

THIRD DIVISION

[G.R. No. 90655, October 07, 1996]

DANIEL V. ZARATE, JR., PETITIONER, VS. HON. NORMA C. OLEGARIO, IN HER CAPACITY AS EXECUTIVE LABOR ARBITER; NATIONAL LABOR RELATIONS COMMISSION; AND THE BENGUET ELECTRIC COOPERATIVE, INC. (BENECO), RESPONDENTS.

DECISION

PANGANIBAN, J.:

May a final and executory judgment ordering reinstatement of a dismissed employee be set aside, and may separation pay be granted in lieu thereof? May decisions or orders of labor arbiters be elevated by certiorari to the Supreme Court?

The Court addresses these questions in resolving the instant petition assailing the Order^[1] dated August 1, 1989, of Executive Labor Arbiter Norma C. Olegario in NLRC Case No. RAB-I-0015-84 entitled "Daniel V. Zarate, Jr. vs. Benguet Electric Cooperative, Inc., et. al.", where the *fallo* reads:^[2]

"WHEREFORE, the motion for the issuance of an alias writ of execution to enforce the reinstatement aspect of the decision of the Labor Arbiter dated November 20, 1985, is hereby denied.

Respondent cooperative is ordered to pay complainant separation pay of one month for every year of service, a fraction of at least six (6) months being considered as one whole year.

The computation of years of service should include the period from the date of his illegal dismissal up to and until the date of this order, said corresponding with the years during which he should have continued in employment."

Also assailed is the Order^[3] dated September 12, 1989, which denied the petitioner's motion for reconsideration for lack of merit.

The Facts

Petitioner was hired by herein private respondent, Benguet Electric Cooperative, Inc. (BENECO), as an accountant by virtue of a probationary appointment effective July 1, 1983 until December 31, 1983. However, in private respondent's plantilla of employees, petitioner's salary was that of a Department Head and under private respondent's Policy No. 3-13, probationary appointments were not to be extended to Department Heads. Learning of this, he confronted private respondent's General Manager, Peter M. Cosalan, regarding his probationary employment. The General Manager then wrote on his appointment paper the words, "designated to the position vacated by Mrs. Rosevida Lopez." Mrs. Lopez happened to be the Manager

of the Finance and Administration Department.^[4]

On November 28, 1983, the General Manager notified petitioner of the termination of his services effective December 31, 1983 without stating the ground for such termination,^[5] prompting petitioner to file on January 13, 1984 a case for illegal dismissal and damages against private respondent and its General Manager before the respondent National Labor Relations Commission, docketed as NLRC Case No. RAB-I-00115-84.

On April 13, 1985, while the aforementioned case was pending resolution, private respondent through its Board of Directors issued Resolution No. 61-85^[6] which recalled petitioner to work and extended to him a temporary appointment in an acting capacity as "Internal Auditor and Supervisor of the Meter Reading, Billing and Collection Division", without prejudice to the outcome of the case he filed against private respondent. Because of this, petitioner reported back to work.

On November 20, 1985, Labor Arbiter Saturnino P. Orate issued a decision in the abovementioned illegal dismissal case finding that the designation of petitioner to the position of Mrs. Lopez was an indication that petitioner had passed the employer's standards during his probationary period thereby making him regular as accountant but not as department head. He thus ordered private respondent "to reinstate the complainant to his former position as accountant without loss of seniority rights, with full backwages from the time his salary was withheld from him up to his actual reinstatement x x x."^[7]

Private respondent, on December 16, 1985, appealed the decision to the NLRC. Pending resolution of said appeal, on September 19, 1986, private respondent's Board of Directors, consisting of new members, issued Resolution No. 159-86 terminating the temporary appointment of petitioner "by reason of his defiance of reasonable rules and regulations, aside from the fact that his arrogant attitude towards the Manager (Juan B. Tiongan) and some employees have (sic) caused and continues to cause demoralization, not to mention the fact that discipline in the Cooperative is being prejudiced."^[8]

On May 29, 1987, the NLRC issued a decision affirming the findings of the labor arbiter but reducing the award of damages and attorney's fees and limiting the computation of backwages to three (3) years.

On August 27, 1987, private respondent filed a petition for certiorari with this Court docketed as G.R. No. 79529. This Court in an extended resolution dated June 15, 1988 dismissed the petition for lack of merit, "there being no grave abuse of discretion."^[9]

The aforesaid ruling having become final and executory, herein private respondent satisfied in full the money claims of petitioner. However, in a Manifestation and Motion for Reconsideration dated May 4, 1989 and filed with the Regional Arbitration Branch of NLRC, private respondent alleged that the National Electrification Authority (NEA) had established guidelines for revising the plantillas of electric cooperatives like herein private respondent, in order to achieve cost savings, and in compliance with such NEA guidelines, on July 14, 1987, private respondent revised its plantilla. As a result thereof, the position of accountant formerly occupied by

petitioner was not one of those retained, nor was an equivalent one created or provided in the new plantilla.^[10] Thus, private respondent moved that it be allowed to pay petitioner separation pay, at the rate of one month for every year of service, in lieu of reinstatement, the latter relief having become unavailable.

