

THIRD DIVISION

[G.R. No. 148848, August 05, 2003]

JACINTO RETUYA, PRISCILA B. VALE, BALTAZAR QUILAT, ABDON DAYSON AND ELEUTERIO ENSALADA, PETITIONERS, VS. HON. SALIC B. DUMARPA, (PRESIDING COMMISSIONER); HON. OSCAR N. ABELLA AND HON. LEON G. GONZAGA JR. (COMMISSIONERS); NATIONAL LABOR RELATIONS COMMISSION (FIFTH DIVISION), CAGAYAN DE ORO CITY; INSULAR BUILDERS, INC./ANTONIO MURILLO, PRESIDENT AND GENERAL MANAGER; AND RODOLFO MURILLO, RESPONDENTS.

D E C I S I O N

PANGANIBAN, J.:

Illegally dismissed employees are entitled to back wages that should not be diminished or reduced by the amount they have earned from another employment during the period of their illegal dismissal. On the other hand, the computation of the separation pay and the circumstances showing the existence of an employer-employee relationship are questions of fact that are generally not proper in a petition for review on certiorari.

The Case

Before us is a Petition for Review^[1] under Rule 45 of the Rules of Court, assailing the February 9, 2001 Decision^[2] and the June 11, 2001 Resolution^[3] of the Court of Appeals (CA) in CA-GR SP No. 55340. The dispositive portion of the challenged Decision reads as follows:

"WHEREFORE, the assailed resolutions of the National Labor Relations Commission dated March 8, 1999 and July 22, 1999 are hereby **REVERSED** and **SET ASIDE**, and the decision of Labor Arbiter Newton R. Sancho dated March 10, 1998 is **REINSTATED**. No costs."^[4]

The assailed Resolution denied petitioners' Motion for Reconsideration.

The Facts

The facts of the case are narrated by the CA in this manner:

"Private respondent, Insular Builders, Inc., is a family-owned corporation managed and operated principally by Antonio Murillo, father, and his son, Rodolfo Murillo. It is engaged in the construction business. Petitioners, on the other hand, were workers who have rendered services in various corporations of private respondents, namely Mindanao Integrated Builders, Inc., Sta. Clara Plywood, Inc., Insular Builders, Inc. and Queen City Builders, Inc.

"Early 1993, at the height of the feud between private respondents Antonio Murillo and Rodolfo Murillo, the former discharged the latter from his position as manager of Insular Builders, Inc. and assumed control of the company. Petitioners found themselves in the middle of the crossfire and were told to temporarily stop working. Later, or on July 26, 1993, private respondent Antonio Murillo dismissed petitioners and reported the matter to the Department of Labor and Employment (DOLE). Petitioners were however made to continue their work, rendering the same services, in the same place, locality and at the same office but under a different company, the Queen City Builders, Inc., managed and controlled by private respondent Rodolfo Murillo.

"On August 3, 1993, petitioners filed with the NLRC, Regional Arbitration Branch No. X, Davao City, a complaint for illegal dismissal, non-payment of wages, 13th month pay, and retirement pay as regards petitioner Abdon Dayson. Petitioners averred that they were terminated from employment on July 26, 1993 without prior notice and also in absence of any valid cause. They alleged that their termination was an off-shoot of the supposed personal rift and disagreements between private respondents Antonio Murillo and Rodolfo Murillo.

"On the other hand, private respondents Insular Builders, Inc. and Antonio Murillo deny having employed petitioners Baltazar Quilat, Abdon Dayson and Eleuterio Ensalada as they were personal employees of and rendering services to private respondent Rodolfo Murillo."^[5]

On December 19, 1994, Labor Arbiter Newton R. Sancho rendered a Decision finding private respondents guilty of illegal dismissal. On June 21, 1996, the NLRC (Fifth Division) of Cagayan de Oro City denied their appeal and affirmed the labor arbiter's Decision *in toto*.

On reconsideration, however, the NLRC set aside in a Resolution dated July 31, 1996, the Decision it had issued on June 21, 1996. It then remanded the case to the labor arbiter for further proceedings.

Subsequently, Labor Arbiter Sancho, in his March 10, 1998 Decision, ruled in this wise:

"WHEREFORE, judgment is hereby rendered:

1. Declaring the dismissal of complainants Jacinto Retuya, Priscila Vale, Baltazar Quilat, Abdon Dayson and Eleuterio Ensalada as ILLEGAL;
2. Ordering respondents Insular Builders, Inc. and Antonio Murillo to PAY complainants their monetary award above recomputed in the total amount of P307,067.34, inclusive of attorney's fees;
3. Absolving Rodolfo Murillo from any liability to the complainants for lack of employer-employee relationship;

4. Awarding the total adjudicated amount of P103,221.60 to the legal heirs of the late complainant Abdon Dayson; and

5. Dismissing all other claims for lack of merit."^[6]

Both parties appealed to the NLRC which, in a March 8, 1999 Resolution, reversed and set aside the labor arbiter's ruling. The Commission ruled that petitioners had not been illegally dismissed and were therefore not entitled to reinstatement or to separation pay and back wages. Affirmed, however, as the sole liability of respondent corporation was the award to Complainant Abdon Dayson of salary differential, service incentive leave pay, 13th month pay differentials, 13th month pay for 1993, and retirement pay.^[7]

Ruling of the Court of Appeals

Declaring that Antonio Murillo and Insular Builders, Inc. had illegally dismissed petitioners from employment, the CA reversed the NLRC and upheld the Decision of the labor arbiter. Moreover, the appellate court held that Rodolfo Murillo had incurred no liability. That no employer-employee relationship existed between him and petitioners was shown by the fact that, as manager of Insular Builders, Inc., he had likewise been dismissed from employment by the elder Murillo.

