

EN BANC

[G.R. NO. 162716, September 27, 2006]

**HONORABLE SECRETARY EMILIA T. BONCODIN OF THE
DEPARTMENT OF BUDGET AND MANAGEMENT (DBM),
PETITIONER, VS. NATIONAL POWER CORPORATION EMPLOYEES
CONSOLIDATED UNION (NECU), RESPONDENT.**

D E C I S I O N

PANGANIBAN, CJ:

Injunction is an extraordinary peremptory remedy available only when the claimant can show a *clear* and *positive right* that must be protected. When the alleged right is unclear or dubious, the injunctive writ cannot be granted. As the present respondent has not proved a clear legal right to the salary step increments in question, the lower court is deemed to have gravely abused its discretion when it issued the Writ of Preliminary Injunction.

The Case

Before us is a Petition for Review^[1] under Rule 45 of the Rules of Court, assailing the November 25, 2003 Decision^[2] and the March 4, 2004 Resolution,^[3] both rendered by the Court of Appeals (CA) in CA-GR SP No. 74694.

The assailed Decision upheld the Writ of Preliminary Injunction issued by the Regional Trial Court of Quezon City, Branch 78, in its Resolutions^[4] dated September 25, 2002, and October 29, 2002, in Civil Case No. Q-02-47615. The questioned writ enjoined the implementation of National Power Corporation's Board Resolution No. 2002-81 passed on July 24, 2002, and confirmed on August 14, 2002; Secretary Emilia T. Boncodin's Letter Memorandum dated May 8, 2002; and Corporate Auditor Norberto Cabibihan's Memorandum Circular dated June 5, 2002.

The assailed Resolution denied reconsideration.

The Facts

The CA summarized the undisputed facts as follows:

"On [October 8, 2001], the Board of Directors of NAPOCOR issued Board Resolution No. 2001-113 amending Board Resolution No. 99-35 which granted the Seniority in Position Pay. Board Resolution No. 99-35 granted a step increment to all qualified NAPOCOR officials and employees who have been in their position for ten (10) years effective calendar year 1999. On the other hand, Board Resolution No. 2001-113 reduced the ten (10) year requirement to three (3) years.

"On [November 12, 2001], then President of NAPOCOR, Jesus Alcorido, issued Circular No. 2001-51 providing for the implementing rules and regulations of Board Resolution No. 2001-113. On May 6, 2002, the NAPOCOR Officer-in-Charge, President and Chief Executive Officer, Roland Quilala, issued Circular No. 2002-22 providing for additional guidelines relative to the implementation of the step increment based on length of service in the position to qualified NAPOCOR officials and employees.

"On [November 26, 2001], petitioner furnished a letter addressed to Mr. Alcorido informing the latter that NAPOCOR's request for clearance to implement Joint CSC-DBM Circular No. 1, s. 1990 which is the basis of Board Resolution No. 2001-113 cannot be given due course for lack of legal basis. In essence, petitioner holds that the grant of step increment based on length of service is an additional benefit under a different name since NAPOCOR has already been granting seniority pay based on the length of service as embodied in the Collective Negotiation Agreement (CNA). In addition, petitioner said that the grant of step increment is not applicable to the salary plan of NAPOCOR considering its higher salary rates [compared with that of the existing government pay plan]. Lastly, petitioner told Mr. Alcorido of the budget implication of the grant of said proposal which she estimated to cost as high as Eighty Four Million Pesos (P84,000,000.00).

"Based on the petitioner's foregoing letter, the Corporate Auditor of NAPOCOR, Norberto Cabibihan, issued a Memorandum [dated June 5, 2002] to Roland Quilala, NAPOCOR Officer-in-Charge, enjoining him to suspend/stop payment of the step increment as embodied in NPC Circular No. 2001-51 dated [November 12, 2001], [effective July 2002]. He also requested the suspension of the implementation of NPC Circular No. 2002-22 dated [May 6, 2002]. He warned that succeeding payments of the step increment shall be automatically disallowed.

"On [June 21, 2002], Mr. Quilala issued a Memorandum enjoining concerned officials to suspend the processing of the succeeding step increment based on length of service resulting from the application of Sections 2.2 (c) and 2.2 (d) of Circular No. 2002-22.

"On [July 24, 2002], the NAPOCOR Board of Directors issued Board Resolution No. 2002-81 revising the implementation of the Step Increment, the pertinent portion of which reads:

"NOW, THEREFORE, BE IT RESOLVED, AS IT IS HEREBY RESOLVED, That the recommendations of the Department of Budget and Management (DBM), as explained by the Honorable Secretary and Director of NP Board, Emilia T. Boncodin, relative to the submitted **Revised Implementation of the Step Increment due to Length of Service in the position of the NPC employees**, to cover the following:

"1) Pure seniority benefits counted as one (1)

step increment for every three (3) years of service in the present position, covering from years 1994 up to 2001 or two (2) steps increment only;

"2) Rollback of basic monthly salary for NPC personnel who have been recipients of the step increase due to length of service in their present position in excess of the two steps increment granted in the above paragraph to qualified employees and officials, and Corrective Salary Adjustment (CSA) effective September 1, 2002; and

"3) No payback by the NPC officials and employees who were granted salary differentials covering the period October 2001 up to August 2002. Approval of all this and the above benefits will be sought from the Office of the President, Malacañang, upon assurance by the Secretary of the Department of Budget and Management (DBM) that a favorable endorsement in support thereof will be made, x x x and are hereby approved; x x x"

"Believing that NPC Circular Nos. 2001-51 and 2002-22 are within the bounds of law and that they have already acquired a vested right in it, [respondent National Power Corporation Employees Consolidated Union (NECU) filed a Petition for Prohibition with Application for TRO/Preliminary Injunction before the Regional Trial Court in Quezon City on [August 27, 2002].

