



Republic of the Philippines  
Supreme Court  
Manila

EN BANC

LEO A. GONZALES,  
Petitioner,

G.R. No. 198423

Present:

- versus -

SERENO, C.J.,\*  
CARPIO,\*  
VELASCO, JR.,  
LEONARDO-DE CASTRO,  
BRION,  
PERALTA,  
BERSAMIN,  
DEL CASTILLO,\*  
ABAD,  
VILLARAMA, JR.,  
PEREZ,\*  
MENDOZA,  
REYES, and  
PERLAS-BERNABE, JJ.

SOLID CEMENT  
CORPORATION and ALLEN  
QUERUBIN,  
Respondents.

Promulgated:

OCTOBER 23, 2012

X-----X

RESOLUTION

BRION, J.:

Before us is the *Second Motion for Reconsideration*<sup>1</sup> filed by petitioner Leo Gonzales (petitioner) in the case in caption (*the current petition*). Previously, the Court granted the petitioner's *Motion for Leave to File and Admit the Attached Motion to Refer the Case to the Court En Banc*. The motion for reconsideration addresses our Minute Resolutions of

\* On official leave.

<sup>1</sup> Rollo, pp. 616-619.



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November 16, 2011 and February 27, 2012, both denying petitioner's petition for review on *certiorari*.

### **The Antecedent Facts**

The current petition arose from the execution of the final and executory judgment in the parties' illegal dismissal dispute (referred to as "***original case***," docketed in this Court as G.R. No. 165330 and entitled *Solid Cement Corporation, et al. v. Leo Gonzales*). The Labor Arbiter (LA) resolved the case at his level on December 12, 2000. Since the LA found that an illegal dismissal took place, the company ***reinstated*** petitioner Gonzales ***in the payroll*** on January 22, 2001.<sup>2</sup>

In the meanwhile, the parties continued to pursue the original case on the merits. The case was appealed to the National Labor Relations Commission (NLRC) and from there to the Court of Appeals (CA) on a petition for *certiorari* under Rule 65 of the Rules of Court. The LA's ruling of illegal dismissal was largely left undisturbed in these subsequent recourses. The ***original case*** eventually came to this Court. In our Resolutions of March 9, 2005<sup>3</sup> and June 8, 2005,<sup>4</sup> we denied the petition of respondent Solid Cement Corporation (*Solid Cement*) for lack of merit. Our ruling became final and *entry of judgment took place on July 12, 2005*.

Soon after its finality, the original case was remanded to the LA for execution. The LA decision dated December 12, 2000 declared the respondents guilty of illegal dismissal and ordered the reinstatement of Gonzales to his former position "with full backwages and without loss of seniority rights and other benefits[.]"<sup>5</sup> Under this ruling, as modified by the NLRC ruling on appeal, Gonzales was awarded the following:

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<sup>2</sup> *Id.* at 17.

<sup>3</sup> *Id.* at 141.

<sup>4</sup> *Id.* at 142.

<sup>5</sup> *Id.* at 16.

- (1) Backwages in the amount of ₱636,633.33;
- (2) Food and Transportation Allowance in the amount of ₱18,080.00;
- (3) Moral damages in the amount of ₱100,000.00;
- (4) Exemplary damages in the amount of ₱ 50,000.00; and
- (5) Ten percent (10%) of all sums owing to the petitioner as attorney’s fees.

**Actual reinstatement** and return to work for Gonzales (who had been on payroll reinstatement since January 22, 2001) came on July 15, 2008.<sup>6</sup>

When Gonzales moved for the issuance of an alias writ of execution on August 4, 2008, he included several items as components in computing the amount of his backwages. Acting on the motion, the LA added ₱57,900.00 as rice allowance and ₱14,675.00 as medical reimbursement (with the company’s apparent conformity), and excluded the rest of the items prayed for in the motion, either because these items have been paid or that, based on the records of the case, Gonzales was not entitled thereto. Under the LA’s execution order dated August 18, 2009, Gonzales was entitled to a total of **₱965,014.15**.<sup>7</sup>

The NLRC, in its decision<sup>8</sup> dated February 19, 2010 and resolution dated May 18, 2010, modified the LA’s execution order by including the following amounts as part of the judgment award:

Additional backwages from Dec. 13, 2000 to Jan. 21, 2001	₱ 50, 800.00 <sup>9</sup>
<b>Salary differentials from year 2000 until August 2008</b>	617,517.48
<b>13<sup>th</sup> month pay differential</b>	51,459.79
13 <sup>th</sup> month pay for years 2000 and 2001	80,000.00

<sup>6</sup> *Id.* at 19.  
<sup>7</sup> *Id.* at 310.  
<sup>8</sup> *Id.* at 312-326.  
<sup>9</sup> *Id.* at 329.

