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THIRD DIVISION

[G.R. No. 157488, February 06, 2007]

SOLGUS CORPORATION, PETITIONER, VS. HON. COURT OF APPEALS, DIOSDADO TELIN AND ALEJANDRE ALAGOS, RESPONDENTS.

D E C I S I O N

CHICO-NAZARIO, J.:

This is a Petition for Review on *Certiorari* under Rule 65 of the Rules of Court seeking to annul and set aside: (a) the Decision,[1] dated 23 April 2002; and (b) the Resolution,[2] dated 20 January 2003, rendered by public respondent Court of Appeals.

The factual antecedents of this case are:

On different dates,[3] complainants Alejandro Alagos (Alagos), Diosdado Telin (Telin) (private respondents in this petition), Jerry Emano (Emano),[4] Edwin Lacerna (Lacerna), Armando Ballon (Ballon), Garry Soriano (Soriano), Jimmy Menor, Jr. (Menor), Roldan Deseo (Deseo), and Dominador Vega (Vega) were hired as security guards by petitioner Solgus Corporation (Solgus), a duly licensed security and investigation agency, and then assigned to its clients.

Sometime during the first quarter of 1994, they separately filed complaints[5] for illegal dismissal and underpayment of salaries and related benefits against the above mentioned corporation and its principals. They alleged that at the time of their hiring, there was no stipulation that they were being hired as probationary employees; that they worked twelve (12) hours daily; that they were made to sign blank payrolls; that they were summarily dismissed from employment; and that at the time of their dismissal, they were each paid P3,800.00 monthly (except for Emano and Deseo, who were paid monthly salaries of P3,600.00 and P3,200.00, respectively). The complaints were later consolidated.[6] On 25 April 1994, the complaint of Vega was dismissed for lack of interest to prosecute.[7]

In evading liability, Solgus alleged that complainants Soriano, Emano and Deseo were probationary employees who, due to their unsatisfactory performance as shown by the feedback of the clients where they were assigned, failed to pass the six-month probationary period; that the other complainants were removed from their posts upon the request of Solgus' clients; that, thereafter, they were repeatedly required to report for work at its head office but they refused to do so; that it was, therefore, constrained to consider them to have abandoned their jobs; that it was not true that the complainants were required to sign blank payrolls; and that the complainants had the burden of proving their money claims.[8]

On 5 December 1996,[9] the Labor Arbiter issued an Order declaring the instant case submitted for resolution. The Order in part reads:

> [I]nstant case is deemed submitted for decision based on the pleadings and records on hand.
>
> Be this as it may, parties are however given fifteen (15) days upon receipt of this Order to file/submit their last responsive pleadings on this case.[10]

On 29 August 1997, Solgus submitted a Memorandum alleging that: complainants Telin,[11] Lacerna,[12] Emano,[13] Ballon,[14] Menor, Jr.,[15] and Alagos[16] had executed Affidavits of Desistance evidencing that their complaints had been amicably settled; and the complaints of Deseo and Soriano should be dismissed because they failed to complete their six-month probationary period and were, therefore, not regular employees.[17]

In a Decision[18] dated 15 October 1997, the Labor Arbiter dismissed the complaints and affirmed the validity of the Affidavits of Desistance and held:

> WHEREFORE, premises considered, judgment is hereby rendered dismissing the complaints of Diosdado Telin, Alejandro Alagos, Edwin Lacerna and Gerry Emano with prejudice. Additionally, the complaint of Jimmy Menor, Jr. and that of Dominador Vega and Armando Ballon elsewhere mentioned in this decision are likewise dismissed with prejudice.
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> However, respondent Solgus Corporation is hereby ordered to pay complainants Garry Soriano and Roldan Deseo their respective salary differentials in accordance with the computation of the monetary awards due the said complainants hereunder indicated, as follows:
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> Garry Soriano
>
> 9/28/93 - 12/15/93 = 2.60 mos.
> P4,402.12 - P3,800.00 = P602.12
> P602.12 x 2.60 mos. P 1,565.51
>
> 12/16/93 - 1/11/94 = .90 mos.
> P5,016.91 - P3,800.00 = P1,216.91
> P1,216.91 x .90 mos. 1,095.21
>
> Ten (10%) percent Attorney's Fees 266.07
>
> P 2,926.79
>
> Roldan Deseo
>
> 9/27/93 - 12/12/93 = 2.53 mos.
> P4,402.12 - P3,600.00 = P802.12

