

## FIRST DIVISION

[ G.R. NO. 164633, August 07, 2006 ]

**GERONIMO S. BANQUERIGO, REYNALDO S. MENOR, ROGELIO ENRICOSO, DANILO PALIOTO, COLITO VIRTUDAZO AND HERBERT VELOSO, PETITIONERS, VS. HON. COURT OF APPEALS, HON. LEONARDO A. QUISUMBING, JOSE M. ESPAÑOL, JR., OFFICE OF THE SECRETARY OF THE DEPARTMENT OF LABOR AND EMPLOYMENT AND INTERNATIONAL PHARMACEUTICAL, INC., RESPONDENTS.**

### D E C I S I O N

**CHICO-NAZARIO, J.:**

Before Us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Civil Procedure, assailing the Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. SP No. 54041, dated 28 February 2001, which affirmed *in toto* the Orders<sup>[2]</sup> dated 24 December 1997<sup>[3]</sup> and 17 March 1998<sup>[4]</sup> of the Secretary of Labor and Employment.

Petitioners are salesmen of private respondent International Pharmaceutical, Inc., (IPI) a domestic corporation engaged in the manufacture of drugs and pharmaceuticals.

Sometime in mid-1989, a bargaining deadlock ensued when the IPI Employees Union – ALU (Union) and the IPI management failed to arrive at a new Collective Bargaining Agreement (CBA). Thereafter, when all conciliation efforts proved futile, the employees, on 8 August 1989, went on strike.

As IPI is engaged in an industry considered indispensable to national interest, on 26 September 1989, then Labor Secretary Ruben D. Torres assumed jurisdiction over the case and ordered the striking employees to return to work. While the case was pending, and the dispute between the workers and management remained unresolved, IPI dismissed hundreds of workers who participated in the strike, including herein petitioners.

On 26 December 1990, Secretary Torres issued an Order resolving the labor dispute between the Union and IPI, the dispositive of which reads:

WHEREFORE, PREMISES CONSIDERED, decision is hereby rendered as follows:

1. finding the IPI Employees Union – ALU as the exclusive bargaining agent of all rank and file employees of ALU including sales personnel;

2. dismissing, for lack of merit, the charges of contempt filed by the Union against the IPI officials and reiterating our strict directive for a restoration of the status quo ante the strike as hereinbefore discussed;
3. dismissing the Union's complaint against the Company for unfair labor practice through refusal to bargain;
4. dismissing the IPI petition to declare the strike of the Union as illegal; and
5. directing the IPI Employees Union –ALU and the International Pharmaceuticals, Inc. to enter into their new CBA, incorporating therein the dispositions hereinbefore stated. All other provisions in the old CBA not otherwise touched upon in these proceedings are, likewise, to be incorporated in the new CBA.<sup>[5]</sup>

From the foregoing Order, both the Union and IPI filed their respective Motions for Reconsideration/Clarification. The Union prayed, among other things, that the affected workers be ordered reinstated to their former positions with full backpay and without loss of seniority rights, as well as payment of all other employee benefits and compensation until actual reinstatement. IPI, on the other hand, questioned the portions of the Order declaring (1) the Union as the exclusive bargaining agent of all rank and file employees of the company; (2) the dismissal of the company's petition to declare the strike of the Union illegal; (3) the salary increase awarded to the employees; and (4) the retention of the provision of the old CBA on union label program. Thus, on 5 December 1991, Secretary Torres issued an Order stating that:

WHEREFORE, in the light of the forgoing considerations, judgment is hereby rendered:

1. Dismissing the motions for reconsideration filed by the International Pharmaceutical, Inc. and the Workers Trade Alliance Unions (WATU) for lack of merit;
2. *Ordering the International Pharmaceutical Inc. to reinstate to their former positions with full backwages reckoned from 8 December 1989 until actually reinstated without loss of seniority rights and other benefits the "affected workers" herein-below listed:*

