

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
SECOND DIVISION**

**REYNALDO TIANGCO and VICTORIA  
TIANGCO,**

*Petitioners,*

*-versus-*

**G.R. No. L-57636  
May 16, 1983**

**HON. VICENTE LEOGARDO, JR., AS  
DEPUTY MINISTER OF THE MINISTRY  
OF LABOR AND EMPLOYMENT,  
AURELIO ILUSTRISIMO, ABRAHAM  
GILBUENA, ROGELIO CARABIO,  
JESUS GILBUENA, PEPITO  
GILBUENA, DOMINADOR LASERNA,  
CLEMENTE VILLARUEL, RUSTOM  
OFQUERIA, ERNESTO DIONG,  
GRACIANO DURANA, AGUEDO  
MARABE, SOLOMON CLARIN,  
ALCAFONE ESGANA, JUAN CASTRO,  
ANTONIO GILBUENA, GREGORIO  
LAYLAY, DANIEL CABRERA,  
ROBERTO BAYON-ON, ELIAS  
ESCARAN, ERNESTO BATOY, EDDIE  
BATOBALANOS, TOMAS CAPALAR,  
JUAN GIHAPON, JOSE OFQUERIA,**

**FRUTO GIHAPON, PEPITO BATOY, and  
SERAFIO YADAWON,**

***Respondents.***

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## **DECISION**

**CONCEPCION, JR., J.:**

Petition for *Certiorari* and Prohibition, with Preliminary Injunction and/or Restraining Order, to annul and set aside the order of the respondent Deputy Minister of Labor which modified and affirmed the order of Director of the National Capitol Region of the Ministry of Labor directing the petitioners to pay the private respondents their legal holiday pay, service incentive pay, and differentials in their emergency cost of living allowances.

The petitioner, Reynaldo Tiangco, is a fishing operator who owns the Reynaldo Tiangco Fishing Company and a fleet of fishing vessels engaged in deep sea fishing which operates from Navotas, Rizal. His business is capitalized at P2,000,000.00,<sup>[1]</sup> while the petitioner, Victoria Tiangco, is a fish broker whose business is capitalized at P100,000.00.<sup>[2]</sup>

The private respondents, Aurelio Ilustrisimo, Pepito Gilbuena, Rogelio Carabio, Abraham Gilbuena, Rustom Ofqueria, Ernesto Diong, Jesus Gilbuena, Clemente (Emerenciano) Villaruel, Dominador Lacerna, and Graciano Durana, are batillos engaged by the petitioner Reynaldo Tiangco to unload the fish catch from the vessels and take them to the Fish Stall of the petitioner Victoria Tiangco. The private respondents, Eddie Batobalanos, Aguedo Marabe, Gregorio Laylay, Fruto Gihapon, Solomon Clarin, Pepito Batoy, Jose Ofqueria, Daniel Cabrera, Juan Castro, Alcafone Esgana, Tomas Capalar, Antonio Gilbuena, Ernesto Batoy, Serafio Yadawon,

Juan Gihapon, Elias Escaran, and Roberto Bayon-on, were batillos engaged by Victoria Tiangco.<sup>[3]</sup> The work of these batillos were limited to days of arrival of the fishing vessels and their working days in a month are comparatively few. Their working hours average four (4) hours a day.

On April 8, 1980, the private respondents filed a complaint against the petitioners with the Ministry of Labor and Employment for non-payment of their legal holiday pay and service incentive leave pay, as well as underpayment of their emergency cost of living allowances which used to be paid in full irrespective of their working days, but which were reduced effective February, 1980, in contravention of Article 100 of the new Labor Code which prohibits the elimination or diminution of existing benefits.<sup>[4]</sup>

The petitioners denied the laborers' contention, claiming that the laborers were all given, in addition to their regular daily wage, a daily extra pay in amounts ranging from 30 centavos to 10 pesos which are sufficient to offset the laborers' claim for service incentive leave and legal holiday pay. As regards the claim for emergency allowance differentials, the petitioners admitted that they discontinued their practice of paying their employees a fixed monthly allowance, and effective February, 1980, they no longer paid allowances for non-working days. They argued, however, that no law was violated as their refusal to pay allowances for non-working days is in consonance with the principle of "no work, no allowance"; and that they could not pay private respondents a fixed monthly allowance without risking the viability of their business.<sup>[5]</sup>

