

THIRD DIVISION

[G.R. No. 143557, June 25, 2004]

UNIVERSITY OF IMMACULATE CONCEPCION AND SISTER MARIA JACINTA DE BELEN, RVM, PETITIONERS, VS. SECRETARY OF LABOR AND EMPLOYMENT, ENGINEER YOLIBELLE S. AVINANTE AND ESTELITA B. PULIDO, RESPONDENTS.

DECISION

SANDOVAL-GUTIERREZ, J.:

This is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Resolutions dated August 31, 1999^[1] and June 5, 2000^[2] of the Court of Appeals in CA-G.R. SP No. 54296, entitled "*University of Immaculate Concepcion and Sister Maria Jacinta De Belen, RVM vs. Hon. Secretary of Labor and Employment, Engineer Yolibelle S. Avinante and Estelita B. Pulido.*"

The facts as borne by the records are:

On September 21, 1995, Engineer Yolibelle S. Avinante, Labor and Employment Officer III of the Regional Office No. XI, Department of Labor and Employment (DOLE) at Davao City, one of herein respondents, sent to the University of Immaculate Concepcion, petitioner, a notice requesting the inspection of the following documents: (1) business permit; (2) list of its regular employees; (3) payrolls and daily time records for the period from August 1994 to August 1995; and (4) proof of payment to its employees of their 13th month pay. Respondent Avinante's notice was pursuant to Article 128 of the Labor Code, as amended.^[3]

Subsequently or on September 26, 1995, respondent Avinante proceeded to the premises of petitioner to inspect the above documents.

Later, respondent Avinante sent to petitioner a second notice requesting the inspection of other documents, such as (1) the list of its regular employees; (2) payrolls covering the period from June 1991 to September 1995; (3) proof of payment to its employees of their 13th month pay during the period from 1992 to 1995; and (4) a record of its capital and total assets.

Upon receipt of the second notice, petitioner's directress, Sister Maria Jacinta De Belen, RVM (also impleaded as petitioner), filed with the same Regional Office No. XI, a motion seeking to enjoin respondent Avinante from inspecting its records.

Despite petitioners' motion, respondent Avinante, on October 17, 1995, proceeded with her inspection. But she was refused access to petitioners' records, so she issued a "Notice of Inspection Results," specifying the violations against labor law as well as occupational safety and health standard laws committed by petitioners. They

then filed an opposition to this Notice.

On July 22, 1996, the Regional Director of Regional Office No. XI issued an Order finding petitioners liable for violation of the above laws and directing them to pay P2,339,752.74 by way of restitution to their 193 employees, thus:

"WHEREFORE, premises considered, the UNIVERSITY OF IMMACULATE CONCEPCION is hereby ordered to pay through this Office, the one hundred ninety three (193) affected workers the total amount of Two Million Three Hundred Thirty Nine Thousand Seven Hundred Fifty Two and 74/100 Pesos (P2,339,752.74) within ten (10) days from receipt of this Order. Management is further ordered to comply with the aforementioned occupational safety and health standards requirements immediately and to submit to this Office proof of compliance thereof within the same period. Finally, management is hereby ordered to comply with all labor standard laws, henceforth.

"SO ORDERED."

Petitioners filed a motion for reconsideration but was denied by the Regional Director in his Order dated November 11, 1996.

On appeal, the Office of the DOLE Secretary (also impleaded as respondent), through former Secretary Leonardo A. Quisumbing, now Associate Justice of this Court, issued an Order dated May 2, 1997 affirming with modification the assailed Orders of the Regional Director in the sense that petitioners were directed to pay only P38,967.50 to 15 out of the 193 affected employees. The amount corresponds to the underpayment of their cost of living allowances under RTWPB Wage Order No. 3.

Petitioners filed a motion for reconsideration but was denied in an Order dated April 23, 1998.

On May 20, 1998, petitioners filed a second motion for reconsideration, but it was merely noted without action, the same being prohibited.^[4] This prompted petitioners to file with this Court, on May 13, 1999, a petition for certiorari which we referred to the Court of Appeals pursuant to our ruling in *St. Martin's Funeral Home vs. NLRC*.^[5]

In a Resolution dated August 31, 1999, the Court of Appeals dismissed the petition for being late, holding that:

"It appears that petitioners received a copy of the Order dated May 2, 1997 on May 15, 1997; that they filed a motion for partial reconsideration of said Order on May 19, 1997, which was denied in an Order dated April 23, 1998, a copy of which was received by them on May 5, 1998; that they filed a second motion for reconsideration on May 20, 1998, which was noted without action for being a mere scrap of paper, in a Resolution dated March 30, 1999, a copy of which was received by them on April 20, 1999.

Section 4, Rule 65 of the 1997 Rules of Civil Procedure, as amended,

provides that the petition for certiorari may be filed not later than sixty (60) days from notice of the judgment, order or resolution sought to be assailed; that a motion for reconsideration of said judgment, order or resolution filed in due time shall interrupt the running of the sixty (60) day period; and in case of denial of said motion, the petition may be filed within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of such denial.

It is clear from the foregoing provision that **only one motion for reconsideration of the judgment, order or resolution assailed is allowed for purposes of interrupting the sixty (60) day period for filing a petition for certiorari.**

Moreover, granting that the filing of a second motion for reconsideration of an Order issued by the Secretary of Labor in Labor Standard cases is not a prohibited pleading under the rules of said office, however, the second motion for reconsideration filed by petitioners was a mere reiteration of the arguments raised in their first motion for reconsideration and passed upon in the Order dated April 23, 1998. The second motion for reconsideration was, therefore, *pro forma*. A *pro forma* motion does not toll the running of the prescriptive period.

Inasmuch that petitioners allowed four (4) days to lapse from receipt of the Order dated May 2, 1997 before filing a motion for reconsideration thereof, they had only **fifty-six (56) days left from May 5, 1998**, when they received a copy of the order dated April 23, 1998 denying said motion for reconsideration, or until June 30, 1998, within which to file the petition for certiorari. However, it was only on May 13, 1999 that the instant petition was filed.

WHEREFORE, the instant petition is hereby DISMISSED for having been filed out of time.

SO ORDERED."

Petitioners filed a motion for reconsideration, however, the same was denied by the Appellate Court in its Resolution dated June 5, 2000.

Petitioners, in the instant petition for review on certiorari, contend that the Court of Appeals erred (1) in holding that a second motion for reconsideration is prohibited; and (2) in dismissing the petition for certiorari for being late.

Section 1, Rule IV in relation to Section 5, Rule V of the Rules on the Disposition of Labor Standards Cases in the DOLE Regional Offices provide:

"RULE IV

A P P E A L S

Section 1. *Appeal*. – The **Order of the Regional Director shall be final and executory unless appealed to the Secretary of Labor and**