- 1. Reynaldo C. Menor**
- 2. Geronimo S. Banquirino**
3. Rogelio Saberon
4. Estefano G. Maderazo
- 5. Herbert G. Veloso**
- 6. Rogelio G. Enricoso**
- 7. Colito Virtudazo**

x x x

**37. Danilo Palioto**

x x x

49. Nestor Ouano (listed in paragraphs 1 & 9 of the IPI Employees Union – ALU's Supplemental Memorandum dated 6 March 1991) [Emphasis ours]

3. Ordering the International Pharmaceutical Inc. to reinstate to their former positions the following employees, namely:

- a. Alexander Aboganda
- b. Pacifico Pestano
- c. Carlito Torregano
- d. Clemencia Pestano
- e. Elisea Cabatingan

(listed in paragraph 3 of the IPI Employees Union – ALU's Supplemental Memorandum dated 6 March 1991).

No further motions of these same nature shall be entertained.<sup>[6]</sup>

Aggrieved by the abovequoted Order, IPI appealed said Order to the Supreme Court via a Petition for *Certiorari*,<sup>[7]</sup> which was subsequently dismissed by the Court in a Resolution dated 14 October 1992. In said Resolution, the Court affirmed the assailed Order of the Labor Secretary and held that there was no grave abuse of discretion on the part of the Labor Secretary in the issuance of the said Order. IPI did not file a Motion for Reconsideration of said Resolution.

On 8 June 1994, the employees filed a Motion for Execution of Judgment before the National Conciliation and Mediation Board, Region VII. Subsequently, said Motion was endorsed to the Regional Office of the Department of Labor and Employment (DOLE VII) on 14 June 1994. After conducting conferences between the parties and ordering the submission of their respective computations regarding the payment of backwages, Alan M. Macaraya, DOLE VII Regional Director, issued a Notice of Computation/Execution dated 12 April 1995, the pertinent portions of which read:

To speed-up the settlement of the issue, the undersigned on 7 February 1995 issued an Order directing the parties to submit within ten (10) calendar days from receipt of the Order, their respective Computations. To date, only the computation from complainants including those that were not specifically mentioned in the Supreme Court decision were submitted and received by this office.

Upon verification of the Computation available at hand, management is hereby directed to pay the employees including those that were not specifically mentioned in the decision but are similarly situated, the aggregate amount of FORTY-THREE MILLION SIX HUNDRED FIFTY THOUSAND NINE HUNDRED FIVE AND 87/100 PESOS (P43,650,905.87) involving NINE HUNDRED SIXTY-TWO (962) employees, in the manner shown in the attached Computation forming part of this Order. This is without prejudice to the final Order of the Court to reinstate those covered employees.

This Order is to take effect immediately and failure to comply as instructed will cause the issuance of a WRIT OF EXECUTION.<sup>[8]</sup>

Meanwhile, on 4 October 1994, Atty. Audie C. Arnado entered his appearance on behalf of fifteen of the 48 employees mentioned in the 5 December 1991 Order of Secretary Torres. Atty. Arnado then filed an Urgent Motion for Execution on behalf of his clients on 21 November 1994. It must be noted that petitioners are not among the fifteen employees represented by Atty. Arnado. On 24 May 1995, Jalilo O. dela Torre, DOLE VII Assistant Regional Director,<sup>[9]</sup> issued a Writ of Execution in favor of the fifteen employees represented by Atty. Arnado in the amount of P4,162,361.50.

Thereafter, on 5 June 1995, Assistant Regional Director dela Torre issued another Writ of Execution, this time in favor of herein petitioners. However, said Writ reduced the monetary award to petitioners from P4,182,739.97, as presented in the Computation attached to the 12 April 1995 Order, to P1,200,378.92. The reduced computation was arrived at by Assistant Regional Director dela Torre by deducting from the original monetary award the commissions, per diems, bodega allowance, and income earned by the salesmen from gainful employment. As stated in the said Writ of Execution:

WHEREAS, after careful analysis on the position papers, the relevant documents on record, the laws and jurisprudence, the undersigned finds that there is a need to modify not only the computations but also to exclude, those who are not specifically mentioned in the Secretary's decision dated 5 December 1991, their claims not being proper subjects of a Writ of Execution for the reason that they are not among those included in the list of "affected workers" and there being continuing efforts on the part of the Union and IPI Management to arrive at an amicable settlement as far as these workers still employed are concerned.

