

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**TOMAS CLAUDIO MEMORIAL
COLLEGE, INC.,**
Petitioner,

-versus-

**G.R. No. 152568
February 16, 2004**

**COURT OF APPEALS and PEDRO
NATIVIDAD,**
Respondents.

X-----X

D E C I S I O N

CALLEJO, SR., J.:

This is a Petition for Ron Certiorari under Rule 45 of the Rules of Court, as amended, seeking to reverse and set aside the Decision^[1] of the Court of Appeals in CA-G.R. SP No. 62651, which affirmed with modification the decision of the National Labor Relations Commission (NLRC) affirming the decision of the Labor Arbiter in NLRC Case No. RAB IV-6-9082-97. The antecedent facts are as follows:

Sometime in 1983, private respondent Pedro Natividad started working with petitioner Tomas Claudio Memorial College (TCMC) in Morong, Rizal. In time, he was promoted as “Liason

Officer” of the school with the Department of Education, Culture and Sports (DECS) and with the Commission on Higher Education (CHED) with the rank of Assistant Registrar.

On June 10, 1996, the private respondent was arrested by the Morong police authorities, without any warrant therefore, for violation of the Dangerous Drugs Act (Republic Act NO. 6425). A criminal complaint was later filed against him, docketed as Criminal Case No. 5137. A preliminary investigation was conducted by the Municipal Court of Morong, Rizal which found probable cause to hold him for trial. The court, on the said date, issued a warrant for the private respondent’s arrest. The records were elevated to the Office of the Provincial Prosecutor of Rizal, and was docketed as I.S. No. 96-4385.

In the interim, the petitioner, through its president, Aladdin F. Trinidad, sent a Memorandum^[2] dated June 13, 1996 to the private respondent informing him that his employment was already terminated, thus:

The undersigned issued a Memorandum in cooperation with the program of the DECS denominated as “Drugless,” “Smokeless” and “Violentless” School Campus intended to combat drug addiction in public and private schools.

Also, the undersigned has directed your immediate superior, Ms. Minda de la Vega to make a summary of your absences for the School Year 1995-1996 and the Summer Term of 1996 as it has been observed that you have been absenting yourself frequently and if you were asked to go to the DECS and to the CHED you do not return to TCMC anymore.

Further, discreet inquiry is ongoing because of your secretive activities which has been rumored already among those who were following your dealings with our students, we barely started our initial inquiry when the authorities arrested you as a drug “pusher” and drug “user”, a just cause to terminate employment. You are

now in jail as you were apprehended for possession of “shabu.”

You are a dangerous employee in TCMC campus considering that we are in education.

For the above, please be informed that your services with TCMC is (sic) terminated effective upon receipt of this memorandum.

You are barred also in (sic) entering the TCMC campus without Administration’s approval.

(SGD.) ALADDIN F. TRINIDAD
President^[3]

The private respondent was thenceforth barred from entering the school without the petitioner’s approval. On July 5, 1996, the private respondent posted a bail bond in Criminal Case No. 5137 and was released from his detention cell.^[4] He did not, however, file any complaint against the petitioner with the NLRC on account of his dismissal.

On October 2, 1996, the State Prosecutor issued a Resolution dismissing the criminal complaint in I.S. No. 96-4385 filed against the private respondent for lack of merit.^[5] The State Prosecutor reasoned out that:

On the date of the preliminary investigation, respondents submitted their separate counter-affidavits, supported by the affidavits of their respective witnesses, and in it, both refuted the claim of the arresting officers that regulated drugs were recovered from them.

There is obviously no basis to sustain the complaints. In the first place, the basis for the invitation extended to the respondents, which is the alleged quarrel over drugs, is hearsay, as it was merely relayed to them, and they had no personal knowledge of said incident.

In the second place, the respondents had not committed, are actually committing or are about to commit an offense when they were invited, to the police station, so the police officers had no right to invite them for questioning. Hence, the subsequent search made on the respondents had no legal basis. It follows that anything recovered from them after their unlawful arrest are inadmissible (sic) as evidence against them, the same being the fruit of the poisonous tree.^[6]

On November 21, 1996, the private respondent was arrested anew by police authorities. The Morong Chief of Police filed a criminal complaint docketed as Criminal Case No. 5251 against the private respondent for violation of Section 27, Article III of Rep. Act No. 6425, as amended.^[7] On February 17, 1997, an Information therefore was filed with the Regional Trial Court of Morong docketed as Criminal Case No. 2661-M.^[8] On said date, the private respondent posted a bail bond and was released from detention.