12% interest from July 12, 2005

878,183.42

This ruling increased Gonzales’ entitlement to **₱2,805,698.04**.

On a petition for *certiorari* under Rule 65 of the Rules of Court, the CA set aside the NLRC’s decision and reinstated the LA’s order, prompting Gonzales to come to the Court *via* a petition for review on *certiorari* (docketed as G.R. No. 198423) under Rule 45 of the Rules of Court. In our Minute Resolutions, we denied Gonzales’ Rule 45 petition. **At this point came the two motions now under consideration.**

For easier tracking and understanding, the developments in the original case and in the current petition are chronologically arranged in the table below:

October 5, 1999	Solid Cement terminated Gonzales’ employment;
December 12, 2000	The LA declared that Gonzales was illegally dismissed and ordered his reinstatement;
January 5, 2001	Gonzales filed a Motion for Execution of reinstatement aspect;
January 22, 2001	Solid Cement reinstated Gonzales in the payroll;
March 26, 2002	The NLRC modified the LA decision by reducing amount of damages awarded by the LA but otherwise affirmed the judgment;
June 28, 2004	The CA dismissed Solid Cement’s <i>certiorari</i> petition;
March 9, 2005	The Court ultimately denied Solid Cement’s petition for review;
July 12, 2005	The judgment became final and an entry of judgment was recorded;
July 15, 2008	Gonzales was actually reinstated;

August 4, 2008	Gonzales filed with the LA a motion for the issuance of an alias writ of execution (with computation of monetary benefits as of August 28, 2008 – the day before his termination anew, allegedly due to redundancy, shall take effect);
August 18, 2009	The LA issued an Order directing the issuance of a writ of execution;
February 19, 2010	The NLRC rendered a decision affirming with modification the LA's Order by including certain monetary benefits in favor of Gonzales;
May 31, 2011	The CA reversed the NLRC and reinstated the LA's Order;
November 16, 2011	The Court denied Gonzales' petition for review, questioning the reinstatement of the LA's Order;
February 27, 2012	The Court denied Gonzales' 1 <sup>st</sup> motion for reconsideration;
April 12, 2012	Gonzales again moved for reconsideration and asked that his case be referred to the <i>En Banc</i> .

### **Our Ruling**

As a rule, a second motion for reconsideration is a prohibited pleading under the Rules of Court,<sup>10</sup> and this reason alone is sufficient basis for us to dismiss the present second motion for reconsideration. The ruling in the original case, as affirmed by the Court, has been expressly declared final. A definitive final judgment, however erroneous, is no longer subject to change or revision.

**A decision that has acquired finality becomes immutable and unalterable.** This quality of immutability precludes the modification of a final judgment, even if the modification is meant to correct erroneous conclusions of fact and law. And **this postulate holds true whether the modification is made by the court that rendered it or by the highest court in the land. The orderly administration of justice requires that, at the risk of occasional errors, the judgments/resolutions of a court must reach a point of finality set by the law.** The noble purpose is to

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<sup>10</sup>

Rule 37, Section 5, par. 2.

write *finis* to dispute once and for all. This is a fundamental principle in our justice system, without which there would be no end to litigations. Utmost respect and adherence to this principle must always be maintained by those who exercise the power of adjudication. Any act, which violates such principle, must immediately be struck down. Indeed, the principle of conclusiveness of prior adjudications is not confined in its operation to the judgments of what are ordinarily known as courts, but extends to all bodies upon which judicial powers had been conferred.<sup>11</sup> (emphases ours, citations omitted)

After due consideration and further analysis of the case, however, we believe and so hold that the CA **did not only legally err but even acted outside its jurisdiction** when it issued its May 31, 2011 decision. Specifically, by deleting the awards properly granted by the NLRC and by reverting back to the LA's execution order, **the CA effectively varied the final and executory judgment in the original case, as modified on appeal and ultimately affirmed by the Court, and thereby acted outside its jurisdiction.** The CA likewise, in the course of its rulings and as discussed below, acted with grave abuse of discretion amounting to lack or excess of jurisdiction by using wrong considerations, thereby acting outside the contemplation of law.

