327 Phil. 335

FIRST DIVISION

[G.R. No. 115759, June 21, 1996]

PURIFICACION F. RAM, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND JRS BUSINESS CORPORATION, RESPONDENTS.

D E C I S I O N

KAPUNAN, J.:

In this petition for certiorari under Rule 65 of the Revised Rules of Court petitioner assails the decision of public respondent NLRC dated 20 December 1993 ordering the reinstatement of petitioner but without backwages. The NLRC's resolution dated 28 February 1994 denying petitioner's motion for reconsideration is likewise impugned.

The facts are hereunder narrated:

Petitioner began her employment with private respondent JRS Business Corporation (JRS), which is engaged in messengerial services, on 11 June 1991 as a counter-clerk trainee at the rate of P75.00 a day which was increased a week later to P106.00. Petitioner was assigned to the lobby office of the Pines Theater in Baguio City.

On 26 August 1991, petitioner received an inter-office memorandum informing her other appointment as a probationary employee for a period of six (6) months effective on the same date.

On 13 February 1992, JRS, through its personnel manager Mr. Hernany P. Baure, sent petitioner an inter-office memorandum[1]terminating her services on grounds of unsatisfactory performance stating that petitioner failed "to meet the standard performance set by the company." Said dismissal took effect on 15 February 1992, the same date petitioner received the aforementioned memorandum.

The decision of JRS to terminate petitioner's services was based on the report/recommendation dated 4 February 1992 submitted by its manager Mr. Roseller Layug. The pertinent portion of the aforementioned report read as follows:

> I am respectfully recommending that her employment be terminated the soonest. During her employment, she was found to be violating Company rules and regulations despite repeated demand from the management to cease the same. The violations like abandoning her place of work during office hours without prior permission from the management, not wearing the proper dress as prescribed by the Company, always late from work, commission of absences and her attitude and/or character is not suited in

> our operations. She was inefficient in her work. Productivity is very low and needs prodding to do a job.[2]

Consequently, petitioner filed a complaint for illegal dismissal, violation of labor standards pertaining to the payment of wages and demanded reinstatement, damages and attorney's fees.

On 30 July 1993, Labor Arbiter Irenarco R. Rimando rendered a decision in favor of petitioner, the dispositive portion of which reads thus:

> VIEWED FROM THIS LIGHT, judgment is hereby rendered declaring that complainant was illegally dismissed. Consequently, respondents are hereby directed to reinstate her to her former position, without loss of seniority rights and other privileges and to pay her full backwages and allowances in the amount of FIFTY TWO THOUSAND EIGHT HUNDRED FIFTEEN PESOS and EIGHTY FOUR CENTAVOS (P52,815.84) plus her salary differentials in the amount of TWO THOUSAND AND FIFTEEN PESOS (P2,015.00). Respondents are hereby directed to pay ten percent (10%) of the award as attorney's fees.
>
> SO ORDERED.[3]

On 20 December 1993, upon appeal by JRS, the NLRC rendered a decision affirming the order of reinstatement of petitioner. However, it deleted the award of backwages and attorney's fees. The dispositive portion states thus:

> WHEREFORE, the Decision dated July 30, 1993 is hereby MODIFIED. Respondents are directed to reinstate complainant to her former position or equivalent position without loss of seniority rights but without backwages. The award of attorney's fees is likewise deleted. Other findings stand affirmed.
>
> SO ORDERED.[4]

Petitioner's motion for reconsideration dated 3 February 1994 was denied by the NLRC in its Resolution of 28 February 1994.

Hence, this appeal civil action for certiorari wherein petitioner assigned the following errors:

> 1. THE NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN DENYING PETITIONER'S PAYROLL BACKWAGES AS MANDATED IN ARTICLE 223 OF THE LABOR CODE WHICH MEANS HER BACKWAGES

DURING THE PERIOD FOLLOWING THE DECISION REINSTATING HER WHICH IS IMMEDIATELY EXECUTORY EVEN PENDING APPEAL, CONSIDERING THAT PRIVATE RESPONDENT REFUSED PETITIONER TO BE ACTUALLY REINSTATED.

2. THE NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN DELETING THE BACKWAGES AND ATTORNEY'S FEES AS AWARDED BY THE LABOR ARBITER, IN SPITE OF THE FINDING THAT PETITIONER WAS ILLEGALLY DISMISSED.[5]

Invoking the third paragraph of Article 223 of the Labor Code which states that:

Art. 223. Appeal.

xxx

In any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall be immediately executory, even pending appeal. The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation or, at the option of the employer, merely reinstated in the payroll. The posting of the bond by the employer shall not stay the execution for reinstatement provided herein.

petitioner insists that she is entitled to payroll backwages from the date of the labor arbiter's decision ordering her reinstatement up to either the finality of the NLRC's decision or her actual reinstatement. Petitioner contends that, by implication, JRS chose payroll reinstatement over actual reinstatement in view of the latter's failure to reinstate petitioner to her former position during the pendency of its appeal before the NLRC. More importantly, petitioner asserts that a motion for execution and a writ of execution are not required to implement the aforequoted provision since the same, by its own terms, is "immediately executory even pending appeal," otherwise, the purpose of the law mandating immediate reinstatement of the dismissed employee would be defeated.

