

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**SAN MIGUEL CORPORATION,
*Petitioner,***

-versus-

**G.R. No. 146775
January 30, 2002**

**THE HONORABLE COURT OF
APPEALS-FORMER THIRTEENTH
DIVISION, HON. UNDERSECRETARY
JOSE M. ESPAÑOL, JR., Hon.
CRESENCIANO B. TRAJANO, and HON.
REGIONAL DIRECTOR ALLAN M.
MACARAYA,**

Respondents.

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DECISION

KAPUNAN, J.:

Assailed in the Petition before us are the Decision, promulgated on 08 May 2000, and the resolution, promulgated on 18 October 2000, of the Court of Appeals in CA-G.R. SP-53269.

The facts of the case are as follows:

On 17 October 1992, the Department of Labor and Employment (DOLE), Iligan District Office, conducted a routine inspection in the premises of San Miguel Corporation (SMC) in Sta. Filomena, Iligan City. In the course of the inspection, it was discovered that there was underpayment by SMC of regular Muslim holiday pay to its employees. DOLE sent a copy of the inspection result to SMC and it was received by and explained to its personnel officer Elena dela Puerta.^[1] SMC contested the findings and DOLE conducted summary hearings on 19 November 1992, 28 May 1993 and 4 and 5 October 1993. Still, SMC failed to submit proof that it was paying regular Muslim holiday pay to its employees. Hence, Alan M. Macaraya, Director IV of DOLE Iligan District Office issued a compliance order, dated 17 December 1993, directing SMC to consider Muslim holidays as regular holidays and to pay both its Muslim and non-Muslim employees holiday pay within thirty (30) days from the receipt of the order.

SMC appealed to the DOLE main office in Manila but its appeal was dismissed for having been filed late. The dismissal of the appeal for late filing was later on reconsidered in the order of 17 July 1998 after it was found that the appeal was filed within the reglementary period. However, the appeal was still dismissed for lack of merit and the order of Director Macaraya was affirmed.

SMC went to this Court for relief via a petition for certiorari, which this Court referred to the Court of Appeals pursuant to *St. Martin Funeral Homes vs. NLRC*.^[2]

The appellate court, in the now questioned decision, promulgated on 08 May 2000, ruled, as follows:

WHEREFORE, the Order dated December 17, 1993 of Director Macaraya and Order dated July 17, 1998 of Undersecretary Español, Jr. is hereby MODIFIED with regards the payment of

Muslim holiday pay from 200% to 150% of the employee's basic salary. Let this case be remanded to the Regional Director for the proper computation of the said holiday pay.

SO ORDERED.^[3]

Its motion for reconsideration having been denied for lack of merit, SMC filed a petition for certiorari before this Court, alleging that:

PUBLIC RESPONDENTS SERIOUSLY ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION WHEN THEY GRANTED MUSLIM HOLIDAY PAY TO NON-MUSLIM EMPLOYEES OF SMC-ILICOCO AND ORDERING SMC TO PAY THE SAME RETROACTIVE FOR ONE (1) YEAR FROM THE DATE OF THE PROMULGATION OF THE COMPLIANCE ORDER ISSUED ON DECEMBER 17, 1993, IT BEING CONTRARY TO THE PROVISIONS, INTENT AND PURPOSE OF P.D. 1083 AND PREVAILING JURISPRUDENCE.

THE ISSUANCE OF THE COMPLIANCE ORDER WAS TAINTED WITH GRAVE ABUSE OF DISCRETION IN THAT SAN MIGUEL CORPORATION WAS NOT ACCORDED DUE PROCESS OF LAW; HENCE, THE ASSAILED COMPLIANCE ORDER AND ALL SUBSEQUENT ORDERS, DECISION AND RESOLUTION OF PUBLIC RESPONDENTS WERE ALL ISSUED WITH GRAVE ABUSE OF DISCRETION AND ARE VOID AB INITIO.

