

## EN BANC

[ G.R. No. 164856, January 20, 2009 ]

**JUANITO A. GARCIA AND ALBERTO J. DUMAGO, PETITIONERS,  
VS. PHILIPPINE AIRLINES, INC., RESPONDENT.**

### DECISION

**CARPIO MORALES, J.:**

Petitioners Juanito A. Garcia and Alberto J. Dumago assail the December 5, 2003 Decision and April 16, 2004 Resolution of the Court of Appeals<sup>[1]</sup> in CA-G.R. SP No. 69540 which granted the petition for certiorari of respondent, Philippine Airlines, Inc. (PAL), and denied petitioners' Motion for Reconsideration, respectively. The dispositive portion of the assailed Decision reads:

WHEREFORE, premises considered and in view of the foregoing, the instant petition is hereby GIVEN DUE COURSE. The assailed November 26, 2001 Resolution as well as the January 28, 2002 Resolution of public respondent National Labor Relations Commission [NLRC] is hereby ANNULLED and SET ASIDE for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction. Consequently, the Writ of Execution and the Notice of Garnishment issued by the Labor Arbiter are hereby likewise ANNULLED and SET ASIDE.

SO ORDERED.<sup>[2]</sup>

The case stemmed from the administrative charge filed by PAL against its employees-herein petitioners<sup>[3]</sup> after they were allegedly caught in the act of sniffing shabu when a team of company security personnel and law enforcers raided the PAL Technical Center's Toolroom Section on July 24, 1995.

After due notice, PAL dismissed petitioners on October 9, 1995 for transgressing the PAL Code of Discipline,<sup>[4]</sup> prompting them to file a complaint for illegal dismissal and damages which was, by Decision of January 11, 1999,<sup>[5]</sup> resolved by the Labor Arbiter in their favor, thus ordering PAL to, *inter alia*, immediately comply with the reinstatement aspect of the decision.

Prior to the promulgation of the Labor Arbiter's decision, the Securities and Exchange Commission (SEC) placed PAL (hereafter referred to as respondent), which was suffering from severe financial losses, under an Interim Rehabilitation Receiver, who was subsequently replaced by a Permanent Rehabilitation Receiver on June 7, 1999.

From the Labor Arbiter's decision, respondent appealed to the NLRC which, by Resolution of January 31, 2000, reversed said decision and dismissed petitioners' complaint for lack of merit.<sup>[6]</sup>

Petitioners' Motion for Reconsideration was denied by Resolution of April 28, 2000 and Entry of Judgment was issued on July 13, 2000.<sup>[7]</sup>

Subsequently or on October 5, 2000, the Labor Arbiter issued a Writ of Execution (Writ) respecting the reinstatement aspect of his January 11, 1999 Decision, and on October 25, 2000, he issued a Notice of Garnishment (Notice). Respondent thereupon moved to quash the Writ and to lift the Notice while petitioners moved to release the garnished amount.

In a related move, respondent filed an Urgent Petition for Injunction with the NLRC which, by Resolutions of November 26, 2001 and January 28, 2002, affirmed the validity of the Writ and the Notice issued by the Labor Arbiter *but suspended and referred the action to the Rehabilitation Receiver for appropriate action.*

Respondent elevated the matter to the appellate court which issued the herein challenged Decision and Resolution nullifying the NLRC Resolutions on two grounds, essentially espousing that: **(1)** a subsequent finding of a valid dismissal removes the basis for implementing the reinstatement aspect of a labor arbiter's decision (the first ground), and **(2)** the impossibility to comply with the reinstatement order due to corporate rehabilitation provides a reasonable justification for the failure to exercise the options under Article 223 of the Labor Code (the second ground).

By Decision of August 29, 2007, this Court PARTIALLY GRANTED the present petition and effectively reinstated the NLRC Resolutions insofar as it suspended the proceedings, viz:

Since petitioners' claim against PAL is a money claim for their wages during the pendency of PAL's appeal to the NLRC, the same should have been suspended pending the rehabilitation proceedings. The Labor Arbiter, the NLRC, as well as the Court of Appeals should have abstained from resolving petitioners' case for illegal dismissal and should instead have directed them to lodge their claim before PAL's receiver.