The CA's actions outside its jurisdiction cannot produce legal effects and cannot likewise be perpetuated by a simple reference to the principle of immutability of final judgment; a void decision can never become final. "The only **exceptions to the rule** on the immutability of final judgments are (1) the correction of clerical errors, (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party, and (3) **void judgments.**"<sup>12</sup> For these reasons, the Court sees it legally appropriate to **vacate the assailed Minute Resolutions of November 16, 2011 and February 27, 2012**, and to reconsider its ruling on the current petition.

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<sup>11</sup> *Mocorro, Jr. v. Ramirez*, G.R. No. 178366, July 28, 2008, 560 SCRA 362, 372-373.

<sup>12</sup> *Id.* at 373; emphases ours.

***The fallo or the dispositive portion***

The resolution of the court in a given issue – embodied in the *fallo* or dispositive part of a decision or order – is the controlling factor in resolving the issues in a case. The *fallo* embodies the court's decisive action on the issue/s posed, and is thus the part of the decision that must be enforced during execution. The other parts of the decision only contain, and are aptly called, the *ratio decidendi* (or reason for the decision) and, in this sense, assume a lesser role in carrying into effect the tribunal's disposition of the case.

When a conflict exists between the *dispositive portion* and the *opinion of the court* in the text or body of the decision, the former must prevail over the latter under the rule that the dispositive portion is the definitive order, while the opinion is merely an explanatory statement without the effect of a directive. Hence, the execution must conform with what the *fallo* or dispositive portion of the decision ordains or decrees.

Significantly, no claim or issue has arisen regarding the *fallo* of the labor tribunals and the CA's ruling ***on the merits*** of the original case. We quote below the *fallo* of these rulings, which this Court ultimately sustained.

**LA ruling:**

WHEREFORE, premises considered, respondents are hereby declared guilty of ILLEGAL DISMISSAL and ordered to reinstate complainant to his former position with full backwages and without loss of seniority rights and other benefits which to date amounts (sic) to Six Hundred Thirty Six Thousand and Six Hundred Thirty Three Pesos and Thirty Three Centavos (₱636,633.33).

**Further,** respondents are jointly and severally liable to pay the following:

1. ₱18,080 as reimbursement for food and transportation allowance;
2. Five Hundred Thousand (₱500,000.00) Pesos as moral damages;
3. Two Hundred Fifty Thousand (₱250,000.00) Pesos as exemplary damages; and



4. 10% of all sums owing to complainant as attorney's fees.<sup>13</sup>  
(emphasis and underscoring ours)

**NLRC Ruling:**

WHEREFORE, premises considered, the decision under review is hereby, MODIFIED by REDUCING the amount of moral and exemplary damages due the complainant to the sum of ₱100,000.00 an ₱50,000.00, respectively.

Further, joint and several liability for the payment of backwages, food and transportation allowance and attorney's fees as adjudged in the appealed decision is hereby imposed only upon respondents Allen Querubin and Solid Cement Corporation, the latter having a personality which is distinct and separate from its officers.

The relief of reinstatement is likewise, AFFIRMED.<sup>14</sup>

**CA Ruling:**

IN VIEW OF ALL THE FOREGOING, the instant petition is hereby dismissed for lack of merit. Accordingly, the decision of the Second Division of the NLRC dated 26 March 2002 in NLRC CA No. 027452-01 is hereby AFFIRMED.<sup>15</sup>

We affirmed the CA ruling on the original case in the final recourse to us; thus, on the merits, the judgment in Gonzales' favor is already final. *From that point, only the implementation or execution of the fallo of the final ruling remained to be done.*

***Re-computation of awards during execution of an illegal dismissal decision***

On the execution aspect of an illegal dismissal decision, the case of *Session Delights Ice Cream and Fast Foods v. Court of Appeals (Sixth Division)*,<sup>16</sup> despite its lack of a complete factual congruence with the present case, serves as a good guide on how to approach the execution of an illegal dismissal decision that contains a monetary award.

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<sup>13</sup> *Rollo*, p. 16.

<sup>14</sup> *Id.* at 17.