THE HON. COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT DECLARED THAT REGIONAL DIRECTOR MACARAYA, UNDERSECRETARY TRAJANO AND UNDERSECRETARY ESPAÑOL, JR., WHO ALL LIKewise ACTED WITH GRAVE ABUSE OF DISCRETION AND WITHOUT OR IN EXCESS OF THEIR JURISDICTION, HAVE JURISDICTION IN ISSUING THE ASSAILED COMPLIANCE ORDER AND SUBSEQUENT ORDERS, WHEN IN FACT THEY HAVE NO JURISDICTION OR HAS LOST JURISDICTION OVER THE HEREIN LABOR STANDARD CASE.^[4]

At the outset, petitioner came to this Court via a petition for certiorari under Rule 65 instead of an appeal under Rule 45 of the 1997 Rules of Civil Procedure. In *National Irrigation Administration vs. Court of Appeals*,^[5] the Court declared:

(S)ince the Court of Appeals had jurisdiction over the petition under Rule 65, any alleged errors committed by it in the exercise of its jurisdiction would be errors of judgment which are reviewable by timely appeal and not by a special civil action of certiorari. If the aggrieved party fails to do so within the reglementary period, and the decision accordingly becomes final and executory, he cannot avail himself of the writ of certiorari, his predicament being the effect of his deliberate inaction.

The appeal from a final disposition of the Court of Appeals is a petition for review under Rule 45 and not a special civil action under Rule 65 of the Rules of Court, now Rule 45 and Rule 65, respectively, of the 1997 Rules of Civil Procedure. Rule 45 is clear that decisions, final orders or resolutions of the Court of Appeals in any case, i.e., regardless of the nature of the action or proceeding involved, may be appealed to this Court by filing a petition for review, which would be but a continuation of the appellate process over the original case. Under Rule 45 the reglementary period to appeal is fifteen (15) days from notice of judgment or denial of motion for reconsideration.

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For the writ of certiorari under Rule 65 of the Rules of Court to issue, a petitioner must show that he has no plain, speedy and adequate remedy in the ordinary course of law against its perceived grievance. A remedy is considered “plain, speedy and adequate” if it will promptly relieve the petitioner from the injurious effects of the judgment and the acts of the lower court or agency. In this case, appeal was not only available but also a speedy and adequate remedy.^[6]

Well-settled is the rule that certiorari cannot be availed of as a substitute for a lost appeal.^[7] For failure of petitioner to file a timely

appeal, the questioned decision of the Court of Appeals had already become final and executory.

In any event, the Court finds no reason to reverse the decision of the Court of Appeals.

Muslim holidays are provided under Articles 169 and 170, Title I, Book V, of Presidential Decree No. 1083,^[8] otherwise known as the Code of Muslim Personal Laws, which states:

Art. 169. Official Muslim holidays. — The following are hereby recognized as legal Muslim holidays:

- (a) ‘Amun Jadîd (New Year), which falls on the first day of the first lunar month of Muharram;
- (b) Maulid-un-Nabî (Birthday of the Prophet Muhammad), which falls on the twelfth day of the third lunar month of Rabi-ul-Awwal;
- (c) Lailatul Isrâ Wal Mi’râj (Nocturnal Journey and Ascension of the Prophet Muhammad), which falls on the twenty-seventh day of the seventh lunar month of Rajab;
- (d) ‘Îd-ul-Fitr (Hari Raya Puasa), which falls on the first day of the tenth lunar month of Shawwal, commemorating the end of the fasting season; and
- (e) ‘Îd-ul-Adhâ (Hari Raya Haji), which falls on the tenth day of the twelfth lunar month of Dhû’l-Hijja.

Art. 170. Provinces and cities where officially observed. — (1) Muslim holidays shall be officially observed in the Provinces of Basilan, Lanao del Norte, Lanao del Sur, Maguindanao, North Cotabato, Iligan, Marawi, Pagadian, and Zamboanga and in such other Muslim provinces and cities as may hereafter be created;

(2) Upon proclamation by the President of the Philippines, Muslim holidays may also be officially observed in other provinces and cities.

The foregoing provisions should be read in conjunction with Article 94 of the Labor Code, which provides:

Art. 94. Right to holiday pay. —

(a) Every worker shall be paid his regular daily wage during regular holidays, except in retail and service establishments regularly employing less than ten (10) workers;

(b) The employer may require an employee to work on any holiday but such employee shall be paid a compensation equivalent to twice his regular rate;

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Petitioner asserts that Article 3(3) of Presidential Decree No. 1083 provides that “(t)he provisions of this Code shall be applicable only to Muslims. However, there should be no distinction between Muslims and non-Muslims as regards payment of benefits for Muslim holidays. The Court of Appeals did not err in sustaining Undersecretary Español who stated:

Assuming arguendo that the respondent’s position is correct, then by the same token, Muslims throughout the Philippines are also not entitled to holiday pays on Christian holidays declared by law as regular holidays. We must remind the respondent-appellant that wages and other emoluments granted by law to the working man are determined on the basis of the criteria laid down by laws and certainly not on the basis of the worker’s faith or religion.

