

THIRD DIVISION

[G.R. No. 113928, February 01, 1996]

**PEARSON & GEORGE, (S.E. ASIA), INC. PETITIONER, VS.
NATIONAL LABOR RELATIONS COMMISSION AND LEOPOLDO
LLORENTE, RESPONDENTS.**

DECISION

DAVIDE, JR., J.:

In this special civil action for certiorari under Rule 65 of the Rules of Court, the petitioner seeks the annulment of the decision of 22 April 1993^[1] and order of 25 November 1993^[2] of public respondent National Labor Relations Commission (NLRC) in NLRC CA No. 0034-07-92 which, respectively, dismissed the petitioner's appeal from the decision of the Labor Arbiter in NLRC NCR Case No. 00-04-02127-90 and denied the petitioner's motion for reconsideration.

The petitioner insists that the Labor Arbiter and the NLRC do not have jurisdiction over the private respondent's complaint for illegal dismissal arising out of his removal as Managing Director of the petitioner due to his non-reelection and the abolition of the said position. It claims that the matter is intra-corporate and thus falls within the exclusive jurisdiction of the Securities and Exchange Commission (SEC) pursuant to Section 5(c) of P.D. No. 902-A.

In a Manifestation submitted in lieu of the required comment on the petition, the Office of the Solicitor General agrees with the petitioner that the NLRC has no jurisdiction over the private respondent's complaint for illegal dismissal and prays that the NLRC be granted a new period within which to file its own comment should it desire to do so.

The NLRC filed its own comment contending that it has jurisdiction over the case because the private respondent was not just an incorporator but also a Managing Director and a line officer or an employee of the petitioner with a salary of P33,000.00 a month; hence, his complaint for illegal dismissal as such employee is within the jurisdiction of the NLRC.

The private respondent does not meet the substantive issues raised by the petitioner but merely sets up the following defenses: (1) the petition was filed long after the lapse of ten days provided for in Article 223 of the Labor Code; (2) a special civil action for certiorari under Rule 65 is not the proper remedy because of the aforementioned provision; (3) the petition is defective because it does not allege when the petitioner received the NLRC decision; and (4) the petition raises factual issues.

In its Reply, the petitioner refutes the foregoing arguments of the private respondent by stating that (1) this Court may take cognizance of petitions

questioning the decisions of the NLRC on the ground of lack or excess of jurisdiction or grave abuse of discretion in spite of Article 223 of the Labor Code making final the said decisions after ten calendar days from receipt thereof; (2) the only way by which a labor case may reach this Court is through a petition for *certiorari*, which must be filed within a reasonable time from receipt of the resolution denying the motion for reconsideration of the decision of the Commission; (3) for purposes of showing the timeliness of the petition, the petitioner has only to state, as it did, the date the order denying the motion for reconsideration was received; and (4) in order to resolve the main issue raised in this petition, viz., whether the NLRC has jurisdiction over this case, it was necessary to state the factual circumstances of the case.

After deliberating on the pleadings submitted by the parties, we resolved to give due course to this petition and to require the parties to submit their respective memoranda.

The factual antecedents as culled from the pleadings are not in dispute:

Private respondent Leopoldo Llorente (hereinafter Llorente) was a member of the Board of Directors of the petitioner. In its organizational meeting on 12 January 1989, the Board of Directors elected among themselves the corporate officers. Llorente was elected as Vice-Chairman of the Board and as Managing Director for a term of one year and until his successor should have been duly elected pursuant to the petitioner's by-laws.

On 29 January 1990, Llorente was preventively suspended, with pay, by reason of alleged anomalous transactions entered by him, which were prejudicial to the interest of the petitioner.

In a letter dated 1 February 1990, Llorente demanded from the petitioner access to his room which the latter allegedly sealed; compensation for his suspension or termination; and delivery of his stock certificates for 9,998 shares.

On 17 February 1990, the petitioner sent Llorente a letter requiring him to explain the acts enumerated therein which he allegedly committed.

On 27 February 1990, Llorente, through his counsel, protested his suspension and requested an examination of the supporting documents to enable him to explain the accusations leveled against him, but to no avail.

At the regular stockholders' meeting on 5 March 1990, the stockholders of the petitioner elected a new set of directors. Llorente was not reelected. On the same day, the new Board of Directors held a meeting wherein it elected a new set of officers and abolished the position of Managing Director.

On 12 March 1990, the petitioner's counsel informed Llorente of his non-reelection, the abolition of the position of Managing Director, and his termination for cause.

On 11 April 1990, Llorente filed with the Labor Arbiter a complaint for unfair labor practice, illegal dismissal, and illegal suspension alleging therein that he was dismissed without due process of law. The case was docketed as NLRC-NCR Case No. 00-04-02127-90.

Upon receipt of the summons, the petitioner filed a Motion to Dismiss alleging therein that the case falls within the jurisdiction of the SEC and not of the NLRC.

In his order of 1 March 1991, the Labor Arbiter denied the said motion on the ground that Llorente was not merely acting as a Director but was likewise doing the functions of a manager or line officer of the corporation.

The parties thereafter filed their respective position papers.

In a decision dated 18 May 1992, the Labor Arbiter found for Llorente, ruled that he was illegally terminated from employment, and disposed as follows:

WHEREFORE, premises considered, judgment is hereby rendered finding the suspension and the eventual dismissal as illegal and ordering respondent to:

1. Pay the complainant his full backwages from January 29, 1990 to date or in the amount of Nine Hundred Twelve Thousand Seven Hundred Eighty (P912,780.00) Pesos;
2. To pay complainant attorney's fees equivalent to ten (10%) percent of his backwages;
3. This Office is cognizant of the fact that due to the instant case, the relations between the parties is so strained that the reinstatement may no longer be feasible. Besides, there may be no equivalent position as the Office of the Managing Director had been abolished; and
4. To pay complainant moral damages in the amount of Fifty Thousand (P50,000.00) Pesos.

The petitioner appealed to the NLRC from the said decision.

Relying on our decision in *LEP International Philippines, Inc. vs. National Labor Relations Commission*,^[3] the NLRC dismissed the petitioner's appeal and affirmed the decision of the Labor Arbiter. It likewise denied the petitioner's motion for reconsideration.

Hence, this petition for certiorari in support of which the petitioner asserts as follows:

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THE NLRC ACTED WITHOUT JURISDICTION AND WITH GRAVE ABUSE OF DISCRETION IN ASSUMING JURISDICTION OVER THE PRESENT CONTROVERSY BETWEEN PETITIONER AND PRIVATE RESPONDENT WHO IS ADMITTEDLY ONE OF ITS INCORPORATORS/STOCKHOLDERS AND A CORPORATE OFFICER.

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