SUPREME COURT
FIRST DIVISION

MARANAW HOTEL RESORT CORPORATION (CENTURY PARK SHERATON MANILA),
***Petitioner*,**

-versus-

G.R. No. 110027
November 16, 1994

NATIONAL LABOR RELATIONS COMMISSION and GINA G. CASTRO,
***Respondents*.**
x----------x

D E C I S I O N

DAVIDE, JR., *J.*:

This Special Civil Action of *Certiorari* raises the issue of whether the National Labor Relations Commission (NLRC) acted with grave abuse of discretion in ordering the payroll reinstatement of an employee despite its resolution reversing the decision of the Labor Arbiter and declaring that there was no illegal dismissal.

The factual and procedural antecedents in this case are in the main not disputed.

On 16 June 1990, private respondent Gina G. Castro was hired on a probationary basis for six months as a guest relations officer of the Century Park Sheraton Hotel, a five-star hotel located at Malate, Manila, owned by the petitioner.[1] On 10 November 1990, she was dismissed on the ground of failure to meet the standards set forth in her probationary employment contract.[2] She then filed on 13 November 1990 with the Arbitration Branch of the National Capital Region of the NLRC a complaint for illegal dismissal with reinstatement, back wages, and damages against the hotel and its former general manager, Peter Grieder.[3] The case was docketed as NLRC-NCR Case No. 00-11-06059-90.

On 23 December 1991, the Labor Arbiter rendered a Decision[4] in favor of the private respondent. The dispositive portion thereof reads as follows:

> "WHEREFORE, premises considered, judgment is hereby rendered as follows:
>
> 1. Declaring the dismissal of complainant Gina G. Castro by respondents to have been illegally effected;
>
> 2. Ordering respondents to immediately reinstate complainant to her former position or substantially equivalent position without loss of seniority rights including the payment of backwages in the amount of Eighty-Eight Thousand Six Hundred Twenty Pesos (P88,620.00);
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> 3. Respondents are further ordered to pay the amount of Two Thousand Eight Hundred Pesos (P2,800.00) for unpaid 13th month pay and Nine Thousand One Hundred Forty-Two Pesos (P9,142.00) as ten (10%) per cent attorney's fees, which is equivalent to ten (10%) per cent of the awards herein; and
>
> 4. As to the claims for damages, the same is hereby ordered dismissed for lack of merit.
>
> SO ORDERED."[5]

The petitioner received a copy of the decision on 28 January 1992. On 7 February 1992, within the 10-day reglementary period, it filed an appeal[6] to the NLRC alleging therein that the Labor Arbiter committed abuse of discretion and serious error in his findings of fact and conclusions of law. It also claimed that the Labor Arbiter erred in ruling that the monthly salary of the private respondent is P7,000.00 when it should have been P3,403.00. Also, on 7 February 1992, it filed an Omnibus Motion For Extension Of Time To File Surety Bond And To Reduce Amount Of Bond[7] since by reason of the above error as to the monthly salary, the back salaries should only have been P40,836.00 and not P88,620.00 and the 13th-month pay should only have been P1,134.00 and not P2,800.00. Thus, the total amount due the private respondent should only be P41,970 and not P91,420.00. This motion was not resolved by the Labor Arbiter.

On 17 February 1992, the private respondent filed a motion for the execution of the Decision[8] on the ground that the petitioner did not file the memorandum of appeal and appeal bond and that the order of reinstatement was immediately executory. This motion was likewise not resolved.

On 14 July 1992, the petitioner filed a surety bond in the amount of P100,562.00[9] to answer for the monetary award based on the erroneous computation by the Labor Arbiter.[10]

In its resolution of 25 March 1993,[11] the NLRC (Second Division) reversed the decision of the Labor Arbiter and dismissed the complaint for lack of merit. It held that there was no illegal dismissal but rather a failure of the private respondent to comply with the petitioner's standards for permanent employment. It then made the following observations:

> "It appears however that on March 13, 1992, complainant filed a Motion For Execution Pending Appeal which motion was inadvertently not acted upon.
>
> Article 223 of the Labor Code provides among others, as follows:

> 'In any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be executory, even pending appeal. The employee shall either be admitted back to work under the 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 a bond by the employer shall not stay the execution for reinstatement provided therein.' (Emphasis supplied).

