

FIRST DIVISION

[G.R. No. 213729, September 02, 2015]

PHILIPPINE AIRLINES, INC., PETITIONER, VS. ALEXANDER P. BICHARA, RESPONDENT.

D E C I S I O N

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*^[1] are the Decision^[2] dated January 24, 2014 and the Resolution^[3] dated July 30, 2014 rendered by the Court of Appeals (CA) in CA-G.R. SP. No. 118777, which reversed and set aside the Decision^[4] dated November 23, 2010 and the Resolution^[5] dated January 21, 2011 of the National Labor Relations Commission (NLRC) in NLRC NCR 00-04-03414-94 (CA No. 013528-97) (AE-03-09), and thereby, ordered petitioner Philippine Airlines, Inc. (PAL) to pay respondent Alexander P. Bichara (Bichara) salary differentials, backwages, and retirement benefits.

The Facts

On October 28, 1968, PAL hired Bichara as a flight attendant. Sometime in 1971, PAL implemented a retrenchment program. By April of that year, Bichara voluntarily resigned. On May 15, 1975, he was rehired.^[6]

In August 1993, Bichara was included in PAL's Purser Upgrading Program in which he graduated on December 13, 1993. As flight purser, he was required to take five (5) check rides for his performance evaluation and earn at least an 85% rating for each ride. However, Bichara failed in the two (2) check rides with ratings of 83.46% and 80.63%. Consequently, on **March 21, 1994**, Bichara was demoted to the position of flight steward.^[7]

On March 22, 1994, Bichara appealed his demotion to PAL, but no action was taken; hence, he filed a complaint for illegal demotion against PAL^[8] before the **NLRC-Regional Arbitration Branch, docketed as NLRC NCR 04-03414-94 (illegal demotion case)**. Eventually, or on June 16, 1997, Labor Arbiter Ricardo C. Nora (LA Nora) issued a Decision^[9] (**June 16, 1997 Decision**) declaring Bichara's demotion as illegal, and accordingly, ordered PAL to reinstate Bichara to his position as flight purser.^[10] PAL filed an appeal before the NLRC and later before the CA, both of which, however, upheld LA Nora's finding. PAL no longer appealed to the Court, thus, **it rendered the June 16, 1997 Decision final and executory on February 5, 2004.**^[11]

During the pendency of the illegal demotion case^[12] before the CA, however, or on **July 15, 1998**, PAL implemented another retrenchment program that resulted in

the termination of Bichara's employment.^[13] This prompted him, along with more than 1,400 other retrenched flight attendants, represented by the Flight Attendants and Stewards Association of the Philippines (FASAP), to file on June 22, 1998, a separate complaint for unfair labor practice, illegal retrenchment with claims for reinstatement and payment of salaries, allowances, backwages, and damages^[14] against PAL, docketed as **NLRC-NCR Case No. 06-05100-98^[15] (illegal retrenchment case)**^[16] This case was appealed all the way to this Court, docketed as G.R. No. 178083 entitled "*Flight Attendants and Stewards Assn. of the Phils, v. PAL, Patria T. Chiong, and CA*" (FASAP case), which **remains pending as of this time.**^[17]

On **July 9, 2005**, Bichara **reached the 60 year-old compulsory retirement age** under the PAL-FASAP Collective Bargaining Agreement (CBA).^[18]

On January 31, 2008, Bichara filed a motion for execution of LA Nora's June 16, 1997 Decision,^[19] which PAL opposed^[20] by arguing that the "complaint for illegal demotion x x x was overtaken by supervening events, *i.e.*, the retrenchment of [Bichara] in 1998 and his having reached [the] compulsory retirement age in 2005."^[21]

The LA Ruling

In an Order^[22] dated February 4, 2009 (February 4, 2009 Order), Labor Arbiter Antonio R. Macam (LA Macam) granted Bichara's motion for execution, thus, directing the issuance of a writ of execution against PAL and/or a certain Jose Garcia to jointly and severally pay Bichara: (a) separation pay in lieu of reinstatement equivalent to one (1) month's pay for every year of service counting from October 28, 1968 up to the present, excluding the period from April 1, 1971 until May 15, 1975, or a period of 35 years; and (b) attorney's fees in the amount of P20,000.00.^[23]

LA Macam declared that, notwithstanding the pendency before this Court of the illegal retrenchment case, *i.e.*, FASAP case, Bichara's termination was invalid, given that: (a) PAL did not use a fair and reasonable criteria in effecting the retrenchment; (b) PAL disregarded the labor arbiters' rulings in the illegal demotion and illegal retrenchment cases which were both immediately executory; and (c) retrenchment was made during the pendency of the illegal demotion case without the permission of the court where the case was pending.^[24] For these reasons, Bichara was entitled to reinstatement to his position as flight purser. However, since Bichara may no longer be reinstated in view of his compulsory retirement in accordance with the CBA, LA Macam, instead, ordered PAL to pay Bichara separation pay with the salary base of a flight purser.^[25]

Aggrieved, PAL appealed to the NLRC.

