

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
THIRD DIVISION**

**ROLANDO G. OCAMPO, ALFREDO DEL  
PILAR, ROWENA C. ROBOSA, DAISY  
ADRIANO, LUISITO ARELLANO,  
TEODORO BANATICLA, ET AL.,  
*Petitioners,***

***-versus-***

**G.R. No. 110687  
December 15, 1993**

**HON. BARTOLOME CARALE, ETC.,  
ALLIED BANKING CORPORATION,  
*Respondents.***

X-----X

**RESOLUTION**

**VITUG, J.:**

A Petition for Mandamus was filed by the petitioners to compel herein public respondent Bartolome Carale, as Chairman of the National Labor Relations Commission (“NLRC”), to issue a writ of execution as regards the “reinstatement aspect” of the Decision<sup>[1]</sup> dated 4 September 1992, of Labor Arbiter Jose De Vera.

On 19 August 1985, private respondent Allied Banking Corporation filed an amended petition, charging the members of the Allied Bank Employees Union (“Union”) with having staged an illegal strike and

other concerted actions. The Union countered by alleging unfair labor practices, illegal dismissal, and violation of B.P. 130 on the part of the private respondent.

After hearing, the Labor Arbiter issued a decision, dated 4 September 1992, stating that the strike conducted on 3 and 4 January 1985, barely sixteen (16) days after the Minister of Labor and Employment had assumed jurisdiction over the labor dispute, as well as the strike staged on 11 February 1985 that lasted up to 11 March 1985, was illegal being in violation of Article 263, paragraph (g) of the Labor Code. Only the union officers, however, who knowingly participated in the illegal strike were held liable in the absence of proof that the individual members participated in any illegal act during the strike. The Labor Arbiter held that there were no just and valid causes for the termination of the services of the union's individual members (inclusive of the petitioners). Finding that while private respondent bank, on 7 October 1986, had reinstated the individual union members after this Court promulgated its Resolution, dated 29 September 1986, in G.R. No. 75749, entitled "Allied Banking Corporation vs. Hon. Augusto Sanchez, et al.," said respondent bank, however, subsequently dismissed the herein 41 petitioners due to alleged lack of positions in the bank. The Labor Arbiter concluded that the second dismissal of the forty-one petitioners had been illegal for being without just and lawful cause. Labor Arbiter De Vera then disposed of the case in this wise:

WHEREFORE, all the foregoing premises being considered, judgment is hereby rendered as follows:

- a) Declaring the strikes complained of as illegal and consequently, all union officers, namely, Tomas Gonzalo, Crisanto Balisi, Norberto Agujo, Benito Barrera, Hernanie Sison, Maynard Cuenca, Victor Alvarez, Inocencio Salvador, Luisito Mendoza, Arturo Villanueva, and Pedro Pascual, lost their employment status;
- b) Dismissing the petition to declare the strike illegal as against the other individual respondents;

- c) Declaring the dismissal of the above-name 163 counter-complainants as illegal and ordering the petitioner Allied Banking Corporation to pay their aggregate backwages and other computed benefits in the total sum of P5,049,692.73;
- d) Ordering the petitioner Allied Banking Corporation to reinstate the forty-one (41) counter-complainants led by Rolando Ocampo, Rowena Rebosa and Alfredo del Pilar, to their former or substantially equivalent position with all the rights, privileges and benefits appertaining thereto including seniority, and to pay them their backwages and other computed benefits in the aggregate amount of P615,000.00; and
- e) Ordering the petitioner Allied Banking Corporation to pay attorney's fees in the amount of P921,290.65.

SO ORDERED.

On 29 September 1992, petitioners filed a "Motion To Issue Partial Writ of Execution," invoking Article 223 of the Labor Code of the Philippines, as amended by R.A. 6715, mandating immediate reinstatement even pending appeal.<sup>[2]</sup> On 30 September 1992, Labor Arbiter De Vera issued the writ of execution.<sup>[3]</sup>

On 30 September 1992, respondent bank filed an appeal with the NLRC, while the petitioners filed their partial appeal on 2 October 1992.

