

SPECIAL FOURTEENTH DIVISION

[CA-G.R. SP NO. 81685, August 17, 2006]

NEWSPAPER MAGAZINE & DEALERS ASSOCIATION OF THE PHILIPPINES, ET. AL., PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND MARILOU TEVAR, RESPONDENTS.

D E C I S I O N

BATO, JR., J.:

Before Us is a petition for Certiorari under Rule 65 of the Rules of Court seeking to annul and set aside public respondent National Labor Relations Commission's (NLRC) Resolution dated October 8, 2003 dismissing petitioners' appeal as well as the Resolution dated December 16, 2003 denying the motion for reconsideration, in NLRC NCR CA No. 036525-03 (NLRC NCR-00-10-09228-02), for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

The facts are as follows:

On October 24, 2002, private respondent Marilou Tevar filed against the petitioners Newspaper, Magazine & Comics Dealers Association of the Phils. (NMCDAP) and Cresencio E. Tabianan a Complaint for illegal dismissal (constructive), nonpayment of salaries/wages, service incentive leave, 13th month pay, separation pay and other benefits^[1] with the public respondent's National Capital Region Arbitration Branch. The Complaint was assigned to Labor Arbiter Veneranda C. Guerrero.

After settlement efforts failed, the parties were directed to submit their Position Papers. In her Position Paper dated January 6, 2003, private respondent alleged that she was a regular employee of petitioners from 1983 to 2002; that she served as Secretary of the association and was responsible for its overall operations and records; that after petitioner Tabianan was elected president of the association, she was pressured by said petitioner and the Board of petitioner NMCDAP to resign; that petitioner Tabianan hired a new employee to replace private respondent; that as a result of the mounting pressure from petitioner Tabianan and the Board of NMCDAP which she could no longer bear, private respondent filed a sick leave on September 23, 2002; that petitioner Tabianan, while approving private respondent's leave, did not authorize the payment of her salary since September 15, 2002; and that the actuation of petitioner Tabianan of getting the records and keys of the association and of hiring a new employee to perform private respondent's regular duties constituted constructive dismissal. Thus, private respondent prayed that petitioners be made liable to pay her unpaid salary, moral and exemplary damages, attorney's fees, 13th month pay and service incentive leave.

In their Position Paper dated December 14, 2002, petitioners alleged that it is a non-stock organization duly registered and existing by virtue of the laws of the Philippines; that private respondent was the only (sole) employee of the association

since 1983; that in 2002, private respondent joined other officers-directors who resigned from the association to form another organization; that in September 2002, petitioner NMCDAP filed a formal complaint of (sic) estafa against private respondent and some resigned former officers of the association; that on September 20, 2002, private respondent filed an application for indefinite leave of absence from September 23, 2002 and requested vacation and sick leave benefits on the basis of her 19 years of service; that petitioner Tabianan granted private respondent's request for indefinite leave of absence but denied the latter's request for payment of sickness and vacation leave benefits; that private respondent was directed to submit her comment, answer or response to charges against her and to explain why her services should not be terminated for cause; that private respondent, instead, filed the Complaint for illegal dismissal and money claims; and that private respondent was not dismissed. Thus, petitioners prayed that the Complaint be dismissed for lack of merit.

On the basis of the pleadings and the evidence on record, the Labor Arbiter, on May 15, 2003, rendered a Decision, the decretal portion of which reads:

"WHEREFORE, premises considered, judgment is hereby rendered finding respondent Newspaper Magazines & Comics Dealer of the Philippines Inc., liable for illegal (constructive) dismissal. Respondent is hereby ordered to pay complainant Marilou T. Tevar the amount of P200,000.00 (P10,000 x 20 years) representing her separation pay, P80,000.00 (P10,000.00 x 8 mos. (9/15/02 to 5/15/03=8 mos.)) representing backwages as of the date of this decision, P4,999.99 (P384.61 x 13 days) representing unpaid salaries and P7,858.33 representing pro-rata 13th month pay.

All other claims are dismissed for lack of merit.

SO ORDERED."

Petitioners received a copy of the Labor Arbiter's Decision on July 3, 2003 and filed their Notice and Memorandum of Appeal dated July 13, 2003 on July 14, 2003. Petitioners claimed as ground for their appeal the Labor Arbiter's alleged failure to appreciate the evidence of the petitioners that resulted in serious errors in the findings of facts, which, if not corrected, would cause grave and irreparable injury to it.

In her Memorandum dated July 27, 2003, private respondent claimed that petitioners' Notice and Memorandum of Appeal was late when it was filed only on July 14, 2003. Also, private respondent called the attention of the public respondent to the failure of the petitioners to attach a surety or cash bond as a requisite for perfecting the appeal.

