

## THIRD DIVISION

[ G.R. No. 143823, March 06, 2001 ]

**JENNIFER ABRAHAM, PETITIONER, VS. NATIONAL LABOR  
RELATIONS COMMISSION, PHILIPPINE INSTITUTE OF  
TECHNICAL EDUCATION (PITE) AND SCHOOL ADMINISTRATOR  
JAIME MAGNANAO, RESPONDENTS.**

### D E C I S I O N

**GONZAGA-REYES, J.:**

On January 27, 1997, petitioner Jennifer Abraham filed a complaint for constructive dismissal against the herein respondent Philippine Institute of Technical Education (PITE) and its school administrator Jaime Magnanao before the Regional Arbitration Branch No. XI, Davao City. The complaint included claims for salary differentials, allowances under Wage Order No. 3, 13th month pay differential and service incentive leave pay and was docketed as NLRC Case No. 01-000-83-97.<sup>[1]</sup> On February 26, 1998, Labor Arbiter Marian Libron-Barroso rendered a decision in favor of the petitioner the dispositive portion of which reads:

"In view thereof, above-entitled case is hereby ordered dismissed for lack of merit.

SO ORDERED."<sup>[2]</sup>

Petitioner appealed the decision to the National Labor Relations Commission (NLRC) and on September 30, 1999, the NLRC<sup>[3]</sup> rendered its Resolution<sup>[4]</sup> reversing the decision of the Labor Arbiter, *viz*:

"WHEREFORE, premises considered, the decision appealed from is hereby REVERSED and SET ASIDE. Respondent is hereby ordered to pay complainant the following:

- (1) Full backwages from the time of her dismissal on December 13, 1996 until the finality of this decision.
- (2) Separation pay in lieu of reinstatement at one month salary per year of service, a fraction of six months being considered as one whole year.
- (3) Salary differentials
- (4) 13th month pay
- (5) Allowances under Wage Order No. 3
- (6) Attorneys fees equivalent to 10% of the total award.

All the rest of the claims are dismissed for lack of merit.

Remand the case to the arbitration branch of origin for the computation of the awards.

SO ORDERED."<sup>[5]</sup>

Not satisfied with the NLRC Resolution, herein respondents moved for reconsideration thereof.<sup>[6]</sup> On January 10, 2000, the NLRC granted respondents' motion and reversed its previous ruling as follows:

"WHEREFORE, the foregoing considered, respondent's Motion for Reconsideration is Granted and further the questioned Resolution dated September 30, 1999 is Set Aside. The decision dated February 26, 1998 is reinstated and Affirmed.

SO ORDERED."<sup>[7]</sup>

Aggrieved by the adverse ruling of the NLRC, herein petitioner filed a Petition for Certiorari with the Court of Appeals.<sup>[8]</sup>

On April 26, 2000, the Court of Appeals<sup>[9]</sup> dismissed the petitioner's petition on the ground that she failed to file a motion for reconsideration of the Resolution of the NLRC reconsidering its previous Resolution. The Court of Appeals ratiocinated that the filing of a motion for reconsideration is a condition *sine qua non* before a petition for certiorari may be given due course.<sup>[10]</sup>

Motion for Reconsideration of the Court of Appeals Resolution was denied hence this petition wherein the petitioner raises the following issues for our resolution:

#### **I**

**WHETHER OR NOT THE FILING OF A MOTION FOR RECONSIDERATION BEFORE FILING A PETITION FOR CERTIORARI IS MANDATORY IN LIGHT OF THE AMENDMENT TO SECTION 4(B), RULE 65 OF THE 1997 RULES ON CIVIL PROCEDURE.**

#### **II**

**WHETHER OR NOT THE GRANTING OF PRIVATE RESPONDENTS' MOTION FOR RECONSIDERATION BY PUBLIC RESPONDENT NATIONAL LABOR RELATIONS COMMISSION IS VALID/PROPER.**

#### **III**

**WHETHER OR NOT PETITIONER WAS CONSTRUCTIVELY DISMISSED.**

#### **IV**

**WHETHER OR NOT PETITIONER IS ENTITLED TO HER MONEY CLAIMS.<sup>[11]</sup>**

In support of her petition, petitioner argues that under the amendment to Section 4 (B), Rule 65 of the 1997 Rules on Civil Procedure as amended by the En Banc

Resolution of this Court dated July 21, 1998,<sup>[12]</sup> the requirement of filing a motion for reconsideration before the filing of a petition for certiorari is optional. And even assuming that the filing of a motion for reconsideration is required before a petition for certiorari may be given due course, petitioner argues that the present case falls under the exception that a motion for reconsideration is not required where special circumstances warrant immediate or more direct action. Petitioner maintains that since the NLRC reversed its previous ruling, she deemed it proper not to file a motion for reconsideration because in all likelihood, the NLRC would not reverse itself for a second time. Petitioner therefore prays that the Resolution of the Court of Appeals dismissing her Petition for Certiorari be reversed and set aside. Petitioner also seeks the reversal of the Resolution of the NLRC dismissing her complaint and prays that this court resolve the substantive merits of the case in her favor.

We grant the petition in part.

Petitions for certiorari are governed by Rule 65 of the New Rules on Civil Procedure under Section 1 thereof:

"SECTION 1. *Petition for certiorari.* - When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of his jurisdiction, or with grave abuse of discretion amounting to lack of or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of the law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying the judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46."

Generally, *certiorari* as a special civil action will not lie unless a motion for reconsideration is filed before the respondent tribunal to allow it an opportunity to correct its imputed errors.<sup>[13]</sup> However, the following have been recognized as exceptions to the rule:

- (a) where the order is a patent nullity, as where the court *a quo* has no jurisdiction;
- (b) ***where the questions raised in the certiorari proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;***
- (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable;
- (d) ***where, under the circumstances, a motion for reconsideration would be useless;***
- (e) where petitioner was deprived of due process and there is extreme urgency for relief;