On June 11, 1997, the private respondent filed a complaint with the NLRC against the petitioner for illegal dismissal.^[9] The case was docketed as NLRC Case No. RAB-IV-6-9082-97. The private respondent executed a sworn statement claiming that (a) there was no factual basis for his dismissal; and (b) he was deprived of his rights to due process.^[10] He also submitted the Joint Affidavit of Rose Baruel, Ellen Alcarde, Rosario Alvarez, Rosauo Resurreccion and Aida S.D. Geronimo.^[11]

Answering the complaint, the petitioner asserted that on or about March 1996, it had received an anonymous telephone call branding the private respondent as not only a “drug user” but also a “pusher.” After a discreet investigation, the information was confirmed by unnamed tricycle drivers, students and school personnel. According to the petitioner, the private respondent was connected to a syndicate supplying prohibited drugs and was selling the same in a nearby billiard hall, in restaurants, and in other places immediately outside the perimeter of the school gate.^[12] The petitioner further alleged that before the private respondent’s activities were reported to the police

authorities, he was arrested in October 1996 while at work and was jailed for violation of the Dangerous Drug Act.

On November 10, 1998, Acting Executive Labor Arbiter Pedro C. Ramos, rendered a decision dismissing the complaint for lack of legal basis, thus:

WHEREFORE, premises considered, the complaint in this case for “illegal dismissal” is hereby ordered dismissed for lack of legal basis.

SO ORDERED.^[13]

The private respondent appealed the decision to the NLRC which affirmed the same. The NLRC also denied the private respondent’s motion for the reconsideration of the said decision.

However, on certiorari with the Court of Appeals, the appellate court affirmed, with modification, the decision of the NLRC, holding that although there was a valid cause for the private respondent’s dismissal, the petitioner did not follow the procedure for the termination of his employment. The CA ordered the petitioner to pay backwages to the private respondent from June 13, 1996 up to the finality of the said decision. The decretal portion of the CA decision reads as follows:

WHEREFORE, the decision of the public respondent NLRC is MODIFIED such that the private respondent is hereby directed to pay the petitioner backwages from June 13, 1996 up to the finality of this judgment.^[14]

The petitioner’s motion for reconsideration was denied by the Court of Appeals in its Resolution dated February 14, 2002.

The petitioner assails the decision of the CA in this Court, contending that:

The Hon. Court of Appeals (Special Eight Division) Gravely Abused Its Discretion And Authority Amounting To Without Or In Excess Of Jurisdiction When It Reviewed The Final Decision Of The Hon. NLRC And Refused To Hear The Side Of TCMC That The Appeal In This Case Was Filed out of Time As The decision Of The Hon. NLRC Is Final Already.

The Hon. Court of Appeals (Special Eight Division) gravely Abused Its Discretion And Authority Amounting To Without Or In Excess Of Jurisdiction When It entertained The Petition For Certiorari Which Was Filed Beyond The Sixty (60) Day Period From Receipt Of The Order-Denying the Motion For Reconsideration And Refused To Hear The Point Raised By TCMC That The Subject Petition Was Filed Beyond The Sixty (60) Day Period For The Filing Of The Petition For Certiorari.

The Hon. Court of Appeals (Special Eight Division) Gravely Abused Its Discretion And Authority When It Disregarded The Evidence In The Record When It Modified, Altered And Changed The Final Decision Of The Hon. National Labor Relations Commission To Justify The Award Of Backwages. Which Included Even The Period When Respondent Natividad Were In Jail For Three Times.

