

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
THIRD DIVISION**

**UNIVERSITY OF IMMACULATE
CONCEPCION AND SISTER MARIA
JACINTA DE BELEN, RVM,
*Petitioners,***

-versus-

**G.R. No. 143557
June 25, 2004**

**SECRETARY OF LABOR AND
EMPLOYMENT, ENGINEER
YOLIBELLE S. AVINANTE AND
ESTELITA B. PULIDO,
*Respondents.***

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D E C I S I O N

SANDOVAL-GUTIERREZ, J.:

This is a Petition for Review on Certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Resolutions dated August 31, 1999^[1] and June 5, 2000^[2] of the Court of Appeals in CA-G.R. SP No. 54296, entitled “University of Immaculate Concepcion and Sister Maria Jacinta De Belen, RVM vs. Hon. Secretary of Labor and Employment, Engineer Yolibelle S. Avinante and Estelita B. Pulido.”

The facts as borne by the records are:

On September 21, 1995, Engineer Yolibelle S. Avinante, Labor and Employment Officer III of the Regional Office No. XI, Department of Labor and Employment (DOLE) at Davao City, one of herein respondents, sent to the University of Immaculate Concepcion, petitioner, a notice requesting the inspection of the following documents: (1) business permit; (2) list of its regular employees; (3) payrolls and daily time records for the period from August 1994 to August 1995; and (4) proof of payment to its employees of their 13th month pay. Respondent Avinante's notice was pursuant to Article 128 of the Labor Code, as amended.^[3]

Subsequently or on September 26, 1995, respondent Avinante proceeded to the premises of petitioner to inspect the above documents.

Later, respondent Avinante sent to petitioner a second notice requesting the inspection of other documents, such as (1) the list of its regular employees; (2) payrolls covering the period from June 1991 to September 1995; (3) proof of payment to its employees of their 13th month pay during the period from 1992 to 1995; and (4) a record of its capital and total assets.

Upon receipt of the second notice, petitioner's directress, Sister Maria Jacinta De Belen, RVM (also impleaded as petitioner), filed with the same Regional Office No. XI, a motion seeking to enjoin respondent Avinante from inspecting its records.

Despite petitioners' motion, respondent Avinante, on October 17, 1995, proceeded with her inspection. But she was refused access to petitioners' records, so she issued a "Notice of Inspection Results," specifying the violations against labor law as well as occupational safety and health standard laws committed by petitioners. They then filed an opposition to this Notice.

On July 22, 1996, the Regional Director of Regional Office No. XI issued an Order finding petitioners liable for violation of the above laws and directing them to pay P2,339,752.74 by way of restitution to their 193 employees, thus:

“WHEREFORE, premises considered, the UNIVERSITY OF IMMACULATE CONCEPCION is hereby ordered to pay through this Office, the one hundred ninety three (193) affected workers the total amount of Two Million Three Hundred Thirty Nine Thousand Seven Hundred Fifty Two and 74/100 Pesos (P2,339,752.74) within ten (10) days from receipt of this Order. Management is further ordered to comply with the aforementioned occupational safety and health standards requirements immediately and to submit to this Office proof of compliance thereof within the same period. Finally, management is hereby ordered to comply with all labor standard laws, henceforth.

“SO ORDERED.”

Petitioners filed a motion for reconsideration but was denied by the Regional Director in his Order dated November 11, 1996.

On appeal, the Office of the DOLE Secretary (also impleaded as respondent), through former Secretary Leonardo A. Quisumbing, now Associate Justice of this Court, issued an Order dated May 2, 1997 affirming with modification the assailed Orders of the Regional Director in the sense that petitioners were directed to pay only P38,967.50 to 15 out of the 193 affected employees. The amount corresponds to the underpayment of their cost of living allowances under RTWPB Wage Order No. 3.

Petitioners filed a motion for reconsideration but was denied in an Order dated April 23, 1998.

On May 20, 1998, petitioners filed a second motion for reconsideration, but it was merely noted without action, the same being prohibited.^[4] This prompted petitioners to file with this Court, on May 13, 1999, a petition for certiorari which we referred to the Court of Appeals pursuant to our ruling in *St. Martin’s Funeral Home vs. NLRC*.^[5]

In a Resolution dated August 31, 1999, the Court of Appeals dismissed the petition for being late, holding that:

“It appears that petitioners received a copy of the Order dated May 2, 1997 on May 15, 1997; that they filed a motion for partial reconsideration of said Order on May 19, 1997, which was denied in an Order dated April 23, 1998, a copy of which was received by them on May 5, 1998; that they filed a second motion for reconsideration on May 20, 1998, which was noted without action for being a mere scrap of paper, in a Resolution dated March 30, 1999, a copy of which was received by them on April 20, 1999.

Section 4, Rule 65 of the 1997 Rules of Civil Procedure, as amended, provides that the petition for certiorari may be filed not later than sixty (60) days from notice of the judgment, order or resolution sought to be assailed; that a motion for reconsideration of said judgment, order or resolution filed in due time shall interrupt the running of the sixty (60) day period; and in case of denial of said motion, the petition may be filed within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of such denial.

It is clear from the foregoing provision that only one motion for reconsideration of the judgment, order or resolution assailed is allowed for purposes of interrupting the sixty (60) day period for filing a petition for certiorari.

Moreover, granting that the filing of a second motion for reconsideration of an Order issued by the Secretary of Labor in Labor Standard cases is not a prohibited pleading under the rules of said office, however, the second motion for reconsideration filed by petitioners was a mere reiteration of the arguments raised in their first motion for reconsideration and passed upon in the Order dated April 23, 1998. The second motion for reconsideration was, therefore, pro forma. A pro forma motion does not toll the running of the prescriptive period.

Inasmuch that petitioners allowed four (4) days to lapse from receipt of the Order dated May 2, 1997 before filing a motion for

reconsideration thereof, they had only fifty-six (56) days left from May 5, 1998, when they received a copy of the order dated April 23, 1998 denying said motion for reconsideration, or until June 30, 1998, within which to file the petition for certiorari. However, it was only on May 13, 1999 that the instant petition was filed.

WHEREFORE, the instant petition is hereby DISMISSED for having been filed out of time.

SO ORDERED.”

Petitioners filed a motion for reconsideration, however, the same was denied by the Appellate Court in its Resolution dated June 5, 2000.

Petitioners, in the instant petition for review on certiorari, contend that the Court of Appeals erred (1) in holding that a second motion for reconsideration is prohibited; and (2) in dismissing the petition for certiorari for being late.

Section 1, Rule IV in relation to Section 5, Rule V of the Rules on the Disposition of Labor Standards Cases in the DOLE Regional Offices provide:

“RULE IV
APPEALS

Section 1. Appeal. – The Order of the Regional Director shall be final and executory unless appealed to the Secretary of Labor and Employment within ten (10) calendar days from receipt thereof.

X X X

RULE V EXECUTION

X X X

Section 5. Finality of decisions of the Secretary of Labor and Employment. – The decisions, orders or resolutions of the Secretary of Labor and Employment shall become final and executory after ten (10) calendar days from receipt of the records of the case. The Regional Director shall issue a writ of execution to enforce the order or decision of the Secretary.

The filing of a petition for certiorari before the Supreme Court (now before the Court of Appeals pursuant to the ruling in *St. Martin's Funeral Home vs. NLRB*) shall not stay the execution of the order or decision unless the aggrieved party secures a temporary restraining order from the Court within fifteen (15) calendar days from the date of finality of the order or decision or posts a supersedeas bond in an amount which is adequate to protect the interests of the prevailing party subject to the approval of the Secretary.”

In *National Federation of Labor vs. Laguesma*,^[6] we ruled that “the remedy of an aggrieved party in a Decision or Resolution of the Secretary of the DOLE is to timely file a motion for reconsideration as a precondition for any further or subsequent remedy, and then seasonably file a special civil action for certiorari under Rule 65 of the 1997 Rules of Civil Procedure.” Under this Rule, petitioners should have filed their petition for certiorari within 60 days^[7] from receipt of the DOLE Secretary’s Order denying their first motion for reconsideration.

In the instant petition, it may be recalled that upon receipt on May 5, 1998 of the April 23, 1998 Order of the Office of the DOLE Secretary denying their motion for reconsideration, petitioners, on May 20, 1998, filed a second motion for reconsideration, a prohibited motion. It was only on May 13, 1999 that petitioners filed a petition for certiorari. Clearly, petitioners incurred a delay of almost one year.

In *Manila Midtown Hotels & Land Corp. vs. NLRC*,^[8] we held that “certiorari, being an extraordinary remedy, the party who seeks to avail of the same must strictly observe the rules laid down by law.” Considering that the assailed Orders of the DOLE Secretary have become final and executory,^[9] hence, the merits of the case can no longer be reviewed to determine if he could be faulted for grave abuse of discretion.^[10]

Petitioners, in a desperate attempt to bolster their position that a second motion for reconsideration is allowed, rely on our rulings in *Barbizon Philippines, Inc. vs. Nagkakaisang Supervisor ng Barbizon Philippines, Inc.*,^[11] *A’ Prime Security Services, Inc. vs. Drilon*,^[12] *United Aluminum Fabricators Workers Union vs. Secretary of Labor and Employment*,^[13] and *Icasiano vs. Office of the President*,^[14] where petitioners therein filed not only a second motion for reconsideration, but also a third motion for reconsideration from the assailed Orders of the Office of the DOLE Secretary.

