SUPREME COURT
THIRD DIVISION

ERLINDA O. MEDINA, LOUELLA MARIE E. ANDRADA, NELMIE C. MANUEL, TEOFILO MAQUI, JR., ELPIDIO R. HIPOL, RICHARD CALDITO, NARCISO BANOEY, EDGARDO MALLARE, ELLIOT MALAGGAY and JOSEPH SOMERA, herein represented by DZWX WORKER'S UNION-ALU (TUCP),
***Petitioners*,**

-versus-

G.R. No. 99054-56
May 28, 1993

CONSOLIDATED BROADCASTING SYSTEM (CBS) — DZWX, ANDRES S. TAMAYO and NATIONAL LABOR RELATIONS COMMISSION,
***Respondents*.**
x----------x

D E C I S I O N

MELO, *J.*:

Eleven workers were illegally dismissed in 1984. In 1988, the Labor Arbiter ordered reinstatement and payment of three years'

backwages. In 1990, the workers received backwages corresponding to three years. But until now, they have not been reinstated and the employer utterly opposes any further claim for backwages on the ground that its liability cannot exceed three years' backwages. Briefly, this is the scenario of the case before us.

Petitioners assail the Resolution dated April 15, 1991 of the Third Division of the National Labor Relations Commission (NLRC, for short) in NLRC Case No. RAB-I-0188-84, NLRC Case No. RAB-I-0226-84 and LS Case No. 30-84-BC, dismissing their appeal for additional backwages (pp. 105-110, Rollo).

Petitioners are rank-and-file employees of Radio Station DZWX at Baguio City which is operated by the Consolidated Broadcasting System, a corporation engaged in the broadcast media industry (pp. 23-24, Rollo).

There is no dispute as to the aspect of illegal dismissal of petitioners, committed on August 31, 1984 after respondent Andres Tamayo, the Area Manager, issued notices of termination dated July 24, 1984 individually to herein petitioners (p. 31, Rollo).

The facts of the case are likewise not disputed.

On May 8, 1988, Labor Arbiter Iremarco Rimando rendered a decision declaring that herein petitioners were illegally dismissed and ordering private respondents to reinstate complainants with full backwages subject to this Court's policy of limiting recovery to three years. Respondents were also found guilty of unfair labor practice and were ordered to pay moral and exemplary damages; and 10% attorney's fees as well as salary differentials from 1981-1984 (pp. 62-63, Rollo).

Petitioners filed a motion for reconsideration insofar as the NLRC failed to declare that respondents were guilty of unfair labor practice and that petitioners are entitled to full backwages subject to the three-year limitation. On October 4, 1989 the NLRC (Third Division) granted the motion and reinstated payment of three (3) years' backwages and declared respondents guilty of unfair labor practice, thus: ". . . they interfered with, restrained or coerced the

complainants in the exercise of rights of self-organization, and (that) under the guise of retrenchment the respondents dismissed or discriminated against a member of the union who is about to give testimony under the Code" (pp. 100-B, Rollo.)

Thereafter, petitioners filed a Motion for Issuance of Writ of Execution on February 8, 1990, noting that instead of reinstating them to their work, they were offered assignments in Davao or Cebu (p. 95, Rollo) and that in view of the refusal of respondents to reinstate them, respondent company should pay them backwages from receipt of the NLRC Resolution dated March 20, 1989, until their actual reinstatement.

In the meantime, petitioners admitted in a Manifestation that they had received backwages in the amount of P481,731.65 representing three (3) years' backwages, 13th month pay, and other money claims plus 5% attorney's fees (p. 106, Rollo).

On August 3, 1990, the Labor Arbiter issued a Writ of Execution ordering respondents to reinstate complainants to their former positions, without loss of seniority rights; but denied complainants' claim for backwages under Republic Act No. 6715 from receipt of the Decision of the Commission dated March 20, 1989 "or additional backwages and benefits on top of three (3) years that they have already collected." (p. 3372, Records; p. 104, Rollo.)

Dissatisfied, complainants appealed to the NLRC, alleging that under Article 223 of the Labor Code, as amended by Republic Act 6715, they are entitled to salaries. The Commission, in its Resolution dated April 15, 1991, dismissed the appeal for lack of merit and ordered the records remanded for immediate implementation or execution of reinstatement. It ruled that strictly speaking, Article 223 does not apply since the case was originally decided by the Labor Arbiter on May 8, 1988 or before the enactment of Republic Act No. 6715.

Hence, the instant petition for certiorari, on a question of law, more particularly the interpretation and application of Paragraph 3, Article 223, of the Labor Code of the Philippines, as amended by Republic Act 6715.

Petitioners would have us rule on whether or not the refusal of the private respondent to reinstate them would make it liable to pay their salaries pursuant to Republic Act No. 6715 (p. 6, Rollo).

Article 223 of the Labor Code, as amended by Republic Act 6715, pertinently provides:

> 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 same 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 shall not stay the execution for reinstatement provided herein. (Emphasis supplied)

Petitioners allege that respondent employer failed to comply with the aforecited provision, by both refusing to admit them back to work and to reinstate them in the payroll (p. 14, Rollo). This being so, they contend that they should be paid salaries to be computed from the time Republic Act No. 6715 took effect, that is, on March 21, 1989, up to and until their actual reinstatement.

Said provision may be applied but only from the time Republic Act No. 6715 took effect on March 21, 1989. In other words, it cannot cover the period before March 21, 1989 during which petitioners remained jobless due to respondent company's failure to admit them back to work.

Petitioners construe the above paragraph to mean that the refusal of the employer to reinstate an employee as directed in an executory order of reinstatement would make it liable to pay the latter's salaries. This interpretation is correct. Under Article 223 of the Labor Code, as amended, an employer has two options in order for him to comply with an order of reinstatement, which is immediately executory, even pending appeal. Firstly, he can admit the dismissed employee back to work under the same terms and conditions prevailing prior to his dismissal or separation or to a substantially equivalent position if the former position is already filled up as we have ruled in Union of

Supervisors (RB) NATU vs. Sec. of Labor, 128 SCRA 442 [1984]; and Pedroso vs. Castro, 141 SCRA 252 [1986]. Secondly, he can reinstate the employee merely in the payroll. Failing to exercise any of the above options, the employer can be compelled under pain of contempt, to pay instead the salary of the employee. This interpretation is more in consonance with the constitutional protection to labor (Section 3, Art XIII, 1987 Constitution). The right of a person to his labor is deemed to be property within the meaning of the constitutional guaranty that no one shall be deprived of life, liberty, and property without dues process of law. Therefore, he should be protected against any arbitrary and unjust deprivation of his job (Bondoc vs. People's Bank and Trust Co., Inc., 103 SCRA 599 [1981]). The employee should not be left without any remedy in case the employer unreasonably delays reinstatement. Therefore, we hold that the unjustified refusal of the employer to reinstate an illegally dismissed employee entitled the employee to payment of his salaries, effective from the date the employer failed to reinstate despite an executory writ of execution served upon him. Such ruling is in accord with the mandate of the new law awarding full backwages until actual reinstatement (Article 279 of the Labor Code as amended.).

Although the instant petition is instituted on a question of law, we are nevertheless not precluded from passing upon any question of fact if only to effect a final and complete resolution of the case before us. A careful analysis of the records of the case reveals that there was no sincere desire on the part of respondents to reinstate petitioners. In a letter dated July 7, 1989, respondents, instead of reinstating petitioners as ordered by the Labor Arbiter and later by the NLRC on March 20, 1989, offered petitioners assignments in other radio stations, particularly in Davao and Cebu (p. 99, Rollo). On September 25, 1990, Sheriff Rodolfo Quintua served the writ of execution on the respondent company but the latter did not comply.

In view of the manifest bad faith and obstinacy on the part of private respondents to reinstate petitioners despite a final and executory order of reinstatement, equity demands that we award additional backwages equivalent to three (3) years' without qualification and deduction. The Solicitor General, citing Mariners Polytechnic School vs. Leogardo, Jr. (171 SCRA 597 [1989]) and Tan Jr. vs. NLRC (183 SCRA 651 [1990]), comments that the ruling of the Labor Arbiter, as

affirmed by the NLRC, limiting backwages recoverable to three (3) years only is supported by jurisprudence. Apparently, there is no point of conflict with the three-year limitation on backwages, otherwise known as the Mercury Drug Rule, a doctrine laid down in Mercury Drug vs. Court of Industrial Relations (56 SCRA 694 [1974]). The three years' backwages, awarded by the Labor Arbiter and affirmed by the NLRC, and already received by herein petitioners, covers the interim period or during the pendency of the labor case. It is intended to restore to some extent income of the employee that was lost by reason of the illegal dismissal. On the other hand, the three years' backwages that this Court now grants is intended to indemnify the dismissed employee for income which could have been earned had he been immediately reinstated as mandated by law. In other words, the backwages that the Labor Arbiter decreed refer to backwages, in its ordinary sense for illegal dismissal; whereas the backwages that we are granting are backwages as a result of the unjustified failure to reinstate. This differentiation springs from the principle that reinstatement and backwages for illegal dismissal are two forms of relief distinct and separate from one another as laid down in the case of Santos vs. NLRC (154 SCRA 166 [1987]). Moreover, even if we ignore such distinction and consider backwages in its entirety; thus concluding that the total amount of backwages covers already a period of six (6) years, it is worth noting that the Mercury Drug Rule is not a hard and fast rule. It admits of certain exceptions. Where there have been serious unfair labor practices committed by the employer in laying off the workers, obstinacy or deceit in trying to defeat the judgment for reinstatement and consequently prolonged non-satisfaction of the judgment for reinstatement and backwages, this Court imposed as an element of punitive damages against respondent by way of example and for the public good, the equivalent of five years' backwages without deduction or qualification or even more (Davao Free Workers Front vs. Court of Industrial Relations, 60 SCRA 408 [1974]). Also in New Manila Candy Workers Union (Naconwa-Paflu) vs. Court of Industrial Relations, 86 SCRA 37 [1978]), we awarded backwages for five years on account of the employer's unfair labor practices and the long number of years during which the workers have been deprived of their work and their wages. In Panday vs. NLRC, (208 SCRA 122 [1992]), we fixed the backwages award at five (5) years as an