The Hon. Court of Appeals (Special Eight Division) Gravely Abused Its Discretion And Authority When It Knowingly Rendered A Decision Which Is Bias. Unfair & Unjust, A Violation Of Art. 205 Of The Revised Penal Code In Relation To Sec (2) (E) Of RA 3019 (Anti-Graft Law) Hence The Decision Is Void.^[15]

The petitioner avers that the Court of Appeals committed a grave abuse of its discretion amounting to excess or lack of jurisdiction when it gave due course to the private respondent's petition for certiorari and modified the decision of the NLRC. According to the petitioner, when the private respondent filed his petition with the CA, the decision of the NLRC had already

become final and executory; thus, the said petition was filed out of time. Furthermore, the petitioner cannot be lawfully compelled to pay backwages for the period of time that the private respondent was in jail on account of his violation of the Dangerous Drugs Act, from June 10, 1996 up to July 5, 1996, and from November 21, 1996 up to February 17, 1997. It contends that the decision of the CA is void for being biased, unjust and that the issuance of the same is a felony under Article 205 of the Revised Penal Code, as well a crime under Section 2(e) of Rep. Act No. 3019, also known as the Anti-Graft and Corrupt Practices Act.

In his Comment on the petition, the private respondent avers that the petitioner failed to comply with Section 4, Rule 45 in relation to Section 2, Rule 42 of the Rules of Court, and that the petition was filed out of time. He maintains that his petition for certiorari with the CA was timely filed and that the decision of the CA is in accord with law.

The issues for resolution may be synthesized, thus: (a) whether the private respondent is proscribed from filing a petition for certiorari for the nullification of the decision of the NLRC, and its resolution denying his motion for reconsideration; (b) whether the said petition in the CA was filed on time; (c) whether the petition at bar was filed beyond the fifteen-day period in Section 2, Rule 45 of the Rules of Court, as amended; and (d) whether the CA committed a grave abuse of discretion amounting to excess or lack of jurisdiction when it modified the decision of the NLRC and ordered the petitioner to pay backwages to the private respondent.

Anent the first ground, the petitioner asserts that under Article 223 of the Labor Code, as amended, the decision of the Labor Arbiter/NLRC shall become final after ten (10) days from receipt of the decision. The decision of the NLRC had become final and executory on November 30, 2000, but the private respondent filed his petition for certiorari with the CA only on January 16, 2001, long after the NLRC decision had become final and executory. The petitioner contends that the private respondent was thus proscribed from filing his petition with the

CA. Even if the private respondent was not so barred from filing his petition, still the same was filed beyond the sixty-day period under Rule 65, Section 4 of the Rules of Court, as amended.

The petitioner's contentions have no merit.

Article 223 of the Labor Code, as amended, states inter alia:

ART. 223. Appeal. – Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders.^[16]

Clearly, Article 223 of the Labor Code applies only to appeals, from awards or final orders of the Labor Arbiter to the NLRC and not to appeals from the decisions, awards or orders of the NLRC to the Court of Appeals. Under Article 222 of the Labor Code, a decision of the NLRC shall be final after ten (10) calendar days from receipt thereof by the petitioner. The private respondent received the decision on January 13, 1999 and had until January 23, 1999 to perfect his appeal with the NLRC. Thus, the private respondent seasonably appealed to the NLRC. The petitioner failed to prove its claim that its copy of the appeal of the private respondent was mailed to it on a later date.

Irrefragably, the decision of the NLRC became final and executory on November 17, 2000 when the private respondent filed his petition with the CA on January 16, 2001. However, the private respondent was not proscribed from filing a petition for certiorari within a period of sixty days from the notice of the NLRC's denial of his motion for the reconsideration of the decision of the NLRC under Section 1, rule 65 of the Rules of Court. If the CA grants the petition and nullifies the decision of the NLRC on the ground of grave abuse of discretion amounting to excess or lack of jurisdiction, the decision of the NLRC is, in contemplation of law, null and void ab initio; hence, the decision never became final and executory.

Anent the second ground, the petitioner insists that the private respondent's petition with the Court of Appeals was filed out of time

because its copy of the petition was not verified and the assailed decisions and resolutions were not attached thereto. The petitioner asserts that since the petition was defective in form, the filing thereof in the CA did not suspend the 60-day period under Section 1, Rule 65 of the Rules of Court.

This contention is, likewise, erroneous.

In its Resolution^[17] dated February 14, 2002, the Court of Appeals resolved the following issues:

This petition was filed at 3:04 p.m. on January 16, 2001, as shown by the stamp of receipt on the upper right corner of its first page. The docketing and other legal fees were likewise paid at the same time. Hence, there is no question that the petition was timely filed.

