SUPREME COURT
THIRD DIVISION

THE INSULAR LIFE ASSURANCE COMPANY, LTD., and FGU INSURANCE GROUP,
***Petitioners*,**

-versus-

G.R. No. L-74191
December 21, 1987

NATIONAL LABOR RELATIONS COMMISSION, HON. ANTONIO TRIA TIRONA, LABOR ARBITER OF THE EXECUTION ARM OF THE NATIONAL LABOR RELATIONS COMMISSION, THE INSULAR LIFE ASSURANCE COMPANY EMPLOYEES ASSOCIATION-NATU, FGU INSURANCE GROUP WORKERS & EMPLOYEES ASSOCIATION-NATU, And INSULAR LIFE BUILDING EMPLOYEES ASSOCIATION-NATU,
***Respondents*.**
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D E C I S I O N

GUTIERREZ, JR., *J.*:

This is a Petition to Review and set aside the Resolution of the National Labor Relations Commission (NLRC), promulgated on April 9, 1986, denying the petitioners' motion for reconsideration, which it treated as an appeal from the order of Labor Arbiter Antonio Tria Tirona dated January 17, 1986. The order is, likewise, the subject of this present application for relief.

This controversy is an offshoot of a labor dispute between petitioner Companies and respondent Unions which began way back in 1958 and has been brought to this Court twice for review.

The facts are culled from our previous decisions and the records of the case.

The petitioners were the respondents, together with the defunct Court of Industrial Relations (CIR) in SC-G.R. No. L-25291, entitled The Insular Life Assurance Co., Ltd., Employees Association-NATU vs. The Insular Life Assurance Co., Ltd. (37 SCRA 244) seeking to review and reverse the decision of the CIR dismissing the respondent Union's complaint for unfair labor practice.

As a result of a bargaining deadlock, respondent Unions declared a strike on May 21, 1958. On the strength of a writ of preliminary injunction, petitioner Companies "notified the petitioners-strikers to report back to work on June 2, 1958 or else be replaced." The respondent Unions called off their strike and returned to work. However, a certain number of workers were refused readmission on the ground of criminal charges pending against them before the fiscal's office. However, non-strikers similarly facing criminal indictments were readily readmitted. Thus, a complaint for unfair labor practice against petitioner Companies was filed on July 29, 1958. The complaint specifically charged the petitioners with — (1) interfering with the exercise of the workers' right to concerted activity; and (2) discriminating against Union members as regards readmission to work after the strike on the basis of union membership and degree of participation in the strike.

After trial on the merits, the Court of Industrial Relations, through presiding Judge Arsenio Martinez, rendered a decision, dated August 17, 1965, dismissing the complaint of respondent Unions for lack of

merit. The Unions seasonably filed their motion for reconsideration which was, however, denied by the October 20, 1965 resolution of the CIR sitting en banc. Hence, the petition for review filed before us by respondent Unions docketed as G.R. No. 25291 (37 SCRA 244).

On January 30, 1971, this Court rendered a decision setting aside the challenged CIR decision, adjudging the petitioners guilty of unfair labor practice, and ordering the reinstatement with backwages of the Unions' members found to have been discriminatorily dismissed by them.

On April 21, 1971, the petitioner Companies, through a motion for reconsideration, petitioned this Court for a re-examination of the January 30, 1971 decision. In the main, the respondents questioned the review made by this Court of the determination of facts reached by the Court of Industrial Relations and the consequent revision of the said findings of fact. The arguments of then respondent Companies centered on their objection that the Court erred in finding them guilty of unfair labor practice.

In a resolution dated March 10, 1977 (76 SCRA 50), this Court found no sufficient or compelling reasons to depart from the judgment embodied in the decision of January 30, 1971, save for the pronouncement on backwages which we fixed at "the total equivalent of three (3) years without qualification or deduction, as applicable to and fully justified in the case at bar." The petitioners' motion for reconsideration was denied.

Thereafter, petitioner Companies filed on March 16, 1977 a "Motion for Clarification" of a portion of the March 10, 1977 resolution, asking whether or not the payment of the three (3) years backwages shall be at the pay rates as of June 2, 1958, (the date of the act of discrimination or discharge of the Union members) or the current pay rates for positions similar or comparable to those previously held by them.