Resolving the case, the Director of the National Capitol Region of the Ministry of Labor and Employment ruled that the daily extra pay given to private respondents was a "production incentive benefit", separate and distinct from the service incentive leave pay and legal holiday pay, payment of which cannot be used to offset a benefit provided by law, and ordered the petitioners to pay the private respondents their service incentive leave pay and legal holiday pay. However, he denied the laborers' claim for differentials in the emergency cost of living allowance for the reason that the emergency cost of living allowance accrues only when the laborers actually work following the principle of "no work, no pay," and private respondents

are not entitled to a fixed monthly allowance since they work on a part time basis which average only four (4) days a week. The private respondents should not be paid their allowances during non-working days.<sup>[6]</sup>

From this order, both parties appealed.

On May 22, 1981, the respondent Deputy Minister of Labor and Employment modified the order and directed the petitioners to restore and pay the individual respondents their fixed monthly allowance from March, 1980 and to pay them the amount of P58,860.00, as underpayment of their living allowance from May, 1977 to February 21, 1980.<sup>[7]</sup>

When their motion for the reconsideration of the above order was denied, the petitioners interposed the present recourse.

The petitioners claim that the respondent Deputy Minister of Labor and Employment acted in excess of jurisdiction, or with grave abuse of discretion in ordering them to pay the private respondents a fixed monthly allowance from March, 1980, despite the “no work, no pay,” law; the private respondents’ consent to receive an allowance for days worked for, as stated in their appeal; and the findings of the Director of the National Capitol Region that private respondents work for other employers and are part-time employees of the petitioners.

Indeed, the record shows that the private respondents work for the petitioners on a part-time basis and their work average only four (4) days a week. It is not also disputed that the private respondents work for more than one employer so that the private respondents should be paid their living allowance only for the days they actually worked in a week or month and all the employers of the employee shall share proportionately in the payment of the allowance of the employee. Section 12 of the Rules and Regulations implementing P.D. 525 which made mandatory the payment of emergency cost of living allowances to workers in the private section, provides, as follows:

“Section 12. Allowance of Daily-Paid & Part-Time employees. — Employees who are paid on a daily basis shall be paid their allowances for the number of days they actually worked in a

week or month, on the basis of the scales provided in Section 7 hereof.

“In case of part-time employment, the allowances shall be paid in the amount proportionate to the time worked by the employee, or higher. If employed by more than one employer, all employers of such employee shall share proportionately in the payment of the allowance of the employee.”

Section 11 of the Rules implementing P.D. 1123, increasing the emergency allowance under P.D. 525, also provides, as follows:

“Section 11. Allowances of full-time and part-time employees. — Employees shall be paid in full the monthly allowances on the basis of the scales provided in Section 3 hereof, regardless of the number of their regular working days, if they incur no absence during the month. If they incur absences, the amounts corresponding to their absences may be deducted from the monthly allowance.

“In case of part-time employment, the allowance to be paid shall be proportionate to the time worked by the employee. This requirement shall apply to any employee with more than one employer.”

However, the respondent Deputy Minister of Labor and Employment correctly ruled that since the petitioners had been paying the private respondents a fixed monthly emergency allowance since November, 1976 up to February, 1980, as a matter of practice and/or verbal agreement between the petitioners and the private respondents, the discontinuance of the practice and/or agreement unilaterally by the petitioners contravened the provisions of the Labor Code, particularly Article 100 thereof which prohibits the elimination or diminution of existing benefits.

Section 15 of the Rules on P.D. 525 and Section 16 of the Rules on P.D. 1123 also prohibits the diminution of any benefit granted to the employees under existing laws, agreements, and voluntary employer practice. Section 15 of the Rules on P.D. 525 provides, as follows:

“Section 15. Relation to Agreement. — Nothing herein shall prevent the employer and his employees from entering into any agreement with terms more favorable to the employees than those provided therein, or be construed to sanction the diminution of any benefit granted to the employees under existing laws, agreements, and voluntary employer practice.”

Section 16 of the Rules on P.D. 1123 similarly prohibits diminution of benefits. It provides, as follows:

“Section 16. Relation to other agreements. — Nothing herein shall prevent employers from granting allowances to their employees in excess of those provided under the Decree and the Rules nor shall it be construed to countenance any reduction of benefits already being enjoyed.”