Had the respondent-movant's counsel examined the record, he would have found out that the petition is properly verified, with the Certification/Verification duly notarized on January 16, 2001. The original of the registry receipts are attached to page 13 of the petition. All the other necessary annexes are likewise attached to the petition. In view thereof, there is absolutely no reason for us not to receive and act thereon. The malicious insinuation of the counsel that we have (sic) another rule for this case is therefore uncalled for.^[18]

We agree with the Court of Appeals. We have reviewed the petition with the Court of Appeals and the annexes thereof. We confirm the verisimilitude of the resolution of the CA that the petition of the private respondent was sufficient in form and substance.

On the next issue, the petitioner contends that the CA committed a grave abuse of its discretion amounting to excess or lack of jurisdiction in modifying the decision of the NLRC. It asserts that the decision of the CA modifying the decision of the NLRC and ordering it to pay backwages to the private respondent is a nullity.

The private respondent, for his part, avers that the proper remedy to assail the decision of the CA was to file a petition for review on certiorari in this Court under Rule 45 of the Rules of Court within fifteen (15) days from receipt of notice of the CA resolution denying the petitioner's motion for reconsideration. However, the petitioner filed a petition with this Court under Rule 65, dated April 2, 2002, well beyond the fifteen-day period counted from February 21, 2002 when the petitioner received the copy of the assailed Resolution of the CA.

We agree that the remedy of the aggrieved party from a decision or final resolution of the CA is to file a petition for review on certiorari under Rule 45 of the Rules of Court, as amended, on questions of facts or issues of law within fifteen days from notice of the said resolution. Otherwise, the decision of the CA shall become final and executory. The remedy under Rule 45 of the Rules of Court is a mode of appeal to this Court from the decision of the CA. It is a continuation of the appellate process over the original case. A review is not a matter of right but is a matter of judicial discretion. The aggrieved party, may however, assail the decision of the CA via a petition for certiorari under rule 65 of the Rules of Court within sixty days from notice of the decision of the CA or its resolution denying the motion for reconsideration of the same. This is based on the premise that in issuing the assailed decision and resolution, the CA acted with grave abuse of discretion, amounting to excess or lack of jurisdiction and there is no plain, speedy and adequate remedy in the ordinary course of law. A remedy is considered plain, speedy and adequate if it will promptly relieve the petitioner from the injurious effect of the judgment and the acts of the lower court.^[19]

The aggrieved party is proscribed from filing a petition for certiorari if appeal is available, for the remedies of appeal and certiorari are mutually exclusive and not alternative or successive.^[20] The aggrieved party is, likewise barred from filing a petition for certiorari if the remedy of appeal is lost through his negligence. A petition for certiorari is an original action and does not interrupt the course of the principal case unless a temporary restraining order or a writ of preliminary injunction

has been issued against the public respondent from further proceeding.^[21] A petition for certiorari must be based on jurisdictional grounds because, as long as the respondent court acted within its jurisdiction, any error committed by it will amount to nothing more than an error of judgment which may be corrected or reviewed only by appeal.^[22]

In this case, the petitioner must establish that the Court of Appeals acted with grave abuse of discretion amounting to excess or lack of jurisdiction in ordering it to pay backwages to the private respondent.

The public respondent acts without jurisdiction if he does not have the legal power to determine the case. There is excess of jurisdiction when the public respondent, being clothed with the power to determine the case, oversteps his authority as determined by law. There is a grave abuse of discretion where the public respondent acts in a capricious, whimsical, arbitrary or despotic manner in the exercise of its judgment as to be equivalent to lack of jurisdiction.^[23]

The petitioner avers that the CA acted with grave abuse of discretion amounting to excess or lack of jurisdiction when the CA ordered the petitioner to pay backwages to the private respondent from June 13, 1996 until the judgment of the CA shall have become final and executory. This is because the private respondent was detained from June 10, 1996 up to July 5, 1996, and from November 21, 1996 to February 17, 1997 for violations of the Dangerous Drugs Act. The petitioner asserts that it is absurd for the petitioner to pay backwages to the private respondent while the latter was in jail. The private respondent would thereby be enriching himself at the expense of the petitioner. The petitioner insists that backwages should not and cannot be awarded to the private respondent, since it would include that period of time when the latter was in jail. The petitioner relied on the declaration of this Court in the case of Cathedral School of Technology vs. NLRC,^[24] where it held that when the employee's dismissal is for a just cause, there can be no backwages even if she was denied due process, otherwise she would be unjustly enriching herself at the expense of the employer.^[25]

We do not agree.