In line with our ruling in Davao Free Workers Front vs. Court of Industrial Relations (67 SCRA 418) we held, in a resolution dated May 5, 1977, that "the computation of the said backwages is at the rate that the petitioners entitled thereto were actually receiving and

being paid at the time of dismissal and strike without deduction and qualification," i.e., June 2, 1958. We declared the resolution final and immediately executory.

Pursuant to the court's resolution of May 5, 1977, the petitioners paid in full the total amount of three (3) years backwages awarded to the dismissed employees except four of them, namely: Florencio Ibarra, Pacifico Ner, Blas Ventura and Jose Castillon, who had reached the retirement age while the case was pending before us.

Because of the petitioner Companies' refusal to reinstate the aforementioned union members and their alleged sham reinstatement of others, the Unions sued the Companies for contempt before respondent NLRC. After hearing the parties, the respondent NLRC issued a resolution, dated July 28, 1978 finding petitioner Companies guilty of contempt and ordered them through their respective presidents, to pay a fine of Five Thousand Pesos (P5,000.00) each. A petition for certiorari was filed with us, docketed as G.R. No. L-49071, questioning the aforesaid resolution of the NLRC.

Petitioner Companies alleged that the respondent Commission erred in ordering the petitioners to pay the four (4) Union members an amount equal to their daily salaries beginning May 16, 1977, until they are actually reinstated, in utter disregard of the fact that they had been retired upon reaching the age of sixty (60) years in 1963, 1970, 1974 and 1977, respectively. Likewise, they alleged that the Commission erred in arbitrarily ordering the petitioners to pay all reinstated employees differential salaries "by way of salary rate adjustments" on the basis of "the actual pay rates of the respondent companies' other employees with comparable seniority" because this is an unwarranted deviation from the final judgment of this Court in G.R. No. L-25291, March 10, 1977. Finally, they assailed the order of contempt as well as the fine imposed on them.

On April 17, 1985, this Court rendered a decision affirming the assailed resolution of the respondent NLRC, save, however, the pronouncement finding petitioner Companies guilty of contempt (135 SCRA 697).

After the aforementioned decision became final, the private respondents filed with the execution arm of the respondent NLRC a "Motion for Computation of Judgment," dated June 21, 1985.

In his Order dated July 24, 1985, the respondent Labor Arbiter directed the Chief, Research and Information Division, NLRC, to designate the Socio-Economic Analyst "to compute the award in accordance with the decision" of this Court.

On September 3, 1985, Analysts Remedios P. Paz and Angelita P. Pancito of the Research and Information Division of the NLRC submitted their "Report of Examiner" indicating that the sums of money due to the thirty-four (34) members of the private respondents amounted to P1,415,437.56, representing their backwages, computed for a period of three (3) years, salary differentials, fringe benefits and retirement pay.

On January 17, 1986, the respondent Labor Arbiter of the Execution Arm issued the disputed order which computed the benefits under the decision of this Court in the aggregate amount of P2,348,334.13.

On January 28, 1986, the petitioners filed their motion for reconsideration of the order now subject of this present review.

On January 29, 1986, private respondents filed their motion to dismiss, alleging that the petitioners' motion for reconsideration was filed beyond the ten-day period provided in Article 223 of the Labor Code for appeal.

Thus, treating the petitioners' motion for reconsideration as an appeal, the respondent Commission issued its disputed resolution dismissing the petitioners' motion filed on January 28, 1986 on the ground that the order appealed from had already become final, a day before, on January 27, 1986, ten (10) calendar days after the receipt by the petitioners of the order dated January 17, 1986.

Alleging grave abuse of discretion and/or abuse of discretion, the petitioners instituted the present petition for certiorari.

The petitioners submit the following assignment of errors:

"1. The respondent Commission erred in treating petitioners' Motion for Reconsideration of its resolution dated April 7, 1986 as an appeal under Article 223 of the Labor Code;

"2. he respondent Labor Arbiter erred in:

"a. Computing the backwages of the four (4) retirees, Florencio Ibarra, Pacifico Ner, Blas Ventura and Jose Castillon for eight (8) years from May 16, 1977 to May 13, 1985, instead of limiting said backwages to three (3) years without deduction or qualification;

"b. Computing the retirement benefits of the four retirees from the dates of their respective employment up to May 13, 1985;

"c. Computing the fringe benefits of the nine strikers who reported back to work in May, 1977 and continued working in the total sum of P189,176.74;

"d. Computing the vacation leave and service award differentials of some members of the respondent Unions;

"e. warding salary and fringe benefit differentials and retirement benefits up to May, 1985 to the strikers who reported back to work in May, 1977 but had stopped soon thereafter;

"f. warding retirement benefits to Mariano Subong, Domingo Boco and Narciso Dano who had not reported back to work at any time." (pp. 179-180, Rollo)

Article 223 of the Labor Code provides:

"Decisions awards or orders of the Labor Arbiter or compulsory arbitrators are final and executory unless appealed to the

> Commission by any or both parties within ten (10) days from receipt of such awards, orders or decisions.

