

## SECOND DIVISION

[ G.R. No. 180962, February 26, 2014 ]

**PHILTRANCO SERVICE ENTERPRISES, INC., REPRESENTED BY ITS VICE-PRESIDENT FOR ADMINISTRATION, M/GEN. NEMESIO M. SIGAYA, PETITIONER, VS. PHILTRANCO WORKERS UNION-ASSOCIATION OF GENUINE LABOR ORGANIZATIONS (PWU-AGLO), REPRESENTED BY JOSE JESSIE OLIVAR, RESPONDENT.**

### D E C I S I O N

**DEL CASTILLO, J.:**

While a government office<sup>[1]</sup> may prohibit altogether the filing of a motion for reconsideration with respect to its decisions or orders, the fact remains that *certiorari* inherently requires the filing of a motion for reconsideration, which is the tangible representation of the opportunity given to the office to correct itself. Unless it is filed, there could be no occasion to rectify. Worse, the remedy of *certiorari* would be unavailing. Simply put, regardless of the proscription against the filing of a motion for reconsideration, the same may be filed on the assumption that rectification of the decision or order must be obtained, and before a petition for *certiorari* may be instituted.

This Petition for Review on *Certiorari*<sup>[2]</sup> seeks a review and setting aside of the September 20, 2007 Resolution<sup>[3]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 100324,<sup>[4]</sup> as well as its December 14, 2007 Resolution<sup>[5]</sup> denying petitioner's Motion for Reconsideration.

#### ***Factual Antecedents***

On the ground that it was suffering business losses, petitioner Philtranco Service Enterprises, Inc., a local land transportation company engaged in the business of carrying passengers and freight, retrenched 21 of its employees. Consequently, the company union, herein private respondent Philtranco Workers Union-Association of Genuine Labor Organizations (PWU-AGLU), filed a Notice of Strike with the Department of Labor and Employment (DOLE), claiming that petitioner engaged in unfair labor practices. The case was docketed as NCMB-NCR CASE No. NS-02-028-07.

Unable to settle their differences at the scheduled February 21, 2007 preliminary conference held before Conciliator-Mediator Amorsolo Aglibut (Aglibut) of the National Conciliation and Mediation Board (NCMB), the case was thereafter referred to the Office of the Secretary of the DOLE (Secretary of Labor), where the case was docketed as Case No. OS-VA-2007-008.

After considering the parties' respective position papers and other submissions,

Acting DOLE Secretary Danilo P. Cruz issued a Decision<sup>[6]</sup> dated June 13, 2007, the dispositive portion of which reads, as follows:

WHEREFORE, premises considered, we hereby ORDER Philtranco to:

1. REINSTATE to their former positions, without loss of seniority rights, the ILLEGALLY TERMINATED 17 "union officers", x x x, and PAY them BACKWAGES from the time of termination until their actual or payroll reinstatement, provided in the computation of backwages among the seventeen (17) who had received their separation pay should deduct the payments made to them from the backwages due them.
2. MAINTAIN the status quo and continue in full force and effect the terms and conditions of the existing CBA – specifically, Article VI on Salaries and Wages (commissions) and Article XI, on Medical and Hospitalization – until a new agreement is reached by the parties; and
3. REMIT the withheld union dues to PWU-AGLU without unnecessary delay.

The PARTIES are enjoined to strictly and fully comply with the provisions of the existing CBA and the other dispositions of this Decision.

SO ORDERED.<sup>[7]</sup>

Petitioner received a copy of the above Decision on June 14, 2007. It filed a Motion for Reconsideration on June 25, 2007, a Monday. Private respondent, on the other hand, submitted a "Partial Appeal."

In an August 15, 2007 Order<sup>[8]</sup> which petitioner received on August 17, 2007, the Secretary of Labor declined to rule on petitioner's Motion for Reconsideration and private respondent's "Partial Appeal", citing a DOLE regulation<sup>[9]</sup> which provided that voluntary arbitrators' decisions, orders, resolutions or awards shall not be the subject of motions for reconsideration. The Secretary of Labor held:

WHEREFORE, the complainant's and the respondent's respective pleadings are hereby NOTED as pleadings that need not be acted upon for lack of legal basis.