The petitioners further claim that the respondent Deputy Minister of Labor and Employment erred in ordering them to pay the amount of P58,860.00 to the private respondents as underpayment of respondents' allowances from May, 1977 to February 20, 1980. The petitioners contend that the emergency cost of living allowances of the private respondents had been paid in full.

We find no merit in the contention. However, a revision of the amount due the private respondents is in order for the reason that the respondent Deputy Minister of Labor and Employment failed to take into consideration, in computing the amount due each worker, the fact that the private respondents are employed by two different individuals whose businesses are divergent and capitalized at various amounts, contrary to the provisions of P.D. 525 and subsequent amendatory decrees, wherein the amount of the emergency cost of living allowance to be paid to a worker is made to depend upon the capitalization of the business of his employer or its total assets, whichever is higher. Thus, Section 7 of the Rules and Regulations implementing P.D. 525 reads, as follows:

“Section 7. Amount of Allowances. — Every covered employer shall give to each of his employees who is receiving less than P600.00 a month not less than the following allowances:

- “(a) P50.00 where the authorized capital stock or total assets, whichever is applicable and higher, is P1 million or more;
- “(b) P30.00 where the authorized capital stock or total assets, whichever is applicable and higher, is at least P100,000.00 but less than P1 million; and
- “(c) P15.00 where the authorized capital stock or total assets, whichever is applicable and higher, is less than P100,000.00.

“Nothing herein shall prevent employers from granting allowances to their employees who will receive more than P600.00 a month, including the allowances. An employer, however, may grant his employees an allowance which if added to their monthly salary, will not yield to them more than P600.00 a month.”

In this case, the private respondents admit that only ten (10) of them, namely: Aurelio Ilustrisimo, Pepito Gilbuena, Rogelio Carabio, Abraham Gilbuena, Rustom Ofquiera, Ernesto Diong, Jesus Gilbuena, Emerenciano Villaruel, Dominador Lacerna, and Graciano Durana, were employees of the petitioner Reynaldo Tiangco, while the remaining seventeen (17) were employed by the petitioner Victoria Tiangco.<sup>[8]</sup> Accordingly, the workers of the petitioner Victoria Tiangco, whose business as fish broker is capitalized at P100,000.00,<sup>[9]</sup> should receive a lesser amount of allowance (P30.00) than those workers employed by the petitioner Reynaldo Tiangco whose business, as a fishing operator with a fleet of fishing vessels, is capitalized at more than P2,000,000.00, and are entitled to receive a fixed monthly allowance of P50.00 a month, each.

After P.D. 525, the following amendatory decrees, directing the payment of additional allowances to employees, were promulgated:

1. P.D. 1123, providing for an across-the-board increase of P60.00 a month effective May 1, 1977;

2. P.D. 1614, which directed the payment of P60.00 monthly allowance effective April 1, 1979;
3. P.D. 1634, which provided for the payment of an additional P60.00 a month effective September 1, 1979, and another P30.00 a month beginning January 1, 1980; and
4. P.D. 1678, which directed the payment of an additional P2.00 a day from February 21, 1980.

Hence, for the period from November, 1976 to April 30, 1977, the petitioner Victoria Tiangco should pay her workers a fixed monthly allowance of P30.00, while the workers of the petitioner Reynaldo Tiangco were entitled to a fixed monthly allowance of P50.00, each. The record shows that during this period, the petitioner Victoria Tiangco was paying her workers a monthly allowance of P30.00 each.<sup>[10]</sup> Accordingly, there was no underpayment for this period insofar as her batillos are concerned. The petitioner Reynaldo Tiangco, however, paid his employees P30.00, instead of P50.00, as mandated by law.<sup>[11]</sup> Therefore, there was an underpayment of P20.00 a month for each batillo under his employ. For the 6-month period, he should pay his workers differentials in the amount of P120.00 each.

For the period from May, 1977 to March, 1979, the workers of the petitioner Victoria Tiangco were entitled to a fixed monthly allowance of P90.00 in view of the promulgation of P.D. 1123 which granted an across-the-board increase of P60.00 a month in their allowances. For this period, however, the said petitioner paid her workers only P60.00 a month, or a difference of P30.00 a month.<sup>[12]</sup> There was, therefore, an underpayment of P690.00 for every batillo under her employ for the 23-month period.

