

## SECOND DIVISION

[ CA-G.R. SP No. 134524, November 18, 2014 ]

**VV SECURITY AGENCY & ALLIED SERVICES, INC., PETITIONER,  
VS. DEPARTMENT OF LABOR AND EMPLOYMENT – NATIONAL  
CAPITAL REGION, LUIS CIRCUELA AND RUBEN BIAG,  
RESPONDENTS.**

### DECISION

**GARCIA, R.R., J.:**

Before Us is a Petition for Certiorari<sup>[1]</sup> under Rule 65 of the Revised Rules of Court assailing the Order<sup>[2]</sup> dated November 14, 2013 of public respondent Department of Labor and Employment-National Capital Region which dismissed the appeal filed by petitioner VV Security and Allied Services, Inc.; and the Resolution by way of an undated Memorandum<sup>[3]</sup> denying the motion for reconsideration<sup>[4]</sup> thereof.

### THE FACTS

Petitioner VV Security Agency and Allied Services, Inc. is a domestic corporation and a duly licensed security agency with principal office address at Carmen, Cagayan de Oro City.<sup>[5]</sup> On June 22, 2012, pursuant to its visitatorial and enforcement power, public respondent Department of Labor and Employment (DOLE) conducted an inspection at petitioner's branch office in Quezon City. However, the duly authorized representative of DOLE was denied access to the employment records of petitioner's employees. Consequently, a Notice of Inspection Results was issued and served to petitioner, through its Branch Supervisor in Quezon City. Petitioner was directed to explain why the employment records were not shown during the inspection which was in violation of Article 128 of the Labor Code. It was likewise found that petitioner allegedly violated the labor standards provisions of the Labor Code by its failure to pay the benefits of some of its security guards, including herein private respondents Luis Circuela and Ruben Biag.<sup>[6]</sup>

Public respondent DOLE-NCR then scheduled several mandatory conferences to give petitioner an opportunity to refute the charges. On July 9, 16 and 23, 2012, petitioner's representative and some of the security guards appeared before the Office of the DOLE-NCR. Petitioner was required to submit the employment records of their employees but it failed to present the same. The erring employees, on the other hand, submitted copies of the computation of their claims.<sup>[7]</sup>

In an Order<sup>[8]</sup> dated January 15, 2013, the Regional Director of public respondent DOLE-NCR directed petitioner to pay herein private respondents Circuela and Biag, together with the other three complainants, the aggregate amount of P1,125,011.03 representing their unpaid wages, legal holiday pay, night shift differential pay, 13<sup>th</sup>

month pay, rest day premium pay, service incentive leave pay and overtime pay. The decretal portion of the Order reads:

WHEREFORE, premises considered, V.V. SECURITY & ALLIED SERVICES, INC. and/or MR. JOSE VICENTE CABRERA is/are ordered to pay LUIS CIRUELA and *[four]* (4) other similarly situated employees, the aggregate amount of ONE MILLION ONE HUNDRED TWENTY FIVE THOUSAND ELEVEN PESOS & 03/100 (P1,125,011.03) within ten (10) days from receipt hereof. Failure to comply with this Order within the period prescribed shall cause the imposition of a penalty of double indemnity pursuant to Republic Act No. 8188, otherwise known as "An Act Increasing the Penalty and Imposing Double Indemnity for violation of the Prescribed or Adjustment in the Wage Rates".

A Writ of Execution shall be issued upon finality of this Order.

Further, the establishment is directed to give the Labor and Employment Officer access to its premises and records in order to question, copy and investigate any fact, condition or matter which may be necessary to determine compliance with labor laws. Criminal charges will be filed in the regular courts for violation of Article 128 of the Labor Code, as amended, in relation to Article 288 of the same Code, if the Office would be denied access the second time around.

SO ORDERED.<sup>[9]</sup>

Petitioner sought a reconsideration of the Order dated January 15, 2013 of public respondent DOLE-NCR. Petitioner argued that it did not violate the law on labor standards since it has regularly paid its security guards their minimum wage and other benefits.

