SEVENTH DIVISION

[CA-G.R. SP NO. 93043, September 15, 2006]

VILMA SO, DOING BUSINESS UNDER THE NAME AND STYLE, EUGENE INTERNATIONAL SERVICES, PETITIONER, VS. HON. NATIONAL LABOR RELATIONS COMMISSION (NLRC) SECOND DIVISION, QUEZON CITY; HON. MONROE C. TABINGAN, IN HIS CAPACITY AS LABOR ARBITER, NLRC-CAR, BAGUIO CITY; AND GRACE DOMINGO, RESPONDENTS.

D E C I S I O N

BERSAMIN, L.P., J.:

The petitioner, a duly recognized recruiter engaged in the recruiting and placement of Filipino overseas contract workers, commenced this special civil action for *certiorari* and prohibition against the National Labor Relations Commission (NLRC) to seek the nullification of the resolution promulgated on November 29,2005 in NLRC CASE NO. RAB-CAR 07-0446-04,[1] denying her motion for reconsideration; and to restrain respondent Labor Arbiter Monroe C. Tabingan from further proceeding in NLRC CASE NO. RAB-CAR 07-0446-04, including implementing the resolution dated June 30, 2005 of the NLRC (dismissing her appeal of the Labor Arbiter's order dated December 15, 2004),[2] claiming that said public respondents were thereby acting or proceeding without or in excess of jurisdiction.

NLRC CASE NO. RAB-CAR 07-0446-04 was an appeal to the NLRC from the order of respondent Labor Arbiter Tabingan dated December 15, 2004 rendered by him in the original case docketed as NLRC Case NO. RAB-CAR-05-0313-04, a claim of private respondent Grace Domingo against the petitioner for alleged illegal dismissal, refund of placement fee, salaries for the unexpired portion of the contract and moral and exemplary damages.

In his order dated December 15, 2004, Labor Arbiter Tabingan disposed as follows:

> WHEREFORE, all premises considered, respondent's Motion being among the prohibited pleadings, the same is hereby DENIED for utter lack of merit.
>
> The Order dated 07 September 2004 stands.
>
> SO ORDERED.[3]

On January 18, 2005, the petitioner appealed to the NLRC and submitted her appeal memorandum, wherein she assigned the following errors, namely:[4]

I.

> THERE IS A PRIMA FACIE EVIDENCE OF ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION ON THE PART OF THE LABOR ARBITER MONROE C. TABINGAN IN NOT GIVING DUE COURSE TO RESPONDENT'S MOTION FOR RECONSIDERATION (TO THE ORDER DATED 07 SEPTEMBER 2004);
>
> THAT THE ABOVE-MENTIONED ORDER DATED DECEMBER 15, 2004 OF THE HONORABLE LABOR ARBITER WAS MADE PURELY ON ASSUMPTIONS AND CONCLUSIONS BASED ON UNFOUNDED FACTS;
>
> FINALLY, THE DECISION RENDERED BY THE HONORABLE LABOR ARBITER PROMULGATED DECEMBER 5, 2004 IS CONTRARY TO LAW, RULES AND APPLICABLE DECISIONS OF THE SUPREME COURT, AND OR SAID ORDER CONTAINS SERIOUS ERRORS IN THE FINDING OF FACTS WHICH, IF NOT CORRECTED, WOULD CAUSE IRREPARABLE DAMAGE AND INJURY TO RESPONDENTS-APPELLANTS.[5]

On June 30, 2005, the NLRC issued its resolution,[6] *viz*:

> WHEREFORE, premises considered, this appeal instituted by the respondents-appellants is hereby DISMISSED for lack of merit. Consequently, the findings and conclusion in the assailed Order are hereby AFFIRMED en toto.
>
> SO ORDERED.[7]

On August 26, 2005, the petitioner filed her *motion for reconsideration*.[8]

On November 29, 2005, the NLRC denied the *motion for reconsideration* through the assailed resolution, as follows:[9]

> WHEREFORE, the motion for reconsideration is denied for lack of merit.
>
> No further motion of similar nature shall be entertained.
>
> SO ORDERED.[10]

Hence, this special civil action for *certiorari* and prohibition, wherein the petitioner submits:

A.

> THAT THE HONORABLE PUBLIC RESPONDENT NATIONAL LABOR RELATIONS COMMISSION (NLRC), SECOND DIVISION, WITH DUE RESPECT, GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OF JURISDICTION IN PROMULGATING ITS RESOLUTION DATED 20 JUNE 2004 (Annex "C") DENYING PETITIONER'S APPEAL DATED 17 JANUARY 2005 (Annex "E") DENYING PETITIONER'S MOTION FOR RECONSIDERATION DATED 26 AUGUST 2005.

B.