<sup>15</sup> *Id.* at 18.

<sup>16</sup> G.R. No. 172149, February 8, 2010, 612 SCRA 10.

In *Session Delights*, the LA found that the employee had been illegally dismissed and consequently ordered the payment of separation pay (in lieu of reinstatement), backwages, 13<sup>th</sup> month pay, and indemnity, all of which the LA itemized and computed *as of the time of his decision*. The NLRC and the CA affirmed the LA's decision on appellate review, except that the CA *deleted* the award for 13<sup>th</sup> month pay and indemnity. In due course, the CA decision became final.

During the execution stage of the decision, the LA arrived at an updated computation of the final awards that included additional backwages, separation pay (computed from the date of the LA decision to the finality of the ruling on the case) and 13<sup>th</sup> month pay. This updated computation was affirmed by the NLRC and by the CA, except for the latter's deletion of the 13<sup>th</sup> month pay award.

Session Delights went to this Court raising the issue of whether the original *fallo* of the LA's decision *on the merits* – at that point already final – could still be re-computed. After stating that only the monetary awards of backwages, separation pay, and attorney's fees required active enforcement and re-computation, the Court stated:

A source of misunderstanding in implementing the final decision in this case proceeds from the way the original labor arbiter framed his decision. The decision consists essentially of two parts.

The *first* is x x x the finding of the illegality of the dismissal and the awards of separation pay in lieu of reinstatement, backwages, attorney's fees, and legal interests.

The *second* part is the computation of the awards made. On its face, the computation the labor arbiter made shows that it was time-bound as can be seen from the figures used in the computation. This part, being merely a computation of what the first part of the decision established and declared, can, by its nature, be re-computed. x x x.

x x x x

However, the petitioner disagreed with the labor arbiter's findings on all counts – *i.e.*, on the finding of illegality as well as on all the consequent awards made. Hence, the petitioner appealed the case to the NLRC which, in turn, affirmed the labor arbiter's decision. x x x.

The petitioner appropriately sought to nullify the NLRC decision on jurisdictional grounds through a timely filed Rule 65 petition for *certiorari*. The CA decision, finding that NLRC exceeded its authority in affirming the payment of 13<sup>th</sup> month pay and indemnity, lapsed to finality and was subsequently returned to the labor arbiter of origin for execution.

It was at this point that the present case arose. Focusing on the core illegal dismissal portion of the original labor arbiter's decision, the implementing labor arbiter ordered the award re-computed; he apparently read the figures originally ordered to be paid to be the computation due had the case been terminated and implemented at the labor arbiter's level. Thus, the labor arbiter re-computed the award to include the separation pay and the backwages due up to the finality of the CA decision that fully terminated the case on the merits. Unfortunately, the labor arbiter's approved computation went beyond the finality of the CA decision (July 29, 2003) and included as well the payment for awards the final CA decision had deleted – specifically, the proportionate 13<sup>th</sup> month pay and the indemnity awards. Hence, the CA issued the decision now questioned in the present petition.

**We see no error in the CA decision confirming that a re-computation is necessary as it essentially considered the labor arbiter's original decision in accordance with its basic component parts as we discussed above.** To reiterate, the first part contains the finding of illegality and its monetary consequences; the second part is the computation of the awards or monetary consequences of the illegal dismissal, computed as of the time of the labor arbiter's original decision.

X X X X

x x x. What the petitioner simply disputes is the re-computation of the award when the final CA decision did not order any re-computation while the NLRC decision that the CA affirmed and the labor arbiter decision the NLRC in turn affirmed, already made a computation that – on the basis of immutability of judgment and the rule on execution of the dispositive portion of the decision – should not now be disturbed.

**Consistent with what we discussed above, we hold that under the terms of the decision under execution, no essential change is made by a re-computation as this step is a necessary consequence that flows from the nature of the illegality of dismissal declared in that decision.** A re-computation (or an original computation, if no previous computation has been made) is a part of the law – specifically, Article 279 of the Labor Code and the established jurisprudence on this provision – that is read into the decision. **By the nature of an illegal dismissal case, the reliefs continue to add on until full satisfaction, as expressed under Article 279 of the Labor Code. The re-computation of the consequences of illegal dismissal upon execution of the decision does not constitute an alteration or amendment of the final decision being implemented. The illegal dismissal ruling stands; only the computation of monetary consequences of this dismissal is affected and this is not a violation of the principle of immutability of final judgments.**

x x x [T]he core issue in this case is not the payment of separation pay and backwages but their re-computation in light of an original labor

arbiter ruling that already contained a dated computation of the monetary consequences of illegal dismissal.

