

Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

LAUREANO CONCORDO,
represented by herein HELEN
CONCORDO, et al.,

G.R. No. 250147

Petitioner, Present:

PERALTA, C.J.,
Chairperson,
CAGUIOA,
CARANDANG,
ZALAMEDA, and
GAERLAN, JJ.

- versus -

ERJOHN & ALMARK TRANSIT
CORP., et al.,

Promulgated:

Respondent.

FEB 10 2021

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D E C I S I O N

CARANDANG, J.:

This appeal by *Certiorari*¹ under Rule 45 of the Rules of Court prays that the Decision² dated May 23, 2019 and the Resolution³ dated October 2, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 140194 be reversed and set aside. The petition disputes the reckoning date for the execution of the Decision⁴ dated September 30, 2010 of the National Labor Relations Commission (NLRC) Second Division which ordered the reinstatement of petitioner employees to their work without loss of seniority rights.

¹ *Rollo*, pp. 10-23.

² Penned by Associate Justice Mari Filomena D. Singh, and concurred by Associate Justices Manuel M. Barrios and Eduardo B. Peralta, Jr.; id. at 222-234.

³ Id. at 242-245

⁴ Penned by Presiding Commissioner Raul T. Aquino, with the concurrence of Commissioner Napoleon M. Menese; id. at 90-101.

Factual antecedents in relation to the illegal dismissal case filed by petitioners

On September 30, 2010, the National Labor Relations Commission (NLRC) Second Division rendered a Decision⁵ dismissing the appeal on the Decision⁶ dated November 19, 2009 of the Labor Arbiter (LA) filed by petitioners Laureano Concorde, Joseph Alipio, Ernesto Traqueña, Lito Saliba, Prisco Dujan, Aniver Batican, Cesario Mayari, Jr., and Dionicio Olarte. The NLRC affirmed the finding of the LA that petitioners were not dismissed from employment. The NLRC added that petitioners failed to prove the fact of their dismissal. Thus, reinstatement of petitioners within five days from receipt of the NLRC Decision was ordered.⁷ Petitioners then moved to reconsider the NLRC Decision. On November 22, 2010, while petitioners' motion for reconsideration was pending, they reported to Erjohn & Almark Transit Corp. (respondent company) pursuant to the Decision dated September 30, 2010 of the NLRC. However, the company refused to admit petitioners for employment.⁸

On November 25, 2010,⁹ the NLRC denied petitioners' motion for reconsideration of the Decision dated September 30, 2010 prompting petitioners to raise their case to the CA on *certiorari* under Rule 65 of the Rules of Court and to be declared illegally dismissed from employment. The case is entitled *Laureano Concorde, et al. v. National Labor Relations Commission (Second Division), et al.* and docketed as CA-G.R. SP No. 118079.¹⁰

On February 25, 2013, the CA rendered its Decision¹¹ denying the Petition for *Certiorari*. The CA affirmed the Decision dated September 30, 2010 of the NLRC. Petitioners moved to reconsider the CA Decision which was denied.¹² Thus, they filed an appeal by *certiorari* with this Court under Rule 45 of the Rules of Court docketed as G.R. No. 209710. On January 13, 2014 this Court, through a Resolution,¹³ denied the petition for review on *certiorari* finding no reversible error in the CA Decision rendered in CA-G.R. SP No. 118079. Petitioners then moved to reconsider the said Resolution. On June 16, 2014, the motion was denied with finality¹⁴ for which an Entry of Judgment¹⁵ had been subsequently issued on July 31, 2014.

⁵ Supra note 4.

⁶ Penned by Labor Arbiter Renell Joseph R. Dela Cruz; *rollo*, pp. 63-89.

⁷ Supra note 4; *rollo*, p. 24.

⁸ *Rollo*, p. 103.

⁹ Id. at 172.

¹⁰ Id. at 173.