> THAT THE HONORABLE PUBLIC RESPONDENT NATIONAL LABOR RELATIONS COMMISSION (NLRC), SECOND DIVISION, WITH ALL DUE RESPECT, COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN NOT DECLARING NULL AND VOID THE ORDER DATED 15 DECEMBER 2004 OF HONORABLE PUBLIC RESPONDENT LABOR ARBITER MONROE C. TABINGAN (Annex "A") BECAUSE THE ORDER RENDERED BY ARBITER TABINGAN IS BASED PURELY AN ASSUMPTIONS, CONCLUSIONS AND UNFOUNDED FACTS AND CONSEQUENTLY, IF NOT CORRECTED, IT WILL CAUSE IRREPARABLE DAMAGE OR INJURY TO PETITIONER.

The petitioner insists that Labor Arbiter Tabingan should have dismissed respondent Domingo's complaint outrightly because she was guilty of forum shopping and that her cause of action was barred by prior judgment. The petitioner posits that Domingo's claim (NLRC Case NO. RAB-CAR-05-0313-04) was dismissed on June 30, 2004 and such dismissal became final; that by reason of such dismissal becoming final, the claim of Domingo was already barred under the principle of *res judicata*; and that her claim should also be dismissed because she was thereby committing forum shopping. Hence, the petitioner contends that the NLRC was guilty of grave abuse of discretion in rejecting her appeal from the Labor Arbiter's order of December 15, 2004.

We find the petition for *certiorari* and prohibition absolutely meritless and, accordingly, deny it due course.

Our review of the records submitted to us indicate that the petitioner's position is entirely unfounded and derives from her and her counsel's refusal to acknowledge the well-founded legal and factual rulings of the Labor Arbiter and the NLRC.

Firstly, in his order dated December 15, 2004, Labor Arbiter Tabingan denied the petitioner's motion to dismiss, explaining thus:

> The respondent, and/or its counsel, seem to be well-versed with the Rules of the Commission. One wonders however why said parties failed to read the reason stated in said assailed Order, which clearly states:
>
> > NLRC RAB-CAR Case No. 05-0313-04 was filed on May 03, 2004. On 30 June 2004, the case was dismissed WITHOUT PREJUDICE [emphasis ours] for failure of the complainant to file her Position paper within the period given.
> >
> > Under common legal parlance, when a case is dismissed without prejudice, it means that the dismissal is not final. In labor cases, it means that the case can be revived or refilled within the prescriptive period. It is of general knowledge that illegal dismissal prescribes in four (4) years from the date of dismissal, and monetary claims prescribe in three (3) years. In the NLRC Rules of Procedure, as amended, RULE V, Sec. 16 provides:
> >
> > > SECTION 16. REVIVAL/RE-OPENING OF RE-FILING OF DISMISSED CASE.* A party may file a motion to

> revive or re-open a case dismissed without prejudice, within ten (10) calendar days from receipt of notice of the order dismissing the same; otherwise, his only remedy shall be to re-file the case in the arbitration branch of origin.

The order dated 30 June 2004 was received by the complainant on 16 July 2004. The Motion to Admit Position paper with the same attached was filed on 27 July 2004. Clearly therefore, the same cannot be deemed to be revived as it was filed beyond the ten-day period as per rule above-quoted. The complainant therefore opted to re-file the same on 28 July 2004.

Be that as it may, for the further education of the respondent and/or its counsel about the NLRC Rules of Procedure, here is another one:

> RULE III, SECTION 4. PROHIBITED PLEADINGS MOTIONS. The following pleadings, motions or petitions shall not be allowed in the cases covered by these Rules:
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> a) Motion to Dismiss the complaint except on the ground of lack of jurisdiction over the Subject Matter, Improper Venue, Res Adjudicata, Prescription and forum shopping;
>
> b) Motion for a Bill of particulars;
>
> c) Motion for New Trial or Motion for Reconsideration of Judgment or Order of the Labor Arbiter;
>
> d) Petition for Relief of Judgment when filed with the Labor Arbiter;
>
> e) Petition for Certiorari, Mandamus or Prohbition;
>
> f) Motion to Declare Respondent in Default.

RULE V, Sec. 15, of the NLRC Rules which states:

> SECTION 15. MOTIONS FOR RECONSIDERATION / PETITION FOR RELIEF FROM JUDGMENT.* No motions for reconsideration / petition for relief from judgment of any decision, resolution or order of a Labor Arbiter shall be allowed. However, when one such motion for reconsideration is filed, it shall be treated as an appeal provided that it complies with the requirements for perfecting an appeal. In the case of a petition for relief from judgment, the Labor Arbiter shall elevate the case to the Commission for disposition.

will not apply considering that what is being sought to be reconsidered is a mere Order, not a JUDGMENT, as contemplated in the above-quoted rule. If truly the respondent and/or its counsel are as well – versed with