

## FIRST DIVISION

[ G.R. No. 146775, January 30, 2002 ]

**SAN MIGUEL CORPORATION, PETITIONER, VS. THE HONORABLE COURT OF APPEALS-FORMER THIRTEENTH DIVISION, HON. UNDERSECRETARY JOSE M. ESPAÑOL, JR., HON. CRESENCIANO B. TRAJANO, AND HON. REGIONAL DIRECTOR ALLAN M. MACARAYA, RESPONDENTS.**

### D E C I S I O N

**KAPUNAN, J.:**

Assailed in the petition before us are the decision, promulgated on 08 May 2000, and the resolution, promulgated on 18 October 2000, of the Court of Appeals in CA G.R. SP-53269.

The facts of the case are as follows:

On 17 October 1992, the Department of Labor and Employment (DOLE), Iligan District Office, conducted a routine inspection in the premises of San Miguel Corporation (SMC) in Sta. Filomena, Iligan City. In the course of the inspection, it was discovered that there was underpayment by SMC of regular Muslim holiday pay to its employees. DOLE sent a copy of the inspection result to SMC and it was received by and explained to its personnel officer Elena dela Puerta.<sup>[1]</sup> SMC contested the findings and DOLE conducted summary hearings on 19 November 1992, 28 May 1993 and 4 and 5 October 1993. Still, SMC failed to submit proof that it was paying regular Muslim holiday pay to its employees. Hence, Alan M. Macaraya, Director IV of DOLE Iligan District Office issued a compliance order, dated 17 December 1993, directing SMC to consider Muslim holidays as regular holidays and to pay both its Muslim and non-Muslim employees holiday pay within thirty (30) days from the receipt of the order.

SMC appealed to the DOLE main office in Manila but its appeal was dismissed for having been filed late. The dismissal of the appeal for late filing was later on reconsidered in the order of 17 July 1998 after it was found that the appeal was filed within the reglementary period. However, the appeal was still dismissed for lack of merit and the order of Director Macaraya was affirmed.

SMC went to this Court for relief *via* a petition for *certiorari*, which this Court referred to the Court of Appeals pursuant to *St. Martin Funeral Homes vs. NLRC*.<sup>[2]</sup>

The appellate court, in the now questioned decision, promulgated on 08 May 2000, ruled, as follows:

WHEREFORE, the Order dated December 17, 1993 of Director Macaraya and Order dated July 17, 1998 of Undersecretary Español, Jr. is hereby

MODIFIED with regards the payment of Muslim holiday pay from 200% to 150% of the employee's basic salary. Let this case be remanded to the Regional Director for the proper computation of the said holiday pay.

SO ORDERED.<sup>[3]</sup>

Its motion for reconsideration having been denied for lack of merit, SMC filed a petition for *certiorari* before this Court, alleging that:

PUBLIC RESPONDENTS SERIOUSLY ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION WHEN THEY GRANTED MUSLIM HOLIDAY PAY TO NON-MUSLIM EMPLOYEES OF SMC-ILICOCO AND ORDERING SMC TO PAY THE SAME RETROACTIVE FOR ONE (1) YEAR FROM THE DATE OF THE PROMULGATION OF THE COMPLIANCE ORDER ISSUED ON DECEMBER 17, 1993, IT BEING CONTRARY TO THE PROVISIONS, INTENT AND PURPOSE OF P.D. 1083 AND PREVAILING JURISPRUDENCE.

THE ISSUANCE OF THE COMPLIANCE ORDER WAS TAINTED WITH GRAVE ABUSE OF DISCRETION IN THAT SAN MIGUEL CORPORATION WAS NOT ACCORDED DUE PROCESS OF LAW; HENCE, THE ASSAILED COMPLIANCE ORDER AND ALL SUBSEQUENT ORDERS, DECISION AND RESOLUTION OF PUBLIC RESPONDENTS WERE ALL ISSUED WITH GRAVE ABUSE OF DISCRETION AND ARE VOID AB INITIO.