The petitioners assail the application of the aforequoted provision of the Labor Code to its motion for reconsideration which the respondent Commission treated as an appeal. We find no error in the Commission's doing so.

For purposes of determining its timeliness, a motion for reconsideration may properly be treated as an appeal. As a step to allow an inferior court to correct itself before review by a higher court, a motion for reconsideration must necessarily be filed within the period to appeal. When filed beyond such period, the motion for reconsideration ipso facto forecloses the right to appeal (Camacho vs. Court of Appeals, 76 SCRA 531). Thus, in the case at bar, a motion for reconsideration and an appeal from a decision, award or order of the Labor Arbiter must be filed within ten (10) days from receipt of such decision, award or order, pursuant to the Labor Code. The petitioners' motion for reconsideration was filed a day late.

The circumstances of the case, however, do not warrant the outright dismissal of the petitioner's motion for reconsideration as was its fate before the respondent NLRC (American Home Insurance Co. vs. Court of Appeals, 109 SCRA 180). The merits of the case require the present review on grounds of substantial justice.

The first issue raised by the petitioners against the respondent Labor Arbiter's order, dated January 17, 1986, is the alleged incompatibility of the Labor Arbiter's computation of backwages of the retirees Florencio Ibarra, Pacifico Ner, Blas Ventura and Jose Castillon with this Court's decision in G.R. No. L-49071, expressly limiting the amount of backwages to an equivalent of three (3) years pay without qualification or deduction.

The respondents, however, point out that the dispositive portion of said decision merely provides an affirmation of the respondent Commission's Resolution dated July 28, 1978 without mention of the three-year limitation on backwages as follows:

> "WHEREFORE, respondents Insular Life Assurance Co., Ltd. and FGU Insurance Group are also hereby ordered to pay:
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> > "(a) Union members Florencio Ibarra, Pacifico Ner, Blas Ventura, and Jose Castillon, an amount equal to their daily salaries beginning May 16, 1977 until they are actually reinstated; (p. 65, Rollo).
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> x x x

The respondents argue that the court's statement on the three-year limitation on backwages was merely an obiter over which the dispositive must prevail.

Attention must be drawn to the issues to which G.R. No. L-49071 addresses itself. The case arose from petitioner Companies' initial refusal to reinstate Union members Florencio Ibarra, Pacifico Ner, Blas Ventura and Jose Castillon who have already reached retirement age. The petitioners allege that the respondent Commission erred in ordering them to pay the four Union members their backwages "in utter disregard of the fact that the latter had been retired upon reaching the age of sixty (60) years in 1963, 1970, 1974 and 1977, respectively." Stated otherwise, it is alleged that the Commission erred in awarding backwages to respondents who are not, in the first place, entitled to reinstatement. The respondent Unions aver: "In effect, what petitioners would have respondent Commission do is to materially alter the Honorable Supreme Court's longstanding, final judgment by excluding from the benefit of its reinstatement order the four (4) mentioned union members whom petitioners claim had already been retired. This of course, respondent Commission is not authorized to do."

The amount of backwages to which the respondent employees are entitled was settled by this Court in G.R. No. L-25291. In our resolution dated March 10, 1977, we held:

> "We are also constrained to reassess the ruling in our decision of January 30, 1971 to the effect that the strikers must receive backwages from the date of the act of discrimination, that is, from the date of their discharge or their offer to return to work

> up to the date of their actual reinstatement, deducting therefrom whatever they have earned pending readmission.
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> "Considering all the circumstances at bar, the Court considers the fixing and limitation of the backwages award to their total equivalent from three years without qualification and deduction as applicable to and justified in the case at bar."

