17] The reason is grounded on the fundamental considerations of public policy and sound practice that, at the risk of occasional error, the judgments or orders of courts must be final at some definite date fixed by law.[18]

Finally, even in the absence of the foregoing considerations, it is still beyond our power and authority to grant the relief prayed for. As we

have ruled in Church Assistance Program, Inc. vs. Sibulo,[19] the Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is. It is the final arbiter of any justiciable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings. Consequently, a Division cannot and should not review a case already passed upon by another Division of this Court. It is only proper to allow the case to take its rest after having attained finality.

WHEREFORE, the instant petition is **DISMISSED**. Costs against petitioners.

SO ORDERED.

Padilla, Vitug, Kapunan and Hermosisima Jr., *JJ.*, concur.

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[1] Records, pp. 54-60.
[2] Dante Nacuray was dismissed on 30 March 1989, Angelito Acosta on 15 May 1989, and Larry Clemente on 27 June 1989.
[3] Records, pp. 83-84; Annexes "P" and "Q."
[4] He was also the one who filed the motion for reconsideration of the decision of the NLRC without having formally entered his appearance.
[5] Entitled Dante Nacuray, Angelito Acosta, and Larry Clemente vs. NLRC and BMC-Benguet Management Corporation.
[6] Records, p. 198; Annex "A".
[7] Records, p. 198; Annex "A."
[8] Petitioners' Reply; Records, p. 126.
[9] Atty. Francisco Ferraren's Compliance/Explanation; Records, pp. 173-174.
[10] Rinconada Telephone Co. vs. Buenviaje, Nos. L-49241-42, 27 April 1990, 184 SCRA 701.
[11] Eden vs. Ministry of Labor and Employment, G.R. No. 72145, 28 February 1990, 182 SCRA 840.
[12] Sumadchat vs. Court of Appeals, G.R. No. 52197, 30 January 1982; Aban vs. Enage, No. L-30666, 26 February 1983.
[13] Chempil Export vs. Court of Appeals, G.R. Nos. 112438-39, 12 December 1995, 251 SCRA 257.
[14] People vs. Court of Appeals, G.R. No. 54641, 28 November 1980, 101 SCRA 450.
[15] DBP vs. Pundogan, G.R. No. 96921, 29 January 1993, 218 SCRA; Mendoza vs. CA, G.R. No. 81909, 5 September 1991, 201 SCRA 343; Woverine Worldwide, Inc. vs. Court of Appeals, G.R. No. 78298, 30 January 1989, 169 SCRA 627.

[16] Shell Company of the Philippines vs. Presiding Judge, G.R. No. 64149, 19 June 1991, 198 SCRA 254.
[17] Nunal vs. Court of Appeals, G.R. No. 94005, 6 April 1993, 221 SCRA 26.
[18] Garbo vs. Court of Appeals, G.R. No. 100474, 10 September 1993, 226 SCRA 250.
[19] G.R. No. 76552, 21 March 1989, 171 SCRA 408.