Petitioner's contentions are unmeritorious.

It is judicially settled that in order to implement the Labor Arbiter's order of reinstatement a writ of execution is imperative, either upon motion of the dismissed employee or the Labor Arbiter's own initiative. In the recent case of Archilles Manufacturing Corporation v. NLRC,[6] we expounded thus:

As regards the first issue, i.e., whether a writ of execution is still necessary to enforce the Labor Arbiter's order of immediate

reinstatement even when pending appeal, we agree with petitioners that it is necessary. x x x

We have fully explained the legal basis for this conclusion in Maranaw Hotel Resort Corporation (Century Park Sheraton Manila) v. NLRC and Gina G. Castro thus -

> It must be stressed, however, that although the reinstatement aspect of the decision is immediately executory, it does not follow that it is self-executory. There must be a writ of execution which may be issued motu proprio or on motion of an interested party. Article 224 of the Labor Code provides:
>
> Art. 224. Execution of decisions, orders or awards.- (a) The Secretary of Labor and Employment or any Regional Director, the Commission or any Labor Arbiter, or med-arbiter or voluntary arbitrator may, motu proprio or on motion of any interested party, issue a writ of execution on a judgment within five (5) years from the date it becomes final and executory x x x.
>
> The second paragraph of Section 1, Rule XVIII of the New Rules of Procedure of the NLRC also provides:
>
> The Labor Arbiter, POEA Administrator, or the Regional Director, or his duly authorized hearing officer of origin shall, motu proprio or upon motion of any interested party, issue a writ of execution on a judgment only within five (5) years from the date it becomes final and executory x x x. No motion for execution shall be entertained nor a writ be issued unless the Labor Arbiter is in possession of the records of the case which shall include an entry of judgment.
>
> In the absence x x x of an order for the issuance of a writ of execution on the reinstatement aspect of the decision of the Labor Arbiter, the petitioner was under no legal obligation to admit back to work the private respondent under the terms and conditions prevailing prior to her dismissal or, at the petitioner's option, to merely reinstate her in the payroll. An option is a right of election to exercise a privilege, and the option in Article 223 of the Labor Code is exclusively granted to the employer. The event that gives rise for its exercise is not the reinstatement decree of the Labor Arbiter, but the writ for its execution commanding the employer to reinstate the employee, while the final act which compels the employer to exercise the option is the service upon it of the writ of execution when, instead of admitting the employee back to his work, the employer chooses to reinstate the employee in the payroll only. If the employer does not exercise this option, it must forthwith admit the employee back to work, otherwise it may be punished for contempt.

> In the case at bench, there was no occasion for petitioners to exercise their option under Art. 223 of the Labor Code in connection with the reinstatement aspect of the decision of the Labor Arbiter. The motions of private respondents for the issuance of a writ of execution were not acted upon by NLRC. It was not shown that respondents exerted efforts to have their motions resolved. They are deemed to have abandoned their motions for execution pending appeal x x x.

Likewise, in Supercars, Inc. v. Minister of Labor and Employment,[7] we held:

> Indeed, there is no doubt that the order dated August 1, 1983 is immediately executory. This being the case, the private respondents should have moved for the issuance of a writ of execution of said order even while the motion for reconsideration is still pending. It is significant to note that no mention was made of a motion for execution having been filed and it was only on August 29, 1985 when the Regional Director ordered the issuance of the writ of execution, motu proprio.
>
> It is fitting to mention again our observation in National Steel Corporation vs. National Labor Relations Commission, et al., supra to wit:
>
> What obviously cause the delay was the sheer inaction of private respondent who was entitled to enforce it. Under the circumstances, it would definitely be offensive to justice and fair play to hold petitioner liable for the consequence of such inaction.

In the present case petitioner was similarly negligent. The record is bereft of any evidence that petitioner endeavored to have the Labor Arbiter's order of reinstatement immediately enforced by means of a motion for execution. Absent a writ of execution issued and served upon JRS, the latter was not formally and appropriately given the chance to choose between actual and payroll reinstatement. Hence, due to her own inaction we are constrained to deny petitioner's prayer for payroll backwages.

Proceeding to the second issue, petitioner assails the following findings of the NLRC:

> There is no dispute that complainant committed infractions. In fact, complainant admitted the same in her letters of explanations. (Annexes" 8", "9" and "10", Respondent's Position Paper, Records, pp. 50, 51 & 52). But, whether or not such infractions constitute serious misconduct is dubitable.
>
> The infractions referred to by respondent are:
>
> 1) late in reporting for work on January 2, 1992 - 8:5 a.m. (Annex "2",