In its Resolution dated October 8, 2003 the public respondent NLRC dismissed petitioners' appeal on the ground that it was not perfected within the reglementary period set forth by the Rules of the Commission. According to the public respondent NLRC, while the appeal was filed on July 14, 2003, the required appeal bond was filed only on July 29, 2003, clearly beyond the ten (10) day reglementary period to perfect an appeal.

In their Motion for Reconsideration dated October 29, 2003, petitioners attributed the delay of the posting of the appeal bond to financial difficulties and pleaded that the appeal be given due course. However, the public respondent NLRC denied the motion for reconsideration in its Resolution dated December 16, 2003.

Aggrieved, petitioners interposed the present petition ascribing that:

PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR EXCESS OF JURISDICTION IN:

(A) DISMISSING THE APPEAL DESPITE THE TIMELY POSTING OF SUPERSEDEAS BOND;

(B) IN FINDING CONSTRUCTIVE DISMISSAL OF THE COMPLAINANT AND

(C) IN AWARDING SEPARATION PAY AND BACK WAGES.

The pivotal issue for resolution is whether or not the public respondent NLRC gravely abused its discretion in dismissing the appeal on the ground that petitioners failed to perfect their appeal within the reglementary period required by law.

The petition is not impressed with merit.

Settled is the rule that there is grave abuse of discretion where the power is exercised in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility amounting to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.^[2] The meaning of grave abuse of discretion has been expanded to include any action done contrary to the constitution, law or jurisprudence.^[3]

In the case at bar, contrary to the unfounded allegations of the petitioners, the public respondent NLRC did not gravely abused its discretion because it merely applied the law and settled jurisprudence in dismissing petitioners appeal.

Article 223 of the Labor Code, as amended, explicitly provides for the requirements in perfecting an appeal from decisions, awards and orders of the Labor Arbiters, viz:

"ART. 223. *APPEAL*

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

In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from.

x x x"

Implementing the aforequoted law, Sections 1, 4, 5 and 6 of Rule VI of the New Rules of Procedure of the NLRC expressly provide, viz:

"Section 1. *Periods of Appeal*. — Decisions, resolutions or orders of the Labor Arbiter shall be final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt thereof; and in case of a decisions, resolutions or orders of the Regional Director of the Department of Labor and Employment pursuant to Article 129 of the Labor Code, within five (5) calendar days from receipt thereof. x x x

Section 4. *Requisites for Perfection of Appeal*. — a) The appeal shall be: 1) filed within the reglementary period provided in Section 1 of this Rule; 2) verified by the appellant himself in accordance with Section 4, Rule 7 of the Rules of Court, as amended; 3) in the form of a memorandum of appeal which shall state the grounds relied upon and the arguments in support thereof, the relief prayed for, and with a statement of the date the appellant received the appealed decision, resolution or order; 4) in three (3) legibly typewritten or printed copies; and 5) accompanied by i) proof or payment of the required appeal fee; ii) posting of a cash or surety bond as provided in Section 6 of this Rule; iii) a certificate of non-forum shopping; and iv) proof of service upon the other parties.

x x x

Section 5. *Appeal Fee*. — The appellant shall pay an appeal fee of One Hundred Fifty Pesos (P150.00) to the Regional Arbitration Branch or Regional Office of origin, and the official receipt of such payment shall form part of the records of the case.

Section 6. *Bond*. — In case the decision of the Labor Arbiter or the Regional Director involves a monetary award, an appeal by the employer may be perfected only upon the posting of a bond, which shall be in the form or cash deposit or surety bond equivalent in amount to the monetary award, exclusive of damages and attorney's fees.

x x x"

Petitioners admit in their Notice and Memorandum of Appeal that they received a copy of the Decision of the Labor Arbiter on July 3, 2003. Applying the law, petitioners had ten (10) calendar days, or until July 13, 2003, from notice of the Decision of the Labor Arbiter within which to file and perfect their appeal. Although, the appeal was filed on time on July 14, 2003 as July 13, 2003 was a Sunday, the appeal was, nevertheless, not perfected due to petitioners' failure to post the required cash or surety bond within the ten (10) day reglementary period. Petitioners posted the required surety bond only on July 28, 2003.^[4]

The requirement of the posting of the cash or surety bond equivalent to the monetary award, within the ten (10) day reglementary period to appeal, is mandatory for the perfection of an appeal. In *Borja Estate vs. Ballard*,^[5] the Supreme Court categorically declared that:

"Thus, it is clear that the appeal from any decision, award or order of the Labor Arbiter to the NLRC shall be made within ten (10) calendar days from receipt of such decision, award or order, and must be under oath,