

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**PIZZA INN/CONSOLIDATED FOODS
CORPORATION,**

Petitioner,

-versus-

**G.R. No. 74531
June 28, 1988**

**NLRC, NLRC SHERIFF and FELICIDAD
FONTANILLA,**

Respondents.

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DECISION

PARAS, J.:

Before Us is a Petition questioning the ruling of the National Labor Relations Commission (NLRC for short) affirming the ruling of the Labor Arbiter in a case for illegal dismissal for unpaid wages, underpaid overtime pay and emergency living allowance, non-payment of legal holiday pay and premium pay for holidays and rest

days filed by private respondent Felicidad Fontanilla against petitioner. The Labor Arbiter directed the reinstatement of complainant Felicidad Fontanilla to her former or equivalent position with full back wages from date of dismissal on April 24, 1982 up to actual date of reinstatement without loss of seniority rights and privileges as she would receive had she not been dismissed, and to pay her unpaid wages from April 1 up to April 23, 1982 in the amount of P761.24.

Private respondent was employed by petitioner in its Quad Carpark Makati outlet on a probationary status with a monthly basic salary of P500.00. Before the expiration of the 6-month probationary period, Felicidad Fontanilla resigned. Claiming that she was forced to resign by the petitioner, the former filed a complaint against the latter.

Petitioner appealed from the decision of the Labor Arbiter favoring private respondent. Petitioner's appeal was dismissed by the NLRC for lack of merit in its resolution promulgated on May 17, 1983. Petitioner filed its Motion for Reconsideration, a motion which was not entertained by the NLRC in its resolution dated August 15, 1983, thru Labor Arbiter Pedro C. Ramos (Annex "B," p. 69, Rollo).

Petitioner came to Us by filing a petition for *certiorari* docketed as G.R. No. 65535. But before any responsive pleading was filed, petitioner withdrew said petition and instead filed a second motion for reconsideration with the NLRC which was likewise denied by the NLRC.

Petitioner filed a motion to elevate the case to the Commission en banc which likewise denied said motion for lack of merit in its resolution dated May 23, 1984.

Petitioner filed anew before Us a petition for *certiorari* with preliminary injunction docketed as G.R. No. 67619. In Our resolution dated June 25, 1984 We resolved to dismiss the petition for lack of merit. Petitioner filed a motion for reconsideration which was denied in Our resolution dated September 10, 1984, ordering entry of final judgment of Our denial. Again, petitioner filed its second motion for reconsideration which We resolved to deny and to expunge from the records of this case (G.R. No. 67619). The order of dismissal of the

petition for *certiorari* (In G.R. No. 67619) became final and executory on September 25, 1984 as per Entry of Judgment (Annex "A" p. 68, Rollo).

Due to the finality of the judgment in this case, the Labor Arbiter below issued a second alias Writ of Execution dated September 8, 1984 against petitioner wherein the amount involved (representing backwages of private respondent among others, from April 24, 1982 to September 30, 1984) amounted to P29,001.00 as per computation of the Socio-Economic Analyst of the Commission.

Petitioner filed a Motion to Recompute and to quash/stay writ of execution, notice of garnishment under supersedeas bond on October 19, 1984. Respondent opposed said motion in both their Urgent Ex-parte Manifestation and ex parte manifestation dated October 22, 1984 and December 5, 1984 respectively.

The Labor Arbiter Pelagio A. Carpio issued on January 21, 1985, an order dismissing the motion of petitioner for lack of merit and ordered it to proceed with the enforcement of the second alias writ of execution dated October 8, 1984 (Annex "H," p. 70, Rollo).

Petitioner filed an appeal from said order of the Labor Arbiter. In reply, respondent Felicidad Fontanilla stated that the petitioner was appealing only on the order of the Labor Arbiter denying the motion to recompute which is only an interlocutory order and should not be entertained on appeal.

The third alias writ of execution of the original decision dated August 31, 1982 was partially satisfied on April 3, 1985, when complainant received the amount of P29,001.00 (Annex "J," p. 82, Rollo) as computed and prepared by the Socio-Economic Analyst covering the period from April 25, 1982 to September 30, 1984 which amount included the emergency allowance, 13th month pay and other privileges which complainant would have received, had she not been dismissed.

Thereafter counsel for petitioner filed a Manifestation dated September 16, 1985 seeking to stop the running of subsequent back

wages from the time the business allegedly closed shop on January 1984.

Felicidad Fontanilla filed her counter manifestation alleging that petitioner refused to reinstate complainant despite several representations of private respondent to the petitioner by the NLRC Sheriff at the latter's outlet in Cinema Square, Legaspi Street, Makati, Metro Manila or Greenbelt Park Makati, contending that the Quad Park outlet wherein Felicidad Fontanilla worked was merely transferred and not really closed contrary to the allegations of petitioner (Annex "K," p. 83, Rollo).