That the amount the petitioner shall now pay has greatly increased is a consequence that it cannot avoid as it is the risk that it ran when it continued to seek recourses against the labor arbiter's decision. Article 279 provides for the consequences of illegal dismissal in no uncertain terms, qualified only by jurisprudence in its interpretation of when separation pay in lieu of reinstatement is allowed. When that happens, the finality of the illegal dismissal decision becomes the reckoning point instead of the reinstatement that the law decrees. In allowing separation pay, the final decision effectively declares that the employment relationship ended so that separation pay and backwages are to be computed up to that point. The decision also becomes a judgment for money from which another consequence flows – the payment of interest in case of delay. This was what the CA correctly decreed when it provided for the payment of the legal interest of 12% from the finality of the judgment, in accordance with our ruling in *Eastern Shipping Lines, Inc. v. Court of Appeals*.<sup>17</sup> (emphases ours, italics supplied)

The **re-computation** of the amounts still due took off from the LA's decision that contained the itemized and computed dispositive portion *as of the time the LA rendered his judgment*. It was necessary because time transpired between the LA's decision and the final termination of the case on appeal, during which time the illegally dismissed employee should have been paid his salary and benefit entitlements.

The present case, of course, is not totally the same as *Session Delights*. At the most obvious level, separation pay is not an issue here as reinstatement, not separation from service, is the final directive; Gonzales was almost immediately reinstated pending appeal, although only by way of a payroll reinstatement as allowed by law. Upon the finality of the decision on the appeal, Gonzales was *actually* reinstated.

Although backwages was an issue in both cases, the thrusts of this issue in the two cases were different. In *Session Delights*, the issue was more on whether the award would be confined to what the LA originally awarded or would continue to run during the period of appeal. This is not an issue in the present case, *since Gonzales received his salary and benefit*

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<sup>17</sup>*Id.* at 21-27.

*entitlements during his payroll reinstatement*; the general concern in the present case is more on the items that should be included in the award, part of which are the backwages.

In other words, the current petition only *generally* involves a determination of *the scope* of the awards that include the backwages. The following were the demanded items:

1. Additional backwages from the LA's decision (on the merits) until Gonzales was payroll reinstated;
2. Seniority rights
  - a. longevity pay/loyalty/service award
  - b. general annual bonus
  - c. annual birthday gift
  - d. bereavement assistance;
3. Other benefits
  - a. vacation and sick leave
  - b. holiday pay;
4. Other allowances
  - a. monetary equivalent of rice allowance (from October 1999 to July 2005) which should be included in computing backwages
  - b. monetary equivalent of yearly medical allowance from 2000 to July 2005 which should be included in computing backwages
  - c. meal allowance
  - d. uniform and clothing allowance
  - e. transportation, gasoline and representation allowance;
5. 13<sup>th</sup> month pay for the years 2000 and 2001;
6. Salary differentials;
7. Damages;
8. Interest on the computed judgment award; and

9. Attorney’s fees.<sup>18</sup>

The LA and the NLRC uniformly excluded some of these items from the awards they made and we could have dismissed the current petition outright on the *issue of entitlement to these benefits*, since entitlement mainly involves questions of fact which a Rule 45 petition generally does not allow. A deeper consideration of the current petition, however, shows that there is more beyond the factual issues of entitlement that are evident on the surface.

To recall, the NLRC differed from the LA on the actual details of implementation and modified the latter’s ruling by including –

Additional backwages from Dec. 13, 2000 to Jan. 21, 2001	₱ 50, 800.00 <sup>19</sup>
<b>Salary differentials from year 2000 until August 2008</b>	617,517.48
<b>13<sup>th</sup> month pay differential</b>	51,459.79
13 <sup>th</sup> month pay for years 2000 and 2001	80,000.00
12% interest from July 12, 2005	878,183.42

The CA, in its own Rule 65 review of the NLRC ruling, effectively found that the NLRC acted outside its jurisdiction when it modified the LA’s execution order and, on this basis, ruled for the implementation of what the LA ordered.