The NLRC Ruling

In a Decision^[26] dated November 23, 2010, the NLRC reversed and set aside LA Macam's February 4, 2009 Order and denied the motion for execution for being

moot and academic, considering Bichara's compulsory retirement in 2005,^[27] without prejudice to the latter's entitlement to backwages and retirement benefits of a flight steward pursuant to this Court's final decision in the *FASAP* case.^[28]

At the outset, the NLRC ruled that Bichara's reinstatement could have taken effect, if at all, only on January 31, 2008 when he sought the execution of the said relief.^[29] In this light, his **reinstatement and corresponding backwages** prior to said date must therefore be based on the salary rate and other benefits **attached to the position of flight steward** to which he was demoted/reverted.^[30] (However, it declared that reinstatement is no longer possible as the same was rendered moot and academic when he compulsorily retired in 2005.^[31] On the other hand, the NLRC concluded that the matter of payment of monetary benefits is not for it to order since it is a relief pertaining to the pending *FASAP* case; as such, Bichara should pursue payment of backwages when the decision in the *FASAP* case is due for execution. In this relation, the NLRC remarked that LA Macam exceeded his authority in awarding separation pay in lieu of reinstatement, since such relief is not contemplated in the decision sought to be executed, *i.e.*, the June 16, 1997 Decision.^[32]

Both parties moved for reconsideration, which were, however, denied in a Resolution^[33] dated January 21, 2011. Dissatisfied, Bichara elevated the case to the CA through a petition for review on *certiorari*.

The CA Ruling

In a Decision^[34] dated January 24, 2014, the CA reversed and set aside the NLRC's ruling. It did not find LA Macam to have exceeded his authority in ordering the payment of separation pay in lieu of reinstatement since, in a long line of cases, this Court has consistently held that when reinstatement is not possible due to over age, payment of separation pay is in place.^[35] The CA, however, observed that since Bichara was one of the retrenched employees involved in the *FASAP* case, this Court's Decision dated October 2, 2009, wherein it ruled that the retrenchment was illegal and thereby stated that "[f]light attendants who have reached their compulsory retirement age of retirement shall receive backwages up to the date of their retirement only,"^[36] should be made to apply. Thus, instead of separation pay, Bichara is entitled to backwages from the time of his retrenchment up to the time he reached the compulsory retirement age of 60. In addition, since the June 16, 1997 Decision, rendered in the illegal demotion case, had already become final and executory, he is entitled to salary differentials of a flight purser from a flight attendant from March 21, 1994, *i.e.*, the date of his demotion, up to the time of his retrenchment in July 1998.^[37] He is also entitled to retirement benefits in accordance with the existing CBA at the time of his retirement.^[38]

PAL moved for reconsideration^[39] which was denied^[40] in a Resolution^[40] dated July 30, 2014; hence, this petition.

The Issue Before the Court

The essential issue to be resolved is whether or not the CA erred in reversing the

NLRC's Decision and thereby awarding Bichara the aforementioned monetary awards.

The Court's Ruling

The petition is partly meritorious.

A judgment should be implemented according to the terms of its dispositive portion is a long and well-established rule.^[41] As such, **where the writ of execution is not in harmony with and exceeds the judgment which gives it life, the writ has *pro tanto* no validity.**^[42]

A companion to this rule is the **principle of immutability of final judgments**, which states that a final judgment may no longer be altered, amended or modified, even if the alteration, amendment or modification is meant to correct what is perceived to be an erroneous conclusion of fact or law and regardless of what court renders it. Any attempt to insert, change or add matters not clearly contemplated in the dispositive portion violates the rule on immutability of judgments.^[43] But like any other rule, this principle has exceptions, namely: (1) the correction of clerical errors; (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party; (3) void judgments; and (4) **whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable.**^[44]

In this case, the final judgment sought to be executed is LA Nora's June 16, 1997 Decision, which was **confined to the directive that PAL reinstate Bichara as a flight purser in view of his illegal demotion** to the position of flight attendant:

IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered declaring the illegality of complainant's [Bichara] demotion/reversion to Flight Steward and ordering the respondents [PAL] to reinstate the complainant to his position as Flight Purser within ten (10) days from receipt of this Decision.

The claim for damages is dismissed for lack of merit.

SO ORDERED.^[45]

Evidently, LA Macam went beyond the terms of the June 16, 1997 Decision when he, in his February 4, 2009 Order, directed the issuance of a writ of execution **ordering the payment of separation pay in lieu of reinstatement:**

WHEREFORE, finding merit in the complainant's [Bichara] Motion for Execution, the same is hereby GRANTED. Let a Writ of Execution be issued ordering the respondents Philippine Airlines, Inc. and/or Jose Garcia, in lieu of reinstating the complainant to the position of Flight Purser, to jointly and severally PAY to the complainant his separation pay equivalent to one (1) month's pay for every year of service counting from October 28, 1968 up to the present, excluding the period from April 1, 1971 until May 15, 1975, or a period of thirty-five (35) years and to pay the complainant the sum of Twenty Thousand Pesos (P20,000.00) for and as attorney's fees.