559 Phil. 228

FIRST DIVISION

[G.R. No. 147961, September 07, 2007]

FOREVER SECURITY & GENERAL SERVICES, PETITIONER, VS. ROMEO FLORES AND LOPE RALLAMA, RESPONDENTS.

DECISION

AZCUNA, J.:

Before the Court is a petition for review on *certiorari* assailing the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 58253 dated December 11, 2000 and the Resolution[2] dated April 24, 2001 denying petitioner's motion for reconsideration.

Romeo D. Flores and Lope A. Rallama were employed as security officers of Forever Security and General Services (Forever Security) in 1990 and 1988, respectively. As security officers, they worked for twelve (12) hours everyday including Sundays and holidays. On February 15, 1993, Forever Security dismissed Flores and Rallama on the ground that they abandoned their posts, duties and responsibilities as security guards.[3] Hence, they filed Complaints[4] for Illegal Dismissal with the National Labor Relations Commission (NLRC), against Forever Security and/or its Executive Vice President Antonio Garin. The case was docketed as NLRC NCR Case No. 00-04-2813-93.

In his complaint, Flores alleged that he did not receive his salary from January 18, 1993 to February 15, 1993. The reason given was that he was allegedly absent without official leave (AWOL) since December 26, 1992. He vehemently denied this and averred that his absence from such date until January 15, 1993 was with the company's consent and that he resumed work since then until he was terminated from service.[5] Rallama, on the other hand, averred that he failed to go to work on January 3 to 31, 1993 because he was hospitalized. When he returned for work, he was told that he was considered AWOL.[6] Flores and Rallama further claimed that during their employment with Forever Security, they were not paid the proper overtime pay, premium pay, rest day and holiday pay, and night shift differential, service incentive leave pay and 13th month pay. They prayed for reinstatement with payment of backwages and other monetary claims plus attorney's fees.[7]

For its part, Forever Security, thru its Vice President Garin, averred that Flores and Rallama went on vacation and sick leave, respectively, but failed to report for work thereafter, thus, they were considered to have abandoned their posts, duties and responsibilities which is a ground for their dismissal from service. It likewise asserted that it had fully paid the complainants' salaries and wages, overtime pay, premium pay for holiday and rest day, night shift differential, service incentive leave pay and 13th month pay. It prayed that the case be dismissed for lack of merit.[8]

The case was calendared for hearings on May 3 and 10, June 10 and 20, and July 15

and 29, 1993, but Forever Security and Vice President Garin failed to appear. On September 16, 1994, Labor Arbiter Ernesto S. Dinopol rendered a decision[9] in favor of complainants-employees, the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered declaring that the dismissal of complainants ROMEO D. FLORES and LOPE A. RALLAMA was illegal and unjustified and ordering respondents FOREVER SECURITY AND GEN. SERVICES, INC. and ANTONIO GARIN to reinstate them to their former positions without loss of seniority rights and other privileges.
>
> Above-named respondents are further ordered to pay jointly and severally complainants, the following sums, as computed by the Research and Information Unit of this Commission:
>
> ROMEO FLORES:
>
> | | |
> |---|---|
> | (12 hours duty, with the following benefits included: 13th month pay, SILP, night shift differentials, rest day pay, holiday pay, uniform allowance, overtime pay of 4-hours a day) = - - | P 87,857.45 |
> | Backwages from February 1, 1993 up to date of reinstatement which if computed as of today, September 16, 1994 amounts to (P6,826.37 x 19.5 months) = - - - - - | P 133,114.21 |
> | TOTAL AWARD - - - - - - - - | P 220,971.66 |
>
> LOPE RALLAMA : (Same Benefits)
>
> | | |
> |---|---|
> | As computed by the Research and Information Unit - - - - - - - - - -- - - - - | P 76,325.95 |
> | Backwages from February 15, up to date of reinstatement which if computed as of today, September 16, 1994 amounts to (P6,826.37 x 19 months) = - - - - - - - - | P 129,701.03 |
> | TOTAL AWARD - - - - - - - - - | P 206,026.98 |
>
> SO ORDERED.[10]