Nevertheless, respondent Commission, in its resolution dated July 28, 1978, awarded daily salaries from May 16, 1977 until April 17, 1985, or a period of eight (8) years. The respondent Commission gravely erred in doing so.

The law of the case has been established in G.R. No. L-25291. The backwages to which all reinstated employees are entitled has been set to the equivalent for a period of three (3) years of the rate of pay at the time of their dismissal. This is in accord with the doctrine laid down by the trail-blazing Mercury Drug vs. Court of Industrial Relations (56 SCRA 694) case which to this day remains the rule in cases of the same or similar circumstances (Lepanto Consolidated Mining Co. vs. Encarnacion, 136 SCRA 258). The formula calls for fixing the award of backwages without qualification and deduction to three (3) years, subject to deduction where there are mitigating circumstances in favor of the employer but subject to increase by way of exemplary damages where there are aggravating circumstances. With the petitioners having been absolved of the contempt charges against them, no aggravating circumstances would warrant an increased award of backwages.

Anent the respondent Arbiter's award of leave benefits, the decree on backwages is understood to be inclusive of such benefits. The grant of three years backwages without qualification and deduction by the court necessarily takes into consideration holidays, vacation leaves and service incentive leaves, paying for all working days regardless of whether or not the same fall on holidays or employees' leave days. Having already paid these benefits, petitioners cannot be burdened to pay the same again. With regard to the award of allowances by respondent Labor Arbiter, we held in Soriano vs. National Labor Relations Commission, et al. (G.R. No. 75510, October 27, 1987) that "the salary base properly used in computing the separation pay and

backwages due to petitioner should include not just the basic salary but also the regular allowances that petitioner had been receiving (See Santos vs. National Labor Relations Commission, G.R. No. 76721, September 21, 1987)." Thus, the award of backwages in the case at bar is, likewise, deemed to cover the allowances claimed by respondents.

As to salary differentials, we have already made clear that the rate at which the three-year backwages shall be computed "at the rate that the petitioners are entitled thereto were actually receiving and being paid at the time of dismissal and strike, . . ., i.e., June 2, 1958." To award salary differentials would be to deviate from our ruling in G.R. No. L-25291 aforequoted and would, in effect, be granting backwages at the current pay rates for positions similar or comparable to those previously held by the respondents which we did not, in the first place allow. It is a settled rule that upon reinstatement, illegally dismissed employees are to be paid their backwages without deduction and qualification as to any wage increases or other benefits that may have been received by their co-owners who were not dismissed or did not go on strike (Durabuilt Recapping Plant & Co., Inc. vs. National Labor Relations Commission, G.R. No. 76746, July 27, 1987; Insular Life Assurance Co., Ltd., Employees Association-NATU vs. Insular Life Assurance Co., Ltd., 77 SCRA 5, citing Davao Free Workers Front vs. Court of Industrial Relations, supra). We do not depart from such established policy.

Coming now to the issue of retirement pay, the petitioners question the award of retirement benefits from the date of their respective employments up to May 13, 1985 (the date G.R. No. L-49071 was promulgated) to: (1) the four retirees Florencio Ibarra, Pacifico Ner, Blas Ventura and Jose Castillon; (2) the strikers who reported back to work in May 1977 but stopped working soon thereafter; and (3) to Mariano Subong, Domingo Boco and Narciso Dano who had not reported back to work at any time. It is argued that retirement benefits to be awarded respondent employees should span only up to the date when they reached their sixtieth (60^{th}) birthday in accordance with the companies' retirement policies.

At the outset, it must be noted that the original decision in G.R. No. L-25291 provides no more than the grant of backwages to the

petitioners' dismissed workers. No salary differentials, fringe benefits and retirement benefits were decreed by the court to warrant the respondent Arbiter's award thereof on execution.

Fundamental is the rule that execution must conform to that ordained or decreed in the dispositive part of the decision (Laingo vs. Camilo, 130 SCRA 144). An order of execution which varies the tenor of the judgment or exceeds the terms thereof is a nullity (Gamboa's Inc. vs. Court of Appeals, 72 SCRA 131; see Villoria vs. Piccio, 95 Phil. 802). The Labor Arbiter's order is fatally infirm to that extent.

Nevertheless, we go on to discuss the matter on retirement benefits claimed by respondent employees to avoid further litigation between the parties on the matter which may further delay the full and final disposition of the case (National Housing Authority vs. Court of Appeals, 121 SCRA 777).