By paying the wages of petitioners and controlling their work conduct, Antonio Murillo and Insular Builders, Inc. showed themselves to be the former's employers. It was Antonio Murillo who exercised the power to dismiss petitioners, as evidenced by a Dismissal Report he submitted to the Department of Labor and Employment (DOLE). He failed to show that their dismissal was for a just cause.

The CA added that the NLRC had erred in declaring that Insular Builders, Inc. and Queen City Builders, Inc. were one and the same entity. The corporate veil may be pierced only when it is used to defeat public convenience, justify a wrong, inflict a fraud or defend a crime.

The CA reinstated, in favor of petitioners, the labor arbiter's award inclusive of attorney's fees.^[8] It also affirmed the reduction of the separation pay and the deletion of the award of back wages as follows:

"Anent the prayer of petitioners that full backwages should be granted to them, we find the labor arbiter's findings as correct and justifiable under the circumstances of this case. Thus:

‘As to complainant's ‘wish’ for the recomputation of award to full backwages, inclusive of allowances, and to their other benefits or their equivalent computed from the time their compensation was withheld from them up to the time of their actual reinstatement, pursuant to Art. 279 of the Labor Code and Supreme Court's ruling in *Osmalik S. Bustamante vs. NLRC*, the same cannot be granted at this stage since it is not among the issues remanded for further proceedings. Nor was it seasonably raised and ventilated on appeal.

‘On the contrary, what is called for is not the recomputation

of the award of backwages to make it higher but its deletion. Right after complainants were dismissed on July 26, 1993, they were employed by Queen City Builders, Inc./Rodolfo Murillo effective August 1, 1993 as shown by the Check Vouchers marked as Annexes `A', `B', `C', `D', and `E' of Rodolfo Murillo's Motion for Reconsideration dated July 10, 1996. Otherwise, it would result in double compensation on the part of complainants -- a situation which is anathema the principles of no work-no pay and unjust enrichment at the expense of Antonio Murillo and his firm."^[9]

Hence, this Petition.^[10]

Issues

Petitioners raise the following issues for our consideration:

"I

Whether the Court of Appeals' Decision and its refusal to reconsider it in its Resolution by its failure to grant the appropriate affirmative reliefs due x x x illegally dismissed employee[s] such as petitioners is in accord with Article 279 of Presidential Decree No. 442, otherwise known as the Labor Code of the Philippines, as amended by Section 34 of Republic Act 6715 and the controlling settled jurisprudence thereon; and

"II

Whether the said questioned dispositions by the Court of Appeals which adversely affect petitioners, are in accord with applicable jurisprudence, the law and established records, in disregard of what had been raised in the assigned errors and submissions thereunder presented in the Petition filed thereat."^[11]

In the main, the issues boil down to two: 1) whether petitioners are entitled to full back wages and separation pay in accordance with Article 279 of the Labor Code; and 2) whether an employer-employee relationship existed between them and Rodolfo Murillo.

The Court's Ruling

The Petition is partly meritorious.

Preliminary Matter: **Appeal by Certiorari**

Before proceeding to the merits of the case, we shall take up a preliminary procedural matter.

Respondents Antonio Murillo and Insular Builders, Inc. argue that petitioner's prayer for the reinstatement of the labor arbiter's Decision was already granted by the CA. Hence, petitioners supposedly had no more reason to appeal to this Court.

We hold that petitioners had the right to file this Petition for Review under Rule 45. Whether they are satisfied with the CA's Decision is not for private respondents to determine. The Rules give both parties the option to appeal and seek further relief, if in their opinion they deserve a bigger or more generous award than that allowed below. Their entitlement to their prayer is to be ruled upon by this Court, not by respondents.

First Issue:
Back Wages and Separation Pay

Petitioners contend that because the CA reinstated the labor arbiter's finding of illegal dismissal, it should not have reduced the amount of their separation pay, but should have instead awarded them full back wages in accordance with Article 279 of the Labor Code.

They add that the CA Decision did not follow settled jurisprudence, specifically *Bustamante v. NLRC*,^[12] on the amount of back wages that illegally dismissed employees were entitled to.

On the other hand, Antonio Murillo and Insular Builders, Inc. counter that petitioners were not illegally dismissed from employment, because there was no cessation of work when they were transferred from Insular Builders, Inc. to Queen City Builders, Inc. Allegedly, what transpired was a mere transfer of employees from one sister company to another, because petitioners continued to work in the same office, receive the same salaries and perform the same kind of work.

In contrast, Rodolfo Murillo claims that the CA correctly ruled that he could not be held liable for back wages and separation pay, because he had no employer-employee relationship with petitioners. He insists that it was his father -- Antonio Murillo -- who, as president and general manager of Insular Builders, Inc., dismissed both him and petitioners.

Petitioners' contentions are partly meritorious.

Bustamante v. NLRC^[13] held that illegally dismissed employees were entitled to full back wages that should not be diminished or reduced by the amount they had earned from another employment during the period of their illegal dismissal. While litigating, employees must still earn a living. Furthermore, as penalty for their illegal dismissal, their employers must pay them full back wages. This rule has been uniformly applied in subsequent cases.^[14]

In the present case, petitioners were dismissed because of a "change of management."^[15] They were not given any prior written notice, but simply told that their services were terminated on the day they stopped working for Insular Builders, Inc. Under the circumstances, the CA was correct in upholding the labor arbiter's finding that they had been illegally dismissed.

Having been illegally dismissed, petitioners should be awarded back wages in accordance with *Bustamante v. NLRC*. The fact that they worked for a sister company^[16] immediately after being dismissed from Insular Builders, Inc. should