349 Phil. 913

FIRST DIVISION

[G.R. No. 115395, February 12, 1998]

FILFLEX INDUSTRIAL & MANUFACTURING CORPORATION AND/OR CELIA BUENCONSEJO, PETITIONER, VS. NATIONAL LABOR COMMISSION, NATIONAL FEDERATION OF LABOR UNIONS, (NAFLU) AND SALUD GALING, RESPONDENTS.

D E C I S I O N

PANGANIBAN, J.:

Is an employee entitled to back wages during the pendency of her appeal before the NLRC, even if the assailed labor arbiter's decision did not order her reinstatement? May the NLRC decree back wages where the employee's dismissal was legal?

The Case

The Court answers this questions in the negative granting this petition for *certiorari* under Rule 65 of the Rules of Court assailing the October 29, 1993 Resolution[1] of the National Labor Relations Commission[2] (NLRC) which disposed as follows:[3]

> "WHEREFORE, the assailed Decision is hereby set aside and a new one is entered dismissing the complaint for lack of merit.
>
> However, respondents [petitioner herein] are ordered to pay complainant [private respondent herein] her salaries from the date of the filing of the instant appeal on April 10, 1992 up to the date of the promulgation of this Resolution, pursuant to Art. 223 of the Labor Code, as amended."

Petitioners also challenge the NLRC's Resolution dated February 7, 1994 which denied their subsequent motion for reconsideration, for lack of merit.

The labor arbiter's decision, which the NLRC set aside, in NLRC NCR Case NO. 00-02-01060-91 dated March 10, 1992 disposed as follows:[4]

> "WHEREFORE, based on the foregoing considerations, judgment is hereby rendered declaring the dismissal of complainant improper and unjust. Accordingly, respondent is hereby ordered to pay the complainant limited backwages and other benefits for six (6) months in the amount of ₱18,252.00.
>
> Considering however the physical condition of the complainant that was the real cause of her absences and tardiness, it would be to their mutual advantage and most importantly to the physical health welfare of complainant that was the real cause of her absences and tardiness, it would be to their mutual advantage and most importantly to the physical and health welfare of complainant that she is separated from the service with separation benefits equivalent to ½ month basic salary for every year of service, a fraction of six months equivalent to one year in the amount of ₱22,815.00.

The charge of unfair labor practice is hereby denied for lack of legal basis.

Individual respondent Celia Buenconsejo is hereby absolved of any liability for she acted only in her official capacity.

Other claims are denied for lack of merit."

The Facts

Labor Arbiter Daniel C. Cueto recited the facts of this case as follow:[5]

"Complainant is a sewer who started working with respondent in November 1975. She was dismissed for abandonment on February 11, 1991. At the time of her dismissal, she was receiving a salary of ₱117.00 per day of work. She claimed that while it is true that she was absent from November 30, 1990 up to December 11, 1990, her dismissal on ground of abandonment is not consonance with law considering that her absences was [sic] attributable to chronic ashmatic [sic] bronchitis which she contacted since early 1990 yet. She presented as evidence the medical certificate dated March 4, 1991 attesting for [sic] her medical treatment covering the period January 1990 to May 28, 1990. She claims that her failure to report for work for 11 days was due to sickness wherein respondents were notified by her through the telephone. Complainant argued that she did not abandon her job and that is evidenced by her immediate filing of instant complaint on February 8, 1991. Her 16 years of service, according to complainant, should have been considered by respondents before she was dismissed. She prays for reinstatement plus backwages and also for damages.

Respondents contended otherwise. It is their position that complainant was hired on February 5, 1978 and that since the early period of her employment she committed various violations of company rules and regulations ranging from habitual tardiness to frequent absences. Said misdemeanor registered the highest number of tardiness in the second quarter of 1984 numbering 45 times from 37 times in the first quarter of 1984 whereas in terms of monthly tardiness, complainant incurred 21 times in March and June, both in 1990 the said tardiness covered by corresponding memoranda marked as Annexes 'A' to 'L' for respondents, that despite the several warnings given, complainant persisted in her tardiness and frequent absences. By way of evidence, respondent submitted the memorandum (Annex O) giving complainant the stern warning for frequent absenteeism incurred in 1988 numbering 49 absences that affects her performance where the same became worse when she absented for ten (10) days in August 1989, which was subject of another memorandum warning that management shall be constrained to take the necessary drastic action against her due to loss of productive manhours caused by complainant's excessive absences. Finally, due to complaint's absences from November 30, 1990 to December 11, 1990 the respondent issued another letter dated December 11, 1990 to complainant (Annex 'R' respondent position paper) requiring her to explain in writing 72 hours why you should not be considered dismisses for having abandoned your job considering that you have been earlier served warning memos for the similar violations.' Respondents stated that despite the said order, it was only on December 19, 1990 that complaint went to the office of respondent to explain. Respondents were forced to terminate complaint's employment due to her failure to report for work and explain her absence for the straight 20 days without any leave or permission for which reason they considered her continued absence as an abandonment of work."

