

TWENTY-SECOND DIVISION

[CA-G.R. SP NO. 04345-MIN, February 18, 2014]

**LAPANDAY AGRICULTURAL & DEVELOPMENT CORPORATION,
PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION -
EIGHTH DIVISION (FORMERLY FIFTH DIVISION), CAGAYAN DE
ORO CITY, LABOR ARBITER MERCEDITAS C. LARIDA, PUBLIC
RESPONDENTS.**

D E C I S I O N

LOPEZ, J.:

Assailed in the instant petition^[1] for *certiorari* under Rule 65 of the Revised Rules of Court filed by petitioner Lapanday Agricultural Development Corporation (Petitioner for brevity) is the Resolution^[2] dated February 11, 2011 of the National Labor Relations Commission (NLRC), Eighth Division (formerly Fifth Division), Cagayan de Oro City, dismissing petitioner's appeal from the Order dated November 4, 2010 of Labor Arbiter Merceditas C. Larida (Labor Arbiter Larida for brevity), approving the computation of the award of backwages for private respondents in the total amount of P40,226,823.38 and setting the case for pre-execution conference on November 23, 2010, as well as the NLRC's denial of petitioner's motion for reconsideration thereto on May 27, 2011.^[3]

The Factual Antecedents:

Culled from the records of the case, the facts are:

Petitioner is an agricultural corporation engaged in the planting, raising, and production of Cavendish bananas as grower for Del Monte Fresh Produce International Inc., while private respondents were its plantation and farm workers. In 2006 onwards, petitioner was confronted with financial reverses attributed to several factors such as, but not limited to, very low productivity, onslaught of banana diseases, adverse effects brought about by the imposition of the aerial spray ban, reduction of lease areas as a result of the Comprehensive Agrarian Reform Law, refusal of landowners to renew their lease contracts, remarkable increase in the production costs, and the extraordinary fluctuation in the foreign exchange. To address its financial predicament, petitioner resorted to cost-saving measures which included the (i) prioritization of capital expenditures to only those certified urgent and absolutely necessary; (ii) suspension of trainings and attendance to seminars; (iii) reduction of travel, fuel and representation expenses by fifty percent (50%); (iv) reduction by twenty percent (20%) of staff allocation for the 2007 budget of all departments; and (v) the suspension of the budget for donations.^[4]

Notwithstanding the cost-saving measures instituted by petitioner, its financial condition continued to deteriorate. Consequently, the management of petitioner conducted a series of intensive meetings with all its departments until the hard decision was reached, to wit: (i) the closure of Farms 1 and 2 and Packing House 56

in petitioner's Plantation Operations consisting of about two hundred five (205) hectares; (ii) the abandonment and non-renewal of lease contracts for identified unproductive areas in all plantation operations; and (iii) the retrenchment of workers in all plantation operations to prevent losses. Prior to the actual implementation of the retrenchment program, petitioner through the Human Resource and Administrative Group, conducted various meetings with the union officers of all the affected plantations, wherein the features of the retrenchment program and schedule dates for the implementation thereof were consulted, explained and discussed. With the approval of the union officials, petitioner effected payment of separation pay, as follows: (i) half month pay (1/2) per year of service for workers with length of service of 15 years or below and for those who will be rehired; (ii) 75% of the monthly salary per year of service for workers with length of service of more than 15 years but less than 20 years; (iii) one month pay per year of service for workers with length of service of over 20 years and for those who will no longer be rehired.^[5]

Sometime in December 2007, petitioner filed with the Department of Labor and Employment (DOLE) the corresponding notice of retrenchment. On January 4, 2008, the affected employees were furnished with notice of retrenchment which would take effect on February 4, 2008. Of the 589 personnel, 455 received their respective notices while 134 opposed the retrenchment program and refused receipt of notice, which constrained petitioner to send the notices by registered mail.^[6]

In February 2008, private respondents filed against petitioner and its officers complaints for illegal dismissal, unfair labor practice, money claims and damages.^[7]

On August 15, 2008, Labor Arbiter Henry F. Te (Labor Arbiter Te for brevity) dismissed the aforesaid complaints, declared the retrenchment valid but ordered petitioner to pay private respondents their separation pay amounting to P8,286,174.53.^[8] Private respondents appealed to the NLRC.

