360 Phil. 527

SECOND DIVISION

[G.R. No. 115452, December 21, 1998]

INTERNATIONAL CONTAINER TERMINAL SERVICES, INC., PETITIONER NATIONAL LABOR RELATIONS COMMISSION AND GABRIEL TANPIENGCO, RESPONDENTS.

D E C I S I O N

BELLOSILLO, J.:

INTERNATIONAL CONTAINER TERMINAL SERVICES, INC. (ICTSI), through this special civil action for certiorari, prays for the modification of the Decision of the National Labor Relations Commission dated 23 September 1993 by deleting therefrom that portion which orders it to pay private respondent Gabriel Tanpiengco his wages from 25 January 1991 up to the promulgation of the Decision despite his valid dismissal for cause.

Petitioner ICTSI is a corporation engaged in stevedoring. It operates the Manila International Container Terminal (MICT) under a management contract with the Philippine Ports Authority. On 12 July 1988 it employed private respondent Tanpiengco as a CFS Priority pursuant to a collective bargaining agreement with private respondent's labor union, the Associated Ports Checkers Services and Workers Union (APCSWU). Tanpiengco has since then become a regular employee assigned either to a shipping line or bodega to strip and examine cargoes from abroad with usual working schedule from 8:00 a.m. to 5:00 p.m. although in actual practice cleaning time would start at 4:30 p.m.

On 7 March 1990 Tanpiengco was assigned at Bodega I. When it was time for him to clean himself he took his T-shirt which was hanging from a post, tucked it at his waist and proceeded to the washroom. He was accosted by a security guard allegedly for behaving suspiciously. Tanpiengco was haled to the comfort room and frisked but nothing of value was found in his person. Nonetheless he was taken to the security office for further questioning; he was accused of taking a T-shirt marked "Gesim Corp." from one of the balikbayan boxes inside the container yard.

On 21 March 1990 Tanpiengco was referred to petitioner's personnel department for investigation. According to petitioner, he admitted to the investigating officer that he took the "Gesim Corp." T-shirt valued at P100.00, but Tanpiengco insisted on his innocence claiming that he was coerced at knifepoint into admitting the theft. On 30 April 1990, after a brief suspension, Tanpiengco was dismissed for pilferage which petitioner considered as breach of trust, dishonesty and theft of property.

Tanpiengco sued the stevedoring firm for illegal dismissal, reinstatement and backwages. The Labor Arbiter, in his decision of 3 December 1990, found the dismissal to be totally unjustified as neither theft nor pilferage was committed by Tanpiengco. The Labor Arbiter gave credence to Tanpiengco's allegation that the T-

shirt he was accused of stealing actually belonged to him, having bought the same from one Maxima Icabandi, a businesswoman. Accordingly, petitioner was ordered to reinstate Tanpiengco with full back wages in the total amount of P91,078.00 from 2 July 1988 to 30 November 1990, with temporary adjustments as the need would arise until his actual reinstatement.[1]

On appeal, the National Labor Relations Commission reversed the decision of the Labor Arbiter and dismissed the complaint of Tanpiengco, in effect holding that his termination was legal, but ordered petitioner to pay him his wages from 25 January 1991 (date of filing of appeal with the NLRC) up to 23 September 1993 (promulgation of NLRC decision) pursuant to Art. 223 of the Labor Code.[2] Both parties moved for reconsideration but were denied on 6 April 1994.[3]

Petitioner now contends that the NLRC committed grave abuse of discretion when it awarded back wages to Tanpiengco from 25 January 1991 to 23 September 1993. Petitioner claims that the monetary award to Tanpiengco who was subsequently found to have been validly and legally terminated is "absolutely unwarranted and patently erroneous and unjustifiable."[4] While it is true that under the law the employer found to have illegally dismissed an employee is required to reinstate the employee either actually or through payroll at the employer's option, this requirement according to petitioner needs execution or enforcement by the employee in coordination with the labor department. In the instant case, Tanpiengco never pursued the execution of the decision of the Labor Arbiter despite the fact that petitioner was perfectly willing to actually recall him during the pendency of the appeal to NLRC. No writ of execution was ever issued by the Labor Arbiter; neither was there any sheriff's return. Thus, by his own inaction or lethargy, Tanpiengco prevented petitioner from actually reinstating him. There is therefore no reason to award him back wages for a failed reinstatement.[5]

