

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**ZAMBOANGA CITY WATER DISTRICT,
*Petitioner,***

-versus-

**G.R. No. 104389
May 27, 1994**

**PRESIDING COMMISSIONER MUSIB
M. BUAT, COMMISSIONERS LEON G.
GONZAGA, JR. AND OSCAR N.
ABELLA, and PRIVATE RESPONDENTS
LUIS C. MARIANO, FELIX G. LAQUIO,
FRANCISCO C. OLIVEROS, MARITTA
S. DELOS REYES, FRANCISBELLO D.
CRUZ, EXEQUIEL M. DAYOT, JR.,
ERIC A. DELGADO, RICARDO M.
FERRER, JOVITO DUHAYLUNGSOD,
ANTONIO F. ALCANTARA, RICARDO
M. CORTEZ, TEOBALDO M. FLORES,
ZOILO J. CAPUY, BERNARDINO T.
ALDINETE, ANGIEL M. ESPINA,
WINIFRIDO P. CASIMIRO, ENRIQUE
M. MANUEL, JR., JOSE P. ATILANO,
ANTONIO F. DELOS REYES, JR.,
ELEUTERIO S. TARROZA, ANTONIO B.
DESPALO, ROLANDO B. GARCIA,
CESAR P. REYES, GENEROSO L.
CODINO, MARIO E. FERNANDO,
BERNARDO B. GEROLAGA, ANTONIO
F. VESAGAS, ANTONIO L. TUBIG,
SAILILLA A. ABDULLA, NOEL A.**

**FERNANDO, SEVERIANO CASIMIRO,
RODOLFO DESCALZO, ARTEMIO DE
LEON, and SANTIAGO FERRER,
*Respondents.***

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DECISION

QUIASON, J.:

This is a Petition for Certiorari under Rule 65 of the Revised Rules of Court to reverse and set aside the Resolutions dated October 24, 1991 and February 19, 1992 of the National Labor Relations Commission (NLRC) in NLRC CA No. M-000352.

I

The Zamboanga City Water District, petitioner herein, is a government-owned and controlled corporation engaged in the business of supplying water in the City of Zamboanga. Private respondents are all employees of petitioner.

In March 1987, a strike occurred in the company. It was conducted and participated in by private respondents, for which reason they were separated from their employment. Petitioner thereafter filed on March 17, 1987 a complaint before the Labor Arbiter to declare the said strike illegal (NLRC Case No. RAB-IX-03-0090-87). The following day, March 18, the Zamboanga Utilities Labor Union (ZULU), to which private respondents belonged, filed before the Labor Arbiter, a complaint against petitioner for illegal dismissal and unpaid wages (NLRC Case No. RAB-IX-03-0092-87).

The two cases were consolidated and heard together, and on April 19, 1988, a consolidated decision was rendered by the Executive Labor Arbiter declaring both the strike and the dismissal of private respondents illegal and ordering the reinstatement of private

respondents to their former positions, without loss of seniority rights and privileges, but without back wages.

Petitioner appealed to the NLRC. On July 17, 1990, the NLRC, through respondent Commissioners, affirmed the decision of the Executive Labor Arbiter, with the sole modification that the strike leader, respondent Felix Laquio herein, be suspended from work without pay for a period of six months, effective ten days from receipt of the decision.

Petitioner received a copy of the decision of the NLRC on August 27 (Rollo, p. 32). Three days later, private respondents filed with the Executive Labor Arbiter a motion for execution of the said decision. On September 24, the Executive Labor Arbiter granted a writ of execution and ordered petitioner to reinstate all private respondents.

On September 28, this Court issued a restraining order in G.R. Nos. 95219-20 enjoining, until further orders, the execution of the NLRC Decision dated July 17, 1990. However, on March 13, 1991, we dismissed the petition, affirmed the NLRC Decision dated July 17, 1990 and lifted the restraining order granted earlier.

Petitioner received a copy of the decision of the Supreme Court on April 10 and on April 16, it reinstated 27 of the respondent employees. On the same day, petitioner informed the Executive Labor Arbiter that respondent Laquio would be reinstated on October 16 after the expiration of Laquio's six-months suspension.

On April 17, private respondents filed a motion to compel the immediate reinstatement of respondent Laquio and the payment of their back wages. According to private respondents, the decision of the NLRC was executory immediately upon receipt by petitioner of a copy thereof on August 27, 1990.

On May 17, the Executive Labor Arbiter issued an order denying private respondents' motion. Private respondents then appealed to the NLRC (NLRC CA No. M-00352.) On October 24, the NLRC set aside the questioned order of the Executive Labor Arbiter and ordered respondent Laquio's reinstatement, if not yet reinstated, and granted full back wages to him from March 6, 1991 up to the day prior

to his actual reinstatement; and to the other private respondents from March 21, 1989 up to April 15, 1991, including the period of effectivity of the temporary restraining order of this Court in G.R. Nos. 95219-20.

Petitioner moved for a reconsideration, which the NLRC however denied on February 19, 1992.

