SUPREME COURT
THIRD DIVISION

RESTITUTO C. PALOMADO,
***Petitioner*,**

-versus-

G.R. No. 96520
June 28, 1996

NATIONAL LABOR RELATIONS COMMISSION, MARLING RICE MILL and/or MARIO TAN TENG KUAN and ROLANDO TAN,
***Respondents*.**
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D E C I S I O N

PANGANIBAN, *J.*:

In this Decision, this Court reiterates some well-entrenched doctrines in labor cases, like (1) the appropriate remedy to challenge rulings of the NLRC is a petition for certiorari under Rule 65, not a petition for review under Rule 45 or 43; (2) a motion for reconsideration is an essential prerequisite to certiorari; (3) only questions relating to jurisdiction or grave abuse of discretion — not ordinary errors of law — are reviewable on certiorari; (4) hence, findings of facts of the NLRC are generally accorded great respect, even finality; (5) the law grants the labor arbiter wide latitude to determine the need for a formal hearing after the submission by the parties of their position

papers; (6) labor tribunals need only substantial evidence — not beyond reasonable doubt — as basis for their decisions; and (7) before a case for illegal dismissal can prosper, an employer-employee relationship must first be established.

Petitioner questions the correctness of the Resolution[1] dated November 29, 1990 or respondent National Labor Relations Commission[2] in Case No. RAB-IV-4-2385-90, which affirmed in toto the decision dated June 27, 1990 rendered by Labor Arbiter Numeriano D. Villena dismissing herein petitioner's complaint for alleged illegal dismissal, underpayment of wages and various benefits.

Antecedent Facts

The labor arbiter made the following factual findings:

> "As viewed from the complaint filed on April 17, 1990, complainant Restituto Palomado charges respondents Marling Rice Mill and/or Mario Tan Ten (sic) Kuan and Rodolfo S. (sic) Tan for alleged illegal dismissal, underpayment of wages, overtime pay, legal holiday pay, premium pay for holiday and rest day and separation pay/retirement/resignation benefit.
>
> After a careful appraisal of the verified position papers together with their supporting proofs, documents and affidavits submitted by the parties, the undersigned finds that the case could be decided judiciously without the necessity of going through formal hearings, hence this Decision.
>
> In support of his claims, complaint, in his verified position paper submitted on June 7, 1990 gave the following averments: that on January 2, 1970, he was hired by respondent Marling Rice Mill as a truck driver paid on a 'per trip basis' amounting to a monthly average of P3,000.00; that he allegedly worked thereat continuously up to August 1987 when he was illegally dismissed by respondent Rolando O. Tan, in his capacity as manager/operator of respondent Marling Rice Mill. Complainant likewise averred that sometime in 1973, respondent Mario Tan Ten (sic) Kuan suffered from stroke and in view thereof, his son, respondent Rolando O. Tan, managed

and operated Marling Rice Mill. It was further argued that sometime in August 1987, respondent Rolando Tan talked to him (complainant) and told him that he (R. Tan) would sell the Isuzu cargo truck which complainant used to drive in order to buy a new truck with the assurance that he would be retained as the driver of the new unit, however, when the Isuzu cargo truck was brought, respondent Tan dismissed him without cause and hired a new driver by the name of Antonio Pustrado. Complainant contended that because of his unjustified dismissal from Marling Rice Mill, he suffered and continues to suffer loss of income in the average amount of P3,000.00 a month starting September 1987.

With regards to his money claims, complainant argued that he had to take trips which took 2-3 days to complete for which he was paid minimal amounts depending on the load of his truck and that for said minimal amounts, he had to work continuously for days and even nights; that there were occasions when he had to drive even during holidays and his restdays as per order of the respondent(,) hence, for these, he is entitled to overtime pay, legal holiday pay and premium pay for holiday and rest day.

Complainant submitted as part of its (sic) documentary evidence a 'Certification of Premium Payments' issued by the Employee Accounts Department of the Social Security System dated October 26, 1988 showing the premium payments made by Marling Trade and Ricemill in his favor from April 1972 to July 1979. As likewise indicated by the letters 'NI' in the columns corresponding to the months after July 1979, complainant's name was no longer included in the quarterly collection list submitted by the respondents on file with the Social Security System.

