

SECOND DIVISION

[G.R. NO. 141277, December 16, 2005]

**REYNALDO DELA CRUZ AND ELUR S. NONO, PETITIONERS, VS.
GOLAR MARITIME SERVICES, INC. AND GOTAAS LARSEN, LTD.,
RESPONDENTS,**

D E C I S I O N

CHICO-NAZARIO, J.:

This petition for review on *certiorari* under Rule 45 of the Rules of Court, as amended, seeks to annul and set aside the Resolutions dated 26 May 1999^[1] and 16 November 1999^[2] of the Court of Appeals in CA G.R. SP No. 52587, dismissing the original action for *certiorari* for having been filed beyond the reglementary period and denying the subsequent motion for reconsideration.

The pertinent facts of the case as culled from the records are as follows:

Sometime in 1996, on different dates, petitioner employees Reynaldo Dela Cruz and Elur Nono were hired and deployed by respondent Golar Maritime Services, Inc., a manning agency, on board the vessel LNGC "Golar Freeze," owned by respondent Gotaas Larsen, Ltd., pursuant to Philippine Overseas Employment Agency (POEA) approved shipboard contracts^[3] for a contract period of nine (9) months.

On 15 July 1996, before the expiration of petitioner employees' respective contracts, they were repatriated back to the country on charges of disobedience and insubordination.

On 25 October 1996, petitioner employees filed a complaint^[4] alleging that they were illegally dismissed. By way of reliefs, they sought the payment of their salaries corresponding to the unexpired portion of their employment contract, reimbursement of repatriation expenses, damages and attorney's fees against respondent Golar Maritime Services, Inc. and Gotaas Larsen, Ltd.

On 16 December 1997, Labor Arbiter Potenciano S. Canizares, Jr. rendered a decision^[5] in favor of petitioner employees, the *fallo* of which states that:

WHEREFORE, the respondents are hereby ordered to pay US\$3,127.50 or Php82,253.25 to Reynaldo D. Dela Cruz for the unexpired portion of 3 months and 15 days of his contract of employment; US\$5,699.00 or Php149,883.70 to Elur S. Nono, corresponding to his salaries for the unexpired portion of 8 months and 6 days of his employment contract; US\$440.00 or Php11,572.00 as the full cost of Dela Cruz's repatriation expenses; and US\$256.00 or Php6,732.80 corresponding to Nono's repatriation expenses.

The respondents are further ordered to pay the complainants 10% of the monetary awards as attorney's fees.

Other claims are hereby dismissed for lack of sufficient evidence.

SO ORDERED.

From the adverse decision of the Labor Arbiter, respondent companies appealed to the National Labor Relations Commission (NLRC).^[6]

Petitioner employees filed a Manifestation and Motion (to dismiss the appeal filed) before the NLRC, contending that respondent companies failed to file the required adequate or sufficient appeal bond. By reason of which, they have lost their right to appeal the decision rendered by the Labor Arbiter in favor of petitioner employees and said decision has become final and executory.

In its Decision^[7] of 05 June 1998, received by petitioner employees on 18 August 1998, the NLRC vacated the aforequoted ruling of the Labor Arbiter and dismissed the instant complaint for lack of merit, viz:

WHEREFORE, the decision appealed from is hereby SET ASIDE. The complaint for illegal dismissal including respondents' counterclaim is (sic) dismissed for lack of merit.

SO ORDERED.

On 28 August 1998, reconsideration was sought by petitioner employees.

On 09 October 1998, petitioner employees received a copy of the NLRC Resolution^[8] dated 14 September 1998 denying their motion for reconsideration.

Undaunted, on 08 December 1998, petitioners went to this Court via a "Petition for *Certiorari* with a Prayer for the Issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order,"^[9] seeking the annulment of said decision. They alleged that the NLRC acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it reversed and set aside the decision by the Labor Arbiter after it has already attained finality.

