

## FIRST DIVISION

[ G.R. No. 168339, October 10, 2008 ]

**MA. GREGORIETTA LEILA C. SY, PETITIONER, VS. ALC INDUSTRIES, INC. AND DEXTER P. CERIALES, RESPONDENTS.**

### D E C I S I O N

#### **CORONA, J.:**

In this petition for review on certiorari under Rule 45 of the Rules of Court, petitioner Ma. Gregorietta Leila C. Sy assails the March 30, 2005 decision<sup>[1]</sup> and May 31, 2005 resolution<sup>[2]</sup> of the Court of Appeals (CA) dismissing her complaint for non-payment of salary and allowances against respondents ALC Industries, Inc. (ALCII) and Dexter P. Cerialles.

Petitioner was hired by respondent corporation ALCII as a supervisor in its purchasing office. She was thereafter assigned to ALCII's construction project in Davao City as business manager and supervisor of the Administrative Division.<sup>[3]</sup> Her Davao assignment was from May 1997 to April 15, 1999.

Petitioner alleged that respondents refused to pay her salary beginning August 1998 and allowances beginning June 1998, despite her almost weekly verbal follow-up. Petitioner filed a complaint before the labor arbiter for unpaid salaries and allowances. Despite several notices and warnings, respondents did not file a position paper to controvert petitioner's claims.<sup>[4]</sup> The case was submitted for resolution based solely on petitioner's allegations and evidence.<sup>[5]</sup>

In his June 30, 2000 decision,<sup>[6]</sup> the labor arbiter ordered ALCII and/or Dexter Cerialles to pay petitioner P282,560 representing her unpaid salary and allowance.

Respondents filed an appeal with motion for reduction of bond in the National Labor Relations Commission (NLRC) without posting any cash or surety bond. In a resolution dated September 6, 2001, the NLRC dismissed respondents' appeal. It ruled that respondents failed to adduce substantial evidence to support their arguments of non-liability. Moreover, it found no justifiable reason to grant a reduction in the required bond.

Petitioner filed her first motion for issuance of writ of execution on November 16, 2001. From then on, four reiterating motions for the issuance of a writ of execution<sup>[7]</sup> were filed. Unknown to her, respondents were able to file a motion for reconsideration on time, accompanied by a joint undertaking/declaration<sup>[8]</sup> in lieu of the cash or surety bond.

Nevertheless, respondents' motion for reconsideration was denied.

On August 2, 2002, respondents filed a motion for clarification but this was likewise denied. Respondents questioned the NLRC's denial of their motion for clarification and reconsideration in the CA via a petition for certiorari and prohibition.

In its March 30, 2005 decision, the CA set aside the resolutions of the NLRC and the decision of the labor arbiter and dismissed petitioner's complaint. When her motion for reconsideration was denied, she filed a Rule 45 petition in this Court questioning the CA decision and resolution on the ground that the decision of the labor arbiter had become final and executory. Hence, the CA no longer had jurisdiction over respondents' petition for certiorari.

We agree.

Article 223 of the Labor Code provides:

**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 calendar days from receipt of such decisions, awards, or orders. xxx.**

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 supplied)

Section 1, Rule VI of the Rules of Procedure of the NLRC, as amended, likewise provides that the appeal must be filed within ten days from receipt of the decision, resolution or order of the labor arbiter. Moreover, Section 6 of the same rules provides that an appeal by the employer may be perfected only upon the posting of a cash or surety bond. As the right to appeal is merely a statutory privilege, it must be exercised only in the manner and in accordance with the provisions of the law. Otherwise, the right to appeal is lost.<sup>[9]</sup>

Although the NLRC Rules of Procedure may be liberally construed in the determination of labor disputes, there is, however, a caveat to this policy. Liberal construction of the NLRC rules is allowed only in meritorious cases, where there is substantial compliance with the NLRC Rules of Procedure or where the party involved demonstrates a willingness to abide by the rules by posting a partial bond.

<sup>[10]</sup> In *Bunagan v. Sentinel Watchman and Protective Agency, Inc.*,<sup>[11]</sup> we held:

Although the NLRC is not bound by the technical rules of procedure and is allowed to be liberal in the interpretation of the rules in deciding labor cases, such liberality should not be applied where it would render futile the very purpose for which the principle of liberality is adopted; the liberal interpretation stems from the mandate that a workingman's welfare should be the primordial and paramount consideration.

Respondents have not shown any reason to warrant a liberal interpretation of the NLRC Rules of Procedure. For one, their failure to post an appeal bond during the reglementary period was directly violative of Article 223 of the Labor Code. In a long line of cases, we have ruled that the payment of the appeal bond is a jurisdictional