In view of the aforequoted provision, complainant should be considered on payroll reinstatement, as of the date of the filing of the Motion For Execution up to the date of the promulgation of this Resolution and thus pay [sic] her salaries corresponding to that period based on P4,800.00 a month which was her salary at the time of her dismissal."

and ultimately decreed thus:

> "WHEREFORE, finding the appeal to be impressed with merit, the decision appealed from is hereby REVERSED and SET ASIDE and a new one entered dismissing the complaint for lack of merit.
>
> However, respondents are hereby ordered to pay complainant Gina C. Castro her salaries corresponding to the period March 13, 1992 up to the date of the promulgation of this Resolution computed at P4,800.00 per month.
>
> SO ORDERED."[12]

Its Motion for Partial Reconsideration[13] seeking to delete the portion of the decision ordering it to pay the private respondent the sum of P4,800.00 per month from 13 March 1992 up to 25 March 1993 having been denied by the NLRC for lack of merit,[14] the petitioner filed the instant case raising the sole issue of whether the NLRC gravely abused its discretion in decreeing the payroll reinstatement of

the private respondent and ordering the petitioner to pay the private respondent.

It maintains that the filing of the motion for execution pending appeal did not entitle the private respondent to payroll reinstatement because this is an option granted to the employer by Article 223 of the Labor Code and the operative act therefor is the exercise by the employer of such option upon the service upon it of the writ of execution for the reinstatement of the private respondent. In the instant case, the motion for execution was not acted upon and no writ of execution was issued. Hence, there was no occasion for the petitioner to exercise its option and the NLRC's order was, in effect, an order for the payment of salary to a party for the period during which she did not work, which is violative of the rule of "no work, no pay." Moreover, the order is inconsistent with the ruling that the private respondent was validly dismissed.

We required the respondents to comment on the petition.

In her Comment[15] filed on 14 September 1993, the private respondent side-steps the merits of the issue raised in the petition; instead, she assails the validity of the NLRC resolution and prays that the same be declared null and void because the petitioner's appeal to the NLRC was not perfected on time due to the petitioner's failure to put up the required surety bond within the 10-day reglementary period. She further asks that the case be remanded to the NLRC for the execution of the decision of the Labor Arbiter. The petitioner controverts these claims in its Reply.[16]

In its Manifestation in Lieu of Comment[17] filed on 12 October 1993, the Office of the Solicitor General maintains that the assailed resolution of the NLRC is not in accordance with law. It prays that the NLRC be given a new period within which to file its comment, which we granted.

In its Comment[18] filed on 14 March 1994, the NLRC contends that its challenged resolution is correct.

It must be stressed that the private respondent did not challenge the resolution of the NLRC reversing the decision of the Labor Arbiter

and dismissing her complaint for illegal dismissal and it is only in this action that she questioned the timeliness of the petitioner's appeal to the NLRC. We have ruled that the issue of the timeliness of an appeal from the decision of the Labor Arbiter to the NLRC may not be raised for the first time before this Court.[19] The proper step that the private respondent should have taken was to file with the NLRC a motion to dismiss the appeal and to remand the records on the ground that the decision had become final and executory.[20]

The sole issue thus presented for our determination is whether or not the NLRC acted with grave abuse of discretion in holding that the private respondent should be considered as reinstated in the payroll from the filing of the motion for execution on 13 March 1992 until the promulgation of its resolution and, as a necessary consequence, ordering the petitioner to pay the private respondent her salaries corresponding to the period from 13 March 1992 up to 25 March 1993 when its resolution was promulgated.

We agree with the petitioner that the NLRC acted with grave abuse of discretion. The petition should thus be granted.

The resolution of the issue is found in the third paragraph of Article 223 of the Labor Code which reads:

> "In any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be executory, even pending appeal. The employee shall either be admitted back to work under the 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 a bond by the employer shall not stay the execution for reinstatement provided herein." (Emphasis supplied).

This paragraph was inserted by Section 12 of R.A. No. 6715, which took effect on 21 March 1989. In Aris (Phil.) Inc. vs. National Labor Relations Commission,[21] we sustained its constitutionality as an exercise of the police power of the state and further ruled that since appeal is a privilege of statutory origin, the law may validly prescribe

limitations or qualifications thereto or provide relief to the prevailing party in the event an appeal is interposed by the losing party.

It is clear from Article 223 that if execution pending appeal is granted, the employee concerned shall be admitted back to work under the terms and conditions prevailing prior to his dismissal or separation. However, instead of doing so, the employer is granted the option to merely reinstate the employee in the payroll. This would simply mean that although not admitted back to work, the employee would nevertheless be included in the payroll and entitled to receive her salary and other benefits as if she were in fact working.