However, to still require petitioners at this time to re-file their labor claim against PAL under peculiar circumstances of the case- that their dismissal was eventually held valid with only the matter of reinstatement pending appeal being the issue- this Court deems it legally expedient to suspend the proceedings in this case.

WHEREFORE, the instant petition is PARTIALLY GRANTED in that the instant proceedings herein are SUSPENDED until further notice from this Court. Accordingly, respondent Philippine Airlines, Inc. is hereby DIRECTED to quarterly update the Court as to the status of its ongoing rehabilitation. No costs.

SO ORDERED.<sup>[8]</sup> (Italics in the original; underscoring supplied)

By Manifestation and Compliance of October 30, 2007, respondent informed the Court that the SEC, by Order of September 28, 2007, granted its request to exit from rehabilitation proceedings.<sup>[9]</sup>

In view of the termination of the rehabilitation proceedings, the Court now proceeds to resolve the remaining issue for consideration, which is **whether petitioners may collect their wages during the period between the Labor Arbiter's order of reinstatement pending appeal and the NLRC decision overturning that of the Labor Arbiter, now that respondent has exited from rehabilitation proceedings.**

### ***Amplification of the First Ground***

The appellate court counted on as its first ground the view that a subsequent finding of a valid dismissal removes the basis for implementing the reinstatement aspect of a labor arbiter's decision.

On this score, the Court's attention is drawn to seemingly divergent decisions concerning reinstatement pending appeal or, particularly, the **option of payroll reinstatement**. On the one hand is the jurisprudential trend as expounded in a line of cases including *Air Philippines Corp. v. Zamora*,<sup>[10]</sup> while on the other is the recent case of *Genuino v. National Labor Relations Commission*.<sup>[11]</sup> At the core of the seeming divergence is the application of paragraph 3 of Article 223 of the Labor Code which reads:

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, 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. (Emphasis and underscoring supplied)

The view as maintained in a number of cases is that:

x x x **[E]ven if the order of reinstatement of the Labor Arbiter is reversed on appeal, it is obligatory on the part of the employer to reinstate and pay the wages of the dismissed employee during the period of appeal until reversal by the higher court.** On the other hand, if the employee has been reinstated during the appeal period and such reinstatement order is reversed with finality, the employee is *not* required to reimburse whatever salary he received for he is entitled to such, more so if he actually rendered services during the period.<sup>[12]</sup> (Emphasis in the original; italics and underscoring supplied)

In other words, a dismissed employee whose case was favorably decided by the Labor Arbiter is entitled to receive wages pending appeal upon reinstatement, which is immediately executory. Unless there is a restraining order, it is ministerial upon the Labor Arbiter to implement the order of reinstatement and it is mandatory on the employer to comply therewith.<sup>[13]</sup>

The opposite view is articulated in *Genuino* which states:

If the decision of the labor arbiter is later reversed on appeal upon the finding that the ground for dismissal is valid, then **the employer has the right to require the dismissed employee on payroll**

**reinstatement to refund the salaries s/he received** while the case was pending appeal, or it can be deducted from the accrued benefits that the dismissed employee was entitled to receive from his/her employer under existing laws, collective bargaining agreement provisions, and company practices. However, if the employee was reinstated to work during the pendency of the appeal, then the employee is entitled to the compensation received for actual services rendered without need of refund.

Considering that *Genuino* was not reinstated to work or placed on payroll reinstatement, and her dismissal is based on a just cause, then she is not entitled to be paid the salaries stated in item no. 3 of the *fallo* of the September 3, 1994 NLRC Decision.<sup>[14]</sup> (Emphasis, italics and underscoring supplied)

It has thus been advanced that there is no point in releasing the wages to petitioners since their dismissal was found to be valid, and to do so would constitute unjust enrichment.

