639 Phil. 633

SECOND DIVISION

[G.R. No. 188949, July 26, 2010]

CENTRAL AZUCARERA DE TARLAC, PETITIONER, VS. CENTRAL AZUCARERA DE TARLAC LABOR UNION-NLU, RESPONDENT.

D E C I S I O N

NACHURA, J.:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court, assailing the Decision[1] dated May 28, 2009, and the Resolution[2] dated July 28, 2009 of the Court of Appeals (CA) in CA-G.R. SP No. 106657.

The factual antecedents of the case are as follows:

Petitioner is a domestic corporation engaged in the business of sugar manufacturing, while respondent is a legitimate labor organization which serves as the exclusive bargaining representative of petitioner's rank-and-file employees. The controversy stems from the interpretation of the term "basic pay," essential in the computation of the 13th-month pay.

The facts of this case are not in dispute. In compliance with Presidential Decree (P.D.) No. 851, petitioner granted its employees the mandatory thirteenth (13th) - month pay since 1975. The formula used by petitioner in computing the 13th-month pay was: Total Basic Annual Salary divided by twelve (12). Included in petitioner's computation of the Total Basic Annual Salary were the following: basic monthly salary; first eight (8) hours overtime pay on Sunday and legal/special holiday; night premium pay; and vacation and sick leaves for each year. Throughout the years, petitioner used this computation until 2006.[3]

On November 6, 2004, respondent staged a strike. During the pendency of the strike, petitioner declared a temporary cessation of operations. In December 2005, all the striking union members were allowed to return to work. Subsequently, petitioner declared another temporary cessation of operations for the months of April and May 2006. The suspension of operation was lifted on June 2006, but the rank-and-file employees were allowed to report for work on a fifteen (15) day-per-month rotation basis that lasted until September 2006. In December 2006, petitioner gave the employees their 13th-month pay based on the employee's total earnings during the year divided by 12.[4]

Respondent objected to this computation. It averred that petitioner did not adhere to the usual computation of the 13th-month pay. It claimed that the divisor should have been eight (8) instead of 12, because the employees worked for only 8 months in 2006. It likewise asserted that petitioner did not observe the company practice of giving its employees the guaranteed amount equivalent to their one month pay, in

instances where the computed 13th-month pay was less than their basic monthly pay.[5]

Petitioner and respondent tried to thresh out their differences in accordance with the grievance procedure as provided in their collective bargaining agreement. During the grievance meeting, the representative of petitioner explained that the change in the computation of the 13th-month pay was intended to rectify an error in the computation, particularly the concept of basic pay which should have included only the basic monthly pay of the employees.[6]

For failure of the parties to arrive at a settlement, respondent applied for preventive mediation before the National Conciliation and Mediation Board. However, despite four (4) conciliatory meetings, the parties still failed to settle the dispute. On March 29, 2007, respondent filed a complaint against petitioner for money claims based on the alleged diminution of benefits/erroneous computation of 13th-month pay before the Regional Arbitration Branch of the National Labor Relations Commission (NLRC). [7]

On October 31, 2007, the Labor Arbiter rendered a Decision[8] dismissing the complaint and declaring that the petitioner had the right to rectify the error in the computation of the 13th-month pay of its employees.[9] The *fallo* of the Decision reads:

> **WHEREFORE, premises considered, the complaint filed by the complainants against the respondents should be DISMISSED with prejudice for utter lack of merit.**
>
> **SO ORDERED.**[10]

Respondents filed an appeal. On August 14, 2008, the NLRC rendered a Decision[11] reversing the Labor Arbiter. The dispositive portion of the Decision reads:

> **WHEREFORE**, the decision appealed is reversed and set aside and respondent-appellee Central Azucarera de Tarlac is hereby ordered to adhere to its established practice of granting 13th[-] month pay on the basis of gross annual basic which includes basic pay, premium pay for work in rest days and special holidays, night shift differential and paid vacation and sick leaves for each year.
>
> Additionally, respondent-appellee is ordered to observe the guaranteed one[-]month pay by way of 13th month pay.
>
> **SO ORDERED**. [12]

Petitioner filed a motion for reconsideration. However, the same was denied in a Resolution dated November 27, 2008. Petitioner then filed a petition for *certiorari*

under Rule 65 of the Rules of Court before the CA.[13]

On May 28, 2009, the CA rendered a Decision[14] dismissing the petition, and affirming the decision and resolution of the NLRC, *viz.*:

> **WHEREFORE**, the foregoing considered, the petition is hereby **DISMISSED** and the assailed August 14, 2008 Decision and November 27, 2008 Resolution of the NLRC, are hereby **AFFIRMED**. No costs.
>
> SO ORDERED.[15]

Aggrieved, petitioner filed the instant petition, alleging that the CA committed a reversible error in affirming the Decision of the NLRC, and praying that the Decision of the Labor Arbiter be reinstated.

The petition is denied for lack of merit.

The 13th-month pay mandated by Presidential Decree (P.D.) No. 851 represents an additional income based on wage but not part of the wage. It is equivalent to one-twelfth (1/12) of the total basic salary earned by an employee within a calendar year. All rank-and-file employees, regardless of their designation or employment status and irrespective of the method by which their wages are paid, are entitled to this benefit, provided that they have worked for at least one month during the calendar year. If the employee worked for only a portion of the year, the 13th-month pay is computed pro rata.[16]

Petitioner argues that there was an error in the computation of the 13th-month pay of its employees as a result of its mistake in implementing P.D. No. 851, an error that was discovered by the management only when respondent raised a question concerning the computation of the employees'

13th-month pay for 2006. Admittedly, it was an error that was repeatedly committed for almost thirty (30) years. Petitioner insists that the length of time during which an employer has performed a certain act beneficial to the employees, does not prove that such an act was not done in error. It maintains that for the claim of mistake to be negated, there must be a clear showing that the employer had freely, voluntarily, and continuously performed the act, knowing that he is under no obligation to do so. Petitioner asserts that such voluntariness was absent in this case.[17]

The Rules and Regulations Implementing P.D. No. 851, promulgated on December 22, 1975, defines 13th-month pay and basic salary as follows:

> Sec. 2. *Definition of certain terms.* - As used in this issuance:
>
> (a) *"Thirteenth-month pay"* shall mean one twelfth (1/12) of the basic salary of an employee within a calendar year;