SO ORDERED.<sup>[10]</sup>

### ***The Assailed Court of Appeals Resolutions***

On August 29, 2007, petitioner filed before the CA an original Petition for *Certiorari* and Prohibition, and sought injunctive relief, which case was docketed as CA-G.R. SP No. 100324.

On September 20, 2007, the CA issued the assailed Resolution which decreed as follows:

WHEREFORE, premises considered, the instant Petition for *Certiorari* and Prohibition with Prayer for Temporary Restraining Order and Preliminary

Injunction is hereby DISMISSED. Philtranco's pleading entitled "Reiterating Motion for The Issuance of Writ of Preliminary Injunction and/or Temporary Restraining Order" is NOTED.

SO ORDERED.<sup>[11]</sup>

The CA held that, in assailing the Decision of the DOLE voluntary arbitrator, petitioner erred in filing a petition for *certiorari* under Rule 65 of the 1997 Rules, when it should have filed a petition for review under Rule 43 thereof, which properly covers decisions of voluntary labor arbitrators.<sup>[12]</sup> For this reason, the petition is dismissible pursuant to Supreme Court Circular No. 2-90.<sup>[13]</sup> The CA added that since the assailed Decision was not timely appealed within the reglementary 15-day period under Rule 43, the same became final and executory. Finally, the appellate court ruled that even assuming for the sake of argument that *certiorari* was indeed the correct remedy, still the petition should be dismissed for being filed out of time. Petitioner's unauthorized Motion for Reconsideration filed with the Secretary of Labor did not toll the running of the reglementary 60-day period within which to avail of *certiorari*; thus, from the time of its receipt of Acting Labor Secretary Cruz's June 13, 2007 Decision on June 14 or the following day, petitioner had until August 13 to file the petition – yet it filed the same only on August 29.

Petitioner filed a Motion for Reconsideration, which was denied by the CA through the second assailed December 14, 2007 Resolution. In denying the motion, the CA held that the fact that the Acting Secretary of Labor rendered the decision on the voluntary arbitration case did not remove the same from the jurisdiction of the NCMB, which thus places the case within the coverage of Rule 43.

### **Issues**

In this Petition,<sup>[14]</sup> the following errors are assigned:

THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT THE PETITIONER AVAILED OF THE ERRONEOUS REMEDY IN FILING A PETITION FOR *CERTIORARI* UNDER RULE 65 INSTEAD OF UNDER RULE 43 OF THE RULES OF COURT.

THE HONORABLE COURT OF APPEALS ERRED WHEN IT HELD THAT THE PETITION FOR *CERTIORARI* WAS FILED OUT OF TIME.

THE HONORABLE COURT OF APPEALS ERRED WHEN IT DISMISSED THE PETITION OUTRIGHT ON THE BASIS OF PURE TECHNICALITY.<sup>[15]</sup>

### ***Petitioner's Arguments***

In its Petition and Reply,<sup>[16]</sup> petitioner argues that a petition for *certiorari* under Rule 65 – and not a petition for review under Rule 43 – is the proper remedy to assail the June 13, 2007 Decision of the DOLE Acting Secretary, pointing to the Court's pronouncement in *National Federation of Labor v. Hon. Laguesma*<sup>[17]</sup> that the remedy of an aggrieved party against the decisions and discretionary acts of the NLRC as well as the Secretary of Labor is to timely file a motion for reconsideration, and then seasonably file a special civil action for *certiorari* under Rule 65 of the

Petitioner adds that, contrary to the CA's ruling, NCMB-NCR CASE No. NS-02-028-07 is not a simple voluntary arbitration case. The character of the case, which involves an impending strike by petitioner's employees; the nature of petitioner's business as a public transportation company, which is imbued with public interest; the merits of its case; and the assumption of jurisdiction by the Secretary of Labor – all these circumstances removed the case from the coverage of Article 262,<sup>[18]</sup> and instead placed it under Article 263,<sup>[19]</sup> of the Labor Code. Besides, Rule 43 does not apply to judgments or final orders issued under the Labor Code.<sup>[20]</sup>

On the procedural issue, petitioner insists that it timely filed the Petition for *Certiorari* with the CA, arguing that Rule 65 fixes the 60-day period within which to file the petition from notice of the denial of a timely filed motion for reconsideration, whether such motion is required or not. It cites the Court's pronouncement in *ABS-CBN Union Members v. ABS-CBN Corporation*<sup>[21]</sup> that "before a petition for *certiorari* under Rule 65 of the Rules of Court may be availed of, the filing of a motion for reconsideration is a condition *sine qua non* to afford an opportunity for the correction of the error or mistake complained of" and since "a decision of the Secretary of Labor is subject to judicial review only through a special civil action of *certiorari* x x x [it] cannot be resorted to without the aggrieved party having exhausted administrative remedies through a motion for reconsideration".