On September 22, 2009, the NLRC rendered its Resolution reversing Labor Arbiter Te's finding. The NLRC found petitioner guilty of illegal dismissal and consequently ordered petitioner to reinstate private respondents with full backwages reckoned from the time they were dismissed until their actual reinstatement, plus 10% attorney's fees of the total monetary award, subject to computation by the Regional Arbitration Branch of origin during the execution proceedings.^[9]

Petitioner sought reconsideration but was denied. This prompted petitioner to elevate its case to the Court of Appeals via a special civil action for *certiorari* with prayer for injunctive relief docketed as CA-G.R. Sp No. 03588. In such action, petitioner sought the reversal of the NLRC's September 22, 2009 resolution, and the reinstatement of Labor Arbiter Te's August 15, 2008 ruling.^[10]

On July 30, 2009, Labor Arbiter Larida rendered a decision in another case against petitioner declaring the dismissal of Presco Fuentes and Brian Taub as illegal, thereby ordering their reinstatement with full backwages. Petitioner appealed to the NLRC which subsequently affirmed the labor arbiter's finding. Thus, petitioner went to the Court of Appeals through a special civil action for *certiorari* with prayer for injunctive relief docketed as CA-G.R. Sp No. 04646. Since both CA-G.R. Sp No. 03588 and CA-G.R. Sp No. 04646 substantially involved the same parties and

issues, the Court of Appeals ordered those cases consolidated per its resolution of March 13, 2012.

On May 21, 2010, private respondents moved for the execution of the NLRC's resolution of September 22, 2009 which ordered petitioner to reinstate private respondents and pay them full backwages plus 10% attorney's fees of the total monetary award. Petitioner opposed this and sought the deferment of the execution proceedings pending appeal contending, among others, that the same would pre-empt or render moot the ruling of the Court of Appeals in CA-G.R. Sp No. 03588 and CA-G.R. Sp No. 04646.

On June 29, 2012, the Court of Appeals rendered its *Consolidated Decision*^[11] (CA consolidated decision for brevity) in CA-G.R. Sp No. 03588 and CA-G.R. Sp No. 04646 penned by Associate Justice Edgardo T. Lloren, the decretal portion of which reads:

"WHEREFORE, the instant consolidated Petitions are GRANTED.

"In CA-G.R. No. 03588: the National Labor Relations Commission, 8th Division's (NLRC) Resolution promulgated on September 22, 2009 and February 12, 2010 are SET ASIDE. The Decision of Labor Arbiter Henry F. Te promulgated on August 15, 2008 is hereby REINSTATED.

"In CA-G.R. No. 04646: the National Labor Relations Commission, 8th Division's (NLRC) Decision promulgated on July 29, 2011 and the Resolution promulgated on October 26, 2011 are SET ASIDE and a new judgment is entered DISMISSING the instant Complaint for lack of merit. Let this case be remanded to the arbitration branch of origin for the computation of private respondents' separation pay to be based on each private respondent's number of years of service.

SO ORDERED."^[12]

(Emphasis in the Original)

Per verification from the Judicial Records Division-Special Proceedings (JRD-SP), the aforesaid CA consolidated decision is now pending appeal before the Supreme Court.
^[13]

Meantime, the DOLE through its Regional Arbitration Branch of origin, Davao City, rendered its Report of Computation dated July 19, 2010 relative to the monetary award due the private respondents per directive of the NLRC, stating an award computation totaling P40,226,823.38.^[14] Thereafter, the parties were directed to file comment on the said computation.

On October 7, 2010, petitioner filed its comment contending that the said computation has no sufficient factual and legal bases, considering that it was made on a straight basis without accounting for absences, tardiness and the like.^[15] On October 4, 2010, private respondents filed a manifestation and motion reiterating its prayer for the issuance of a writ of execution to enforce the NLRC's resolution of September 22, 2009.^[16]

On November 4, 2010, Labor Arbiter Larida approved the aforesaid computation and set the case for pre-execution conference on November 23, 2010.^[17] On November 9, 2010, the said labor arbiter issued another order directing the reinstatement of private respondents.^[18]

On November 23, 2010, petitioner appealed to the NLRC relative to Labor Arbiter Larida's approval of the computation of the monetary award.^[19]

On December 10, 2010, Labor Arbiter Larida issued a Writ of Execution^[20] for the enforcement of the reinstatement aspect of her Order dated November 9, 2010.^[21]

On February 11, 2011, the NLRC issued a Resolution^[22] dismissing for lack of merit petitioner's appeal from the Order dated November 4, 2010 of Labor Arbiter Larida approving the computation of the award of backwages for private respondents in the total amount of P40,226,823.38, the dispositive portion of which reads:

"**WHEREFORE**, foregoing premises considered, the instant motion for reconsideration treated as an appeal is **DISMISSED** not only for being a frivolous appeal, but also for lack of merit.

