667 Phil. 489

THIRD DIVISION

[G.R. No. 189314, June 15, 2011]

MIGUEL DELA BARAIRO, PENA PETITIONER, VS. OFFICE OF THE PRESIDENT AND MST MARINE SERVICES (PHILS,), INC. RESPONDENT.

D E C I S I O N

CARPIO MORALES, J.:

Miguel Barairo (petitioner) was hired[1] on June 29, 2004 by respondent MST Marine Services (Phils.) Inc., (MST) for its principal, TSM International, Ltd., as Chief Mate of the vessel *Maritina*, for a contract period of six months. He hoarded the vessel and discharged his duties on July 23, 2004. but was relieved[2] on August 28, 2004 ostensibly for transfer to another vessel, *Solar*. Petitioner thus disembarked in Manila on August 29. 2004.

Petitioner was later to claim that he was not paid the promised "standby fee" in lieu of salary that he was to receive while awaiting transfer to another vessel as in fact the transfer never materialized.

On October 20, 2004, petitioner signed a new Contract of Employment[3] for a six-month deployment as Chief Mate in a newly-built Japanese vessel. M/T *Haruna.* He was paid a one-month "standby lee" in connection with the *Maritina* contract.

Petitioner boarded the M/T *Haruna* on October 31, 2004 tat he disembarked a week later as MST claimed that his boarding of M/T *Haruna* was a "sea trial" which, MST maintains, was priorly made known to him on a "stand-by" fee. MST soon informed petitioner that he would be redeployed to the M/T *Haruna* on November 30, 2004, but petitioner refused, prompting MST to file a complaint[4] for breach of contract against him before the Philippine Overseas Employment Administration (POEA).

Petitioner claimed, however, that he was placed on "forced vacation'1 when he was made to disembark from the M/T *Haruna*, and that not wanting to experience a repetition of the previous "termination" of his employment aboard the *Maritina*, he refused to be redeployed to the M/T *Haruna.*

By Order[5] of April 5. 2006, then POEA Administrator Rosalinda D Baldoz penalized petitioner with one year suspension from overseas deployment upon a finding that his refusal to complete his contract aboard the M/T *Haruna* constituted a breach thereof.

On appeal by petitioner, the Secretary of Labor, by Order[6] of September 22, 2006, noting that it was petitioner's first offense, *modified* the POEA Order by shortening the period of suspension from one year to six months.

The Office of the President (OP), by Decision[7] of November 26, 2007. dismissed petitioner's appeal for lack of jurisdiction, citing *National Federation of Labor v. Laguesma*.[8]

The OP held that appeals to it in labor cases, except those involving national interest, have been eliminated. Petitioner's motion for partial reconsideration was denied by Resolution[9] of June 26, 2009. hence, the present petition.

Following settled jurisprudence, the proper remedy to question the decisions or orders o the Secretary of Labor is via Petition for Certiorari under Rule 65. nol via an appeal to the OP. For appeals to the OP in labor cases have indeed been eliminated, except those involving national interest over which the President may assume jurisdiction. The rationale behind this development is mirrored in the OP's Resolution of June 26, 2009 the pertinent portion of which reads:

> . . **[T]he assailed DOLE'S Orders were both issued by Undersecretary Danilo P. Cruz under the authority of the DOLE Secretary vvho is the alter ego of the President**. Under the "Doctrine of Qualified Political Agency," a corollary rule to the control powers of the President, all executive and administrative organizations are adjuncts of the Executive Department, the heads of the various executive departments are assistants and agents of the Chief Executive, and, except in cases where the Chief Executive is required by Constitution or law to act in person or the exigencies of the situation demand that he act personally, the multifarious executive and administrative functions of the Chief **Executive are performed by and through the executive departments, and the acts of the Secretaries of such departments, performed and promulgated in the regular course of business are, unless disapproved or reprobated by the Chief Executive presumptively the of the Chief Executive.** [10] (emphasis and underscoring supplied)

It cannot be gainsaid that petitioner's case does not involve national interest.

Petitioner's appeal of the Secretary of Labor's Decision to the Office of the President did not toll the running of the period, hence, the assailed Decisions of the Secretary of Labor are deemed to have attained finality.

> **Although appeal is an essential part of our judicial process, it has been held, time and again, that the right thereto is not a natural right or a part of due process but is merely a statutory privilege. Thus, the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but also jurisdictional and failure of a party to conform to the rules regarding appeal will render the judgment final and executory**. Once a decision attains finality, it becomes the law of the case irrespective of whether the decision is erroneous or not and no court - not even the Supreme Court - has the power to revise, review, change or