Suffice it to say that even if petitioners’ second motion is in order, however, it is a pro forma motion. As aptly stated by the Court of Appeals, “the second motion for reconsideration filed by petitioners was a mere reiteration of the arguments raised in their first motion for reconsideration and passed upon in the Order dated April 23, 1998.”

In *Vda. de Espina vs. Abaya*,^[15] we held that a second motion for reconsideration, being pro-forma, does not suspend the period to file a petition for certiorari, thus:

“The grounds stated in said motion being in reiteration of the same grounds alleged in his first motion, the same is pro-forma.

X X X

Furthermore, the second motion for reconsideration has not stated new grounds considering that the alleged failure of the Clerk of Court to set plaintiffs’ motion for reconsideration, although seemingly a different ground than those alleged in their first motion for reconsideration, is only incidental to the issues raised in their first motion for reconsideration, as it only

refers to the right of plaintiffs' counsel to argue his motion in court just to amplify the same grounds already denied by the court.

Therefore, it is very evident that the second motion for reconsideration being pro-forma did not suspend the running of the period of filing a petition for certiorari or appeal, as the case may be.”

WHEREFORE, the petition is **DENIED**. The assailed Resolutions dated August 31, 1999 and June 5, 2000 of the Court of Appeals in CA-G.R. SP No. 54296 are **AFFIRMED IN TOTO**.

Costs against petitioners.

SO ORDERED.

Corona and Carpio-Morales, JJ., concur.
Vitug, J., (Chairman), on official leave.

[1] Annex “A” of the Petition for Review, Rollo at 30-33.

[2] Annex “B”, id. at 34-36.

[3] ART. 128. Visitorial and enforcement power. – (a) The Secretary of Labor or his duly authorized representatives, including labor regulation officers, shall have access to employer’s records and premises at any time of the day or night whenever work is being undertaken therein, and the right to copy therefrom, to question any employee and investigate any fact, condition or matter which may be necessary to determine violations or which may aid in the enforcement of this Code and of any labor law, wage order or rules and regulations issued pursuant thereto.

[4] Section 19. Motion for reconsideration. – The aggrieved party may file a motion for reconsideration of the Order of the Regional Office within seven (7) calendar days from receipt by him of a copy of said Order.

The Regional Director shall resolve the motion for reconsideration within ten (10) days from receipt thereof. A motion for reconsideration filed beyond the seven-day reglementary period shall be treated as an appeal if filed within the ten-day reglementary period for appeal, but subject to the requirements for the perfection of an appeal.

No second motion for reconsideration shall be entertained in any case (Rule II, Rules on the Disposition of Labor Standard Cases).

[5] G.R. No. 130866, September 16, 1998, 295 SCRA 494. In this case, we held that appeal from the NLRC should be initially filed with the Court of

Appeals, no longer with this Court, pursuant to the doctrine of hierarchy of courts.

- [6] See G.R. No. 123426, March 10, 1999, 304 SCRA 405 (1999), cited in SMC Quarry 2 Workers Union – February Six Movement Local Chapter No. 1564 vs. Titan Megabags Industrial Corporation, G.R. No. 150761, May 19, 2004 at 5.
- [7] In its assailed Resolution, the Court of Appeals noted that petitioners have exactly “56 days from May 5, 1998 or until June 30, 1998 within which to file their motion for reconsideration” (Section 4, Rule 65 of the 1997 Rules of Civil Procedure, as amended).
- [8] G.R. No. 118397, March 27, 1998, 288 SCRA 259, 265, cited in SC Resolution in Kowloon House/Willy Ng vs. Hon. Court of Appeals, G.R. No. 140024, June 18, 2003 at 6.
- [9] See Maria Glenn M. Alviado et al. vs. MJG General Merchandize et al., G.R. No. 129702, September 8, 2003 at 5, cited in SMC Quarry 2 Workers Union – February Six Movement Local Chapter No. 1564 vs. Titan Megabags Industrial Corporation, supra.
- [10] See Lagera vs. NLRC, G.R. No. 123636, March 31, 2000, 329 SCRA 436, 440, cited in SMC Quarry 2 Workers Union – February Six Movement Local Chapter No. 1564 vs. Titan Megabags Industrial Corporation, supra.
- [11] G.R. Nos., 113204-05, September 16, 1996, 261 SCRA 738.
- [12] G.R. No. 91987, July 17, 1995, 246 SCRA 439.
- [13] G.R. No. 93016, July 3, 1992, 211 SCRA 104.
- [14] G.R. No. 49855, May 15, 1992, 209 SCRA 25.
- [15] See G.R. No. 45142, April 26, 1991, 196 SCRA 312.