¹¹ Penned by Associate Justice Edwin D. Sorongon, with the concurrence of Associate Justices Hakim S. Abdulwahid and Marlene Gonzales-Sison; id. at 281-291.

¹² Id. at 37.

¹³ Id. at 293.

¹⁴ Id. at 292.

¹⁵ Id. at 293-294.

Factual Antecedents on the execution of the Decision dated 30 September 2010 of the NLRC

While CA-G.R. SP No. 118079 was pending, the Decision dated September 30, 2010 of the NLRC attained finality as no injunction order had been issued by the CA. As a result, on December 24, 2010, an entry of judgment had been issued.¹⁶

On May 3, 2011, petitioners filed with the LA a Motion for Issuance of Writ of Execution with Regards (*sic*) to Reinstatement Aspect of the [September 30, 2010 NLRC] Decision.¹⁷ They argued that the unjustified refusal of respondent company to reinstate them on November 22, 2010, physically or in the payroll, entitled them to payment of their salaries effective from the time the employer failed to reinstate them. Petitioners prayed for payroll reinstatement and payment of their reinstatement backsalaries reckoned from October 1, 2010, or the date of their receipt of the Decision dated September 30, 2010 of the NLRC until their actual reinstatement.¹⁸ On February 22, 2012,¹⁹ the LA ordered the issuance of the writ of execution. Respondent company was likewise ordered to pay petitioners a total amount of ₱2,599,800.00 representing their accrued wages as of date of the Order.²⁰

Respondent company filed with the NLRC First Division a Petition for Extraordinary Remedies under Rule XII of the 2011 NLRC Rules of Procedure assailing the Order dated February 22, 2012 of the LA.²¹ In a Resolution²² dated May 10, 2012 the NLRC granted respondent company's petition holding that the LA gravely erred in awarding accrued wages to petitioners. Under Article 223²³ of the Labor Code of the Philippines, it is only the decision of the LA that is immediately executory in so far as the reinstatement aspect is concerned.²⁴ The NLRC clarified that the order of reinstatement, in this case, is based from the Decision dated September 30, 2010 of the NLRC, which is neither immediately executory nor self-executory. In issuing the Order dated February 22, 2012, the LA mistook the order of reinstatement by the NLRC to be immediately executory. The NLRC held that it was premature for petitioners to report back to work on November 22, 2010 in view of the Motion for Reconsideration of the Decision dated September 30, 2010 of the NLRC filed by petitioners with

¹⁶ Id. at 137.

¹⁷ Id. at 102-106.

¹⁸ Id. at 103-106.

¹⁹ Id. at 111-122.

²⁰ Id. at 122.

²¹ Id. at 124.

²² Id. at 124-130.

²³ Renumbered as Article 229. Department Advisory No. 01, Renumbering of the Labor Code of the Philippines, as Amended, Series of 2015.

²⁴ Article 229. [223] *Appeal*. – x x x.

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 by the employer shall not stay the execution for reinstatement provided herein.

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the NLRC. Thus, said NLRC Decision had not attained finality at such time. If the NLRC's order for reinstatement attained finality, petitioners must first seek the issuance of a writ of execution of the NLRC Decision. As there was no writ of execution issued, respondent company could not be said to have refused compliance with the reinstatement order. The NLRC nullified the Order dated February 22, 2012 of the LA and enjoined the LA from issuing a writ of execution of the NLRC Decision or enforcing the same, if one has been issued. The Decision dated May 10, 2012 of the NLRC attained finality and had been entered in the Book of Entries of Judgment on June 8, 2012.²⁵

On August 3, 2012, petitioners filed an Omnibus Motion²⁶ with the LA. Petitioners reiterated their argument that they were unjustly refused by respondent company to return to work, which entitled them to payment of accrued backsalaries. Petitioners also moved that respondent company be declared in contempt for refusal to comply with the order of reinstatement.²⁷