WHEREAS, among the seven (7) salesmen, namely: Geronimo S. Banquirigo, Rogelio Enricoso, Danilo Palioto, Reynaldo C. Menor, Noli Silo, Herbert Veloso and Colito Virtudazo, who are beneficiaries of the awards and whose names appear in the Order of the Secretary of DOLE and represented by Atty. Celso C. Reales, the office finds that the computations include, commissions, per diems and bodega allowance which should have not been included for the following reasons:

a. Commissions and per diems –

"But commissions ("override commissions" plus "net deposit incentive") are not includible in such base figure since such commissions must be earned by actual market transactions attributable to the employee. Neither should "travels equivalent" (an unusual and unexplained term) and "commission in trading personal clients" be included in such base figure. (Soriano v. NLRC, G.R. 75510, Oct. 27, 1989) (underscoring supplied). Hence, commissions must be earned by actual market transactions and per diems must be actually earned in the field before they are includible in the computation of separation pay.

b. Bodega Allowance –

"An unqualified award of backwages means that the employee is paid at the wage rate at the time of his dismissal. And the Court declared that the base figure to be used in the computation of backwages due to the employee should include not just the basic salary, but also the regular allowances that he had been receiving such as the emergency living allowances and the 13th month pay mandated under the law. In this computation of the amount of backwages, the Labor Arbiter without legal basis excluded the ECOLA. (Paramount Vinyl Products Corp. vs. NLRC, et. al., G.R. No. 81200, Oct. 17, 1990). (Underscoring supplied). Bodega allowance being not a regular allowance mandated by law, hence, not includible.

WHEREAS, the 12 April 1995 computations do not consider the incomes earned from gainful employment and the amounts they had received from the company in 1989 and 1990 which should have been deducted from the said computations;

x x x x

NOW, THEREFORE, you are hereby commanded to proceed to the premises of International Pharmaceuticals, Inc. and/or its Manager located at San Jose dela Monataña, Mabolo, Cebu City and require them to pay the aforestated seven (7) salesmen in the aggregate amount of ONE MILLION TWO HUNDRED THOUSAND THREE HUNDRED SEVENTY EIGHT & 92/100 (P1,200,378.92), Philippine currency.<sup>[10]</sup>

Dissatisfied by the reduced computation contained in the issued Writ of Execution, petitioners filed a "Motion Declaring Subsequent Orders Issued by Assistant Director Jalilo dela Torre Null and Void" on 30 June 1995, 22 days after petitioners' receipt of said Writ on 8 June 1995.

On 11 July 1995, IPI likewise questioned the 24 May 1995 Writ of Execution issued by Assistant Regional Director dela Torre in favor of the fifteen employees represented by Atty. Arnado, through an Appeal and Prohibition with Prayer for Temporary Restraining Order filed before the Office of then Labor Undersecretary Cresenciano Trajano. Said appeal was later resolved by then Acting Labor Secretary Jose Brillantes in an Order dated 22 December 1995 granting IPI's appeal by considering the case closed and terminated, and ordering the 24 May 1995 Writ of Execution recalled and quashed. According to said Order, the compromise agreement entered into by the fifteen employees on 2, 3 and 17 December 1993 had the effect of finally settling the dispute between the fifteen employees and IPI.

On Motion for Reconsideration filed by the fifteen employees, then Labor Secretary Leonardo A. Quisumbing,<sup>[11]</sup> in an Order dated 27 August 1996, reversed and set aside the 22 December 1995 Order. Secretary Quisumbing opined that the compromise agreements entered into by the fifteen employees with IPI, that became the basis for the granting of IPI's appeal and the consequent quashing of the writ of execution, were inefficacious as they were null and void.

IPI filed a Motion for Reconsideration of Secretary Quisumbing's Order dated 27