Hence, this petition.

II

Petitioner contends that the NLRC had no jurisdiction to issue the resolutions in question because jurisdiction over labor disputes is vested in the Civil Service Commission. It also argues that the NLRC committed grave abuse of discretion amounting to lack or in excess of jurisdiction when it ordered the payment of the salaries of private respondent during the effectivity of the restraining order of this Court in G.R. Nos. 95219-20.

There is no dispute that petitioner, a water district with an original charter, is a government-owned and controlled corporation. The established rule is that the hiring and firing of employees of government-owned and controlled corporations are governed by the provisions of the Civil Service Law and Civil Service Rules and Regulations (*Tanjay Water District vs. Gabaton*, 172 SCRA 253 [1989]; *Hagonoy Water District vs. National Labor Relations Commission*, 165 SCRA 272 [1988]; *National Housing Corporation vs. Juco*, 134 SCRA 172 [1985]; *Baguio Water District vs. Trajano*, 127 SCRA 730 [1984]). Jurisdiction over the strike and the dismissal of private respondents is therefore lodged not with the NLRC but with the Civil Service Commission.

Nevertheless, petitioner never raised the issue of lack of jurisdiction before the Executive Labor Arbiter, the NLRC or even this Court in G.R. Nos. 95219-20. In fact, petitioner itself filed the complaint before the Executive Labor Arbiter in NLRC Case No. RAB-IX-03-0090-87, sought affirmative relief therefrom and even participated actively in the proceedings below. It is only now in this case before us, after the NLRC ordered payment of back wages, that petitioner raises

the issue of lack of jurisdiction. Indeed it is not fair for a party who has voluntarily invoked the jurisdiction of a tribunal in a particular matter to secure an affirmative relief therefrom, to afterwards repudiate and deny that very same jurisdiction to escape a penalty (Ocheda vs. Court of Appeals, 214 SCRA 629 [1992]; Royales vs. Intermediate Appellate Court, 127 SCRA 470 [1984]; Tijam vs. Sibonghanoy, 23 SCRA 29 [1968]).

Petitioner is thus estopped from assailing the jurisdiction of the NLRC and is bound to respect all the proceedings below.

The second issue involves the determination of when private respondents should be reinstated as ordered by the decision of the Executive Labor Arbiter dated April 19, 1988. Their salaries start to toll from said date.

Petitioner claims that private respondents, except respondent Laquio, were entitled to reinstatement only after April 10, 1991 when it received a copy of the decision of the Supreme Court in G.R. Nos. 95219-20. Petitioner reinstated said private respondents on April 16, 1991. In the case of respondent Laquio, petitioner reinstated him on October 16, 1991 after the expiration of the six-month suspension.

Petitioner argues that the execution of the NLRC decision dated July 17, 1990 was suspended by the temporary restraining order issued by this Court in G.R. Nos. 95219-20.

The Executive Labor Arbiter agreed with petitioner's contention.

The NLRC was of the view that private respondents should have been reinstated on March 21, 1989 and paid their back wages from that date to April 15, 1991 including the period of effectivity of the temporary restraining order of this Court in G.R. Nos. 95219-20. Respondent Laquio on the other hand, should have been reinstated on March 6, 1991 and paid his back wages from said date up to the day prior to his actual reinstatement.

The reckoning date of March 21, 1989 used by the NLRC was the date of effectivity of R.A. No. 6715, amending the third paragraph of Article 223 of the Labor Code which provides:

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“In any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be executory, even pending appeal. The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation or, at the option of the employer, merely reinstated in the payroll. The posting of a bond by the employer shall not stay the execution for reinstatement provided herein (Emphasis supplied).

X X X

Under the said provision of law, the decision of the Labor Arbiter reinstating a dismissed or separated employee insofar as the reinstatement aspect is concerned, shall be immediately executory, even pending appeal. The employer shall reinstate the employee concerned either by: (a) actually admitting him back to work under the same terms and conditions prevailing prior to his dismissal or separation; or (b) at the option of the employer, merely reinstating him in the payroll. Immediate reinstatement is mandated and is not stayed by the fact that the employer has appealed, or has posted a cash or surety bond pending appeal.

The issuance of the temporary restraining order in G.R. Nos. 95219-20 did not nullify the rights of private respondents to their reinstatement and to collect their wages during the period of the effectivity of the order but merely suspended the implementation thereof pending the determination of the validity of the NLRC resolutions subject of the petition. Naturally, a finding of this Court that private respondents were not entitled to reinstatement would mean that they had no right to collect any back wages. On the other hand, where the Court affirmed the decision of the NLRC and recognized the right of private respondents to reinstatement, as in G.R. Nos. 95219-20, private respondents are entitled to the wages accruing during the effectivity of the temporary restraining order.

WHEREFORE, the petition is **DISMISSED**.

SO ORDERED.

**Davide, Jr. and Bellosillo, *JJ.*, concur.
Cruz and Kapunan, *JJ.*, are on leave.**

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