Declaring "the dismissal of complainant improper and unjust," the labor arbiter awarded her "limited backwages and other benefits" plus separation pay equivalent to one half month for every year of service. The labor arbiter did not order her reinstatement, holding that her separation from employment would be to the parties' "mutual benefit and most importantly to the physical and health welfare of complainant."

Respondent NLRC's Ruling

On appeal, Respondent NLRC ruled that the dismissal of private respondent was justified. It held, however, that Article 223 of the Labor Code required the reinstatement of private respondent during the pendency of her appeal. Thus, it awarded back wages for the said period when the appeal was pending before it, reasoning as follows:[6]

> "Verily, respondents-appellants could no longer be faulted when they decided to terminate the services of complainant for her failure to improve her attendance despite repeated warnings.
>
> However, pursuant to Art. 223 of the Labor Code, as amended, which provides for mandatory reinstatement whether actual or on payroll, pending appeal, respondent should pay complainant her salaries from the time the appeal was filed on April 10, 1992 up to the date of the promulgation of this Resolution."

Dissatisfied, petitioners lodged this recourse before this Court. In the Resolution[7] dated June 29, 1994, this Court issued a temporary restraining order thus:[8]

> "NOW, THEREFORE, you (respondents), your officers, agents, representatives, and/or persons acting upon your orders or in your place or stead, are hereby ENJOYED from enforcing or executing the resolutions of public respondent National Labor Relations Commission dated October29, 1993 and February 8, 1994, and in any manner or purpose continuing with the proceedings of the case in NLRC NCR Case No. 00-02-01060-91 entitled 'National Federation of Labor Unions (NAFLU) and Salud Galing vs. Filflex Industrial and Manufacturing Corporation and/or Celia Buenconsejo of the Department of Labor and Employment."[9]

The Issue

Petitioners raise a single issue:[10]

> "x x x. Petitioners submit that the only issue is whether the public respondent NLRC committed grave abuse of discretion, amounting to lack of jurisdiction, in awarding private respondent Galing her salaries from the date of the filing of the appeal on April 10, 1992 up to the date of the promulgation of its Resolution on October 29, 1993, given the undisputed fact of her persistent, repeated, prolonged and contumacious violations of company rules and regulations."

The Court's Ruling

The petition is meritorious.

Sole Issue: *Back wages During Pendency of Appeal*

Petitioners argue that the "second paragraph of the dispositive portion of the Decision[11] has no basis in fact or in law." They assert that "the decision of Labor Arbiter Cuerto did not call for the reinstatement of [C]omplainant Galing [private

respondent herein], [thus] it follows that there is no basis now of this Honorable Commission to Grant her backwages during the period of appeal. Clearly, Article 223 finds no application to the instant case."[12] They also contend that the assailed Resolution "became inconsistent with itself. For while it delared the dismissal of the complainant legal, it ruled nevertheless that [C]omplainant Galing should have been reinstated during the period of the appeal."[13]

Agreeing with the petition, the solicitor general clarifies that Article 223 of the Labor Code is inapplicable to the instant case because Labor Arbiter Cuerto "did not order the reinstatement of private respondent." Likewise, the government lawyer agrees that the NLRC Resolution was inherently inconsistent for holding that the dismissal of Complainant Galing was justified and, at the same time, ruling that she should have been reinstated during the pendency of the appeal.[14]

On the other hand, the legal department of the NLRC[15] maintains that "reinstatement (pending appeal) whether actual or in payroll is mandatory under Art. 223 of the Code" [16]

Private respondent adds that under paragraph one, second sentence of the Labor Arbiter's decision, "there [was] a call for reinstatement of the complainant because of the backwages granted to her."[17]

We agree with the petitioners and the solicitor general.

No Order of Reinstatement

The relevant law is Article 223[18] of the Labor Code, which reads:

> "ART. 223. Appeal. – Decision, 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. Such appeal may be entertained only on any of the following grounds:
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> x x x x x x x x x
>
> In any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be executory, even pending appeal. The employee shall either be admitted back to work under the same terms and conditions prevailing prior to her dismissal or separation or, at the option of the employer, merely reinstated in the payroll. The posting of a bond by the employer shall not stay the execution for reinstatement provided herein.
>
> x x x x x x x x x" (Underscoring supplied.)

In other words, reinstatement during appeal is warranted only when the labor arbiter (LA) himself rules that the dismissed employee should be reinstated. In the present case, neither the dispositive portion nor the text of the labor arbiter's decision ordered the reinstatement of private respondent. Further, the back wages granted to private respondent were specifically limited to the period prior to the filing of the appeal with Respondent NLRC. In fact, the LA's decision ordered her separation from service for the parties' "mutual advantage and most importantly to physical and health welfare of the complainant." Hence, it is an error and an abuse of discretion for the NLRC to hold