In a Resolution dated 10 February 1999, however, we referred the petition to the Court of Appeals for appropriate action and disposition consistent with our pronouncement in the case of *St. Martin Funeral Home vs. National Labor Relations Commission, et al.*^[10]

Acting on the petition, in a Resolution dated 26 May 1999, the Court of Appeals resolved to dismiss the same for having been filed beyond the reglementary period pursuant to Section 4 of Rule 65 of the Rules of Civil Procedure, as amended, to wit:

Pursuant to the amendment to Section 4 of Rule 65 introduced by Supreme Court Circular No. 39-98 which took effect on 1 September 1998 – "If the petitioner had filed a motion for new trial or reconsideration in due time after notice of said judgment, order or resolution the period herein fixed shall be interrupted. If the motion is

denied the aggrieved party may file the petition within the remaining period but which shall not be less than five (5) days in any event, reckoned from notice of such denial. No extension of time to file the petition shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days," – the Court hereby RESOLVES to DISMISS the instant petition for having been filed beyond the reglementary period which expired on 28 November 1998.

SO ORDERED.

On 16 November 1999, the second assailed Resolution was promulgated denying petitioner employees' motion for reconsideration, ratiocinating that:

Settled is the rule, to the point of being elementary, that perfection of an appeal within the statutory or reglementary period is not only mandatory but also jurisdictional (citation omitted); and dismissal of an appeal for lack of appellate jurisdiction based on a party's failure to perfect his appeal on time is not a technicality (citation omitted).

SO ORDERED.

Petitioner employees now come to this Court *via* a petition for review on *certiorari* under Rule 45 of the Rules of Civil Procedure, as amended.

As contained in their memorandum, petitioner employees argue that the Court of Appeals grievously erred in dismissing their petition for *certiorari* considering that:

I.

THE AMENDMENT TO RULE 65 HAD JUST TAKEN EFFECT WHEN THE PETITION FOR CERTIORARI WAS FILED;

II.

RULES OF PROCEDURE SHOULD NOT BE ALLOWED TO DEFEAT SUBSTANTIAL JUSTICE; and

III.

THE DECISION OF THE HONORABLE LABOR ARBITER IS A FINAL AND EXECUTORY DECISION.

Simply put, the present petition raises as fundamental issues for resolution by the Court questions of procedure – whether or not (1) the Court of Appeals committed reversible error in dismissing petitioner employees' petition for *certiorari* for being filed beyond the reglementary period^[11] provided for under Section 4, Rule 65 of the Rules of Civil Procedure, as amended by *Supreme Court Circular No. 38-98*; and (2) the appeal bond filed was adequate or sufficient to perfect an appeal before the NLRC.

Petitioner employees are of the view that since the amendment to Section 4 of Rule 65 of the Rules of Civil Procedure, *i.e.*, *Supreme Court Circular No. 38-98*, "was fairly new and majority of the members of the legal profession have not adopted it

in their practice"^[12] it was "in the best interest of justice if the petition was not dismissed." They rationalized further that "[t]he petition, after all, was only ten (10) days late when it was filed. ... [H]ad they been aware of the amendment made by the Supreme Court Circular No. 38-98, the petition would have been prepared on or before November 28, 1998 or a timely motion for extension (of time to file petition) would have been filed."^[13] Hence, "[i]t was simply a case of an excusable neglect on the part of the undersigned law firm, for which the petitioners should not have been prejudiced.

At the time of the filing of the earlier^[14] petition on 08 December 1998, **Supreme Court Circular No. 38-98**,^[15] which amended Section 4 of Rule 65 of the 1997 Rules of Civil Procedure, had already taken effect two months prior, or on 01 September 1998 after publication in several newspapers of general circulation. The rule, as amended by said circular, reads:

SEC. 4. *Where and when petition to be filed.* – The petition may be filed not later than sixty (60) days from notice of the judgment, order or resolution sought to be assailed in the Supreme Court.... If it involves the acts or omissions of a quasi-judicial agency, and unless otherwise provided by law or these Rules, the petition shall be filed in and cognizable only by the Court of Appeals.