On the other hand, respondent Rolando S. (sic) Tan, in his verified position paper submitted on May 28, 1990 alleged among others that he is the proprietor of R.S. Ricemill located in Bo. Hibanga, Sariaya, Quezon, which business he started in 1987 while respondent Mario Tan Ten (sic) Kuan was the proprietor of 'Marling Rice Mill', which ceased operations in

> 1987 following the infirmity and poor health of Mr. Mario Tan Teng Kuan who died of cardiac arrest on March 15, 1989.
>
> Respondent Rolando S. (sic) Tan strongly argued that he is not owner neither the manager of Marling Rice Mill although he was a former employee of Mr. Mario Tan Teng Kuan and that complainant had never been an employees of R.S. Ricemill which he owned and operated."

The labor arbiter found that there was no dispute as to the fact that respondent Mario Tan Keng Kuan (as owner of Marling Rice Mill) employed petitioner herein as truck driver, the real controversy being when the latter's services actually ended, particularly in view of the untimely death of respondent Mario Tan Teng Kuan in 1989 and the Marling Rice Mill's cessation of operation in 1987. Absent other concrete evidence of petitioner's length of service, the labor arbiter relied upon the "certification of premium payments" prepared and issued by the SSS Employee Accounts Department, Premium Verification Division II at the instance of petitioner himself, which certification showed that after June 1979, petitioner was no longer included among the employees listed in the quarterly collection list filed with the Social Security System — in other words, he ceased to be employed with respondent Marling Rice Mill after June 1979. This was buttressed by the payrolls of Marling Rice Mill submitted to the SSS for various periods after June 1979, as well as by the unrebutted sworn statement of one Dionisio Belda, petitioner's co-worker and pahinante, who alleged that petitioner asked to go on vacation leave in June 1979 and did not report back to work after that. The arbiter thus concluded that petitioner ceased to be an employee of respondent Marling Rice Mill since July 1979, and therefore, inasmuch as the complaint against his former employer Marling Rice Mill and/or Mario Tan Teng Kuan was filed only on April 17, 1990, or beyond the reglementary period prescribed by law,[3] the complaint was already barred by prescription.

As to petitioner's claims against respondent Rolando O. Tan, the labor arbiter found that the documentary evidence presented by said respondent overwhelmingly negated petitioner's allegations that he had been employed by Tan, who it turned out was himself but an employee of Marling Rice Mill, and who subsequently became

proprietor of his own business (R.S. Ricemill), which started operation in 1986, and which was never impleaded by petitioner as party-respondent in the case below. Thus, the arbiter ruled that there existed no employer-employee relationship between the herein petitioner and respondent Rolando O. Tan, and dismissed the petitioner's claims for lack of merit.

Dissatisfied, petitioner appealed the decision to public respondent NLRC, claiming grave abuse of discretion by the arbiter and serious errors in his findings of fact. But the public respondent agreed with the findings made by the arbiter and then concluded:

> "We have gone over the entire records of this case, and We find no evidentiary support for complainant's (petitioner's) allegations against respondent Rolando Tan. Thus, it is Our opinion that the Labor Arbiter neither abused his discretion nor committed serious errors in his findings of facts. Hence, We affirm."[4]

Aggrieved, petitioner now pleads NLRC's abuse of discretion before this Court.

Issues Raised

Petitioner framed the "principal issue" this-wise:

> "Whether or not public respondent NLRC erred in finding that the Labor Arbiter did not act with grave abuse of discretion amounting to lack of jurisdiction nor commit serious errors in his findings both in questions of fact and of law."

and then proceeded to attack the labor arbiter's ruling by alleging the following specific "grounds" for the petition:

> "I. The labor arbiter acted with grave abuse of discretion amounting to lack of jurisdiction in the conduct of the proceedings in this case.
>
> II. The labor arbiter committed serious errors in his findings in questions of fact.

III. The labor arbiter committed serious errors in his findings in questions of law."

The Court's Ruling

We find for the respondents, the instant petition being obviously and indubitably bereft of merit.