On August 6, 2013, the LA issued a Writ of Execution²⁸ to implement the order of reinstatement in the Decision dated September 30, 2010 of the NLRC. On September 10, 2013, the sheriff served the Writ of Execution on respondent company, but the latter refused petitioners' reinstatement.²⁹

On July 31, 2014, petitioners again filed with the LA a Motion for Issuance of Writ of Execution on Complainants' Accrued Salaries for Failure of Respondent to Reinstatement Them.³⁰ Petitioners prayed for the computation of their accrued salaries from the time they presented themselves for work to respondent company on September 10, 2013 up to the time of filing of the motion.³¹

On August 27, 2014, the LA issued an Order³² computing petitioners' accrued wages in the total amount of ₱2,005,312.40 reckoned from September 10, 2013 until the date of the Order of the LA.³³ Private respondents filed a motion for reconsideration,³⁴ which was denied for being a prohibited pleading.³⁵

Respondent company then filed with the NLRC another Petition for Extraordinary Remedies under Rule XII of the NLRC Rules of Procedure praying for the nullification of the Order dated August 27, 2014 of the LA.³⁶ On November 21, 2014, the NLRC rendered its Decision³⁷ granting respondent company's petition. The NLRC held that petitioners' right to

²⁵ Supra note 22 at 128-130; *rollo*, pp. 189-191.

²⁶ *Rollo*, pp. 131-134.

²⁷ Id. at 132-134.

²⁸ Id. at 137-138.

²⁹ Id. at 143.

³⁰ Id. at 140-142.

³¹ Id. at 142.

³² Id. at 145-151.

³³ Id. at 150-151.

³⁴ Id. at 152-159.

³⁵ Id. at 162-168.

³⁶ Id. at 186-187.

³⁷ Penned by Commissioner Erlinda T. Agus with the concurrence of Presiding Commissioner Gregorio O. Bilog III and Commissioner Alan A. Ventura; id. at 186-196.

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reinstatement and “from where reinstatement wages would be realized”³⁸ have not ripened into an enforceable right. The Decision dated September 30, 2010 of the NLRC must have attained finality in order for a writ of execution to have been validly issued by the LA. Considering that petitioners challenged the NLRC Decision with the CA in CA-G.R. SP No. 118079, the same could not have attained finality with which petitioners may enforce their right. In the same manner, by subsequently raising the CA Decision with this Court, petitioners’ right to reinstatement could not be enforced. It was only on June 16, 2014 that petitioners’ right to reinstatement arose, or the date of denial of petitioners’ Motion for Reconsideration in G.R. No. 209170. The NLRC held that petitioners cannot claim payment for accrued reinstatement wages prior to June 16, 2014. The NLRC declared null and void the Order dated August 27, 2014 issued by the LA.³⁹ Petitioners moved to reconsider⁴⁰ the NLRC Decision which was denied.⁴¹

Ruling of the Court of Appeals

Petitioners were constrained to file a Petition for *Certiorari*⁴² with the CA under Rule 65 of the Rules of Court, which was denied in the assailed Decision⁴³ dated May 23, 2019. The CA held that the Decision dated September 30, 2010 of the NLRC had not yet attained finality.⁴⁴ Similar to the observations of the NLRC, challenging the NLRC Decision with the CA and ultimately with this Court precluded said NLRC Decision from attaining finality. The NLRC Decision became final and subject to execution only on June 16, 2014 when this Court issued a Resolution⁴⁵ in G.R. No. 209710 directing the issuance of an entry of judgement. Under Articles 229⁴⁶ and 230⁴⁷ of the Labor Code of the Philippines, a writ of execution implementing a decision of the NLRC may only be issued either *motu proprio* or on motion of any interested party within five years from the date the decision becomes final and executory.⁴⁸ Without the NLRC Decision attaining finality

³⁸ Id. at 191.

³⁹ Id. at 191-195.

⁴⁰ Id. at 197-204.

⁴¹ Id. at 211-219.