Under this situation and in the context of the Rule 45 petition before us, the reviewable issue before us is *whether the CA was legally correct in finding that the NLRC acted outside its jurisdiction when it modified the LA’s execution order*. This is the issue on which our assailed Resolutions would rise or fall. For, indeed, a Rule 45 petition which seeks a review of

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<sup>18</sup> Rollo, pp. 44-70.  
<sup>19</sup> Supra note 9.

the CA decision on a Rule 65 petition should be reviewed “from the prism of whether [the CA] correctly determined the presence or absence of grave abuse of discretion in the NLRC decision.”<sup>20</sup> In short, we do **not** rule whether the CA committed grave abuse of discretion; rather, ***we rule on whether the CA correctly determined the absence or presence of grave abuse of discretion by the NLRC.***

***The components of the backwages***

***a. Salary and 13<sup>th</sup> month differential due after dismissal***

In the case of *BPI Employees Union – Metro Manila and Zenaida Uy v. Bank of the Philippine Islands* and *Bank of the Philippine Islands v. BPI Employees Union – Metro Manila and Zenaida Uy*,<sup>21</sup> the Court ruled that in computing backwages, salary increases from the time of dismissal until actual reinstatement, and benefits *not yet granted at the time of dismissal are excluded*. Hence, we cannot fault the CA for finding that the NLRC committed grave abuse of discretion in awarding **the salary differential amounting to ₱617,517.48 and the 13<sup>th</sup> month pay differentials amounting to ₱51,459.48** that accrued subsequent to Gonzales’ dismissal.

***b. Legal interest of 12% on total judgment***

However, based on the same *BPI* case, Gonzales is entitled to **12% interest on the total unpaid judgment amount**, from the time the Court’s decision (on the merits in the original case) became final. When the CA reversed the NLRC and reinstated the LA’s ruling (which did not order payment of interest), the CA overstepped the due bounds of its jurisdiction under a *certiorari* petition as it acted on the basis of wrong considerations

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<sup>20</sup> *Montoya v. Transmed Manila Corporation*, G.R. No. 183329, August 27, 2009, 597 SCRA 334, 342-343, cited in *Mercado v. AMA Computer College-Parañaque City, Inc.*, G.R. No. 183572, April 13, 2010, 618 SCRA 218, 232-233.

<sup>21</sup> G.R. Nos. 178699 and 178735, September 21, 2011.

and outside the contemplation of the law on the legal interests that final orders and rulings on forbearance of money should bear.

In a *certiorari* petition, the scope of review is limited to the determination of whether a judicial or quasi-judicial tribunal acted without or in excess of its jurisdiction or grave abuse of discretion amounting to lack of jurisdiction; such grave abuse of discretion can exist when the ruling entity used the wrong considerations and thereby acted outside the contemplation of law. In justifying the return to and adoption of the LA's execution order, the CA solely relied on the doctrine of immutability of judgment which it considered to the exclusion of other attendant and relevant factors. This is a fatal error that amounted to **grave abuse of discretion**, particularly on the award of 12% interest. The seminal case of *Eastern Shipping Lines, Inc. v. Court of Appeals*<sup>22</sup> cannot be clearer on the rate of interest that applies:

3. **When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest x x x shall be 12% per annum from such finality until its satisfaction**, this interim period being deemed to be by then an equivalent to a forbearance of credit.<sup>23</sup> (emphasis ours)

In *BPI*, we even said that “[t]his natural consequence of a final judgment is not defeated notwithstanding the fact that the parties were at variance in the computation of what is due”<sup>24</sup> under the judgment. In the present case, the LA's failure to include this award in its order was properly corrected by the NLRC on appeal, only to be unreasonably deleted by the CA. Such deletion, based solely on the immutability of the judgment in the original case, is a wrong consideration that fatally afflicts and renders the CA's ruling void.

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<sup>22</sup> G.R. No. 97412, July 12, 1994, 234 SCRA 78.

<sup>23</sup> *Id.* at 97.

<sup>24</sup> *Supra* note 21.



