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THIRD DIVISION

[G.R. No. 96520, June 28, 1996]

RESTITUTO C. PALOMADO, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, MARLING RICE MILL AND/OR MARIO TAN TENG KUAN AND ROLANDO TAN, RESPONDENTS.

D E C I S I O N

PANGANIBAN, J.:

In this Decision, this Court reiterates some well-entrenched doctrines in labor cases, like (1) the appropriate remedy to challenge rulings of the NLRC is a petition for certiorari under Rule 65, not a petition for review under Rule 45 or 43 (2) a motion for reconsideration is an essential prerequisite to certiorari; (3) only questions relating to jurisdiction or grave abuse of discretion - not ordinary errors of law - are reviewable on certiorari; (4) hence, findings of facts of the NLRC are generally accorded great respect, even finality; (5) the law grants the labor arbiter wide latitude to determine the need for a formal hearing after the submission by the parties of their position papers; (6) labor tribunals need only substantial evidence - not beyond reasonable doubt - as basis for their decisions; and (7) before a case for illegal dismissal can prosper, an employer-employee relationship must first be established.

Petitioner questions the correctness of the Resolution[1] dated November 29, 1990 of respondent National Labor Relations Commission[2] in Case No. RAB-IV4-2385-90, which affirmed *in toto* the decision dated June 27, 1990 rendered by Labor Arbiter Numeriano D. Villena dismissing herein petitioner's complaint for alleged illegal dismissal, underpayment of wages and various benefits.

Antecedent Facts

The labor arbiter made the following factual findings:

> "As viewed from the complaint filed on April 17, 1990, complainant Restituto Palomado charges respondents Marling Rice Mill and/or Mario Tan Ten (sic) Kuan and Rodolfo S. (sic) Tan for alleged illegal dismissal, underpayment of wages, overtime pay, legal holiday pay, premium pay for holiday and rest day and separation pay/retirement/resignation benefit.
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> After a careful appraisal of the verified position papers together with their supporting proofs, documents and affidavits submitted by the parties, the undersigned finds that the case could be decided judiciously without the necessity of going through formal hearings, hence this Decision.

In support of his claims, complainant, in his verified position paper submitted on June 7, 1990 gave the following averments:

that on January 2, 1970, he was hired by respondent Marling Rice Mill as a truck driver paid on a 'per trip basis' amounting to a monthly average of P3,000.00; that he allegedly worked thereat continuously up to August 1987 when he was illegally dismissed by respondent Rolando O. Tan, in his capacity as manager/operator of respondent Marling Rice Mill. Complainant likewise averred that sometime in 1973, respondent Mario Tan Ten (sic) Kuan suffered from stroke and in view thereof, his son, respondent Rolando O. Tan, managed and operated Marling Rice Mill. It was further argued that sometime in August 1987, respondent Rolando Tan talked to him (complainant) and told him that he (R. Tan) would sell the Isuzu cargo truck which complainant used to drive in order to buy a new truck with the assurance that he would be retained as the driver of the new unit, however, when the Isuzu cargo truck was bought, respondent Tan dismissed him without cause and hired a new driver by the name of Antonio Pustrado. Complainant contended that because of his unjustified dismissal from Marling Rice Mill, he suffered and continues to suffer loss of income in the average amount of P3,000.00 a month starting September 1987.

With regards to his money claims, complainant argued that he had to take trips which took 2-3 days to complete for which he was paid minimal amounts depending on the load of his truck and that for said minimal amounts, he had to work continuously for days and even nights; that there were occasions when he had to drive even during holidays and his rest days as per order of the respondents(,) hence, for these, he is entitled to overtime pay, legal holiday pay and premium pay for holiday and rest day.

Complainant submitted as part of its (sic) documentary evidence a 'Certification of Premium Payments' issued by the Employee Accounts Department of the Social Security System dated October 26,1988 showing the premium payments made by Marling Trading and Ricemill in his favor from April 1972 to July 1979. As likewise indicated by the letters 'NI' in the columns corresponding to the months after July 1979, complainant's name was no longer included in the quarterly collection list submitted by the respondents on file with the Social Security System.

On the other hand, respondent Rolando S. (sic) Tan, in his verified position paper submitted on May 28, 1990 alleged among others that he is the proprietor of R. S. Ricemill located in Bo. Hibanga, Sariaya, Quezon, which business he started in 1987 while respondent Mario Tan Ten (sic) Kuan was the proprietor of 'Marling Rice Mill,' which ceased operations in 1987 following the infirmity and poor health of Mr. Mario Tan Teng Kuan who died of cardiac arrest on March 15, 1989.

Respondent Rolando S. (sic) Tan strongly argued that he is not the owner neither the manager of Marling Rice Mill although he was a former

> employee of Mr. Mario Tan Teng Kuan and that complainant had never been an employee of R. S. Ricemill which he owned and operated."

The labor arbiter found that, there was no dispute as to the fact that respondent Mario Tan Teng Kuan (as owner of Marling Rice Mill) employed petitioner herein as truck driver, the real controversy being when the latter's services actually ended, particularly in view of the untimely death of respondent Mario Tan Teng Kuan in 1989 and the Marling Rice Mill's cessation of operation in 1987. Absent other concrete evidence of petitioner's length of service, the labor arbiter relied upon the "certification of premium payments" prepared and issued by the SSS Employee Accounts Department Premium Verification Division II at the instance of petitioner himself, which certification showed that after June 1979, petitioner was no longer included among the employees listed in the quarterly collection list filed with the Social Security System - in other words, he ceased to be employed with respondent Marling Rice Mill after June 1979. This was buttressed by the payrolls of Marling Rice Mill submitted to the SSS for various periods after June 1979, as well as by the unrebutted sworn statement of one Dionisio Belda, petitioner's co-worker and *pahinante,* who alleged that petitioner asked to go on vacation leave in June 1979 and did not report back to work after that. The arbiter thus concluded that petitioner ceased to be an employee of respondent Marling Rice Mill since July 1979, and therefore, inasmuch as the complaint against his former employer Marling Rice Mill and/or Mario Tan Teng Kuan was filed only on April 17, 1990, or beyond the reglementary period prescribed by law,[3] the complaint was already barred by prescription.