⁴² Id. at 31-47.

⁴³ Supra note 2.

⁴⁴ Supra note 2 at 230-232.

⁴⁵ *Rollo*, p. 292.

⁴⁶ Formerly Article 223 of the Labor Code of the Philippines. Department Advisory No. 01, Renumbering of the Labor Code of the Philippines, as Amended, Series of 2015.

⁴⁷ Formerly Article 224 of the Labor Code of the Philippines. Department Advisory No. 01, Renumbering of the Labor Code of the Philippines, as Amended, Series of 2015.

⁴⁸ Article 229. [223] *Appeal*. – Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. Such appeal may be entertained only on any of the following grounds:

(a) If there is prima facie evidence of abuse of discretion on the part of the Labor Arbiter;

(b) If the decision, order or award was secured through fraud or coercion, including graft and corruption;

(c) If made purely on questions of law; and

(d) If serious errors in the findings of facts are raised which would cause grave or irreparable damage or injury to the appellant.

x x x x

Article 230. [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, requiring a sheriff or a duly deputized officer to execute or enforce final decisions, orders or

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no writ of execution may be issued implementing the same. The CA emphasized that reinstatement pending appeal is only warranted when it is the LA ordering the reinstatement of a dismissed employee. Unlike the order of a labor arbiter which is self-executory, that of the NLRC, as discussed above, is not.⁴⁹

Petitioner's Arguments

Dissatisfied with the Decision of the CA, petitioners filed the instant appeal by *certiorari*⁵⁰ with this Court under Rule 45 of the Rules of Court. Petitioners argued that under Section 14, Rule VII of the NLRC Rules of Procedure, decisions of the NLRC shall become final and executory after ten calendar days from receipt thereof. The CA erred in holding that the Decision dated September 30, 2010 of the NLRC had not attained finality in view of the subsequent filing of a Petition for *Certiorari* with the CA and later an appeal by *Certiorari* with this Court. Petitioners argued that under Section 4, Rule XI of the NLRC Rules of Procedure, pending petitions for *certiorari* with the CA or this Court will not stay the execution of the assailed decision unless a restraining order is issued by the courts. As there was no restraining order issued by the CA nor by this Court, the NLRC Decision can be executed after the lapse of ten days. Thus, declaring the Order dated August 27, 2014 of the LA null and void is incorrect considering that petitioners can validly move for the issuance of the writ of execution of the NLRC Decision. In the same vein, petitioners should have long been reinstated by respondent company to their previous work. Petitioners reiterate that the inordinate delay of respondent company to actually reinstate them entitled them to payment of accrued backsalaries.⁵¹

Respondent's Comment

In their Comment,⁵² respondent company reiterated the findings of both the NLRC and the CA that the order of reinstatement in the Decision dated September 30, 2010 of the NLRC cannot be subject of a writ of execution when such Decision had been challenged before the CA and later with this Court. It was only on June 16, 2014 that the Decision dated September 30, 2010 of the NLRC attained finality when petitioners' motion for reconsideration filed in G.R. No. 209710 was denied with finality.⁵³ Furthermore, the pronouncement in G.R. No. 209710 which upholds the NLRC Decision is the *law of the case* or the controlling legal rule for the instant petition considering that the facts in G.R. No. 209710 are "similar and continue to be the facts in the instant case."⁵⁴ Thus, the instant petition should be denied.⁵⁵

awards of the Secretary of Labor and Employment or Regional Director, the Commission, the Labor Arbiter or Med-Arbiter, or Voluntary Arbitrator or panel of Voluntary Arbitrators. x x x.

⁴⁹ Supra note 2 at 231.

⁵⁰ *Rollo*, pp. 10-23.

⁵¹ Id. at 19-23.

⁵² Id. at 260-278.

⁵³ Id. at 273-274.

⁵⁴ Id. at 277-278.

⁵⁵ Id. at 278.

