771 PHIL. 169

THIRD DIVISION

[G.R. No. 193990, October 14, 2015]

EASTERN SHIPPING LINES, INC., AND/OR CONGRESSMAN ERWIN L. CHIONGBIAN, PETITIONERS, VS. JULIO C. CANJA, RESPONDENT.

D E C I S I O N

PERALTA, J.:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court seeking the reversal of the Decision[2] dated July 20, 2010 and Resolution[3] dated October 7, 2010 of the Court of Appeals in CA-G.R. SP No. 112756 entitled *Eastern Shipping Lines, Inc. and/or Cong. Erwin L. Chiongbian vs. NLRC and Julio C. Canja*.[4]

The facts are as follows:

The instant petition stemmed from a complaint for illegal dismissal, illegal suspension, underpayment of holiday pay premium, 13th month pay, separation pay, retirement benefits, sick leave and vacation leave benefits, damages and attorney's fees filed by respondent Julio C. Canja (Canja) against petitioners Eastern Shipping Lines, Inc., its president and Congressman Erwin L. Chiongbian before the Arbitration Branch of the NLRC.

In his complaint, Canja narrated that, sometime in February 1982, he was hired by ESLI as a maintenance worker in its office at Anda Circle, Port Area, Manila. However, during his employment, he was also made to work as a mason, painter, carpenter and gardener in the residence of petitioner Chiongbian at Forbes Park, Makati City. In 1987, Canja was even sent to Sarangani Province in Cotabato to work in the beach resort of Chiongbian for seven months. He was eventually ordered to return to Manila to continue his maintenance work for ESLI and in the residence of Chiongbian. In April 2008, Chiongbian instructed Canja not to report for work during the time his entire family was in the United States for a one-month vacation. He was told that he will be called upon to resume his work when they return from their vacation. In May 2008, Chiongbian came back from abroad and called up Canja to continue his work. Nevertheless, only a week after his resumption of work, Canja was told to stop reporting since there was no available job for him. Canja asked for reconsideration as he has not committed any wrongdoing to cause his termination from employment. He, however, was allegedly not allowed to report again.

For their part, petitioners denied that Canja was terminated from his employment. They claimed that it was actually Canja who refused to work without any valid reason even after being called upon by petitioners. They added that Canja actually still owed them a loan and cash advances that have not been fully paid yet. They insisted that Canja's act of refusing to return to work showed that he wanted to

sever his employer-employee relationship with them. Petitioners claimed that they sent one of their employees, a certain Alejandro Bustamante Antonio, to Canja's residence to persuade him to report back to work, but the latter refused.

On May 27, 2009, the Labor Arbiter rendered a Decision[5] holding petitioners liable for illegal dismissal. It ratiocinated that petitioners failed to prove that Canja abandoned his work or that he deliberately refused to resume employment without any intention of returning. It likewise held that Canja is entitled to the payment of backwages from May 2008 up to the date of their Decision, and in lieu of reinstatement, the payment of separation pay at the rate of one-half (14) month pay for every year of service.[6]

Petitioners appealed the decision before the NLRC.

In a Resolution[7] dated November 29, 2009, the NLRC affirmed the findings of the Labor Arbiter and declared Canja to be illegally dismissed. It observed that except for petitioners' bare allegation of abandonment, no other evidence was offered to support their defense of abandonment.

Petitioners moved for reconsideration, but the same was denied in a Resolution[8] dated January 15, 2010.

Thus, on February 16, 2010, before the Court of Appeals, petitioners filed a Petition for *Certiorari*[9] with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction, alleging grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the NLRC in declaring Canja to be illegally dismissed and in awarding backwages and separation pay.

In a Resolution[10] dated March 17, 2010, the Court of Appeals denied petitioners' prayer for the issuance of a temporary restraining order for failing to show compelling reasons that they have a clear and legal right to the issuance thereof.

Meanwhile, the NLRC decision became final and executory on April 3, 2010, thus, Entry of Judgment[11] was issued on April 7, 2010.

On July 20, 2010, in its disputed Decision,[12] the Court of Appeals affirmed with modification the Resolutions dated November 29, 2009 and January 15, 2010 of the NLRC, the dispositive portion of which reads:

> WHEREFORE, premises considered, the instant Petition for Certiorari is hereby DISMISSED. The Resolutions dated November 29, 2009 and January 15, 2010 of public respondent NLRC are **AFFIRMED** with **MODIFICATION** in that private respondent Julio C. Canja's separation pay must be equivalent to one (1) month pay for every year of service to be reckoned from the first day of employment up to the finality of this decision, while his full backwages are to be computed from the date of illegal dismissal up to the finality of the decision. Let the records of this case be remanded to the Computation and Examination Unit of the NLRC for the proper computation of the amounts due private respondent.[13]

The appellate court reasoned that there was no convincing evidence to show that Canja intended to abandon his job. It ruled that Canja's filing of illegal dismissal against petitioner is inconsistent with the claim of abandonment.

Petitioners moved for reconsideration, but was denied in a Resolution[14] dated October 7, 2010. Thus, the instant petition for review on *certiorari* raising the lone issue of:

> WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN ITS DECISION DATED 20 JULY 2010 AND 7 OCTOBER 2010 WHEN IT MODIFIED THE RESOLUTION OF THE NATIONAL LABOR RELATIONS COMMISSION DATED 29 NOVEMBER 2009 ON THE BASIS OF A NEW CASE WHICH WAS DECIDED BY THE SUPREME COURT DESPITE THE FACT THAT THIS CASE HAD ALREADY BECOME FINAL AND EXECUTORY AND SATISFIED.[15]

In essence, petitioners argue that because the NLRC Decision had already become final and executory, as in fact there was already an entry of judgment, the same can no longer be modified.

We disagree.

In *Philippine Transmarine Carriers, Inc. v. Legaspi,*[16] the Court has the occasion to rule that a petition for certiorari is not rendered moot by the mere fact that there was already an executed NLRC decision. For clarification, we quote:

> Section 14, Rule VII of the 2011 NLRC Rules of Procedure provides that decisions, resolutions or orders of the NLRC shall become final and executory after ten (10) calendar days from receipt thereof by the parties, and entry of judgment shall be made upon the expiration of the said period. In *St. Martin Funeral Home v. NLRC*, however, it was ruled that judicial review of decisions of the NLRC may be sought via a petition for certiorari before the CA under Rule 65 of the Rules of Court; and under Section 4 thereof, petitioners are allowed sixty (60) days from notice of the assailed order or resolution within which to file the petition. ***Hence, in cases where a petition for certiorari is filed after the expiration of the 10-day period tinder the 2011 NLRC Rules of Procedure hut within the 60-day period under Rule 65 of the Rules of Court, the CA can grant the petition and modify, nullify and reverse a decision or resolution of the NLRC.***[17]

In this case, the NLRC Decision was dated November 29, 2009. Within the ten (10) days from receipt of the Decision, petitioners filed a motion for reconsideration on December 21, 2009. however, the NLRC denied the motion in a Resolution dated January 15, 2010, to which a copy was received by petitioner on February 8, 2010. Under the NLRC Rules of Procedure, petitioners have sixty (60) days from receipt of the denial of the motion for reconsideration within which to file the petition for