SO ORDERED."^[23]

(Emphasis in the Original)

Petitioner sought reconsideration but was denied per NLRC Decision^[24] dated May 27, 2011, the *fallo* of which states:

"**WHEREFORE**, foregoing premises considered, the instant motion for reconsideration is hereby **DENIED** for lack of merit. However, [petitioner] Lapanday Agricultural Development Corporation is ordered to pay the complainants their separation pay, in lieu of reinstatement, equivalent to one (1) month pay for every year of service apart from their full backwages, including attorney's fees equivalent to ten percent (10%) of the aggregate monetary awards, subject to further computation by the Regional Arbitration Branch of origin during the execution proceedings using the guidelines stated above.

SO ORDERED."

(Emphasis in the Original)

Aggrieved, petitioner came to Us via the instant petition questioning the propriety of the NLRC's affirmance of the DOLE's computation of monetary award for the private respondents, as well as the consequent issuance by Labor Arbiter Larida of the writ of execution pending appeal for the enforcement of the reinstatement aspect of her Order^[25] dated November 9, 2010 (or in lieu thereof the payment of separation pay equivalent to one month pay for every year of service as ordered by the NLRC per its Decision^[26] dated May 27, 2011), alleging this lone:

Assignment of Error:

"THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT RULED DURING THE

EXECUTION PROCEEDINGS THAT [PETITIONER] SHOULD PAY THE PRIVATE RESPONDENTS (i) SEPARATION PAY, IN LIEU OF REINSTATEMENT, EQUIVALENT TO ONE MONTH PAY FOR EVERY YEAR OF SERVICE FROM THE DATES THEY WERE ENGAGED UNTIL THE PROMULGATION OF THE DECISION; (ii) BACKWAGES COMPUTED FROM FEBRUARY 5, 2008 UNTIL PROMULGATION OF THE DECISION BASED ON WAGE RATES PREVAILING AT THE TIME OF THEIR DISMISSAL FROM EMPLOYMENT ON FEBRUARY 4, 2008; and (iii) ATTORNEY'S FEES EQUIVALENT TO 10% OF THE AGGREGATE MONETARY AWARDS.”^[27]

In essence, petitioner contends that the DOLE's computation of the monetary award amounting to P40,226,823.38 which was approved by Labor Arbiter Larida and affirmed by the NLRC, is without sufficient factual and legal bases, not only because the said figure was arrived at as a result of a mere “desk assessment” without accounting for absences, tardiness and the like, but also because the same had been rendered ineffectual by the rendition of the CA consolidated decision in CA-G.R. SP No. 03588-MIN and CA-G.R. SP No. 04646 which dismissed the labor complaints of private respondents against petitioner and set aside the questioned resolutions of the NLRC sought to be enforced.^[28]

On the other hand, private respondents countered in the main that since the CA consolidated decision in CA-G.R. SP No. 03588-MIN and CA-G.R. SP No. 04646 in favor of petitioner has not yet attained finality as the same is still pending appeal before the Supreme Court, and considering that no TRO or Injunction was issued to stay the execution of the September 22, 2009 NLRC resolution finding petitioner guilty of illegal dismissal and consequently ordering it to reinstate private respondents with full backwages which had long become final and executory pursuant to the NLRC New Rules of Procedure, the issuance of the writ of execution by Labor Arbiter Larida became her ministerial duty. Thus, there is no grave abuse of discretion amounting to lack or excess of jurisdiction to speak of on the part of the NLRC nor Labor Arbiter Larida.^[29]

The ultimate issue for resolution in this case is whether or not the NLRC acted with grave abuse of discretion amounting to lack or excess of jurisdiction: (a) in issuing its Resolution^[30] dated February 11, 2011 dismissing petitioner's appeal from the Order dated November 4, 2010 of Labor Arbiter Larida, approving the computation of the monetary award; and (b) in affirming the consequent issuance by Labor Arbiter Larida of the writ of execution pending appeal for the enforcement of the reinstatement aspect of the Order^[31] dated November 9, 2010.

Our Ruling:

In a petition for *certiorari* premised on grave abuse of discretion, it must be shown that the NLRC patently and grossly abused its discretion and that such abuse amounted to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, as to be equivalent to having acted without or in excess of jurisdiction.^[32] “*Grave abuse of discretion*” means such capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction. To justify the issuance of the writ of *certiorari*, the abuse of discretion must be grave, as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty