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**SUPREME COURT  
FIRST DIVISION**

**ROSENDO PIÑERO, DUMAGUETE  
CATHEDRAL COLLEGE FACULTY AND  
STAFF ASSOCIATION (DUCACOFSA)  
and NATIONAL FEDERATION OF  
TEACHERS AND EMPLOYEES UNION  
(NAFTEU),**

***Petitioners,***

***-versus-***

**G.R. No. 149610  
August 20, 2004**

**NATIONAL LABOR RELATIONS  
COMMISSION, FOURTH DIVISION,  
CEBU CITY and DUMAGUETE  
CATHEDRAL COLLEGE, INC.,**

***Respondents.***

X-----X

**DECISION**

**YNARES-SANTIAGO, J.:**

Challenged in this Petition for Review on Certiorari is the May 25, 2001 Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. SP No. 52084 which affirmed the Resolution<sup>[2]</sup> of the National Labor Relations Commission (NLRC) in NLRC Case No. V-0002-95 sustaining the Labor Arbiter's Decision<sup>[3]</sup> in RAB-VII-011-0315-91-D. The assailed

decision declared as illegal the strike staged by Dumaguete Cathedral College Faculty and Staff Association-National Federation of Teachers and Employees Union (DUCACOFSA-NAFTEU), and ordered the dismissal of the officers thereof.

Private respondent Dumaguete Cathedral College, Inc.,<sup>[4]</sup> an educational institution, is the employer of the faculty and staff members comprising the labor union DUCACOFSA-NAFTEU. On December 19, 1986, DUCACOFSA (then affiliated with the National Alliance of Teachers and Allied Workers – NATAW) and private respondent entered into a Collective Bargaining Agreement (CBA) effective for 3 years.<sup>[5]</sup> Upon the expiration of their CBA in 1989, the parties failed to conclude another CBA which led DUCACOFSA (now affiliated with NAFTEU) to file a notice of strike with the Department of Labor and Employment (DOLE) on the ground of refusal to bargain.<sup>[6]</sup>

On November 4, 1991, DUCACOFSA-NAFTEU conducted a strike in the premises of private respondent without submitting to the DOLE the required results of the strike vote obtained from the members of the union.

Consequently, on November 21, 1991, private respondent filed with the DOLE a complaint to declare the strike illegal and to dismiss the following officers of DUCACOFSA-NAFTEU, to wit:

- 1) Rosendo U. Piñero – President
- 2) Monica A. Sison – Vice President for Elementary
- 3) Godofreda D. Flores – Vice President for High School
- 4) Eugenio O. Magos – Vice President for College
- 5) Carmen P. Baylon – Secretary
- 6) Teresita Baylosis – Treasurer
- 7) Consolacion C. Unabia – Liaison Officer
- 8) Pablo T. Tuble – Member Executive Board
- 9) Hermenia C. Nazareno – Member Executive Board
- 10) Magdeline P. Borromeo - Member Executive Board<sup>[7]</sup>

On October 28, 1994, the Labor Arbiter rendered a decision as follows:

WHEREFORE, in light of the foregoing, judgment is hereby rendered declaring the strike illegal and declaring the respondent union officers to have lost their employment status effective on the date of this decision.

All other claims are dismissed for lack of legal and factual basis.

SO ORDERED.<sup>[8]</sup>

Unfazed, the union officers appealed<sup>[9]</sup> to the NLRC.

Meanwhile, on November 29, 1991, the said officers returned to work by virtue of a Memorandum of Agreement entered into by DUCACOFSA-NAFTEU and private respondent allowing them to resume service without prejudice to the outcome of the instant case then pending appeal with the NLRC.<sup>[10]</sup>

On December 19, 1995, the NLRC affirmed the decision of the Labor Arbiter.<sup>[11]</sup> In addition to the failure to comply with strike vote requirements, the NLRC ratiocinated that the strike was illegal because DUCACOFSA-NAFTEU, not being a legitimate labor organization, has no personality to hold a strike. The union officers filed a Motion for Reconsideration but the same was denied.<sup>[12]</sup>

Petitioner Rosendo U. Piñero filed with this Court a Petition for Certiorari<sup>[13]</sup> which was referred to the Court of Appeals<sup>[14]</sup> pursuant to the ruling in St. Martin's Funeral Home vs. NLRC.<sup>[15]</sup>

On March 25, 2001, the Court of Appeals affirmed the decision of the NLRC, thus –

WHEREFORE, the instant petition is DISMISSED and the Resolutions of the NLRC (4th Division) promulgated on December 19, 1995 and February 16, 1996, respectively, in NLRC Case No. V-0002-95 are AFFIRMED.

SO ORDERED.<sup>[16]</sup>

On August 29, 2001, Piñero's Motion for Reconsideration was denied.<sup>[17]</sup> Hence, the instant petition.

The issues to be resolved are: (1) Was the strike staged by DUCACOFSA- NAFTEU illegal? (2) If yes, should Piñero be dismissed?

The NLRC declared the strike illegal on the grounds that DUCACOFSA-NAFTEU is legally non-existent and therefore has no personality to hold a strike; and that the strike was conducted without the requisite strike vote.