### ***Respondent's Arguments***

In its Comment,<sup>[22]</sup> respondent argues that the Secretary of Labor decided Case No. OS-VA-2007-008 in his capacity as voluntary arbitrator; thus, his decision, being that of a voluntary arbitrator, is only assailable via a petition for review under Rule 43. It further echoes the CA's ruling that even granting that *certiorari* was the proper remedy, the same was filed out of time as the filing of a motion for reconsideration, which was an unauthorized pleading, did not toll the running of the 60-day period. Finally, it argues that on the merits, petitioner's case could not hold water as it failed to abide by the requirements of law in effecting a retrenchment on the ground of business losses.

### **Our Ruling**

The Court grants the Petition.

It cannot be said that in taking cognizance of NCMB-NCR CASE No. NS-02-028-07, the Secretary of Labor did so in a limited capacity, *i.e.*, as a voluntary arbitrator. The fact is undeniable that by referring the case to the Secretary of Labor, Conciliator-Mediator Aglibut conceded that the case fell within the coverage of Article 263 of the Labor Code; the impending strike in Philtranco, a public transportation company whose business is imbued with public interest, required that the Secretary of Labor assume jurisdiction over the case, which he in fact did. By assuming jurisdiction over the case, the provisions of Article 263 became applicable, any representation to the contrary or that he is deciding the case in his capacity as a voluntary arbitrator notwithstanding.

It has long been settled that the remedy of an aggrieved party in a decision or

resolution of the Secretary of Labor 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 on Civil Procedure.

[23] There is no distinction: when the Secretary of Labor assumes jurisdiction over a labor case in an industry indispensable to national interest, "he exercises great breadth of discretion" in finding a solution to the parties' dispute.[24] "[T]he authority of the Secretary of Labor to assume jurisdiction over a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to national interest includes and extends to all questions and controversies arising therefrom. The power is plenary and discretionary in nature to enable him to effectively and efficiently dispose of the primary dispute." [25] This wide latitude of discretion given to the Secretary of Labor may not be the subject of appeal.

Accordingly, the Secretary of Labor's Decision in Case No. OS-VA-2007-008 is a proper subject of *certiorari*, pursuant to the Court's pronouncement in *National Federation of Labor v. Laguesma*, [26] thus:

Though appeals from the NLRC to the Secretary of Labor were eliminated, presently there are several instances in the Labor Code and its implementing and related rules where an appeal can be filed with the Office of the Secretary of Labor or the Secretary of Labor issues a ruling, to wit:

x x x x

(6) Art. 263 provides that the Secretary of Labor shall decide or resolve the labor dispute [over] which he assumed jurisdiction within thirty (30) days from the date of the assumption of jurisdiction. His decision shall be final and executory ten (10) calendar days after receipt thereof by the parties.

From the foregoing we see that the Labor Code and its implementing and related rules generally do not provide for any mode for reviewing the decision of the Secretary of Labor. It is further generally provided that the decision of the Secretary of Labor shall be final and executory after ten (10) days from notice. Yet, like decisions of the NLRC which under Art. 223 of the Labor Code become final after ten (10) days, decisions of the Secretary of Labor come to this Court by way of a petition for *certiorari* even beyond the ten-day period provided in the Labor Code and the implementing rules but within the reglementary period set for Rule 65 petitions under the 1997 Rules of Civil Procedure. x x x

x x x x

In fine, we find that it is procedurally feasible as well as practicable that petitions for *certiorari* under Rule 65 against the decisions of the Secretary of Labor rendered under the Labor Code and its implementing and related rules be filed initially in the Court of Appeals. Paramount consideration is strict observance of the doctrine on the hierarchy of the courts, emphasized in *St. Martin Funeral Homes v. NLRC*, on