At the outset, it must be noted that this petition suffers from serious procedural defects which would have warranted its outright dismissal. First of all, it was incorrectly brought "under the provisions of Rule 43 of the Rules of Court" (rollo, p. 6). We have time and again ruled that the appropriate remedy to challenge a resolution of the NLRC is a very special civil action for certiorari under Rule 65 of the Rules of Court, and not a petition for review under Rule 45,[5] much less Rule 43. However, in order to afford the parties substantial justice, the Court decided to treat the instant petition as a special civil action for certiorari.

Additionally, the allegation in the petition clearly show that petitioner failed to file a motion for reconsideration of the assailed Resolution before filing the instant petition. As correctly argued by private respondent Rolando Tan, such failure constitutes a fatal infirmity even if the petition be treated as a special civil action for certiorari. The unquestioned rule in this jurisdiction is that certiorari will lie only if there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law against the acts of public respondent. In the instant case, the plain and adequate remedy expressly provided by law[6] was a motion for reconsideration of the assailed decision, based on palpable or patent errors, to be made under oath and filed within ten (10) calendar days from receipt of the questioned decision. And for failure to avail of the correct remedy expressly provided by law, petitioner has permitted the subject Resolution to become final and executory after the lapse of the ten day period within which to file such motion for reconsideration. We have held in Pure Foods Corporation vs. NLRC[7] that:

> "(T)he filing of such a motion is intended to afford public respondent an opportunity to correct any actual or fancied error attributed to it by way of a re-examination of the legal and factual aspects of the case. Petitioner's inaction or negligence under the circumstances is tantamount to a deprivation of the right and opportunity of the respondent commission to cleanse itself of an error unwittingly committed or to vindicate itself of an act unfairly imputed. An improvident resort to certiorari cannot be used as a tool to circumvent the right of public respondent to review and purge its decision of an oversight, it any. Neither should this special civil action be resorted to as a shield from the adverse consequences of petitioner's own negligence or error in the choice of remedies. Having allowed the decision to become final and executory, petitioner cannot by an overdue strategy question the correctness of the decision of the respondent commission when a timely motion for reconsideration was the legal remedy indicated."

Likewise, in the case of Zapata vs. NLRC,[8] this Court held:

> "Furthermore, fatal to this action is petitioners failure to move for the reconsideration of the assailed decision on the dubious pretext that it will be a mere rehash of the arguments and issues previously raised in his position paper, but which stratagem conveniently skirts as a consequence the reglementary period therefor, especially if the same has already expired. The implementing rules of respondent NLRC are equivocal in requiring that a motion for reconsideration of the order, resolution, or decision of respondent commission should be seasonably filed as a precondition for pursuing any further or subsequent remedy, otherwise the said order, resolution, or decision shall become final and executory after ten calendar days from receipt thereof. Obviously, the rationale therefor is that the law intends to afford the NLRC an opportunity to rectify such errors or mistakes it may have lapsed into before resort to the courts of justice can be had. This merely adopts the rule that the function of a motion for reconsideration is to point

> out to the court (or commission) the error that it may have committed and to give it a chance to correct itself." (footnote omitted; emphasis supplied.)

But even if the aforementioned procedural flaws were to be disregarded, the herein petition nevertheless suffers from even more grievous substantive defects. A petition for certiorari under Rule 65 of the Rules of Court will lie only where a grave abuse of discretion or an act without or in excess of jurisdiction on the part of the respondent commission is clearly shown. In Loadstar Shipping Co., Inc. vs. Gallo,[9] we reiterated the basic policy that the original and exclusive jurisdiction of this Court to review a decision or resolution of respondent NLRC does not include a correction of its evaluation of the evidence but is confined to issues of jurisdiction or grave abuse of discretion. But the instant petition is a mere rehash of petitioner's Memorandum of Appeal[10] dated July 13, 1990 filed with respondent NLRC. Nowhere in the petition is it shown that the respondent commission committed such patent, gross and prejudicial errors of law or fact, or a capricious disregard of settled law and jurisprudence, as to amount to a grave abuse of discretion or lack of jurisdiction on its part. Absent such showing, this Court ordinarily will not engage in a review of the facts found nor even of the law as interpreted or applied by respondent, for the writ of certiorari is an extraordinary remedy, and certiorari jurisdiction is not to be equated with appellate jurisdiction.[11] Moreover, it is a fundamental rule that factual findings of quasi-judicial agencies like the public respondent NLRC if supported by substantial evidence are generally accorded not only great respect but even finality, and are binding upon this Court, unless petitioner is able to show that respondent Commission had arbitrarily disregarded evidence before it or had misapprehended evidence to such an extent as to compel a contrary conclusion if such evidence had been properly appreciated.[12] This is rooted in the fact this Court is not a trier of facts, as well as in the respect to be accorded the determinations made by administrative bodies in general on matters falling within their respective fields or specialization or expertise.[13]