While we are not in full accord with the finding of the NLRC, that Tanpiengco was validly dismissed for cause, he appears to have accepted the legality of his dismissal as he did not appeal therefrom. He now focuses his attention on collecting his back wages corresponding to the period when his case was pending appeal before the NLRC and in his Comment accuses petitioner of "delay(ing) the execution of the Orders and Decisions of the National Labor Relations Commission dated September 23, 1993 and April 6, 1994." Tanpiengco stresses that he did not waive his reinstatement. In fact he promptly filed on 27 February 1991 a motion for writ of execution with the NLRC but the Labor Tribunal failed to act on it. As a result, petitioner cannot fault him for NLRC's inaction.

Private respondent Tanpiengco is correct. In its En Banc decision in *Pioneer Texturizing Corporation v. NLRC,*[6] the Court veered away from *Maranaw Hotel Corporation (Century Park Sheraton Manila) v. NLRC,*[7] cited in the succeeding cases of *Archilles Manufacturing Corporation v. NLRC,*[8] and *Purificacion Ram v. NLRC,*[9] holding that although the reinstatement aspect of the Labor Arbiter's decision was immediately executory, it did not follow that it was self-executory. There must be a writ of execution which may be issued motu proprio or on motion of the interested party pursuant to Art. 224 of the Labor Code. However under the *Pioneer* case, now the law of the case, the reinstatement order is already considered self-executory.

Art. 223 of the Labor Code, as amended by RA No. 6715 which took effect on 21 March 1989, provides:

> Art. 223. *Appeal.* - Decisions, awards or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. Such appeal may be entertained only on any of the following grounds: x x x x In any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be executory, even pending appeal. The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation or, at the option of the employer, merely reinstated in the payroll. The posting of a bond by the employer shall not stay the execution for reinstatement provided herein x x x x
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> On the other hand, Art. 224 provides:
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> Art. 224. *Execution of decisions, orders, or awards.* - (a) The Secretary of Labor and Employment or any Regional Director, the Commission or any Labor Arbiter, or med-arbiter or voluntary arbitrator may, motu proprio or on motion of any interested party, issue a writ of execution on a judgment within five (5) years from the date it becomes final and executory, requiring a sheriff or a duly deputized officer to execute or enforce final decisions, orders or awards of the Secretary of Labor and Employment or regional director, the Commission, the Labor Arbiter or med-arbiter, or voluntary arbitrators. In any case, it shall be the duty of the responsible officer to separately furnish immediately the counsels of record and the parties with copies of said decisions, orders or awards. Failure to comply with the duty prescribed herein shall subject such responsible officer to appropriate administrative sanctions.

To be sure, the Court has not been consistent in its interpretation of Art. 223. The nagging issue has always been whether the reinstatement order is self-executory. Citing the divergent views of the Court beginning with *Inciong v. NLRC*[10] followed by the deviation in interpretation in *Maranaw Hotel Corporation (Century Park Sheraton Manila) v. NLRC,* as reiterated and adopted in Archilles Manufacturing Corporation v. NLRC and Purificacion Ram v. NLRC, the Court in the 1997 Pioneer case has laid down the doctrine that henceforth an order or award for reinstatement is self-executory, meaning that it does not require a writ of execution, much less a motion for its issuance, as maintained by petitioner. It proceeded to explain that Art. 224, adverted to in Maranaw as the basis for the need for a writ of execution, applies only to final and executory decisions which are not within the coverage of Art. 223. It further expounded on the objective of Art. 223 as envisioned by our lawmakers. Thus:

> Art. 224 states that the need for a writ of execution applies only within five (5) years from the date a decision, an order or award becomes final and executory. It cannot relate to an award or order of reinstatement still to be appealed or pending appeal which Art. 223 contemplates. The provision of Art. 223 is clear that an award for reinstatement shall be