P802.12 x 2.53 mos.	P 2,029.36
12/13/93 - 12/28/93 = .53 mos. P5,016.91 - P3,200.00 = P1,816.91	
P1,816.91 x .53 mos.	962.96
Ten (10%) percent Attorney's Fees	299.23
	P 3,291.55
Grand Total	P 6,218.34

All other claims of said complainants are dismissed for lack of merit.[19]

In the challenged decision, the Labor Arbiter found: (1) that the complaints of Telin, Alagos, Emano, Ballon, Menor, and Lacerna should be dismissed due to the Affidavits of Desistance;[20] that the complaint of Vega had been dismissed earlier for lack of interest to prosecute;[21] (2) that complainants Soriano and Deseo were not entitled to security of tenure because they were employed by Solgus for less than six months and were therefore not regular employees; (3) that, moreover, Soriano and Deseo failed to impugn the respondents' contention that they were the subjects of several complainants of its clients and may therefore be considered to have abandoned and/or relinquished their jobs; and (4) that complainants Soriano and Deseo may recover salary differentials because they were paid less than the minimum wage rate established by law, but, due to insufficient evidence, they may not recover overtime pay and other benefits.

From the Labor Arbiter's decision, the complainants filed a Memorandum of Appeal[22] dated 22 December 1997 to the National Labor Relations Commission (NLRC). However, only complainants Telin and Alagos affixed their signatures thereon. In their appeal, the complainants denied executing the Affidavits of Desistance. They likewise complained that they were not furnished a copy of the 29 August 1997 Memorandum of Solgus where the affidavits were attached. They claimed that had they been given a copy, they would have timely repudiated the same.[23]

In a Decision[24] dated 27 November 1998, the NLRC held:

> WHEREFORE, the Decision appealed from is hereby REVERSED.
>
> The respondents are hereby ordered to REINSTATE the complainants-appellants to their former positions without loss of seniority rights and to pay them backwages and other benefits, or their monetary equivalent, from the dates of their dismissal to the dates they are actually reinstated. Furthermore, the respondents are hereby ordered to pay complainants' salary differentials and other unpaid benefits that accrued within the unprescribed three-year period preceding the filing of their complaints.[25]

Solgus elevated the case to the Court of Appeals. In a Decision dated 23 April 2002, the Court of Appeals held:

> **WHEREFORE,** in view of the foregoing, the challenged judgment of the NLRC is hereby **MODIFIED** in that:
>
> 1. The petitioners are ordered to reinstate Diosdado Telin and Alejandre Alagos to their former positions without loss of seniority of rights and to pay them backwages and other benefits due, or their monetary equivalent from the time of their dismissal until they are actually reinstated.
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> 2. The awards given by the labor arbiter to Garry Soriano and Roldan Deseo shall remain valid and binding.[26]

The Motion for Reconsideration filed by Solgus was denied by the Court of Appeals in a Resolution dated 20 January 2003.[27]

For its procedural and substantive flaws we deny the Petition.