THE HON. COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT DECLARED THAT REGIONAL DIRECTOR MACARAYA, UNDERSECRETARY TRAJANO AND UNDERSECRETARY ESPAÑOL, JR., WHO ALL LIKEWISE ACTED WITH GRAVE ABUSE OF DISCRETION AND WITHOUT OR IN EXCESS OF THEIR JURISDICTION, HAVE JURISDICTION IN ISSUING THE ASSAILED COMPLIANCE ORDER AND SUBSEQUENT ORDERS, WHEN IN FACT THEY HAVE NO JURISDICTION OR HAS LOST JURISDICTION OVER THE HEREIN LABOR STANDARD CASE.<sup>[4]</sup>

At the outset, petitioner came to this Court via a petition for *certiorari* under Rule 65 instead of an appeal under Rule 45 of the 1997 Rules of Civil Procedure. In *National Irrigation Administration vs. Court of Appeals*,<sup>[5]</sup> the Court declared:

x x x (S)ince the Court of Appeals had jurisdiction over the petition under Rule 65, any alleged errors committed by it in the exercise of its jurisdiction would be errors of judgment which are reviewable by timely appeal and not by a special civil action of *certiorari*. If the aggrieved party fails to do so within the reglementary period, and the decision accordingly becomes final and executory, he cannot avail himself of the writ of *certiorari*, his predicament being the effect of his deliberate inaction.

The appeal from a final disposition of the Court of Appeals is a petition for review under Rule 45 and not a special civil action under Rule 65 of the Rules of Court, now Rule 45 and Rule 65, respectively, of the 1997 Rules of Civil Procedure. Rule 45 is clear that decisions, final orders or resolutions of the Court of Appeals in any case, *i.e.*, regardless of the

nature of the action or proceeding involved, may be appealed to this Court by filing a petition for review, which would be but a continuation of the appellate process over the original case. Under Rule 45 the reglementary period to appeal is fifteen (15) days from notice of judgment or denial of motion for reconsideration.

x x x

For the writ of *certiorari* under Rule 65 of the Rules of Court to issue, a petitioner must show that he has no plain, speedy and adequate remedy in the ordinary course of law against its perceived grievance. A remedy is considered "plain, speedy and adequate" if it will promptly relieve the petitioner from the injurious effects of the judgment and the acts of the lower court or agency. In this case, appeal was not only available but also a speedy and adequate remedy.<sup>[6]</sup>

Well-settled is the rule that *certiorari* cannot be availed of as a substitute for a lost appeal.<sup>[7]</sup> For failure of petitioner to file a timely appeal, the questioned decision of the Court of Appeals had already become final and executory.

In any event, the Court finds no reason to reverse the decision of the Court of Appeals.

Muslim holidays are provided under Articles 169 and 170, Title I, Book V, of Presidential Decree No. 1083,<sup>[8]</sup> otherwise known as the Code of Muslim Personal Laws, which states:

Art. 169. *Official Muslim holidays.* - The following are hereby recognized as legal Muslim holidays:

- (a) *'Amun Jadid* (New Year), which falls on the first day of the first lunar month of *Muharram*;
- (b) *Maulid-un-Nabi* (Birthday of the Prophet Muhammad), which falls on the twelfth day of the third lunar month of *Rabi-ul-Awwal*;
- (c) *Lailatul Isra Wal Mi'raj* (Nocturnal Journey and Ascension of the Prophet Muhammad), which falls on the twenty-seventh day of the seventh lunar month of *Rajab*;
- (d) *'Id-ul-Fitr* (*Hari Raya Puasa*), which falls on the first day of the tenth lunar month of *Shawwal*, commemorating the end of the fasting season; and
- (e) *'Id-ul-Adha* (*Hari Raya Haji*), which falls on the tenth day of the twelfth lunar month of *Dhu'l-Hijja*.

Art. 170. *Provinces and cities where officially observed.* - (1) Muslim holidays shall be officially observed in the Provinces of Basilan, Lanao del Norte, Lanao del Sur, Maguindanao, North Cotabato, Iligan, Marawi, Pagadian, and Zamboanga and in such other Muslim provinces and cities as may hereafter be created;