In any event, a careful perusal of the records of this case leads to the inescapable conclusion that respondent NLRC acted correctly in affirming in toto the decision of the labor arbiter dismissing the

claims of petitioner. Clearly, the arbiter's decision is based on substantial evidence, and no infirmity or circumstance can be found in its factual findings as would detract from the conclusiveness thereof. Thus, there being nothing irregular, arbitrary, capricious or oppressive, amounting to lack of jurisdiction, nor erroneous exercise of discretion, much less any grave abuse thereof, on the part of public respondent, we therefore may not amend or revoke its factual findings. Any error which may be attributed to respondent NLRC would at most be a mere error of judgment which cannot be a proper subject of the special civil action for certiorari.[14]

But if only to demonstrate the utter lack of basis for the instant petition and obliterate all doubts as to the correctness of the respondent Commission's ruling, we shall delve into the alleged errors assigned by the petitioner.

Firstly, petitioner complains that the labor arbiter "acted with grave abuse of discretion." when on May 17, 1990 he terminated the preliminary conference and directed the parties to file their respective position papers without even requiring the private respondents to answer the claims of petitioner and in spite of the fact that petitioner's counsel had moved for ten days to file a reply/comment to respondent Tan's Letter-Answer (Petitioner's Memorandum, pp. 7-8; rollo, pp. 185-186). Petitioner also insists that, inasmuch as the parties held totally conflicting positions, the arbiter ought to have held formal hearings.

These arguments are simply untenable. Petitioner should know that the basic purpose of the initial conference hearing is to explore the possibility of amicably settling the case upon a fair compromise (Sec. 1, Rule VII, Revised Rules of the NLRC). Therefore, when the possibility of an amicable settlement appears remote, either in whole or in part, it becomes imperative for the labor arbiter to terminate the conference and require the parties to submit their respective verified positions papers pursuant to Sec. 2 of Rule VII. In the case below, the arbiter's exercise of his discretion, which carries with it the presumption of regularity, was based only on the belief that it was futile to continue exploring the possibility of a settlement. The arbiter ordered submission of position papers also because of the "failure of complainant's representative to appear" (rollo, p. 41). This, however,

did not preclude the petitioner's filing of a reply/comment to respondent Tan's Letter-Answer if he had so desired. In any event, we do not see how the failure of the arbiter to conduct a formal hearing could constitute "grave abuse of discretion". Sec. 3, Rule VII grants an arbiter wide latitude to "determine whether there is a need for a formal hearing or investigation after the submission by the parties of their position papers and supporting proofs." Additionally, the records show that petitioner signed the minutes of the hearing of May 17, 1990, signifying his agreement to the arbiter's colatilla that "in case a formal hearing is no longer necessary, this case shall be deemed submitted for decision." (Rollo, p. 41.)

Secondly, petitioner believes that had there been a formal hearing, the arbiter's allegedly mistaken reliance on certain of the documentary evidence submitted by parties "would have been cured and remedied by the parties" presumably through the presentation of controverting evidence. This postulate is not in consonance with the need for speedy disposition of labor cases, for the parties may then willfully withhold their evidence and disclose the same only during the formal hearing, thus creating surprises which would merely complicate the issues and prolong the trial. There is a dire need to lessen technicalities in the process of settling labor disputes; hence, Sec. 2 of Rule VII provides:

> "Section 2. Submission of position papers. — During the initial conference/hearing, or immediately thereafter, the Labor Arbiter shall require the parties to simultaneously submit to him their respective verified position papers, which shall cover only the tissues raised in the complaint, accompanied by all supporting documents then available to them and the affidavits of their witnesses which shall take place of their direct testimony. The parties shall thereafter not be allowed to allege, or present evidence to prove, facts not referred to and any cause or causes of action not included in their complaint or position papers, affidavits and other documents. The parties shall furnish each other with copies of the position papers, together with the supporting affidavits and documents submitted by them."

