497 Phil. 227

SECOND DIVISION

[G.R. NO. 155207, April 29, 2005]

WILHELMINA S. OROZCO, PETITIONER, VS. THE FIFTH DIVISION OF THE HONORABLE COURT OF APPEALS, PHILIPPINE DAILY INQUIRER, AND LETICIA JIMENEZ MAGSANOC, RESPONDENTS.

R E S O L U T I O N

CHICO-NAZARIO, J.:

Ostensibly, the question raised in this present petition is of general interest to students of law¾whether a newspaper columnist is an employee of the newspaper which publishes the columns. However, for failure to file the appeal bond required by law, the Court is impelled to defer the settlement of the above issue until the jurisdictional requirement has been duly complied with.

This Petition for Review under Rule 45 of the Rules of Court assails the *Resolution*[1] of the Court of Appeals Fifth Division denying the Motion for Reconsideration filed by Wilhelmina Orozco (Orozco) and the Decision[2] of the same division in CA-G.R. SP No. 50970, the dispositive portion of which provides:

> WHEREFORE, based on the foregoing, the petition is hereby GRANTED. The assailed decision of the public respondent NLRC affirming the decision of the Labor Arbiter that private respondent Wilhelmina Orozco is an employee of petitioner PDI is hereby SET ASIDE. Private respondent Orozco's complaint is hereby DISMISSED for lack of merit.
>
> SO ORDERED.[3]

The above ruling of the Court of Appeals reversed the Decision[4] of the National Labor Relations Commission (NLRC) which affirmed the Decision[5] of the Labor Arbiter,[6] the decretal portion of which stated:

> WHEREFORE, judgment is hereby rendered, finding complainant to be an employee of respondent company; ordering respondent company to reinstate her to her former or equivalent position, with backwages.
>
> Respondent company is also ordered to pay her 13th month pay and service incentive leave pay.
>
> Other claims are hereby dismissed for lack of merit.
>
> SO ORDERED.[7]

This case arose out of the complaint filed by Orozco against private respondents Philippine Daily Inquirer (PDI) and Leticia Jimenez-Magsanoc (Magsanoc), the

editor-in-chief of the PDI at that time, for illegal dismissal, underpayment, non-payment of allowance, separation pay, retirement pay, service incentive leave pay, 13th month pay, moral and exemplary damages, discrimination in pay and for attorney's fees[8] with the Arbitration Branch of the NLRC on 1 June 1993.[9]

Based on the records of this case, Orozco was engaged as a columnist by PDI on 8 March 1990. She penned the column "Feminist Reflections" which appeared in the Lifestyle Section under the editorship of Lolita T. Logarta.[10]

Orozco worked by submitting weekly columns with a per article wage of Two Hundred Fifty Pesos (P250.00) which was later increased to Three hundred Pesos (P300.00).[11]

In June 1991, Magsanoc as editor-in-chief of PDI discussed how to improve the Lifestyle section of the newspaper with the Lifestyle editor. They agreed to cut down the number of columnists and for this reason, PDI decided to drop or terminate Orozco's column in November 1992.[12]

Orozco's column thus appeared in PDI for the last time on 7 November 1992. Upon inquiry at the office of Magsanoc as to why her column was stopped, the secretary told Orozco that it was Eugenia Apostol (Apostol), the chairperson of PDI, who had decided to stop her column.[13]

Apostol was out of the country at that time so Orozco waited until February 1993 to talk to her. In a telephone conversation with Orozco, Apostol stated that she had been told by Magsanoc that there were too many columnists in the Lifestyle Section. [14]

Aggrieved at the stoppage of her column, Orozco filed the instant case against private respondents before the NLRC. The PDI raised as primary defense the claim that Orozco was not an employee of the newspaper. However, in a Decision dated 29 October 1993, Labor Arbiter Arthur L. Amansec ruled that Orozco had been illegally dismissed, after concluding that Orozco had indeed been an employee of the PDI.

The PDI, through counsel, received a copy of the Labor Arbiter's *Decision* on 16 December 1993.[15] It timely filed a *Notice and Memorandum* dated 24 December 1993, but it did not lodge a cash or surety bond in the amount equivalent to the monetary award in the judgment appealed from. PDI adverted to such failure on its part before the NLRC but justified the same on the ground that the Decision of the Labor Arbiter did not fix any amount but merely stated that Orozco was entitled to backwages.

The NLRC dismissed the appeal in its Decision dated 23 August 1994. In this *Decision*, it made note of the failure of PDI to perfect the appeal by filing the cash or surety bond. Nonetheless, the NLRC ventured to delve on the merits, and thereupon, affirmed the finding of the Labor Arbiter that Orozco was an employee of PDI.

Private respondents elevated the case to the Supreme Court by way of the special civil action of certiorari. Pursuant to the ruling in *St. Martin Funeral Homes v. NLRC*,

[16] this Court referred the case to the Court of Appeals.

On 11 July 2002, the Court of Appeals reversed the decision of the NLRC by holding that Orozco is not an employee of PDI. The reversal was grounded on factual premises, the appellate court concluding that the NLRC had misappreciated the facts and rendered a ruling wanting in substantial evidence. It thereby dismissed Orozco's complaint for lack of merit. The Court of Appeals likewise dismissed Orozco's motion for reconsideration on 11 September 2002. Hence, this petition.

In her *Memorandum*, Orozco posits that the Court of Appeals should have dismissed outright the private respondent's petition for certiorari for their failure to file a cash bond or a surety bond as provided for in Article 223 of the Labor Code.

In support of the argument, Orozco contends that a grievous error tantamount to grave abuse of discretion was committed by the Court of Appeals when it failed to appreciate the observation of the NLRC that private respondents did not perfect their appeal as they did not deposit on time any cash or surety bond in compliance with the provision of Art. 223 of the Labor Code when they filed an appeal of the Labor Arbiter's decision at the NLRC. Orozco argues that the posting of the cash or surety bond is mandatory and must be made by the employer within the reglementary period of ten (10) days from receipt of the Labor Arbiter's decision so as to perfect his appeal. Failing to do so, the employer loses the right to appeal, and the Labor Arbiter's decision becomes final and executory, regardless of whether or not the NLRC declares it so, by operation of law.[17]

The NLRC in its decision concluded that it had no jurisdiction over PDI's appeal but proceeded nonetheless to discuss the merits of the case. On the other hand, the Court of Appeals made no mention at all of the jurisdictional defect, whether in its recital of facts or discussion of the arguments.

The novelty of the argument on the merits aside, it is essential not to lose sight of the jurisdictional issue, as it determines whether or not an appeal had indeed been perfected.

The provisions of the Labor Code are quite clear cut on the matter. The relevant portion of Article 223 states:

> ART. 223. Appeal. - Decisions, awards or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. . .
>
> In case of a judgment involving a monetary award, **an appeal by the employer may be perfected only upon the posting of a cash or surety bond** issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from. (emphasis supplied)

By explicit provision of law, an appeal is perfected only upon the posting of a cash or surety bond. The reason behind the imposition of this requirement is not difficult to divine. As the Court said in *Viron Garments Mftg., Co., Inc. v. NLRC*:[18]