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." (Emphasis supplied).

The second paragraph of Section 1, Rule VIII 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. 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." (Emphasis supplied).

In the instant case, the Labor Arbiter neither issued *motu proprio* a writ of execution to enforce the reinstatement aspect of his decision

nor acted on the private respondent's motion for execution filed on 13 March 1992. The NLRC did not also resolve it prior to the promulgation of its decision more than a year later or on 23 March 1993. The pleadings before us do not show that the private respondent had filed a motion to resolve the motion for execution or that she had, by any other means, called the attention of the NLRC to such motion for execution. The private respondent may therefore be deemed to have abandoned her motion for execution pending appeal.

In the absence then of an order for the issuance of a writ of execution[22] 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,[23] 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 a 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.[24]

This option is based on practical considerations. The employer may insist that the dismissal of the employee was for a just and valid cause and the latter's presence within its premises is intolerable by any standard; or such presence would be inimical to its interest or would demoralize the co-employees. Thus, while payroll reinstatement would in fact be unacceptable because it sanctions the payment of salaries to one not rendering service, it may still be the lesser evil compared to the intolerable presence in the workplace of an unwanted employee.

Since in the instant case no occasion arose for the petitioner to exercise its option under Article 223 of the Labor Code with respect to the reinstatement aspect of the decision of the Labor Arbiter, the NLRC acted with grave abuse of discretion when it ordered that the

private respondent should be considered reinstated in the payroll from the filing of her motion for execution until the promulgation of its resolution on 25 March 1993. As correctly contended by the Office of the Solicitor General, the NLRC "arrogated unto itself the right to choose whether to admit the dismissed employee back to work or to reinstate her in the payroll, which right properly pertains to the employer."[25] Worse, the NLRC resolution granted the unresolved motion for execution which had been effectively abandoned through the private respondent's inaction and which, for obvious reasons, could no longer be properly resolved in a resolution finally disposing the appeal. And since the resolution reversed the decision of the Labor Arbiter and dismissed for lack of merit the private respondent's complaint for illegal dismissal, the rationale for the order of payroll reinstatement is beyond us.

WHEREFORE, the petition is hereby **GRANTED**. The challenged resolution of the National Labor Relations Commission of 25 March 1993 in NLRC-NCR Case No. 00-11-06059-90 is modified by deleting the portion thereof ordering the petitioner to pay the private respondent her salaries corresponding to the period from 13 March 1992 up to the date of the promulgation of the resolution. The rest shall stand.

No pronouncement as to costs.

SO ORDERED.

Padilla, Bellosillo, Quiason and Kapunan, *JJ.*, concur.

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[1] Rollo, 53-54.
[2] Rollo, 22-24; 37-39.
[3] Annex "C" of Petition; Id., 50.
[4] Annex "D" of Petition; Id., 53-62.
[5] Id., 61-62.
[6] Annex "E" of Petition; Rollo, 64. The appeal contains the Memorandum on Appeal.
[7] Annex "B" of Reply; Id., 126.
[8] Annex "F" of Petition; Id., 82-83.
[9] Annexes "C" and "C-1" of Reply; Id., 129-131.
[10] Id., 122.

[11] Annex "A" of Petition; Rollo, 34-48.
[12] Id., 46-48.
[13] Annex "G" of Petition; Rollo, 85-88.
[14] Annex "B" of Petition; Id., 49.
[15] Id., 101-107.
[16] Rollo, 117-124.
[17] Id., 140-150.
[18] Id., 161-166.
[19] Arrastre Security Association-TUPAS vs. Ople, 127 SCRA 580 [1984]; Rada vs. NLRC, 205 SCRA 69 [1992].
[20] Diaz vs. Nora, 190 SCRA [1990].
[21] 200 SCRA 246 [1991].
[22] Under Section 2, Rule III of the Manual of Instructions for Sheriffs of the NLRC, the writ of execution must issue in the name of the Republic of the Philippines.
[23] Black's Law Dictionary, Fifth ed., 986.
[24] Section 2, Rule III, Manual of Instructions for Sheriffs of the NLRC; Section 9, Rule 39, Rules of Court, which may be applied suppletorily pursuant to Section 3, Rule I of the Manual.
[25] Rollo, 146.