Issue

The main issue before Us is the reckoning period at which petitioners should be reinstated.

Ruling of the Court

Both the NLRC and the CA considered petitioners' right to reinstatement unenforceable because the Decision dated September 30, 2010 of the NLRC had not attained finality in view of the pending *certiorari* proceedings filed by petitioner employees in CA-G.R. SP No. 118079 and later an appeal with this Court in G.R. No. 209710. Both tribunals held that reinstatement of petitioners can only be reckoned on June 16, 2014 when this Court issued in G.R. No. 209710 a Resolution directing the issuance of an entry of judgement.⁵⁶

Albeit that petitioner employees filed for *certiorari* with the CA and later an appeal with this Court, We hold that the Decision dated September 30, 2010 of the NLRC is final and executory as to respondent company. Based from the facts, upon promulgation of the NLRC Decision, respondent company did not assail the decision, in whole or in part, through a motion for reconsideration with the NLRC,⁵⁷ or through a petition for *certiorari* with the CA under Rule 65 of the Rules of Court.⁵⁸ As far as respondent company was concerned, it found no reason for the NLRC Decision to be revisited and is considered satisfied with the adjudication therein. Respondent company's failure to avail of the appropriate remedies within the prescribed period under the rules⁵⁹ unavoidably rendered the judgment final.⁶⁰ Thus, an appellee who has not himself appealed cannot obtain from the appellate court any affirmative relief other than those granted in the decision of the court below.⁶¹ As far as respondent is concerned, the reviewing tribunal is precluded from acquiring the jurisdiction to review and alter the final judgment.⁶²

As the judgment became immutable and unalterable and may no longer be modified in any respect,⁶³ We find no reason for respondent

⁵⁶ Supra note 37 at 191-195; supra note 2 at 230-232.

⁵⁷ The 2005 NLRC Rules of Procedure was in effect when the Decision dated September 30, 2010 of the NLRC was promulgated.

Rule VII of the 2005 NLRC Rules of Procedure

Section 15. MOTIONS FOR RECONSIDERATION. – Motion for reconsideration of any decision, resolution or order of the Commission shall not be entertained except when based on palpable or patent errors; provided that the motion is under oath and filed within ten (10) calendar days from receipt of decision, resolution or order, with proof of service that a copy of the same has been furnished, within the reglementary period, the adverse party; and provided further, that only one such motion from the same party shall be entertained. The 2005 Revised Rules of Procedure of the NLRC Page 13 of 21 Should a motion for reconsideration be entertained pursuant to this Section, the resolution shall be executory after ten (10) calendar days from receipt thereof.

⁵⁸ *St. Martin Funeral Home v. NLRC*, 356 Phil. 811, 816 (1998).

⁵⁹ The 10- day period as prescribed in Section 14, Rule VII of the 2005 NLRC of Rules of Procedure; and the 60-day period as prescribed in Section 4, Rule 65 of the Rules of Court.

⁶⁰ *Hiponia-Mayuga v. Metropolitan Bank and Trust Co.*, 761 Phil. 521, 529 (2015).

⁶¹ *Manese v. Jollibee Foods Corporation*, 697 Phil. 322, 337 (2012), citing *SMI Fish Industries, Inc. v. NLRC*, 288 Phil. 329, 334 (1992).

⁶² Supra note 60.

⁶³ Supra note 60.

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company to depart from the order in the Decision dated September 30, 2010 of the NLRC to reinstate petitioners upon its finality. Respondent company cannot be precluded from reinstating petitioners even with the pending *certiorari* proceedings with the CA in CA-G.R. SP No. 118079 or appeal with this Court in G.R. No. 209710, as such cases were filed by petitioner employees. In those proceedings, respondent company can only advance arguments to uphold the NLRC Decision. With an entry of judgment of the NLRC Decision having been issued on December 24, 2010,⁶⁴ respondent company is bound to reinstate petitioners from such time.