"On [August 30, 2002], public respondent [Judge Percival Mandap Lopez, of Branch 78, Regional Trial Court of Quezon City] issued an Order granting private respondent's prayer for the issuance of a Temporary Restraining Order and setting the hearing of the application for the issuance of a writ of preliminary injunction on [September 9, 2002]. However, it appears that in lieu of oral arguments, the parties opted to file their respective position papers and memoranda on the matter.

"Hence, on [September 25, 2002], public respondent issued the first assailed Resolution granting private respondent's prayer for the issuance of the writ of preliminary injunction. Public respondent held that at that stage of the proceedings, respondents therein have not shown that Circular No. 2001-51 and Board Resolution No. 2001-113, which were implemented effective [July 1, 2001], are in contravention of [any] law. He further held that a "roll back" of the salaries of all the NAPOCOR employees, while the merits of the case is yet to be

heard, would result to a grave and irreparable damage to them. Thus, public respondent granted [NECU's] prayer for the issuance of the writ of preliminary injunction subject to its filing of the Injunction Bond in the amount of Eighty Four Million Pesos (P84,000,000.00) which is the budget implication of the step increment as manifested by petitioner.

"Both parties moved for the reconsideration of the Resolution. Petitioner prayed for the reversal thereof while [respondent NECU] prayed for the deletion of the Injunction Bond. Public respondent denied both motions in the second assailed Resolution dated [October 29, 2002]."^[5]

Through a Petition for Certiorari under Rule 65 of the Rules of Court, petitioner sought relief from the CA. She argued that the RTC had "failed to consider the principle of non- exhaustion of administrative remedies and allowed the grant of seniority pay to NAPOCOR employees [without any legal basis]."^[6]

Ruling of the Court of Appeals

The CA found no cogent reason to disturb the conclusions reached by the lower court. The appellate court ruled that the doctrine of exhaustion of administrative remedies was not a hard and fast rule. It held that the determination of whether the arguments raised by respondent fell within the exceptions to the rule was within the sound discretion of the trial court.

Adopting the RTC's ratiocinations that grave and irreparable damage would be inflicted on the employees if the writ was not granted, the Court of Appeals said:

"It is the humble view of this Court that matters of compensation, being sacrosanct and held dearly as life itself, cannot easily be trifled with, trampled upon and recalled at whim. The grim prospect of uncertainty facing the [respondents] owing to their inevitable separation from the service further compels this Court to act decisively and with dispatch while the main case is being heard."^[7]

The CA, however, refused to rule on the issue of whether there was legal basis for the step increments. It believed that to do so would mean prejudging the main case pending before the trial court.

Hence, this Petition.^[8]

Issues

In her Memorandum, petitioner raises the following issues for our consideration:

- I. Whether Rule 16 of the 1997 Rules of Civil Procedure authorized the Regional Trial Court to acquire jurisdiction over matters pending with the COA by issuing a writ of preliminary injunction, which amounts to an encroachment on the independence of the same constitutional body.

- II. Whether Section 16 of Republic Act No. (RA) 6758 (The Salary Standardization Law enacted on August 21, 1989) amended RA No. 6375 (NAPOCOR Charter), which authorized the Board of Directors to fix the compensation, allowance and benefits of its employees.
- III. Whether Sections 14 and 15 of RA 6758 mandated the DBM to review and approve NAPOCOR Board Resolution No. 2001-113 and its implementing Circular No. 2001-51 before it may be legally implemented.
- IV. Whether NAPOCOR has the power to issue Board Resolution No. 2002-81 amending its Resolution No. 2001-113 and Circular No. 2001-51 in order to correct its previous erroneous act of implementing the latter Resolution /Circular without the requisite review and approval by the DBM.
- V. Whether Rule 58 of the 1997 Rules of Civil Procedure authorized the issuance of a writ of preliminary injunction even if the relief/protection applied for is the subject of controversy in the main action.
- VI. Whether Section 1, Rule 36 of the 1997 Rules of Civil Procedure required that an Order for the issuance of a writ of preliminary injunction should state clearly and distinctly the facts and the law on which it is based."^[9]

Briefly, the issues brought for resolution by this Court are (1) the propriety of the Writ of Preliminary Injunction; and (2) the legality of the step increments that were issued without the DBM's prior approval.

Considering that the second issue concerns the merits of the case pending before the trial court, the Court will limit its discussion only to the first question.

The Court's Ruling

The Petition is partly meritorious.

Sole Issue:

Propriety of the Preliminary Injunction

Exhaustion of Administrative Remedies

Initially, petitioner assails the trial court's jurisdiction to issue the Writ of Preliminary Injunction. She contends that the Petition for Prohibition filed by respondent is premature, because COA has yet to rule on whether or not to lift the suspension of the step increments granted in Napocor Board Resolution No. 2001-113 and Circular No. 2001-51. She adds that there is a need to follow the procedural requirements and processes mandated in COA's 1997 Revised Rules (COA Rules) as a condition precedent for a resort to the courts by respondent. She says further that it is not exempt from the doctrine of exhaustion of administrative remedies on the basis merely of its general assertions of irreparable injury.