Anent the first ground, we find that DUCACOFSA-NAFTEU's status as a legitimate labor organization has been settled in a final and executory decision of the NLRC in NLRC Case No. V-0432-93,<sup>[18]</sup> which affirmed the decision of the Labor Arbiter in NLRC Case No. RAB VII-02-0025-93-D,<sup>[19]</sup> finding private respondent guilty of unfair labor practice and recognizing DUCACOFSA-NAFTEU as an existing legitimate labor organization. Pertinent portions of the Labor Arbiter's findings which were adopted by the NLRC are as follows –

The record further shows that the herein Complainant Union or Association formally disaffiliated from National Alliance of Teachers and Allied Workers (NATAW) and at the same time affiliated itself with the National Federation of Teachers and Employees Union (NAFTEU) in its resolution dated April 8, 1991 marked as Exhibit "C". By reason of such affiliation NAFTEU, sent a formal notice Exh. "D", to the Department of Labor and Employment received by the DOLE Docket Section on March 24, 1992 informing the latter of additional local union affiliated with the Federation among which was DUCACOFSA. Said notice however, does not show that respondent DCCI [Dumaguete Cathedral College, Inc.] was furnished a copy. Other documents on record, Annex "1" x x x is a Certification dated September 13, 1991 issued by Bartolome C. Amoguis, certifying x x x that x x x DUCACOFSA, x x x is not a registered labor organization. Similar certification dated September 24, 1991 signed by Johnny P. Garcia of the Bureau of Labor Relations, also certified that based on records, the Dumaguete Cathedral College Faculty and Staff Association-

NATAW has not been reported as one of the affiliates of the x x x (NATAW). The same office of the Bureau of Labor Relations issued another certification, Annex “3”, dated September 23, 1991, certifying that based on records, the Dumaguete Cathedral College Faculty and Staff Association-NAFTEU has not been reported as one of the affiliates of x x x (NAFTEU).

By reason of the foregoing certification Annexes “1”, “2” and “3” respondent [Dumaguete Cathedral College, Inc.] alleges that complainant [union] does not legally exist hence, respondent cannot be held liable for Unfair Labor Practice.

We disagree.

x x x

The averment that complainant is not existing by reason of the certifications marked as Annexes “1”, “2” and “3” cannot be upheld for the reason that per resolution marked as Exh. “C” and the letter signed by Evelyn B. Quijano, Deputy Secretary-General marked as Exh. “D” which was duly received by the DOLE Docket Section on March 25, 1992 shows otherwise. We cannot also sustain the averment that the union was dissolved by reason of the resignation of some members for mere resignation of some members does not ipso facto dissolve a union.<sup>[20]</sup>

Under the doctrine of conclusiveness of judgment which is also known as “preclusion of issues” or “collateral estoppel,” issues actually and directly resolved in a former suit cannot again be raised in any future case between the same parties involving a different cause of action.<sup>[21]</sup> Accordingly, private respondent is now barred from challenging the status of DUCACOFSA-NAFTEU.

Anent the second ground, however, there is no doubt that the strike staged by DUCACOFSA-NAFTEU is illegal for non-compliance with the strike-vote requirements. The relevant provisions of Article 263 of the Labor Code read:

Article 263. x x x

(c) x x x the duly certified or recognized bargaining agent may file a notice of strike or the employer may file a notice of lockout with the Department at least 30 days before the intended date thereof. In cases of unfair labor practice, the period of notice shall be 15 days and in the absence of a duly certified or recognized bargaining agent, the notice of strike may be filed by any legitimate labor organization in behalf of its members. However, in case of dismissal from employment of union officers duly elected in accordance with the union constitution and by-laws, which may constitute union busting where the existence of the union is threatened, the 15-day cooling-off period shall not apply and the union may take action immediately.

x x x

(f) A decision to declare a strike must be approved by a majority of the total union membership in the bargaining unit concerned, obtained by secret ballot in meetings or referenda called for that purpose. A decision to declare a lockout must be approved by a majority of the board of directors of the corporation or association or of the partners in a partnership, obtained by secret ballot in a meeting called for the purpose. The decision shall be valid for the duration of the dispute based on substantially the same grounds considered when the strike or lockout vote was taken. The Department may, at its own initiative or upon the request of any affected party, supervise the conduct of the secret balloting. In every case, the union or the employer shall furnish the Department the results of the voting at least seven days before the intended strike or lock-out, subject to the cooling-off period herein provided.

Under the aforementioned provisions, the requisites for a valid strike are as follows: (a) a notice of strike filed with the DOLE thirty days before the intended date thereof or fifteen days in case of unfair labor practice; (b) strike vote approved by a majority of the total union membership in the bargaining unit concerned obtained by secret ballot in a meeting called for that purpose; (c) notice given to the

DOLE of the results of the voting at least seven days before the intended strike. These requirements are mandatory and failure of a union to comply therewith renders the strike illegal.<sup>[22]</sup>

Pursuant to Article 264 of the Labor Code, any union officer who knowingly participates in an illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status.

