

TWELFTH DIVISION

[CA-G.R. SP NO. 129256, June 26, 2014]

**MANILA SOURCES CORPORATION AND GARY L. SO, PETITIONER,
VS. NATIONAL LABOR RELATIONS COMMISSION (FIFTH
DIVISION) AND RICARDO DEQUINA, RESPONDENTS.**

D E C I S I O N

DICDICAN, J.:

Before us is a Petition for Certiorari^[1] filed by Manila Sources Corporation and/or Gary L. So ("petitioners") pursuant to Rule 65 of the 1997 Revised Rules of Court seeking to reverse and set aside the Resolution^[2] of the Fifth Division of the National Labor Relations Commission ("NLRC") dated January 10, 2013 in NLRC NCR Case No. 02-02535-12(NLRC LAC No. 01-000048-13) as well as the Resolution^[3] promulgated on February 28, 2013 denying the Motion for Reconsideration thereof.

The material and relevant facts of the case, as culled from the record, are as follows:

The present controversy stemmed from a Complaint for illegal dismissal, underpayment of salaries/wages, non-payment of holiday pay and holiday premium, 13th month pay, separation pay and illegal deduction filed with the Labor Arbiter in Quezon City by Ricardo B. Dequina ("private respondent) against the herein petitioners which was docketed as NLRC NCR Case No. 02-02535-12.

Manila Sources Corporation ("petitioner corporation") is a domestic corporation duly organized and existing under the law of the Philippines which is engaged in the business of sales and installation of air-conditioning units. It is represented by its Operations Manager, Mr. Gary So.

On the other hand, herein private respondent was employed by the petitioners on June 2, 2009 as Maintenance/Painter of the company with a daily salary of Three Hundred Fifty (P350.00) Pesos.

As synthesized by Labor Arbiter Lilia S. Savari in her Decision^[4] dated October 24, 2012, the factual antecedents are as follows:

"Complainant alleges that he was hired by the respondent on June 2, 2009 as a Maintenance/Painter with a daily wage of Three Hundred Fifty (P350.00) Pesos. His work schedule is from Monday to Saturday at 8:30 A.M. to 5:30 P.M. Aside from working as maintenance, complainant was likewise, occasionally assigned as company collector, that further he was tasked to assist in the delivery of aircon units, solar water heater in Metro Manila and nearby provinces including installation of item delivered to the customers.

"According to the complainant, he had been rendering satisfactory services which are necessary and desirable to the success of the business of the respondent; that the relationship was going smoothly until the later part of the year 2011 when Complainant was asking his co-employees regarding the benefit goes with being an employee such as SSS, Medicare, minimum salary, including 13th month pay as provided by law. The actions and queries of the Complainant reached Mr. Gary So. As a consequence, the respondent became very strict with the complainant. Small matters became big until the 3rd week of January 2012 when complainant was assigned to repair a ceiling of house located at Mckinley Hills Subdivision Taguig City; that he was advised by the architect hence, he has to return to the office and report to the respondent what transpired. The respondent got angry and told complainant that he is hard-headed by not following his instructions. The complainant tried to explain but instead he was told point blank that he will not be given any assignment anymore.

"The complainant for several occasions went back to the respondent to ask for assignment and go back to work but complainant's pleas only landed on deaf ears."

Thus, the herein private respondent filed his Complaint for illegal dismissal, underpayment of salaries/wages, non-payment of overtime pay, holiday pay, holiday premium, service incentive leave, 13th month pay, separation pay and illegal deduction against the herein petitioners to the Labor Arbiter in Quezon City.

By reason of the filing by the private respondent of a complaint against the petitioners, proceedings were conducted by the Labor Arbiter. First, there was a mandatory conciliatory conference with the parties which was held by the Labor Arbiter. When no settlement was arrived at, the parties were directed to file their respective position papers which the parties filed in due time.

Eventually, on October 24, 2012, Labor Arbiter Savari rendered a Decision in favor of the private respondent. The pertinent portion of the said Decision reads:

"WHEREFORE, a Decision is hereby rendered declaring that complainant was illegally dismissed. Corollarily, he is entitled to be reinstated to his former position without loss of seniority rights and other privileges plus backwages from the time of dismissal up to actual reinstatement.

"Further, respondents are ordered to pay complainant salary differentials, service incentive leave pay and 13th month pay.

"Computation of the award is as follows:

"xxxx.

"All other claims are DISMISSED for lack of merit.

"SO ORDERED."

Unsatisfied with the Labor Arbiter's disposition, the herein petitioners appealed from the former's Decision to the NLRC. On November 22, 2012 the herein petitioners filed their Notice of Appeal and Appellant's Brief and Very Urgent *Ex Parte* Motion for

Reduction of Supersedeas Bond. However, petitioners failed to post a cash/surety bond. On this score, the NLRC rendered the herein assailed Resolution which dismissed private respondents' appeal for non-perfection of their appeal. The decretal portion of the NLRC Resolution dated January 10, 2013 reads:

“WHEREFORE, premises considered, respondents' Very Urgent Ex Parte Motion for Reduction of Supersedeas Bond is DENIED and their Appeal is DISMISSED for non-perfection.

“SO ORDERED.”

Petitioner then filed a Motion for Reconsideration^[5] of the said Resolution of the NLRC. On February 28, 2013, the NLRC issued the herein assailed Resolution denying petitioner's Motion for Reconsideration.

Unperturbed, petitioners filed the present petition before this Court assigning the lone act of grave abuse of discretion purportedly committed by the NLRC, to wit:

THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT DENIED THE PETITIONERS' VERY URGENT EX PARTE MOTION FOR REDUCTION OF SUPERSEDEAS BOND AND IN EVENTUALLY DISMISSING THEIR APPEAL FOR NON-PERFECTION AND IN DENYING THEIR MOTION FOR RECONSIDERATION OF THE RESOLUTION DATED JANUARY 10, 2013.

After a careful and judicious scrutiny of the whole matter, together with the applicable laws and jurisprudence in the premises, we find the present petition to be devoid of merit.

Prefatorily, a petition for the writ of *certiorari* does not deal with errors of judgment nor does it include a mistake in the appreciation of the contending parties' respective evidence or the evaluation of their relative weight^[6]. It bears stressing that a writ of *certiorari* can be availed of only if the public respondent has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction. The burden is on the part of the petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent issuing the impugned decision or order. Mere abuse of discretion is not enough; it must be grave.^[7]

By grave abuse of discretion is meant such capricious and whimsical exercise of judgment which is equivalent to an excess or lack of jurisdiction^[8]. A public respondent judge acts without jurisdiction if it does not have the legal power to determine the case; there is excess of jurisdiction where the respondent, being clothed with the power to determine the case, oversteps its authority as determined by law^[9]. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility^[10].

In the case at bench, petitioners contended that the public respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction when it dismissed petitioners' appeal for non-perfection of their appeal. According to the