Petitioner further alleges that the arbiter ignored all his documentary exhibits save one, which was even used against him, "while laboriously enumerating one by one all the documentary exhibits of respondent Rolando Tan without qualification whatsoever on the admissibility and credibility of the same." The one piece of documentary evidence being referred to was the SSS's certification of premium payment's which, as earlier mentioned, indicated on its face that by July 1979 petitioner was no longer an employee of Marling Rice Mill. Other documentary evidence presented by petitioner consisted of various receipts for purchases of gasoline, which cannot be regarded as relevant to nor in any way supportive of his allegation of having been employed from 1979 onwards, and as were correctly disregarded.

Petitioner also questions respondent Commission's condonation of the labor arbiter's "serious errors" in determining the non-existence of employer-employee relationship based on (i) the SSS certification of premium payments, (ii) the payrolls of Marling Rice Meal submitted to the SSS, and (iii) the sworn statement executed by Dionisio Belda.

The petitioner's proposition is tenuous if not flimsy. He himself procured and submitted to the arbiter the SSS certification of premium payments to prove his employment from 1979 to his alleged date of termination. Thus, he must have foreseen the consequences of such evidence, for the certification "clearly showed that after June 1979, his name as an employee of respondent Marling Rice Mill was no longer included in the submitted quarterly collection list on file with the Social Security System, or in short, he cease to be employed with the respondent Marling Rice Mill after June 1979."[15] As for the payrolls of Marling Rice Mill pertaining to various parts of 1979, 1984, 1985 and 1986, we agree with respondent Tan[16] that petitioner's accusation that Tan deliberately and unlawfully withheld the payrolls for the intervening periods is founded, reckless and irresponsible. In the first place, he did not prove the existence of such unpresented payrolls (said rice mill having ceased operation in 1987) and secondly, he failed to prove that respondent Tan (who insists he was not the manager thereof) was in possession or custody of such payrolls. If he indeed believe that by such withheld payrolls he could have proven the existence of an employer-employee relationship in

his favor, then he should have exerted diligent efforts to secure the same through subpoena duces tecum. But he did not. In any event, quasi-judicial agencies need only substantial evidence as basis for their decisions. Petitioner submitted a "Sinumpaang Salaysay" dated July 26, 1990 of Mr. Dionisio Belda (which, incidentally, was presented for the first time only before this Court) in order to counteract and offset the effects of the sworn statement dated October 28, 1979 executed by the same Mr. Belda in which he categorically stated that petitioner did not return to work after going on vacation leave in June 1979. Nonetheless, it is obvious that the new sworn statement does not in the least detract from the weight of the evidence showing that petitioner was not an employee of private respondent Rolando Tan and that Rolando Tan was not the manager of Marling Rice Mill but merely an employee thereof. The petitioner also failed to explain why, in the payrolls of Marling Rice Mill, a certain Guillermo Tan signed as the manager thereof, if indeed it is true that Rolando Tan was the manager of said rice mill. The "Bilihang Lampasan" between respondent Tan and Antonio Lindog for the sale of an Isuzu cargo truck does not, contrary to petitioner's contention, prove that respondent Tan was in "absolute control" of Marling Rice Mill. To begin with, the mentioned truck was not even shown to have been owned by the rice mill, thus no presumption of absolute control by respondent Tan over the rice mill could have arisen from that contract of sale.

Disregarding the peripheral matters, the key issue in this case is whether there exists an employer-employee relation relationship between petitioner and private respondent Roland Tan, who, petitioner claims, exercised the power to select and engage the services of the Marling Rice Mill's employees, to dismiss employees (in the same way petitioner was allegedly dismissed), and paid the wages and controlled all work of the mill's employees. Petitioner likewise avers that he was terminated without "cause, just or authorized, thereby making the same illegal". As discussed earlier, and as found by the labor arbiter and affirmed by the public respondent NLRC, there never existed an employer-employee relationship between petitioner and private respondent Rolando Tan. Thus, the labor arbiter held (and public respondent NLRC concurred):