At the hearings held on private respondent's motion, it submitted its new plantilla, together with job descriptions pertaining to the positions of chief of the accounting division, bookkeeper, and manager of the administration and accounting department, as sought by petitioner. On the other hand, petitioner filed his Comments with Motion for Issuance of Alias Writ of Execution, to enforce that portion of the decision of the arbiter directing his reinstatement.

After due deliberation, Executive Labor Arbiter Olegario issued her questioned Order holding that reinstatement of the petitioner had become an impossibility because of a supervening event, viz., the abolition of the position he once occupied, and because of the absence of a substantially equivalent position in the new plantilla; furthermore, the respondent executive arbiter ruled that petitioner was not qualified for any of the available existing positions in the new plantilla. She thus ordered payment of separation pay instead of reinstatement.

A motion for reconsideration^[11] filed by petitioner was subsequently denied for lack of merit. Hence, the instant petition, raising the following issues:

The Issues

"1. That the respondent Executive Labor Arbiter acted with grave abuse of discretion when she did not consider private respondent's Board Resolution no. 61-85 (Annex 'A' of the petition) despite the obvious and clear terms thereof.

2. That the respondent Executive Labor Arbiter acted with grave abuse of discretion in issuing the (herein assailed) order (Annex 'L' of the petition) in total disregard to the final and executory judgment that petitioner be reinstated to his former position.

3. That petitioner's constitutional right of security of tenure will be violated if he will not be reinstated to his former position or to an equivalent or substantial position."^[12]

In short, petitioner contests the correctness of the Executive Labor Arbiter's order denying reinstatement and granting separation pay instead.

Petitioner avers that it is not true that the position of accountant was abolished, and that the Executive Labor Arbiter's view that reinstatement was no longer possible is untenable aside from raising a new matter.^[13] He alleges that the private respondent's personnel groupings (i.e., new plantilla) will show that his position was not abolished and/or that there exist similar or equivalent positions available for him.^[14] Also, it is the ministerial duty of the executive labor arbiter to implement the final and executory decision (granting reinstatement) without modification.^[15]

The Court's Ruling

Preliminary Issue: Certiorari to SC Improper

At the outset, we note that the petition is dismissible outrightly for being improper, since petitioner ought to have elevated the matter to the National Labor Relations Commission, instead of directly having recourse to this Court. The Labor Code provides for the proper mode of appeal:

"Art. 223. Appeal -- Decisions, awards or orders of the Labor Arbiter are final and executory unless appealed to the Commission [NLRC] by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. x x x"

Moreover, we have repeatedly emphasized, far too many times to recall, that the extraordinary remedy of certiorari will lie only if there be no appeal or any other plain, speedy and adequate remedy available in the ordinary course of law against the acts of respondent.^[16] In the instant case, such plain, speedy and adequate remedy consists in appealing the executive arbiter's Order to the NLRC within ten days from receipt thereof. And precisely because of petitioner's failure to avail of the correct remedy expressly provided by law, the subject Order has become final and executory after the lapse of the ten day period. On this count alone, the instant petition should be dismissed outright. Nevertheless, inasmuch as the petition raises a substantial issue, this Court has decided to resolve the same on the merits.

Jurisdiction of this Court in Certiorari

The rule is settled that the original and exclusive jurisdiction of this Court to review a decision of respondent NLRC (or Executive Labor Arbiter as in this case) in a petition for certiorari under Rule 65 does not normally include an inquiry into the correctness of its evaluation of the evidence. Errors of judgment, as distinguished from errors of jurisdiction, are not within the province of a special civil action for certiorari, which is merely confined to issues of jurisdiction or grave abuse of discretion. It is thus incumbent upon petitioner to satisfactorily establish that respondent Commission or executive labor arbiter acted capriciously and whimsically in total disregard of evidence material to or even decisive of the controversy, in order that the extraordinary writ of certiorari will lie.^[17] By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, and it must be shown that the discretion was exercised arbitrarily or despotically. For certiorari to lie, there must be capricious, arbitrary and whimsical exercise of power, the very antithesis of the judicial prerogative in accordance with centuries of both civil law and common law traditions.^[18]

Nowhere can we find any grave abuse of discretion by the respondent executive arbiter. What petitioner considers and characterizes as grave abuse are the arbiter's findings that the former position of petitioner had already been abolished, and that there was no equivalent position to which he could be appointed. In respect thereof, we must once more reiterate our much-repeated but not well-heeded rule that findings of fact made by the labor tribunals below which have acquired expertise in matters within their specific and specialized jurisdiction, and which findings are supported by substantial evidence on record (as in this case), are generally entitled to and accorded great respect and even finality and are binding upon this Court,^[19] unless petitioner is able to show that the labor arbiter and the NLRC simply and