With the addition of P60.00 across-the-board increase in their allowances, the workers of the petitioner Reynaldo Tiangco were entitled to receive a fixed monthly allowance of P110.00. However, the record shows that his workers were only paid P60.00 a month,<sup>[13]</sup> or a difference of P50.00 a month. Consequently, each batillo hired by him should be paid a differential of P1,150.00 for the 23-month period.

For the period from April, 1979 to August, 1979, the employees of the petitioner Victoria Tiangco were entitled to a fixed monthly allowance of P150.00 while the workers employed by the petitioner Reynaldo Tiangco were entitled to an allowance of P170.00, pursuant to P.D. 1614. The record shows, however, that both petitioners paid their workers only P120.00 a month.<sup>[14]</sup> There was a difference of P30.00 a month in the case of the petitioner Victoria Tiangco, and P50.00, a month, in the case of the petitioner Reynaldo Tiangco. Hence, for this period, the petitioner Victoria Tiangco should pay the amount of P150.00 to each batillo in her employ, while the petitioner Reynaldo Tiangco should pay the amount of P250.00, as differentials in the cost of living allowances of the workers under his employ.

Upon the promulgation of P.D. 1634, directing the payment of an additional P60.00 a month effective September, 1979 and another P30.00 effective January 1, 1980, the workers of the petitioner Victoria Tiangco were entitled to receive a fixed monthly allowance of P210.00 a month from September, 1979, and P240.00, a month beginning January, 1980. The workers of the petitioner Reynaldo Tiangco, upon the other hand, were entitled to a monthly allowance of P230.00, effective September, 1979, and P260.00, a month beginning January, 1980. The record shows, however, that both petitioners paid their workers the amounts of P180.00 a month for the months of September to December, 1979,<sup>[15]</sup> and P210.00 a month for the months of January and February, 1980.<sup>[16]</sup> There was underpayment, therefore, in the allowances of the workers of the petitioner Victoria Tiangco in the amount of P30.00, a month, for the months of September, 1979 to February, 1980, or P180.00 for each batillo in her employ. The private respondents hired by the petitioner Reynaldo Tiangco, upon the other hand, are entitled to differentials in the amount of P50.00 a month for the same period, or P300.00 each.

Then, beginning February, 21, 1980, the workers should be paid an additional P2.00, a day, pursuant to P.D. 1678. The record shows that the petitioners had complied with this requirement.<sup>[17]</sup> The petitioners, however, failed to pay the fixed monthly allowance of their workers which was P240.00, in the case of the workers employed by the petitioner Victoria Tiangco, and P260.00, in the case of the workers of the petitioner Reynaldo Tiangco. Thus, for the

month of March, 1980, the petitioner Victoria Tiangco paid her workers varying amounts, the lowest of which was P30.00, paid to Eddie Batobalonos and Fruto Gihapon, and the highest of which was P210.00, paid to Juan Gihapon and Roberto Bayonon.<sup>[18]</sup> Hence, there was underpayment in their emergency cost of living allowances. But, since, the respondents employed by Victoria Tiangco are willing to accept P50.00 a month as differentials for the months of March, 1980 to May, 1980,<sup>[19]</sup> the workers employed by her should be paid P50.00, each, for the month of March, 1980, except Juan Gihapon and Roberto Bayon-on who should be paid P30.00, each, for the said month, having received the amount of P210.00, each, as allowance for that month.

For the month of April, 1980, the workers of the petitioner, Victoria Tiangco, were paid varying amounts ranging from P120.00 to P210.00.<sup>[20]</sup> Hence, there was also underpayment in their allowances. Accordingly, they should be paid the amount of P50.00, each, except for Juan Gihapon, Antonio Gilbuena, Juan Castro, and Aguedo Marabe, who should be paid P40.00, each, and Solomon Clarin, Daniel Cabrera, and Gregorio Laylay who should be paid P30.00 each.

For the month of May, 1980, the petitioner Victoria Tiangco, paid her workers varying amounts less that what was provided for by law.<sup>[21]</sup> Hence, they should be paid the amount of P50.00, each, for this month.

The petitioner, Reynaldo Tiangco, also paid the employees varying amounts, ranging from P210.00 to P250.00, as emergency cost of living allowance, for the month of March, 1980.<sup>[22]</sup> Since they were entitled to a fixed monthly allowance of P260.00, each, there was underpayment in their cost of living allowances. Accordingly, the petitioner should pay the respondent Pepito Gilbuena the amount of P50.00; the respondents Dominador Lacerna and Graciano Durano, the amount of P40.00, each; the respondent Ernesto Diong, the amount of P30.00; the respondents Rustom Ofqueria and Aurelio Ilustrisimo, the amount of P20.00, each; and the respondents Abraham Gilbuena, Jesus Gilbuena, Rogelio Carabio, and Emerenciano Villaruel, the amount of P10.00 each.

For the month of April, 1980, the workers of the petitioner Reynaldo Tiangco, were not also paid their emergency cost of living allowance in full.<sup>[23]</sup> Hence, the said petitioner should pay his workers the amount of P30.00 each, except for Pepito Gilbuena, who should be paid the amount of P50.00, and Rustom Ofqueria, Jesus Gilbuena, and Graciano Durano, who are entitled to only P40.00 each.

The petitioner, Reynaldo Tiangco did not also pay his workers their full cost of living allowance for the month of May, 1980. The workers were paid varying amounts of P130.00 to P150.00, instead of P260.00, as required by law.<sup>[24]</sup> Hence, they should be paid the amount of P50.00 each for the month of May, 1980.

**WHEREFORE**, the petitioners Victoria Tiangco and Reynaldo Tiangco should be, as they are hereby, ordered to PAY the private respondents the following amounts as differentials in their emergency cost of living allowance:

Petitioner Victoria Tiangco:

1.	Eddie Batobalanos	P1,170.00
2.	Aguedo Morabe	P1,160.00
3.	Gregorio Laylay	P1,150.00
4.	Fruto Gihapon	P1,170.00
5.	Solomon Clarin	P1,150.00
6.	Pepito Batoy	P1,170.00
7.	Jose Ofqueria	P1,170.00
8.	Daniel Cabrera	P1,150.00
9.	Juan Castro	P1,160.00
10.	Alcafone Esgana	P1,170.00
11.	Tomas Capalar	P1,170.00
12.	Antonio Gilbuena	P1,160.00
13.	Ernesto Batoy	P1,170.00
14.	Serapio Yadawon	P1,150.00
15.	Juan Gihapon	P1,140.00
16.	Elias Escaran	P1,150.00
17.	Roberto Bayon-on	P1,130.00

Petitioner Reynaldo Tiangco:

1.	Aurelio Ilustrisimo	P1,920.00
2.	Pepito Gilbuena	P1,970.00
3.	Rogelio Carabio	P1,910.00
4.	Abraham Gilbuena	P1,910.00
5.	Rustom Ofqueria	P1,930.00
6.	Ernesto Diong	P1,930.00
7.	Jesus Gilbuena	P1,920.00
8.	Emerenciano Villaruel	P1,910.00
9.	Dominador Lacerna	P1,940.00
10.	Graciano Durano	P1,950.00

With this modification, the judgment appealed from is **AFFIRMED** in all other respects. With costs against the petitioners.

**SO ORDERED.**

**Makasiar, J., (Chairman), Aquino, Guerrero, Abad Santos, De Castro and Escolin, JJ., concur.**

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- [1] Rollo, p. 181.
  - [2] Id., pp. 191, 192.
  - [3] Id., p. 27.
  - [4] Id., p. 23.
  - [5] Id., p. 70.
  - [6] Id., p. 163.
  - [7] Id., p. 180.
  - [8] Id., p. 25.
  - [9] Id., pp. 191, 192.
  - [10] Id., pp. 119-122.
  - [11] Id., pp. 76-78.
  - [12] Id., pp. 123-130; 133-142; 144-147.
  - [13] Id., pp. 80-99; 101-103.
  - [14] Id., pp. 148-152; 104-108.
  - [15] Id., pp. 153-156; 109-112.
  - [16] Id., pp. 158-159; 113-114.
  - [17] Id., pp. 57-60.
  - [18] Id., p. 160.
  - [19] Id., p. 265.
  - [20] Id., p. 161.
  - [21] Id., p. 162.
  - [22] Id., pp. 67, 115.
  - [23] Id., pp. 68, 116.

[24] Id., pp. 69, 117.

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