Respondent bank thereafter moved to quash the writ of execution which, however, was denied by the Labor Arbiter in his order of 5 November 1992.<sup>[4]</sup>

On 19 November 1992, respondent Bank filed with the NLRC a "Petition for Injunction and Mandamus," docketed as NLRC NCR Case No. 00316-92, praying primarily that the Labor Arbiter and herein petitioners be restrained from implementing the writ of execution issued on 30 September 1992. The petitioners filed their answer on 3 December 1992.

On 11 February 1993, petitioners' counsel wrote the respondent Chairman of the NLRC a letter, requesting from him the issuance of a writ of execution for the immediate reinstatement of his clients to their former positions. On 19 May 1993, in a second letter, counsel reiterated the plea. On 8 July 1993, the instant petition for mandamus against the public and private respondents was filed with this Court.

The pivotal issue in this petition is whether, on the above settings, the writ of mandamus lies to compel public respondent to issue a writ of execution for the reinstatement of the petitioners.

The petitioners take the simplistic view that the "refusal of the NLRC Chairman to issue a writ of execution to enforce the reinstatement aspect of the decision of the labor arbiter constitutes an open defiance (to) the rule of law," and that a "writ of mandamus should be issued ordering the said Chairman to issue a corresponding writ of execution to enforce the immediate reinstatement of herein petitioners."

The stance is untenable. Under Rule 65 of the Revised Rules of Court, a writ of mandamus may only issue:

"When any tribunal, corporation, board, or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, and there is no other plain, speedy and adequate remedy in the ordinary course of law." (Sec. 3)

Given the circumstances here obtaining, the non-issuance of a writ of execution by the NLRC Chairman cannot be interpreted to mean an unlawful neglect in the performance of an act which the law specifically enjoins as a duty. For a writ of mandamus to issue, the petitioner should, on the one hand, have a clear legal right to the thing demanded, and there should be, upon the other hand, an imperative duty of a respondent to perform the act sought to be mandated.<sup>[5]</sup> Considering that a writ of execution has already been issued by Labor Arbiter De Vera and a motion to quash it has been denied, no longer is the Chairman of the NLRC still called upon, let alone duty bound, to again issue a similar writ of execution.

Article 218 [d] of the Labor Code empowers the National Labor Relations Commission “(t)o hold any person in contempt directly or indirectly and impose appropriate penalties therefor in accordance with law.” Considering this statutory provision, we concur with the view expressed by the Solicitor-General that the petitioners should have instead “moved to cite private respondent bank for contempt due to its disobedience, if not belligerent resistance, to the writ of execution lawfully issued by the Labor Arbiter.” A motion to cite the respondent bank for contempt is not only a plain, speedy and adequate but indeed intended to be the appropriate remedy that can be sought in order to ensure the proper implementation of the writ of execution.

We take note, furthermore, that pending with the NLRC is a petition for injunction and mandamus filed by respondent bank to restrain the Labor Arbiter and the herein petitioners from implementing the writ of execution. In the meantime that said petition is pending with, and still to be acted upon by, the NLRC, a recourse to this Court would yet be premature.

**WHEREFORE**, the petition is **DISMISSED**.

**SO ORDERED**.

**Feliciano, Bidin, Romero and Melo, JJ., concur.**

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[1] Annex “A”, Rollo, 31-55.

[2] Annex “C”, Ibid., 59-62.

[3] Annex “D”, Ibid., 63-64.

[4] Annex “E”, Ibid., 65-68.

[5] Canonizado vs. Benitez, 127 SCRA 610/1984/; Taboy vs. Court of Appeals, 105 SCRA 758 [1981]; Province of Pangasinan vs. Reparations Commission, 80 SCRA 376 [1977]; Ocampo vs. Subido, 72 SCRA 443 [1976].