On April 27, 1995, Forever Security and Garin appealed the Labor Arbiter's decision to the NLRC.[11] The case was docketed as NLRC NCR CA No. 00-9021-95 and was raffled to the Second Division. Instead of posting a cash or surety bond, Forever Security and Garin filed a Motion for Extension of Time to File/Submit Appeal/Surety Bond,[12] alleging among others, that appellants are finalizing appropriate arrangements with an insurance bonding company; that due to lack of material time, they are not able to file surety/appeal bond. They further prayed that they be

given a thirty (30)-day extension from April 27, 1995 or until May 27, 1995, within which to file a surety/appeal bond.[13]

On July 31, 1995, the Second Division issued a Resolution[14] dismissing the appeal for appellants' failure to perfect the same in accordance with the requirements of the Labor Code, specifically by posting the required cash or surety bond.[15] Appellants filed a Motion for Reconsideration[16] but it was denied in a Resolution dated October 24, 1995.[17] An official certification was later issued by the Philippine Postal Corporation, signed by Makati Central Acting Postmaster Danilo A. Velasco, stating that a copy of said resolution was delivered and received by the parties.[18] The decision thus became final and executory and an Entry of Judgment was issued on August 2, 1996.[19]

Flores and Rallama moved for the issuance of a Writ of Execution[20] which was favorably acted upon by the Labor Arbiter on August 28, 1997.[21] The writ, however, was returned unserved, thus, an Alias Writ of Execution and a Second Alias Writ of Execution were subsequently issued.[22] Pursuant to the Writ of Execution and Alias Writs of Execution, a Notice of Garnishment was issued.[23] Thereafter, Forever Security and Garin filed an urgent *ex-parte* motion to quash the writ of execution and alias writs of execution.[24] They insisted that the Resolution of the Second Division denying their motion for reconsideration was not yet final and executory considering that respondents' counsel failed to receive a copy of the same. As such, the Entry of Judgment is null and void and consequently, the Writ of Execution, Alias Writs of Execution and Notice of Garnishment were all irregularly issued and have no legal force and effect.[25]

On March 15, 1999, pursuant to the Notice of Garnishment, an Order[26] of garnishment was issued directing Mr. Taja Guinomia and Mrs. Cynthia Tayam of the Department of Foreign Affairs, Office of Fiscal Management, to release a check drawn in favor of the NLRC Cashier amounting to P430,758.64. Forever Security and Garin then filed an Urgent *Ex-parte* Motion for Reconsideration and Opposition to Release[27] which was, however, denied in an Order[28] dated May 12, 1999. Said order became the subject of another appeal which the NLRC denied in a Resolution[29] dated February 9, 2000, ratiocinating that the same was dilatory in nature and indicative of bad faith. Their Motion for Reconsideration was likewise denied for lack of merit in a Resolution dated March 7, 2000.[30]

Forever Security, represented by Garin, as petitioner, elevated the matter before the CA in a special civil action for *certiorari*, prohibition and *mandamus*. In a Decision[31] dated December 11, 2000, the CA dismissed the petition, the decretal portion of which reads:

> WHEREFORE, premises considered, the petition for certiorari, prohibition and mandamus is DENIED for lack of merit.
>
> SO ORDERED.[32]

The court found that petitioner failed to substantiate its claim that respondents were guilty of abandonment, which would have justified their dismissal from service. The

court further held that petitioner failed to observe the procedural rules provided for by the Labor Code. As to the allegation that petitioner's counsel did not receive a copy of the NLRC resolution denying its motion for reconsideration, the court applied the rule on presumption of receipt in the ordinary course of mail. The CA opined that the certification issued by the acting postmaster of the Makati Central Post Office negates petitioner's claim that their former counsel, Atty. Cleofe L. Jaime, failed to receive a copy of the NLRC resolution. Consequently, there is nothing left to be done except to implement the orders of execution and garnishment.[33]

Forthwith, petitioner filed a Motion for Reconsideration[34] which was denied in a Resolution[35] dated April 24, 2001.