As to petitioner's claims against respondent Rolando O. Tan, the labor arbiter found that the documentary evidence presented by said respondent overwhelmingly negated petitioner's allegations that he had been employed by Tan, who it turned out was himself but an employee of Marling Rice Mill, and who subsequently became proprietor of his own business (R. S. Ricemill), which started operations in 1986, and which was never impleaded by petitioner as party-respondent in the case below. Thus, the arbiter ruled that there existed no employer-employee relationship between the herein petitioner and respondent Rolando O. Tan, and dismissed the petitioner's claims for lack of merit.

Dissatisfied, petitioner appealed the decision to public respondent NLRC, claiming grave abuse of discretion by the arbiter and serious errors in his findings of fact. But the public respondent agreed with the findings made by the arbiter and then concluded:

> "We have gone over the entire records of this case, and We find no evidentiary support for complainant's (petitioner's) allegations against respondent Rolando Tan. Thus, it is Our opinion that the Labor Arbiter neither abused his discretion nor committed serious errors in his findings of facts. Hence, We affirm."[4]

Aggrieved, petitioner now pleads NLRC's abuse of discretion before this Court.

Issues Raised

Petitioner framed the "principal issue" this-wise:

> "Whether or not public respondent NLRC erred in finding that the Labor Arbiter did not act with grave abuse of discretion amounting to lack of jurisdiction nor commit serious errors in his findings both in questions of fact and of law."

and then proceeded to attack the labor arbiter's ruling by alleging the following specific "grounds" for the petition:

> "I. The labor arbiter acted with grave abuse of discretion amounting to lack of jurisdiction in the conduct of the proceedings in this case.
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> II. The labor arbiter committed serious errors in his findings in questions of fact.
>
> III. The labor arbiter committed serious errors in his findings in questions of law."

The Court's Ruling

We find for the respondents, the instant petition being obviously and indubitably bereft of merit.

At the outset, it must be noted that this petition suffers from serious procedural defects which would have warranted its outright dismissal. First of all, it was incorrectly brought "under the provisions of Rule 43 of the Rules of Court" (Rollo, p. 6). We have time and again ruled that the appropriate remedy to challenge a resolution of the NLRC is a special civil action for certiorari under Rule 65 of the Rules of Court, and not a petition for review under Rule 45,[5] much less Rule 43. However, in order to afford the parties substantial Justice, the Court decided to treat the instant petition as a special civil action for certiorari.

Additionally, the allegations in the petition clearly show that petitioner failed to file a motion for reconsideration of the assailed Resolution before filing the instant petition. As correctly argued by private respondent Rolando Tan, such failure constitutes a fatal infirmity even if the petition be treated as a special civil action for certiorari. The unquestioned rule in this jurisdiction is that certiorari will lie only if there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law against the acts of public respondent. In the instant case, the plain and adequate remedy expressly provided by law[6] was a motion for reconsideration

of the assailed decision, based on palpable or patent errors, to be made under oath and filed within ten (10) calendar days from receipt of the questioned decision. And for failure to avail of the correct remedy expressly provided by law, petitioner has permitted the subject Resolution to become final and executory after the lapse of the ten-day period within which to file such motion for reconsideration. We have held in *Pure Foods Corporation vs. NLRC*[7]that:

> "(T)he filing of such a motion is intended to afford public respondent an opportunity to correct any actual or fancied error attributed to it by way of a reexamination of the legal and factual aspects of the case. Petitioner's inaction or negligence under the circumstances is tantamount to a deprivation of the right and opportunity of the respondent commission to cleanse itself of an error unwittingly committed or to vindicate itself of an act unfairly imputed. An improvident resort to certiorari cannot be used as a tool to circumvent the right of public respondent to review and purge its decision of an oversight, if any. Neither should this special civil action be resorted to as a shield from the adverse consequences of petitioner's own negligence or error in the choice of remedies. Having allowed the decision to become final and executory, petitioner cannot by an overdue strategy question the correctness of the decision of the respondent commission when a timely motion for reconsideration was the legal remedy indicated."

Likewise, in the case of *Zapata vs. NLRC,*[8] this Court held:

> "Furthermore, fatal to this action is petitioners failure to move for the reconsideration of the assailed decision on the dubious pretext that it will be a mere rehash of the arguments and issues previously raised in his position paper, but which stratagem conveniently skirts as a consequence the reglementary period therefor, especially if the same has already expired. The implementing rules of respondent NLRC are unequivocal in requiring that a motion for reconsideration of the order, resolution, or decision of respondent commission should be seasonably filed as a precondition for pursuing any further or subsequent remedy, otherwise the said order, resolution, or decision shall become final and executory after ten calendar days from receipt thereof. Obviously, the rationale therefor is that the law intends to afford the NLRC an opportunity to rectify such errors or mistakes it may have lapsed into before resort to the courts of justice can be had. This merely adopts the rule that the function of a motion for reconsideration is to point out to the court (or commission) the error that it may have committed and to give it a chance to correct itself." (footnote omitted; italics supplied.)

But even if the aforementioned procedural flaws were to be disregarded, the herein petition nevertheless suffers from even more grievous substantive defects. A petition for certiorari under Rule 65 of the Rules of Court will lie only where a grave abuse of discretion or an act without or in excess of jurisdicfion on the part of the