On October 10, 1985, the NLRC en banc denied appeal of petitioner. A motion for Reconsideration filed on October 31, 1985 by petitioner was likewise denied by the same body for lack of merit. Such denial is now the subject on appeal by *certiorari* to Us raising the:

“Issue: May an employer be ordered to reinstate private respondent after the closure of its branch or outlet where private respondent was employed, and to pay private respondent back wages even after the date of closure and continuously without limit considering that there was no way to reinstate the workers anymore?”

Be it noted that it would now be idle to dispute the legality of the order to reinstate and pay back wages to the complainant, it appearing that said order has become final. All that remain to be determined are the matter of reinstatement, and the amount of backwages to be paid.

Petitioner maintains that complainant should not be paid her backwages beyond the date of closure of business on January 31, 1984. The records show that the petitioner's Pizza-Inn Quad Carpark outlet ceased its business operations due to poor business sales of pizzas. The fact of closure was properly reported to the Municipal Treasurer of Makati wherein petitioner paid the required closure fee under O.R. No. 7890507 on January 20, 1984 (Annex "G," p. 37, Rollo). Their contract of lease with Ayala Corporation over said premises was also terminated as of January 31, 1984 as per letter of Mr. Simon C. Mossesgeld, Area Manager of the Ayala Corporation,

Commercial Center Division (Annex “H,” p. 38, Rollo). Subsequently, Pizza’s only two other remaining outlets in the Philippines were also closed and its franchise surrendered to Pizza-Inn Texas, U.S.A. as evidenced by a letter dated April 8, 1986 (Annex “F,” p. 180, Rollo). Hence, the closure of the business rendered the reinstatement of complainant to her previous position impossible but she is still entitled to the payment of backwages up to the date of dissolution or closure. We have ruled that:

“An employer found guilty of unfair labor practice in dismissing his employee may not be ordered so to pay backwages beyond the date of closure of business where such closure was due to legitimate business reasons and not merely an attempt to defeat the order of reinstatement” (Columbian Rope Co. of the Phil. vs. Tacloban Association of Laborers and Employees No. 1-14848, October 31, 1982, 6 SCRA 425, also citing Durable Shoe Factory vs. CIR, L-77831, May 31, 1956).”

Claimant imputes bad faith on the part of petitioner in refusing to reinstate her in petitioner’s other Pizza Inn outlets or branches then still existing. There is indeed authority for the proposition that complainant be reinstated to her former position or substantially equivalent employment, if available. However, where an employer suffered business recession, as in the case at bar such that its commercial or financial circumstances have changed forcing it to close one outlet or branch (and subsequently all other outlets also closed shop), respondent Commission, assuming that petitioner was guilty of unfair labor practice cannot compel the employer to reinstate private respondent if such reinstatement may exceed the petitioner’s needs under the altered conditions. Normally each outlet had only a sufficient number of employees who served pizzas. It has its own “plantilla” and by accommodating complainant, it might prejudice and displace other employees. Reinstatement pre-supposes that the previous position from which one had been removed still exists or that there is an unfilled position more or less of similar nature as the one previously occupied by the employee. Admittedly, no such position is available. Reinstatement therefore becomes a legal impossibility. The law cannot exact compliance with what is impossible. Moreover an employer is privileged to go out of business by closing the same regardless of his reasons especially if done in

good faith and due to causes beyond his control like heavy business losses. To deprive him of such privilege would be oppressive and inhuman. In such cases, the dismissed employee can no longer be reinstated but shall be entitled to backwages up to the date of dissolution or closure (but not exceeding three years).

It is on record that the Socio-Economic Analyst of the public respondent computed that award of P29,001.00 covering the period from April, 1982 to September, 1984, which amount complainant admittedly received after the NLRC Sheriff garnished from the amount deposited at the Philippine Commercial and International Bank despite the pendency of petitioner's appeal questioning the order of the Labor Arbiter's denial of petitioner's Motion to Recompute and to Quash/Stay Writ of Execution/Notice of Garnishment under Supersedeas Bond. Petitioner alleged in said appeal that it was not furnished a copy of such computation nor a chance to refute the same. Petitioner insisted too that award of backwages should be reasonably limited up to January, 1984 only. Notwithstanding such contentions, private respondent immediately caused the further computation of backwages from October 1, 1984 up to November 15, 1985 in the additional sum of P23,188.21 under the pretext that petitioner has not yet reinstated private respondent (Annex "A," p. 114, Rollo).

As aforementioned the order of reinstatement becomes a legal impossibility as the outlet closed on January 31, 1984. Computing backwages beyond January 1984, the date of closure, would not only be unjust but confiscatory as well as violative of the Constitution depriving the petitioner of his property rights. The unlimited award would not only prejudice the herein petitioner but would, as well, impose a crushing financial burden on the already financially distressed petitioner corporation. The fact that the computation of the backwages was done ex-parte without giving petitioner a chance or opportunity to comment on said computation is clearly a denial of due process.

WHEREFORE, the assailed Order is hereby **SET ASIDE** and the case **REMANDED** to the NLRC for a determination of the amount of backwages to be paid to the complainant with instructions to receive or require such further evidence as may be necessary.

SO ORDERED.

Yap, C.J., (Chairman), Melencio-Herrera, Padilla and Sarmiento, JJ., concur.

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