*c. Additional backwages and 13<sup>th</sup> month pay*

We reach the same conclusion on the other deletions the CA made, particularly on the deletion of the **13<sup>th</sup> month pay for 2000-2001, amounting to ₱80,000.00, and the additional backwages for the period of December 13, 2000 to January 21, 2001, amounting to ₱50,800.00.** We note in this regard that the execution proceedings were conducted before the LA issued an Order requiring the payment of **₱965,014.15** in Gonzales' favor. An appeal of this computation to the NLRC to question the LA's determination of the amount due throws the LA's determination wide open for the NLRC's review. In granting these monetary reliefs, the NLRC reasoned that –

Since there is **no showing that complainant was paid his salaries** from the time when he should have been immediately reinstated until his payroll reinstatement, he is entitled thereto.<sup>25</sup> (emphasis ours)

To be sure, if the NLRC's findings had been arrived at arbitrarily or in disregard of the evidence on record, the CA would have been right and could have granted the petition for *certiorari* on the finding that the NLRC made a factual finding not supported by substantial evidence.<sup>26</sup> The CA, in fact, did not appear to have looked into these matters and did not at all ask whether the NLRC's findings on the awarded monetary benefits were supported by substantial evidence. This omission, however, did not render the NLRC's ruling defective as *Jimenez v. NLRC, et al.*<sup>27</sup> teaches us that –

On the first issue, we find no reason to disturb the findings of respondent NLRC that the entire amount of commissions was not paid, this by reason of the evident failure of herein petitioners to present evidence that full payment thereof has been made. **It is a basic rule in evidence that each party must prove his affirmative allegations. Since the burden of evidence lies with the party who asserts an affirmative allegation,** the plaintiff or complainant has to prove his affirmative

<sup>25</sup> Decision dated February 19, 2010; *rollo*, p. 321.

<sup>26</sup> *Prince Transport, Inc. v. Garcia*, G.R. No. 167291, January 12, 2011, 639 SCRA 312, 325.

<sup>27</sup> 326 Phil. 89 (1996).

allegation, in the complaint and the defendant or respondent has to prove the affirmative allegations in his affirmative defenses and counterclaim. Considering that petitioners herein assert that the disputed commissions have been paid, they have the bounden duty to prove that fact.

As a general rule, one who pleads payment has the burden of proving it. **Even where the plaintiff must allege non-payment, the general rule is that the burden rests on the defendant to prove payment, rather than on the plaintiff to prove non-payment.** The debtor has the burden of showing with legal certainty that the obligation has been discharged by payment.

When the existence of a debt is fully established by the evidence contained in the record, the burden of proving that it has been extinguished by payment devolves upon the debtor who offers such a defense to the claim of the creditor. Where the debtor introduces some evidence of payment, the burden of going forward with the evidence – as distinct from the general burden of proof – shifts to the creditor, who is then under a duty of producing some evidence to show non-payment.<sup>28</sup> (emphases ours, citations omitted)

Thus, even without proof of nonpayment, the NLRC was right in requiring the payment of the 13<sup>th</sup> month pay and the salaries due after the LA's decision until the illegally dismissed petitioner was reinstated in the payroll, *i.e.*, from December 13, 2000 to January 21, 2001. It follows that the CA was wrong when it concluded that the NLRC acted outside its jurisdiction by including these monetary awards as items for execution.

These amounts are *not excluded* from the concept of backwages as the salaries fell due after Gonzales should have been reinstated, while the 13<sup>th</sup> month pay fell due for the same period by legal mandate. These are entitlements that cannot now be glossed over if the final decision on the merits in this case were to be respected.

***The Legal Obstacle: the prohibition  
on 2<sup>nd</sup> motion for reconsideration***

The above discussions unavoidably lead to the conclusion that the Court's Minute Resolutions denying Gonzales' petition were not properly issued and are tainted by the nullity of the CA decision these Resolutions

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<sup>28</sup>*Id.* at 95.

effectively approved. We do not aim to defend these actions, however, by mechanically and blindly applying the principle of immutability of judgment, nor by tolerating the CA's inappropriate application of this principle. The immutability principle, rather than being absolute, is subject to well-settled exceptions, among which is its inapplicability when a decision claimed to be final is not only erroneous, but null and void.

We cannot also be oblivious to the legal reality that the matter before us is no longer the validity of Gonzales' dismissal and the legal consequences that follow – matters long laid to rest and which we do not and cannot now disturb. Nor is the matter before us the additional monetary benefits that Gonzales claims in his petition, since these essentially involve factual matters that are beyond a Rule 45 petition to rule upon and correct.