If the petitioner had filed a motion for new trial or reconsideration in due time after notice of said judgment, order or resolution, the period herein fixed shall be interrupted. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of such denial. No extension of time to file the petition shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days. (Emphasis supplied.)

The records of the case at bar show that petitioner employees timely filed a motion for reconsideration on 28 August 1998 to the assailed NLRC decision received on 18 August 1998. A copy of the denial of said motion dated 14 September 1998 was likewise received on 09 October 1998. Applying the aforequoted amendment to the foregoing set of dates, clearly, ten (10) days have been consumed. Petitioner employees, thus, had a remaining period of fifty (50) days within which to file the petition for *certiorari* reckoned from 10 October 1998 or until 28 November 1998. The petition, however, was filed ten (10) days beyond the reglementary period prescribed by the amended rule of civil procedure; hence its dismissal.

Be that as it may, the Resolutions of the Court of Appeals dismissing the petition have to be annulled and set aside taking into consideration further amendments made to Section 4 of Rule 65 of the 1997 Rules of Civil Procedure.

During the pendency of the case at bar, on 01 September 2000, **Supreme Court Circular No. 56-2000**^[16] further amended Section 4 of Rule 65 of the Rules of Civil Procedure. The latest amendment to said section reads:

SEC. 4. *When and where petition filed.* – The petition shall be filed not later than sixty (60) days from notice of judgment, order or resolution. *In*

case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of the said motion.

The petition shall be filed in the same Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction.

The present procedural issue vexing petitioner employees had already been squarely addressed by this Court in the case of *Sps. Victor & Milagros Perez and Cristina Agraviador Aviso vs. Antonio Hermano*.^[17] For this reason, we deem it apt to quote *in toto* pertinent portions of the *ponencia*, viz:

Under this amendment, the 60-day period within which to file the petition starts to run from receipt of notice of the denial of the motion for reconsideration, if one is filed (citation omitted).

In *Narzoles v. NLRC*,^[18] we described this latest amendment as curative in nature as it remedied the confusion brought about by Circular No. 39-98 because, "historically, *i.e.*, even before the 1997 revision to the Rules of Civil Procedure, a party had a fresh period from receipt of the order denying the motion for reconsideration to file a petition for *certiorari*." Curative statutes, which are enacted to cure defects in a prior law or to validate legal proceedings which would otherwise be void for want of conformity with certain legal requirements, by their very essence, are retroactive (citation omitted). And, being a procedural rule, we held in *Sps. Ma. Carmen and Victor Javellana v. Hon. Presiding Judge Benito Legarda* (citation omitted) that "procedural laws are construed to be applicable to actions pending and undetermined at the time of their passage, and are deemed retroactive in that sense and to that extent."

Bearing in mind the abovequoted jurisprudence, petitioner employees 0had a "fresh" 60-day period from the time they received a copy of the assailed Court of Appeals Resolution denying their motion for reconsideration, or from 09 October 1998. Petitioner employees, accordingly, had 60 days from 09 October 1998 within which to file the petition for *certiorari*. Said petition was filed on 08 December 1998, or on the 60th day; hence, without a doubt, the petition was seasonably filed within the reglementary period provided by the latest amendment aforequoted.

Prescinding from the above, the Court of Appeals committed reversible error in dismissing the petition outright and denying the resultant motion for reconsideration filed by petitioner employees.

Apropos the issue respecting of perfection of respondent companies' appeal to the NLRC, We quote once more the dispositive portion of the Labor Arbiter's decision, to wit:

WHEREFORE, the respondents are hereby ordered to pay **US\$3,127.50** **or Php82,253.25** to Reynaldo D. Dela Cruz for the unexpired portion of