exception to the standard net award of three years' backwages, with the aim of punishing the employer for his bad faith.

Private respondents, in their Memorandum dated February 5, 1992 interpose the defense that the instant case has become moot and academic in view of the agreement of the parties for the payment of separation pay instead of reinstatement (p. 184, Rollo). They submitted a Manifestation allegedly executed on December 14, 1991 and signed by the parties and their respective counsel. This Manifestation provides, among other things:

2. That the respondent offered to reinstate the complainants in its station in Cebu or Davao but the complainants rejected the offer whereupon negotiations were started for the payment of separation pay in lieu of reinstatement as authorized by law and jurisprudence;

3. That respondent computed separation pay of each and all of the complainants on the basis of their last monthly pay/salary scale, to which the complainants responded as follows:

   Sir:

   I have received copy of the computation of the company of the intended separation day of my clients based on their rate during their dismissal. It is our position that it should be based on the latest rate and the number of years shall include the period that the case is pending. We may accept the check but subject to recomputation.

4. That in any case the complainants are entitled to the separation pay offered by the respondent;

5. That accordingly the parties have agreed that the respondent will tender, as they hereby tender, and the complainants will accept, as they hereby accept, the respondent's checks as follows:

Louella Marie Andrada — P11,015.30

Narciso Banoey	—	2,730.00
Richard Caldito	—	11,990.00
Elpidio Hipol	—	12,155.00
Elliot Malaggay	—	12,870.00
Edgardo Mallare	—	12,595.00
Nelmie Manuel	—	17,820.00
Erlinda Medina	—	4,700.00
Teofilo Maqui, Jr.	—	2,730.00
Joseph Somera	—	2,730.00

6. That the foregoing is without prejudice to recomputation, on the basis of existing law and jurisprudence or on the basis of negotiations between the parties;

7. That the complainants additionally withdraw as they hereby withdraw their complaints lodged with the Office of the City Prosecutor, Baguio City, against officers of the respondent for unfair labor practice arising from the subject matter litigated in the present case;

8. That to effectuate the foregoing the complainants will execute and file with the Office of the City Prosecutor the corresponding affidavits of desistance;

WHEREFORE, premises considered, the corresponding checks will be delivered to this Office for eventual delivery to the complainants without prejudice to further proceedings insofar as the possible recomputation of the separation pay is concerned.

Baguio City, Philippines, December 14, 1991. (pp. 186-188, Rollo)

Without passing upon the veracity of said Manifestation, the fact that the petitioners entered into an agreement for the payment of separation pay in lieu of reinstatement does not preclude them from demanding the benefits which they are entitled to under the law. Such agreement is not binding since it was not made with the assistance of the Labor Arbiter; neither was it approved by him. This, aside from the fact that in the instant petition, herein petitioners are reiterating

their demand for immediate reinstatement. As may be deduced from the above agreement, the purpose of private respondents in offering to pay separation pay was clearly for petitioners to withdraw their complaints for unfair labor practice against private respondents lodged with the Office of the City Prosecutor of Baguio City. In Lopez Sugar Corp. vs. FFW (189 SCRA 179 [1990]), we ruled that quitclaims executed by laborers are commonly frowned upon as contrary to public policy and ineffective to bar claims for the full measure of the worker's legal rights.

WHEREFORE, the petition is hereby **GRANTED** and respondent company is hereby ordered to pay petitioners their corresponding backwages for a period of three (3) years, without qualification and deduction. In addition, private respondents are hereby ordered to immediately reinstate petitioners. No special pronouncement is made as to costs.

SO ORDERED.

Feliciano, Bidin, Davide, Jr. and Romero, *JJ.*, concur.