Prior to *Genuino*, there had been no known similar case containing a dispositive portion where the employee was required to refund the salaries received on payroll reinstatement. In fact, in a catena of cases,<sup>[15]</sup> the Court did not order the refund of salaries garnished or received by payroll-reinstated employees despite a subsequent reversal of the reinstatement order.

The dearth of authority supporting *Genuino* is not difficult to fathom for it would otherwise render inutile the rationale of reinstatement pending appeal.

x x x [T]he law itself has laid down a compassionate policy which, once more, vivifies and enhances the provisions of the 1987 Constitution on labor and the working man.

x x x x

These duties and responsibilities of the State are imposed not so much to express sympathy for the workingman as to forcefully and meaningfully underscore labor as a primary social and economic force, which the Constitution also expressly affirms with equal intensity. Labor is an indispensable partner for the nation's progress and stability.

x x x x

x x x In short, with respect to decisions reinstating employees, the law itself has determined a sufficiently overwhelming reason for its execution pending appeal.

x x x x

x x x Then, by and pursuant to the same power (police power), the State may authorize an immediate implementation, pending appeal, of a decision reinstating a dismissed or separated employee since that saving act is designed to stop, although temporarily since the appeal may be

decided in favor of the appellant, a continuing threat or danger to the survival or even the life of the dismissed or separated employee and his family.<sup>[16]</sup>

**The social justice principles of labor law outweigh or render inapplicable the civil law doctrine of unjust enrichment** espoused by Justice Presbitero Velasco, Jr. in his Separate Opinion. The constitutional and statutory precepts portray the otherwise "unjust" situation as a condition affording full protection to labor.

Even outside the theoretical trappings of the discussion and into the mundane realities of human experience, the "refund doctrine" easily demonstrates how a favorable decision by the Labor Arbiter could harm, more than help, a dismissed employee. The employee, to make both ends meet, would necessarily have to use up the salaries received during the pendency of the appeal, only to end up having to refund the sum in case of a final unfavorable decision. It is mirage of a stop-gap leading the employee to a risky cliff of insolvency.

Advisably, the sum is better left unspent. It becomes more logical and practical for the employee to refuse payroll reinstatement and simply find work elsewhere in the interim, if any is available. Notably, the option of payroll reinstatement belongs to the employer, even if the employee is able and raring to return to work. Prior to *Genuino*, it is unthinkable for one to refuse payroll reinstatement. In the face of the grim possibilities, the rise of concerned employees declining payroll reinstatement is on the horizon.

Further, the *Genuino* ruling not only disregards the social justice principles behind the rule, but also institutes a scheme unduly favorable to management. Under such scheme, the salaries dispensed *pendente lite* merely serve as a bond posted in installment by the employer. For in the event of a reversal of the Labor Arbiter's decision ordering reinstatement, the employer gets back the same amount without having to spend ordinarily for bond premiums. This circumvents, if not directly contradicts, the proscription that the "posting of a bond [even a cash bond] by the employer shall not stay the execution for reinstatement."<sup>[17]</sup>

In playing down the stray posture in *Genuino* requiring the dismissed employee on payroll reinstatement to refund the salaries in case a final decision upholds the validity of the dismissal, the Court realigns the proper course of the prevailing doctrine on reinstatement pending appeal vis-à-vis the effect of a reversal on appeal.

Respondent insists that with the reversal of the Labor Arbiter's Decision, there is no more basis to enforce the reinstatement aspect of the said decision. In his Separate Opinion, Justice Presbitero Velasco, Jr. supports this argument and finds the prevailing doctrine in *Air Philippines* and allied cases inapplicable because, unlike the present case, the writ of execution therein was secured prior to the reversal of the Labor Arbiter's decision.

The proposition is tenuous. *First*, the matter is treated as a mere race against time. The discussion stopped there without considering the cause of the delay. *Second*, it requires the issuance of a writ of execution despite the immediately executory nature of the reinstatement aspect of the decision. In *Pioneer Texturing Corp. v.*