In *Santos vs. NLRC*,^[26] we explained the normal consequences of a finding that an employee has been illegally dismissed, the statutory intent on the matter and nature of the true remedies of reinstatement and payment of backwages, thus:

The normal consequences of a finding that an employee has been illegally dismissed are, firstly, that the employee becomes entitled to reinstatement to his former position without loss of seniority rights and secondly, the payment of backwages corresponding to the period from his illegal dismissal up to actual reinstatement. The statutory intent on this matter is clearly discernible. Reinstatement restores the employee who was unjustly dismissed to the position from which he was removed, that is, to his status quo ante dismissal, while the grant of backwages allows the same employee to recover from the employer that which he had lost by way of wages as a result of his dismissal. These twin remedies-reinstatement and payment of backwages – make the dismissed employee whole who can then look forward to continued employment. Thus do these two remedies give meaning and substance to the constitutional right of labor to security of tenure. The two forms of relief are distinct and separate, one from the other. Though the grant of reinstatement commonly carries with it an award of backwages, the inappropriateness or non-availability of one does not carry with it the inappropriateness or non-availability of the other.^[27]

The payment of backwages is generally granted on the ground of equity. It is a form of relief that restores the income that was lost by reason of the unlawful dismissal; the grant thereof is intended to restore the earnings that would have accrued to the dismissed employee during the period of dismissal until it is determined that the termination of employment is for a just cause.^[28] It is not private compensation or damages but is awarded in furtherance and effectuation of the public objective of the Labor Code. Nor is it a redress of a private right but rather in the nature of a command to the employer to make public reparation for dismissing an employee either due to the former's unlawful act or bad faith.^[29]

The award of backwages is not conditioned on the employee's ability or inability to, in the interim, earn any income. While it may be true that on June 11, 1996, the private respondent was detained in Criminal Case No. 5137, the State Prosecutor found no probable cause for the detention of the private respondent and resolved to dismiss the case. The private respondent has not yet been convicted by final judgment in Criminal Case No. 5251. Indeed, he is presumed innocent until his guilt is proved beyond reasonable doubt.

In fine, we find and so hold that the Decision of the CA is in accord with law.

IN THE LIGHT OF THE FOREGOING, the petition is DISMISSED.

SO ORDERED.

Puno, J., (Chairman), Quisumbing, Austria-Martinez, and Tinga, JJ., concur.

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- [1] Penned by Associate Justice Delilah Vidallon-Magtolis, Chairman, with Associate Justices Bienvenido L. Reyes and Juan Q. Enriquez, Jr., concurring; Rollo, pp. 38-46.
- [2] Records, p. 33.
- [3] Ibid.
- [4] Rollo, p. 214.
- [5] Records, pp. 34-35.
- [6] Id. at 35.
- [7] Rollo, pp. 215-216.
- [8] Id. at 224-225.
- [9] Id. at 72.
- [10] Records, p. 43.
- [11] Id. at 44.
- [12] Id. at 49.
- [13] Id. at 265.
- [14] Rollo, p. 46.
- [15] Id. at 9-10.
- [16] Underscoring supplied.
- [17] Rollo, pp. 48-52.
- [18] Id. at. 49-50.

- [19] National Irrigation Administration vs. Court of Appeals, 318 SCRA 255 (1999).
- [20] Ibid.
- [21] Section 7, Rule 65 of the Rules of Court.
- [22] Jalandoni vs. Drilon, 327 SCRA 107 (2000).
- [23] Condo Suite Club Travel, Inc. vs. NLRC, 323 SCRA 679 (2000).
- [24] 214 SCRA 551 (1992).
- [25] Rollo, p. 22.
- [26] 154 SCRA 166 (1987).
- [27] Ibid.
- [28] Serrano vs. NLRC, 323 SCRA 445 (2000).
- [29] Imperial Textile Mills, Inc. vs. NLRC, 217 SCRA 237 (1993); St. Theresa's School of Novaliches Foundation vs. NLRC, 289 SCRA 110 (1998).