At any rate, Article 3(3) of Presidential Decree No. 1083 also declares that “nothing herein shall be construed to operate to the prejudice of a non-Muslim.”

In addition, the 1999 Handbook on Workers' Statutory Benefits, approved by then DOLE Secretary Bienvenido E. Laguesma on 14 December 1999 categorically stated:

Considering that all private corporations, offices, agencies, and entities or establishments operating within the designated Muslim provinces and cities are required to observe Muslim holidays, both Muslim and Christians working within the Muslim areas may not report for work on the days designated by law as Muslim holidays.^[9]

On the question regarding the jurisdiction of the Regional Director Allan M. Macaraya, Article 128, Section B of the Labor Code, as amended by Republic Act No. 7730, provides:

“Article 128. Visitorial and enforcement power. —

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(b) Notwithstanding the provisions of Article 129 and 217 of this Code to the contrary, and in cases where the relationship of employer-employee still exists, the Secretary of Labor and Employment or his duly authorized representatives shall have the power to issue compliance orders to give effect to the labor standards provisions of this Code and other labor legislation based on the findings of labor employment and enforcement officers or industrial safety engineers made in the course of the inspection. The Secretary or his duly authorized representative shall issue writs of execution to the appropriate authority for the enforcement of their orders, except in cases where the employer contests the findings of the labor employment and enforcement officer and raises issues supported by documentary proofs which were not considered in the course of inspection.

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In the case before us, Regional Director Macaraya acted as the duly authorized representative of the Secretary of Labor and Employment and it was within his power to issue the compliance order to SMC. In

addition, the Court agrees with the Solicitor General that the petitioner did not deny that it was not paying Muslim holiday pay to its non-Muslim employees. Indeed, petitioner merely contends that its non-Muslim employees are not entitled to Muslim holiday pay. Hence, the issue could be resolved even without documentary proofs. In any case, there was no indication that Regional Director Macaraya failed to consider any documentary proof presented by SMC in the course of the inspection.

Anent the allegation that petitioner was not accorded due process, we sustain the Court of Appeals in finding that SMC was furnished a copy of the inspection order and it was received by and explained to its Personnel Officer. Further, a series of summary hearings were conducted by DOLE on 19 November 1992, 28 May 1993 and 4 and 5 October 1993. Thus, SMC could not claim that it was not given an opportunity to defend itself.

Finally, as regards the allegation that the issue on Muslim holiday pay was already resolved in NLRC CA No. M-000915-92 (Napoleon E. Fernan vs. San Miguel Corporation Beer Division and Leopoldo Zaldarriaga),^[10] the Court notes that the case was primarily for illegal dismissal and the claim for benefits was only incidental to the main case. In that case, the NLRC Cagayan de Oro City declared, in passing:

We also deny the claims for Muslim holiday pay for lack of factual and legal basis. Muslim holidays are legally observed within the area of jurisdiction of the present Autonomous Region for Muslim Mindanao (ARMM), particularly in the provinces of Maguindanao, Lanao del Sur, Sulu and Tawi-Tawi. It is only upon Presidential Proclamation that Muslim holidays may be officially observed outside the Autonomous Region and generally extends to Muslims to enable them the observe said holidays.”^[11]

The decision has no consequence to issues before us, and as aptly declared by Undersecretary Español, it “can never be a benchmark nor a guideline to the present case.”^[12]

WHEREFORE, in view of the foregoing, the petition is **DISMISSED**.

SO ORDERED.

Davide, Jr., C.J., Puno, Pardo and Ynares-Santiago, JJ., concur.

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- [1] Also Elena de Fuerta.
[2] 295 SCRA 494 (1998).
[3] Rollo, p. 61.
[4] Rollo, pp. 17-18.
[5] 318 SCRA 255 (1999).
[6] *Id.*, at 264-265.
[7] See *GSIS vs. Olisa*, 304 SCRA 421 (1999); *Mathay, Jr. vs. Civil Service Commission*, 312 SCRA 91 (1999); *Republic vs. Court of Appeals*, 313 SCRA 376 (1999).
[8] A Decree to Ordain and Promulgate a Code Recognizing the System of Filipino Muslim Laws, Codifying Muslim Personal Laws, and Providing for Its Administration and for Other Purposes.
[9] Emphasis supplied.
[10] Resolution, promulgated on 21 July 1993 of the NLRC Cagayan de Oro City.
[11] Rollo, p. 93.
[12] *Id.*, at 49.