Hence, this petition.

The issues, as raised by the petitioner, are as follows:

> WHETHER OR NOT THE COURT OF APPEALS HAS ERRED IN LAW:
>
> A. FOR NOT HOLDING VALID AND LEGAL THE DISMISSAL OF RESPONDENTS FLORES AND RALLAMA ON THE GROUND OF ABANDONMENT.
>
> B. FOR HOLDING THAT THE ORDER DATED OCTOBER 24, 1995 WAS DULY RECEIVED BY PETITIONER'S COUNSEL, ATTY. MA. CLEOFE JAIME IN THE ORDINARY COURSE OF THE MAIL APPLYING THE PRESUMPTION UNDER RULE 131, SECTION 5 (v), AND FOR HOLDING THE PETITIONER TO HAVE FAILED TO OVERCOME SUCH PRESUMPTION BY SATISFACTORY PROOF.
>
> C. FOR HOLDING FINAL AND EXECUTORY THE DECISION DATED SEPTEMBER 16, 1994 OF LABOR ARBITER ERNESTO DINOPOL.

Petitioner maintains that the CA decision runs counter to the Rules of Procedure of the NLRC, particularly Rule III, Sections 6 and 7. To buttress its claim, petitioner insists that there is nothing in said rule that would suggest that the completeness of service of the order, coursed through mail, shall be determined by applying the rules of presumption under the Revised Rules of Court. Petitioner contends that the NLRC Rules, to be considered complete service, service of summons, notices, orders, decisions or final awards sent through registered mail must be received by the addressee or his/her agent. In the present case, such was not complied with. Thus, the presumption under Section 5(v), Rule 131 of the Revised Rules of Court finds no application or persuasion in the present case.[36]

Petitioner added that there was no proof on who actually received the copy of the resolution or whether such person was authorized to receive it in behalf of Atty. Jaime. Consequently, the entry of judgment, writ of execution and alias writs of execution, notice of garnishment, and order of garnishment are all null and void *ab initio*.[37] Moreover, petitioner claims that the issue of abandonment and reinstatement has become moot and academic since it had already ceased operation and closed its business as a security agency since December 31, 1993.[38]

The petition is without merit on both the procedural and substantive issues.

At the outset, this Court would like to point out that the present case at bench had long become final and executory for failure of petitioner to comply with procedural rules on perfection of appeals to the NLRC.

Article 223 of the Labor Code sets forth the rules on appeal from the Labor Arbiter's monetary award, thus:

> Article 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. x x x.
>
> x x x
>
> In case of a judgment involving a monetary award, an appeal by the employer **may be perfected only upon the posting of a cash or surety bond** issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from. (Emphasis ours)

Moreover, Sections 1 and 6, Rule VI of the New Rules of Procedure of the NLRC[39] provide:

> SEC 1. *Periods of Appeal*. — Decisions, awards or orders of the Labor Arbiter and the POEA Administrator shall be 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 of the Labor Arbiter x x x.
>
> x x x
>
> SEC. 6. *Bond*. — In case the decision of a Labor Arbiter, POEA Administrator and Regional Director or his duly authorized hearing officer involves a monetary award, an appeal by the employer shall be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission or the Supreme Court in an amount equivalent to the monetary award.

The requirement of a cash or surety bond for the perfection of an appeal from the Labor Arbiter's monetary award is not only mandatory but jurisdictional as well, and non-compliance therewith is fatal and has the effect of rendering the award final and executory.[40] The logical purpose of an appeal bond is to insure, during the period of appeal, against any occurrence that would defeat or diminish recovery under the judgment if subsequently affirmed; it also validates and justifies, at least *prima facie*, an interpretation that would limit the amount of the bond to the aggregate of the sums awarded other than in the concept of moral and exemplary damages.[41] This is consistent with the State's constitutional mandate to afford full protection to labor in order to forcefully and meaningfully underscore labor as a primary social and economic force.[42]