In the case at bar, DUCACOFSA-NAFTEU failed to prove that it obtained the required strike-vote among its members and that the results thereof were submitted to the DOLE. The strike was therefore correctly declared illegal, for non-compliance with the procedural requirements of Article 263 of the Labor Code, and Piñero properly dismissed from service.

The Court notes that petitioner Piñero turned 60 years old and retired on March 1, 1996<sup>[23]</sup> after 29 years<sup>[24]</sup> of service, rendering his dismissal from service moot and academic. However, in view of the propriety of his termination as a consequence of the illegal strike, he is no longer entitled to payment of retirement benefits because he lost his employment status effective as of the date of the decision of the Labor Arbiter – October 28, 1994.<sup>[25]</sup>

An employee who is dismissed for cause is generally not entitled to any financial assistance. Equity considerations, however, provide an exception. Equity has been defined as justice outside law, being ethical rather than jural and belonging to the sphere of morals than of law. It is grounded on the precepts of conscience and not on any sanction of positive law, for equity finds no room for application where there is law.<sup>[26]</sup>

Although meriting termination of employment, Piñero's infraction is not so reprehensible nor unscrupulous as to warrant complete disregard of his long years of service.<sup>[27]</sup> Moreover, he has no previous derogatory records. Weighed on the scales of justice, conscience and reason tip in favor of granting financial assistance to support him in the twilight of his life after long years of service.

Under the circumstances, social and compassionate justice dictate that petitioner Piñero be awarded financial assistance equivalent to one-half (1/2) month's pay for every year of service<sup>[28]</sup> computed from his date of employment up to October 28, 1994 when he was declared to have lost his employment status. Indeed, equities of this case should be accorded due weight because labor law determinations are not only *secundum rationem* but also *secundum caritatem*.<sup>[29]</sup>

**WHEREFORE**, in view of all the foregoing, the petition is Partially granted. The decision of the Court of Appeals in CA-G.R. SP No. 52084, affirming the resolution of the National Labor Relations Commission in NLRC Case No. V-0002-95 is **AFFIRMED** with **MODIFICATION**. As modified, Rosendo U. Piñero is awarded financial assistance equivalent to one-half (1/2) month's pay for every year of service computed from his date of employment up to October 28, 1994.

No pronouncement as to costs.

**SO ORDERED.**

**Davide, Jr., C.J., (Chairman), Quisumbing, Carpio, and Azcuna, JJ., concur.**

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[1] Penned by Associate Justice Ma. Alicia Austria-Martinez (now Associate Justice of the Supreme Court) and concurred in by Associate Justices Hilarion L. Aquino and Jose L. Sabio, Jr. (Rollo, p. 137).

[2] Rollo, p. 39.

[3] Rollo, p. 86.

[4] Now known as Colegio De Sta. Catalina De Alejandria.

[5] Rollo, p. 72.

[6] Rollo, p. 132.

[7] Rollo, p. 87.

[8] Rollo, p. 101.

[9] Appeal dated November 5, 1994.

[10] Rollo, pp. 225-226.

[11] The dispositive portion of the NLRC's Resolution states – "WHEREFORE, the decision of Labor Arbiter Jose G. Gutierrez, dated October 28, 1994, is hereby AFFIRMED. Consequently, the appeal of respondents is DISMISSED." (Rollo, p. 46).

[12] Resolution dated February 16, 1996 (Rollo, p. 60).

- [13] Filed on April 22, 1996 (CA Rollo, p. 4).
- [14] Resolution dated January 25, 1999, CA Rollo, p. 231.
- [15] G.R. No. 130866, 16 September 1998, 295 SCRA 494.
- [16] Rollo, p. 142.
- [17] Resolution dated August 26, 2001 (Rollo, p. 163).
- [18] Rollo, p. 218. The decision became final and executory on October 11, 1994 (Entry of Judgment, Rollo, p. 108).
- [19] Rollo, p. 211.
- [20] Rollo, pp. 219-222.
- [21] Celendro vs. Court of Appeals, G.R. No. 131099, 20 July 1999, 310 SCRA 835, 843-844.
- [22] Grand Boulevard Hotel vs. Genuine Labor Organization of Workers in Hotel, Restaurant and Allied Industries, G.R. No. 153664 and Grand Boulevard Hotel vs. Edna B. Dacanay, G.R. No. 153665, 18 July 2003, 406 SCRA 688, 709-710.
- [23] Rollo, p. 34.
- [24] Rollo, pp. 189-190.
- [25] Private respondent refused to pay his retirement benefits pending the final resolution of the instant case.
- [26] Aparente, Sr. vs. National Labor Relations Commission, G.R. No. 117652, 27 April 2000, 331 SCRA 82, 93.
- [27] Aparente, Sr. vs. National Labor Relations Commission, supra.
- [28] Salavarria vs. Letran College, G.R. No. 110396, 25 September 1998, 296 SCRA 184, 192; Aparente, Sr. vs. National Labor Relations Commission, supra.
- [29] Almira vs. B.F. Goodrich Philippines, G.R. No. L-34974, 25 July 1974, 58 SCRA 120, 131.