Meanwhile, three (3) of the other complainants, namely: Reynald A. Tala-oc, Gomer D. Recomez and Aladin F. Ignalague, agreed to settle amicably with petitioner. The notarized quitclaims were then submitted before public respondent DOLE-NCR.<sup>[10]</sup>

In a Resolution<sup>[11]</sup> dated September 26, 2013, public respondent DOLE-NCR denied petitioner's motion for reconsideration for being filed out of time. Petitioner's representative in its Quezon City branch office was duly served with the inspection results, notices and orders. Also, during the summary hearings, petitioner was repeatedly required to submit the employment records of its workers but still failed to do so. There was thus no basis in petitioner's claim that it was denied due process since it was given ample opportunity to present its side of the case and to produce evidence in its favor. The pertinent portions of the Resolution read:

Also, assuming *arguendo* that respondent's motion was filed within the reglementary period, this Office finds no denial of its right to due process. Records show that respondent was given ample opportunity to present his side and to produce evidence in his favor. The Notice of

Inspection Results was issued to and received by a person whom respondent itself admitted as his representative. The fact that the latter was negligent of its duty to communicate the matter to its principal does not in any way change the fact that respondent was duly notified. Moreover, summary hearings were also conducted wherein respondent had every opportunity to adduce evidence in its favor. In fact, during the hearings, respondent was repeatedly required to present the employment records but still failed to do so. Thus, it cannot be denied that respondent was afforded due process. Respondent cannot feign denial of reasonable opportunity to be heard by invoking its own inaction.

WHEREFORE, premises considered, the Motion for Reconsideration filed by both the respondent V.V. Security & Allied Services, Inc. and complainant Ruben Biag from our Order dated 15 January 2013 are hereby DENIED for being filed out of time.<sup>[12]</sup>

On October 23, 2013, petitioner filed its notice of appeal<sup>[13]</sup> and appeal memorandum<sup>[14]</sup>.

In the assailed Order<sup>[15]</sup> dated November 14, 2013, public respondent DOLE-NCR held that petitioner failed to perfect its appeal for non-payment of the requisite appeal bond. Under Section 5, Rule XI of the Rules on Labor Laws Compliance System, the Regional Director of the DOLE is given authority to dismiss the appeal when it is filed beyond the reglementary period of ten days and/or when it is not supported by an appeal bond. While the notice and memorandum of appeal filed by petitioner was within the ten-day reglementary period, it was not accompanied by the required posting of appeal bond. Since there was no perfected appeal, the judgment has already become final and executory. The pertinent portions of the Order read:

It is provided in the subject "Notice of Appeal" that a copy of our Resolution dated 26 September 2013 was received on 14 October 2013. Relevantly, Section 5, Rule XI of the Rules on Labor Laws Compliance System (Department Order No. 131-13), which took effect on 22 August 2013 provide that:

x x x

The abovementioned provision gives the Regional Director authority to dismiss the appeal when it is filed beyond the reglementary period of 10 days and/or when it is not supported by an appeal bond.

In this case, although the Notice and Memorandum of Appeal was filed within the ten-day reglementary period, it is not accompanied by the required posting of bond. Consequently, the appeal is not duly perfected. It is well to stress that an appeal is a mere statutory privilege and not a natural right and may be exercised only in the manner and in accordance with the provisions set by law. Corollarily, its requirements must be

strictly complied with.

Verily, there being no perfected appeal, the Compliance Order attained finality. Necessarily, execution is the subsequent legal recourse.

WHEREFORE, premises considered, the appeal is DISMISSED. Let the Notice of Finality be issued.<sup>[16]</sup>

A Motion for Reconsideration<sup>[17]</sup> was filed by petitioner with the attached appeal bond by way of a manager's check<sup>[18]</sup> dated November 28, 2013 issued by the Bank of the Philippine Islands. Petitioner alleged that the amount of P301,115.81 represents the money claims of private respondents Circuela and Biag. In an undated Memorandum<sup>[19]</sup>, public respondent DOLE-NCR denied the motion for reconsideration.

Hence, the instant petition for certiorari in which petitioner raised the following grounds<sup>[20]</sup> for its allowance, to wit:

I.

WHETHER OR NOT PUBLIC RESPONDENT DOLE-NCR COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION WHEN IT RULED THAT PETITIONER AGENCY'S MOTION FOR RECONSIDERATION WAS FILED OUT OF TIME.

II.

WHETHER OR NOT PUBLIC RESPONDENT DOLE-NCR COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION WHEN IT UNILATERALLY DISMISSED PETITIONER AGENCY'S NOTICE OF APPEAL ON THE GROUND THAT IT FAILED TO POST A BOND.

III.

WHETHER OR NOT PUBLIC RESPONDENT DOLE-NCR COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION WHEN IT REFUSED TO TAKE COGNIZANCE OF PETITIONER AGENCY'S MOTION FOR RECONSIDERATION AND MOTION TO ADMIT BOND.

IV.

WHETHER OR NOT PUBLIC RESPONDENT DOLE-NCR COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION WHEN IT FURNISHED PETITIONER AGENCY WITH NOTICES THROUGH ITS BRANCH SUPERVISOR.