The general rule is that the remedy to obtain reversal or modification of judgment on the merits is appeal. This is true even if the error, or one of the errors, ascribed to the court rendering the judgment is its lack of jurisdiction over the subject matter, or the exercise of power in excess thereof, or grave abuse of discretion in the findings of facts or of law set out in the decision.[28] Solgus, instead of availing of the remedy of appeal under Rule 45 of the Revised Rules of Court,[29] filed a petition for *certiorari* under Rule 65 of the Revised Rules of Court.[30] This procedural flaw notwithstanding, the court deems it judicious to take cognizance of the case to put the issues to rest.[31]

As to issues of substance, both the Court of Appeals and the NLRC are one in their conclusion that the Labor Arbiter erred in giving full faith and credit to the affidavits of desistance. They differ, however, as to who should be reinstated. The NLRC gave a blanket order to reinstate all the complainants, whereas the Court of Appeals reinstated only complainants Telin and Alagos since they were the only ones who affixed their signatures to the Memorandum of Appeal. It ruled that it was an error for the NLRC to order the reinstatement of all the complainants. The Decision of the Labor Arbiter had attained finality as to those who did not appeal to the NLRC.

We shall first resolve the matter of whether or not the NLRC erred when it ordered the reinstatement of all the complainants despite the fact that only Telin and Alagos signed the Memorandum of Appeal before the NLRC.

We find that the NLRC erred in this aspect. The prevailing doctrine in labor cases is that a party who has not appealed cannot obtain from the appellate court any affirmative relief other than those granted, if any, in the decision of the lower tribunal.[32] In the case before us, only Telin and Alagos signed the memorandum of appeal indicating that they were the only ones who signified their intention to appeal the Labor Arbiter's decision. In other words, as to the other complainants who did not join Telin and Alagos in their appeal before the NLRC, it is presumed that they were satisfied with the adjudication of the Labor Arbiter.[33]

That being settled, we now go to the issue of the propriety of the Labor Arbiter's decision in giving effect and validity to the affidavits of desistance.

In *Periquet v. National Labor Relations Commission,*[34] the guideposts to determine validity of affidavits of desistance were set, thus:

> Not all waivers and quitclaims are invalid as against public policy. If the agreement was voluntarily entered into and represents a reasonable settlement, it is binding on the parties and may not later be disowned simply because of a change of mind. It is only where there is clear proof that the waiver was wangled from an unsuspecting or gullible person, or the terms of settlement are unconscionable on its face, that the law will step in to annul the questionable transaction. But where it is shown that the person making the waiver did so voluntarily, with full understanding of what he was doing, and the consideration for the quitclaim is credible and reasonable, the transaction must be recognized as a valid and binding undertaking. x x x.

In the instant case, we agree with both the NLRC and the Court of Appeals that the Affidavits of Desistance deserve scant consideration.

The NLRC Rules of Procedure particularly Section 3, Rule V,[35] provides:

> Section 3. *Submission of Position Papers/Memorandum.* - Should the parties fail to agree upon an amicable settlement, either in whole or in part, during the conferences, the Labor Arbiter shall issue an order stating therein the matters taken up and agreed upon during the conferences and directing the parties to simultaneously file their respective verified position papers.
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> These verified position papers shall cover only those claims and causes of action raised in the complaint excluding those that may have been amicably settled, and shall be accompanied by all supporting documents including the affidavits of their respective witnesses which shall take the place of the latter's direct testimony. **The parties shall thereafter not be allowed to allege facts, or present evidence to prove facts, not referred to and any cause or causes of action not included in the complaint or position papers, affidavits and other documents.** x x x. (Emphasis supplied.)

The records clearly indicate that Solgus received the 5 December 1996 Order of the Labor Arbiter on 2 January 1997.[36] However, it inexplicably managed to submit its Memorandum only on 27 August 1997 when it presented for the **first time** the alleged Affidavits of Desistance executed by complainants Telin and Alagos.

We agree with the NLRC that the Labor Arbiter should not have taken undue haste in considering the Affidavits of Desistance of complainants as presented by Solgus on the ground that it made no reference at all in its position paper, reply, and rejoinder to the existence of the said affidavits in patent violation of the aforementioned rule of the NLRC. The belated presentation of the purported Affidavits of Desistance deprived complainants Telin and Alagos of the opportunity to