Paragraph (a), Section 14, Rule 1, Book VI provides:

> "Section 14. Retirement benefits. — (a) An employee who is retired pursuant to a bona fide retirement plan or in accordance with the applicable individual or collective agreement or established employer policy shall be entitled to all the retirement benefits provided therein or to termination pay equivalent at least to one-half month salary for every year of service, whichever is higher."

An employee's years of service, therefore, are determinative of the extent of retirement benefits due him. The respondent retirees, Ibarra, Ner, Ventura and Castillon capitalize on this provision of law alleging that because of the petitioners' failure to reinstate them, upon order of the court in G.R. No.

L-25291 on March 10, 1977, they were unable to be retired, their retirement being possible only on May 13, 1985. Thus, computation of their retirement benefits should include the period during which they were deprived of their right to retire.

This cannot be allowed. The respondent employees are covered by the petitioner Companies' retirement plan which prevails as the law in

their cases. The plan grants retirement benefits to employees upon reaching the age of sixty (60). Beyond such age, they cease to be covered by the petitioners' retirement policy regardless of whether or not they continue in the companies' employ. Consequently, the computation of benefits accruing under the plan cannot go beyond the stipulated date of retirement. Thus, in the case at bar, respondents would have been retired upon reaching the age of sixty (60), regardless of whether or not they had been immediately reinstated. The respondents' tardy reinstatement could not have delayed the arrival of their compulsory date of retirement under the policy as to grant them additional benefits beyond such date. Only the application and payment of benefits have been delayed. Upon their reinstatement, they could then apply for retirement benefits already due them in accordance with the Companies' policies. As the respondents aver, their employment is deemed continuous or uninterrupted by their illegal dismissal. By their own arguments, the respondents' retirement cannot be deemed to have been postponed by their dismissal and for purposes of computing retirement benefits, years of service shall be understood to be the period extending from the employee's date of hiring to the compulsory date of retirement which, in this case, is the date of the employee's sixtieth (60th) birthday. This period cannot be extended. The same rule applies to all other retirable employees.

The petitioners assail the award of retirement benefits to several employees who had reported back to work in May, 1977 (upon finality of the order of this Court in G.R. No. L-25291) but had stopped working thereafter. We reiterate the applicability of the aforementioned rule on computation of retirement benefits based on the employee's years of service. All those who, before their final date of termination have reached the age of sixty (60) shall be entitled to retirement benefits from date of hiring to the date of their sixtieth birth anniversary. Those who have left the petitioners' service before acquiring the necessary credits for retirement are, obviously, not entitled thereto.

As regards those who never reported back to work, they shall be entitled to retirement benefits if they had reached their sixtieth (60th) birthday before May 5, 1977 (the date of finality of our decision in

G.R. No. L-25291 ordering their reinstatement with backwages). Otherwise, they cannot be awarded retirement benefits.

Finally, as to the service award differentials, claimed by some respondent union members, the company policy shall, likewise prevail, the same being based on the employment contracts or collective bargaining agreements between the parties. As the petitioners had explained, pursuant to their policies on the matter, the service award differential is given at the end of the year to an employee who has completed years of service divisible by five (5). Thus, employees who, at the time of their separation have completed years of service divisible by five from the time of their reinstatement in May, 1977 shall be entitled to such differential. Others without said years of service obviously do not qualify to receive this incentive.

WHEREFORE, the Petition is hereby **GRANTED**. The Resolutions of the National Labor Relations Commission dated April 9, 1986 and July 28, 1978, insofar as the latter ordered the payment of backwages and salary differentials to respondents, as well as the challenged order of Labor Arbiter Antonio Tria Tirona are **SET ASIDE**.

The petitioners are ordered to pay respondents Florencio Ibarra, Pacifico Ner, Blas Ventura and Jose Castillon backwages fixed to the total equivalent of three (3) years at the rate of pay at the time of their dismissal without deduction or qualification as to any wage increases or other benefits that may have been received by their co-workers who were not dismissed or did not go on strike. The awards of allowances, leave benefits, and salary differentials are hereby **SET ASIDE**. The award of retirement benefits and service award differentials shall be made in accordance with the employer-employee agreements on the matter pursuant to our pronouncements herein.

SO ORDERED.

Fernan, *J., (Chairman)*, Feliciano, Bidin and Cortes, *JJ.*, concur.