The matter before us – in the Rule 45 petition questioning the CA's Rule 65 determination – is the **scope of the benefits awarded by the LA, as modified on appeal and ultimately affirmed by this Court**, which ruling has become final and which now must be implemented as a matter of law.

Given these considerations, to reopen this case on second motion for reconsideration would not actually embroil the Court with changes in the decision on the merits of the case, but would confine itself solely to the issue of the CA's actions in the course of determining lack or excess of jurisdiction or the presence of grave abuse of discretion in reviewing the NLRC's ruling on the execution aspect of the case.

Additionally, while continued consideration of a case on second motion for reconsideration very strongly remains an exception, our action in doing so in this case is not without sound legal justification.<sup>29</sup> An order of execution that varies the tenor of a final and executory judgment is null and

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<sup>29</sup> Resolution, *Muñoz v. Court of Appeals*, G.R. No. 125451, August 22, 2001.

void.<sup>30</sup> This was what the CA effectively did – it varied the final and executory judgment of the LA, as modified on appeal and ultimately affirmed by the Court. We would simply be enforcing our own Decision on the merits of the original case by nullifying what the CA did.

Viewed in these lights, the recognition of, and our corrective action on, the nullity of the CA's ruling on the current petition is a duty this Court is under obligation to undertake pursuant to Section 1, Article VIII of the Constitution. We undertake this corrective action by restoring what the CA should have properly recognized to be covered by the Decision on the merits of the original case.

**WHEREFORE**, premises considered, in lieu of our Minute Resolutions of November 16, 2011 and February 27, 2012 which we hereby vacate, we hereby **PARTIALLY GRANT** the petition and **DIRECT** the payment of the following deficiencies in the payments due petitioner Leo Gonzales under the Labor Arbiter's Order of August 18, 2009:

1. 13<sup>th</sup> month pay for the years 2000 and 2001;
2. Additional backwages from December 13, 2000 until January 21, 2001; and
3. 12% interest on the total judgment award from the time of the judgment's finality on July 12, 2005 until the total award is fully paid.

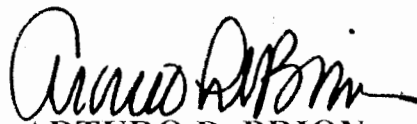
The Labor Arbiter is hereby **DIRECTED** to issue the appropriate writ of execution incorporating these additional awards to those reflected in his Order of August 18, 2009.

Costs against respondents Solid Cement Corporation and Allen Querubin.


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<sup>30</sup> *INIMACO v. NLRC*, 387 Phil. 659, 667 (2000).

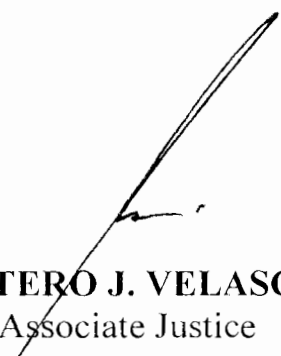
**SO ORDERED.**

  
**ARTURO D. BRION**  
Associate Justice

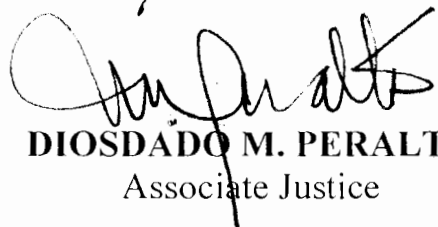
**WE CONCUR:**

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice

(On Leave)  
**ANTONIO T. CARPIO**  
Associate Justice

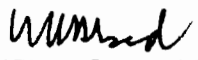
  
**PRESBITERO J. VELASCO, JR.**  
Associate Justice

  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

  
**DIOSDADO M. PERALTA**  
Associate Justice

  
**LUCAS P. BERSAMIN**  
Associate Justice


(On Leave)  
**MARIANO C. DEL CASTILLO**  
Associate Justice


  
**ROBERTO A. ABAD**  
Associate Justice

  
**MARTIN S. VILLARAMA, JR.**  
Associate Justice

(On Leave)  
**JOSE PORTUGAL PEREZ**  
Associate Justice

  
**JOSE CATRAL MENDOZA**  
Associate Justice

  
**BIENVENIDO L. REYES**  
Associate Justice

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

## CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court.



**MARIA LOURDES P. A. SERENO**  
Chief Justice