Moreover, the doctrine of law of the case, as respondent company insists, is inapplicable. Law of the case has been defined as the opinion delivered on a former appeal which relates entirely to questions of law, and is confined in its operation to subsequent proceedings in the same case.⁶⁵ In other words, once the appellate court has issued a pronouncement on a point that was presented to it with full opportunity to be heard having been accorded to the parties, the pronouncement should be regarded as the law of the case and should not be reopened on remand of the case to determine other issues of the case, like damages.⁶⁶ Here, We reiterate that the Decision dated September 30, 2010 of the NLRC as to respondent company is already final. In fact, the ruling of the CA in CA-G.R. SP No. 118079 and later in G.R. No 209710 by this Court only affirmed the NLRC Decision finding that petitioners were not dismissed from employment and should be reinstated. Thus, the issues settled in the foregoing proceedings, albeit involving the same parties, are independent from the issue in the present case concerning the period when to enforce the NLRC Decision. As discussed, respondent company should have reinstated petitioners on December 24, 2010. Considering that We find no proof of return to work from respondent company, petitioners are entitled to receive backwages reckoned from December 24, 2010 until they are reinstated, actually or in payroll.

WHEREFORE, the Decision dated May 23, 2019 of the Court of Appeals in CA-G.R. SP No. 140194 is **REVERSED** and **SET ASIDE**. Respondent company Erjohn & Almark Transit Corporation is **ORDERED** to:

- 1) immediately reinstate petitioners to their previous work without loss of seniority rights;
- 2) pay petitioners their backwages reckoned from December 24, 2010 until they are reinstated.
- 3) The total monetary award shall be subject to legal interest of twelve percent (12%) *per annum* from December 24, 2010 until June 30, 2013 and six percent (6%) *per annum* from July 1, 2013 until full satisfaction.⁶⁷

⁶⁴ *Rollo*, p. 137.

⁶⁵ *Comilang v. Court of Appeals*, 160 Phil. 72, 85 (1975), citing 30 Am. Jur. 913-914.

⁶⁶ *Dev't. Bank of the Phils. v. Guariña Agricultural & Realty Dev't. Corp.*, 724 Phil. 209, 225 (2014).

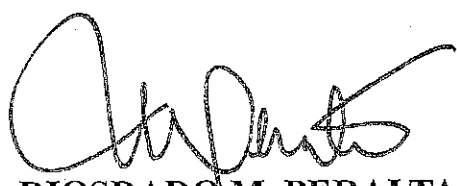
⁶⁷ *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).

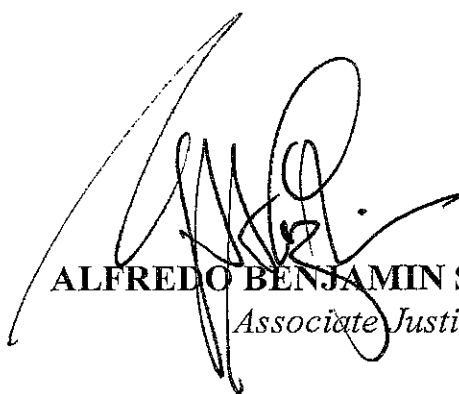
Let the case be **REMANDED** to the Labor Arbiter for a detailed computation of the monetary awards.

SO ORDERED.



ROSMARI D. CARANDANG
Associate Justice

WE CONCUR:


DIOSDADO M. PERALTA
Chief Justice

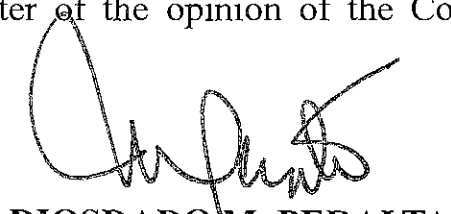

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


RODIL V. ZALAMEDA
Associate Justice


SAMUEL H. GAERLAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


DIOSDADO M. PERALTA
Chief Justice