336 Phil. 749

FIRST DIVISION

[G.R. Nos. 114924-27, March 18, 1997]

DANTE NACURAY, ANGELITO ACOSTA AND LARRY CLEMENTE, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND BMC-BENGUET MANAGEMENT CORPORATION, RESPONDENTS.

D E C I S I O N

BELLOSILLO, J.:

DANTE NACURAY, ANGELITO ACOSTA and LARRY CLEMENTE pray that the petition filed by their former counsel be considered null and void, the adverse consequences thereof declared without any force and effect, and that the decision of the National Labor Relations Commission be set aside and the judgment of the Labor Arbiter reinstated.

The antecedents: On various dates, BMC-Benguet Management Corporation (BMC for short) employed petitioners as helpers. They were assigned at the Finishing Section of BMC's Production Department and worked as "air-grinder operators." The Confirmation of Employment forms issued to them by BMC specifically provided that their employment should only be for three (3) months.[1]

Their employment contracts were nonetheless renewed several times; thrice for Dante Nacuray and Larry Clemente, and twice for Angelito Acosta. Later, however, their services were terminated by the non-extension of their respective contracts.[2] According to BMC, their "performance during the contractual period did not meet the company's standards."[3]

As a consequence, several complaints for illegal dismissal, non-payment of wages and violation of P.D. No. 851 were filed against BMC. Thereafter, upon motion of complainants, and in view of the similarity of the causes of action and the identity of the parties involved, the hearing and the disposition of their complaints were consolidated in the Office of Labor Arbiter Evangeline S. Lubaton.

On 7 March 1990, the Labor Arbiter decided in favor of complainants, petitioners herein. Holding that they were "regular" employees and not "casual" employees, BMC was ordered to reinstate them.

Undaunted by the adverse decision of the Labor Arbiter, BMC appealed to the NLRC on 23 March 1990. The Second Division of the Commission rendered its judgment on 29 October 1993 reversing the decision of the Labor Arbiter. The motion of complainants for reconsideration was denied on 16 December 1993. Thereafter, the resolution of NLRC having become final and executory was entered in the Book of Entry of Judgments on 4 March 1994.

On 26 April 1994 complainants through their new counsel Atty. Eduardo Lopez,[4] filed a special civil action for certiorari before this Court.

The problem actually started on 17 December 1993. A day after the motion for reconsideration was denied by the NLRC, Atty. Francisco Ferraren, the counsel who represented herein petitioners in the proceedings below, instituted a special civil action for certiorari before this Court, docketed as G.R. No. 112834 and assigned to the Third Division.[5]

On 24 January 1994, the Third Division dismissed the petition for certiorari filed by Atty. Ferraren. In a minute resolution, the Third Division ruled -

> Accordingly, the Court Resolved to DISMISS the petition for certiorari of the decision dated October 29, 1993 of the National Labor Relations Commission in NLRC NCR Case No. 00-04-01954-89 for failure to comply with requirement No. 2 and with Circular 19-91.
>
> Besides, even if the petition complied with the aforesaid requirements, it would still be dismissed, as the Court finds that no grave abuse of discetion was committed by the public respondent.[6]

The minute resolution became final and executory. It was entered in the Book of Entry of Judgments on 28 February 1994.[7]

Petitioners claim that they have no knowledge whatsover that a similar petition was filed by their counsel Atty. Ferraren with this Court. According to them they came to know of it only when they received copy of the Manifestation of respondent BMC. According to their undertaking, they immediately filed a Counter-Manifestation informing the Court of the existence of a similar petition before this Court; that after the favorable resolution of the Labor Arbiter was reversed by the NLRC, petitioners terminated the services of Atty. Ferraren verbally and formally thru a letter dated 26 November 1993 copy of which was furnished public respondent NLRC; and that the "best proof" of Atty. Ferraren's lack of authority to file the petition was the fact that he himself verified the same instead of having it verified by any of herein petitioners.[8]

When required by this Court to explain why he filed the 17 December 1993 Petition for Certiorari, Atty. Ferraren replied that he received the letter from petitioners on 21 December 1993, four (4) days after he filed his petition in their behalf. He claimed that petitioners even urged him to file a petition as soon as they received copy of the decision of the Commission. But after he prepared the petition, he could not any more get in touch with his clients so he was constrained to take matters into his own hands.[9]

Petitioners filed a memorandum on 21 November 1994 while respondent filed their supplemental memorandum on 28 April 1995.The following interrelated procedural issues were raised by petitioners: First, was there a valid substitution of counsel so that at the time Atty. Ferraren filed his petition he was no longer authorized to do so; Second, were petitioners guilty of forum shopping; and, Third, what is the effect of the minute resolution of the Third Division dismissing the first petition for

certiorari?

As regards the first issue, we hold that there was no valid substitution of counsel in accordance with the Rules. For a valid substitution of counsel the following elements must concur: (a) there must be a written request for substitution; (b) it must be filed with the written consent of the client; (c) it must be with the written consent of the attorney to be substituted; and, (d) in case the consent of the attorney to be substituted cannot be obtained, there must be at least a proof of notice that the motion for substitution was served on him in the manner prescribed by the Rules of Court.[10]

In the instant case, the process of substitution of counsel was not yet complete when Atty. Ferraren filed the first petition in view of the absence of the third and fourth elements. If at all, it became complete and effective only after Atty. Ferraren received the letter from petitioners formally terminating his services as counsel. For, it was only then could he be considered to have been notified of the substitution. In the absence of clear and convincing proof, the allegation of petitioners that there was prior verbal notice is insufficient and cannot even be considered as substantial compliance with the requirements.

Thus when Atty. Ferraren filed his petition on 17 December 1993 he continued to enjoy the presumption of authority granted to him by petitioners because as of that date he was still their counsel of record. Petitioners cannot now be allowed to disown the negligence and mistake of their counsel which resulted in the dismissal of their petition as they are bound by them no matter how prejudicial they may be to their cause.[11]

It must be stressed that while petitioners have the right to terminate their relations with their counsel and make substitution or change at any stage of the proceedings, the exercise of such right is subject to compliance with the prescribed requirements. Otherwise, no substitution can be effective and the counsel who last appeared in the case before the substitution became effective shall still be responsible for the conduct of the case.[12] The rule is intended to ensure the orderly disposition of cases. Without it there will be confusion in the service of processes, pleadings and other papers.

This brings us to the second issue. Perhaps hoping to exculpate themselves from the adverse consequences of their misdeed, petitioners want us to believe that they have nothing to do with the first petition. To this end, they impute bad faith on their former counsel and deny his authority. A careful scrutiny of the records however reveals that they have not been candid with this Court.

It is very unnatural for Atty. Ferraren to continue prosecuting the case despite having been verbally notified of the termination of his services; much more, in not informing his clients of the status of the case. Moreover, judging from the vigor with which this case has been prosecuted, it strains our imagination to discover that the instant petition was filed by petitioners only after more than four (4) months from the date of the NLRC resolution denying their motion for reconsideration. As if confirming our suspicion, the petitioners' letter of 26 November 1993 addressed to Atty. Ferraren was "coincidentally" mailed on the same date the petition was filed by Atty. Ferraren.