"With regards to complainant's claim against respondent Rolando O. Tan, the overwhelming documentary evidences presented by said respondent strongly negated complainant's charges that he had been under the employ of Rolando O. Tan who appeared to be the registered proprietor/owner of R.S. Rice Mill, (an) entity which started to operate in 1986 as per Certificate of Registration issued by the Bureau of Domestic Trade dated April 11, 1986 and which was never interpleaded (sic) by herein complainant as party-respondent in this case. Respondent Rolando Tan, whom complainant alluded to as the manager/operator of Marling Rice Mill after respondent Mario Tan Ten (sic) Kuan suffered (a) stroke sometime in 1973 was nothing more than a mere employee of Marling Rice Mill as shown by the payrolls submitted to the Social Security System by respondent Marling Rice Mill. Complainant's allegation that Rolando Tan managed, operated and transacted business for Marling Rice Mill is of no moment and wanting in evidence since its is even clear from the said payrolls that it was one Guillermo Tan who was the manager of Marling Rice Mill. Complainant's documentary exhibits (Annexes "I", "I-1" to "I-16", inclusive, and Annex "J") failed to serve their purpose as they are in themselves mere scraps of paper, irrelevant and immaterial.

In view of all the foregoing, the undersigned finds that there existed no employee-employer relationship between complainant and respondent Rolando O. Tan." (Rollo, 49-50.)

An indispensable precondition of illegal dismissal is the prior existence of an employer-employee relationship; in this case, since it was established that there was no such relationship between petitioner and private respondent Tan, therefore the allegation of illegal dismissal does not have any leg to stand on. The claims for backwages, separation pay and other benefits must likewise fail.

WHEREFORE, in view of the foregoing, the petition is hereby **DISMISSED** for lack of merit and the Resolution of the public respondent NLRC dated November 29, 1990 is **AFFIRMED** in toto. No costs.

SO ORDERED.

Narvasa, C.J., Davide, Jr., Melo and Francisco, JJ., concur.

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[1] Rollo, pp. 34-37.
[2] Third Division, composed of Comm. Rogelio I. Rayala, ponente and Pres. Comm. Lourdes C. Javier and Comm. Ireneo B. Bernardo, concurring.
[3] Cf. Section 1, Rule II of Book VII of the Labor Code.
[4] Resolution, p. 3; Rollo, p. 36.
[5] De Asis vs. National Labor Relations Commission, 177 SCRA 340 (September 7, 1989), citing Asiaworld Publishing House, Inc. vs. Ople, 152 SCRA 219 (July 23, 1987).
[6] Sec. 9, Rule X, New Rules of the National Labor Relations Commission.
[7] 171 SCRA 415, 425 (March 21, 1989); see also Villarama vs. National Labor Relations Commission, 236 SCRA 280 (September 2, 1994).
[8] 175 SCRA 56, 60 (July 5, 1989); see also G.A. Yupangco vs. NLRC, G.R. No. 102191, February 17, 1992, minute resolution.
[9] 229 SCRA 654, 659-660 (February 4, 1994); see also Sta. Fe Construction Co. vs. NLRC, 230 SCRA 593 (March 2, 1994).
[10] Annex "G", Petition; rollo, pp. 53-78.
[11] Cf. Sime Darby Pilipinas, Inc., vs. Magsalin, 180 SCRA 177 (December 15, 1989).
[12] St. Mary's College (Tagum, Davao) vs. NLRC, 181 SCRA 62, 66 (January 12, 1990); Tropical Hut Employees' Union-CGW vs. Tropical Hut Food Market, Inc., 181 SCRA 173, 187 (January 20, 1990): Loadstar Shipping Co., Inc. vs. Gallo, supra; Inter-Orient Maritime Enterprises, Inc. vs. NLRC 235 SCRA 268, 277 (August 11, 1994); Five J Taxi vs. NLRC, 235 SCRA 556, 560 (August 22, 1994).
[13] Maya Farms Employees Organization vs. NLRC, 239 SCRA 508 (December 28, 1994); also Lucena vs. Pan-Trade, Inc., 172 SCRA 733, 736 (April 25, 1989).
[14] Vide Zapat vs. National Labor Relations Commission, supra.
[15] Arbiter's Decision, pp. 6-7; rollo, pp. 47-48.
[16] Memorandum for respondent Rolando Tan, pp. 12-13; rollo, pp. 171-172.
