



Republic of the Philippines
Supreme Court
 Manila

FIRST DIVISION

**THE NATIONAL WAGES AND
 PRODUCTIVITY COMMISSION
 (NWPC) and THE REGIONAL
 TRIPARTITE WAGES AND
 PRODUCTIVITY BOARD
 (RTWPB)- NCR,**

Petitioners,

- versus -

**THE ALLIANCE OF
 PROGRESSIVE LABOR (APL)
 and THE TUNAY NA
 NAGKAKAISANG
 MANGGAGAWA SA ROYAL
 (TNMR-APL)**

Respondents.

G.R. No. 150326

Present:

SERENO, C.J.,
 LEONARDO-DE CASTRO,
 BERSAMIN,
 VILLARAMA, JR., and
 REYES, JJ.

Promulgated:

MAR 12 2014

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DECISION

BERSAMIN, J.:

This case concerns the authority of the National Wages and Productivity Commission (NWPC) and the Regional Tripartite Wages and Productivity Board (RTWPB) created under Republic Act No. 6727,¹ otherwise known as the *Wage Rationalization Act*, to issue wage orders, and to receive, process and act on applications for exemption from the prescribed wage rates.

¹ *An Act to Rationalize Wage Policy Determination by Establishing the Mechanism and Proper Standards Therefore, amending for the purpose Article 99 of, and Incorporating Articles 120, 121, 122, 123, 124, 126 and 127 into, Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines, Fixing New Wage Rates, Providing Wage Incentives for Industrial Dispersal to the Countryside, and for other purposes.*

The Case

Petitioners NWPC and RTWPB of the National Capital Region (NCR) appeal the decision promulgated on June 15, 2001,² whereby the Court of Appeals (CA) reversed the decisions rendered by the NWPC on February 28, 2000³ and July 17, 2000⁴, and declared as null and void Section 2(A) and Section 9(2) of Wage Order No. NCR-07.

Antecedents

On June 9, 1989, Republic Act No. 6727 was enacted into law. In order to rationalize wages throughout the Philippines, Republic Act No. 6727 created the NWPC and the RTWPBs of the different regions.

Article 121 of the *Labor Code*, as amended by Section 3 of Republic Act No. 6727, empowered the NWPC to formulate policies and guidelines on wages, incomes and productivity improvement at the enterprise, industry and national levels; to prescribe rules and guidelines for the determination of appropriate minimum wage and productivity measures at the regional, provincial or industry levels; and to review regional wage levels set by the RTWPBs to determine whether the levels were in accordance with the prescribed guidelines and national development plans, among others. On the other hand, Article 122(b) of the *Labor Code*, also amended by Section 3 of Republic Act No. 6727, tasked the RTWPBs to determine and fix minimum wage rates applicable in their region, provinces or industries therein; and to issue the corresponding wage orders, subject to the guidelines issued by the NWPC. The RTWPBs were also mandated to receive, process and act on applications for exemption from the prescribed wage rates as may be provided by law or any wage order.⁵

Consequently, the RTWPB-NCR issued Wage Order No. NCR-07 on October 14, 1999 imposing an increase of ₱25.50/day on the wages of all private sector workers and employees in the NCR and pegging the minimum wage rate in the NCR at ₱223.50/day.⁶ However, Section 2 and Section 9 of Wage Order No. NCR-07 exempted certain sectors and industries from its coverage, to wit:

² *Rollo*, pp. 44-49; penned by Associate Justice Eubolo G. Verzola (retired/deceased), and concurred in by Associate Justice Marina L. Buzon (retired) and Associate Justice Bienvenido L. Reyes (now a Member of the Court).

³ *Id.* at 56-66.

⁴ *Id.* at 67-70.

⁵ Article 122(e) of the *Labor Code*, as amended.

⁶ *Rollo*, pp. 52-55.

Section 2. The adjustment in this Order does not cover the following:

A. [W]orkers in the following sectors which were granted corresponding wage increases on January 1, 1999 as prescribed by Wage Order No. NCR-06:

a.1. Agriculture workers	
-Plantation	₱12.00
-Non-plantation	₱18.50
a.2. Cottage/handicraft industry	₱16.00
a.3. Private hospitals with bed capacity of 100 or less	₱12.00
a.4. Retail/Service establishments	
-Employing 11-15 workers	₱12.00
-Employing not more than 10 workers	₱19.00

B. Workers in small establishments employing less than ten (10) workers.

x x x x

Section 9. Upon application with and as determined by the Board, based on documentation and other requirements in accordance with applicable rules and regulations issued by the Commission, the following may be exempt from the applicability of this Order:

1. Distressed establishments as defined in the NPWC Guidelines No. 01, series of 1996;

2. Exporters including indirect exporters with at least 50% export sales and with forward contracts with their foreign buyers/principals entered into on or twelve (12) months before the date of publication of this Order may be exempt during the lifetime of said contract but not to exceed twelve (12) months from the effectivity of this Order.

Feeling aggrieved by their non-coverage by the wage adjustment, the Alliance of Progressive Labor (APL) and the Tunay na Nagkakaisang Manggagawa sa Royal (TNMR) filed an appeal with the NWPC assailing Section 2(A) and Section 9(2) of Wage Order No. NCR-07. They contended that neither the NWPC nor the RTWPB-NCR had the authority to expand the non-coverage and exemptible categories under the wage order; hence, the assailed sections of the wage order should be voided. The appeal was docketed as NWPC Case No. W.O.- 99-001.

Ruling of the NWPC

In its decision dated February 28, 2000,⁷ the NWPC upheld the validity of Section 2(A) and Section 9(2) of Wage Order No. NCR-07. It observed that the RTWPB's power to determine exemptible categories was adjunct to its wage fixing function conferred by Article 122(e) of the *Labor Code*, as amended by Republic Act No. 6727; that such authority of the RTWPB was also recognized in NWPC Guidelines No. 01, Series of 1996; that APL and TNMR did not adduce evidence to show any arbitrariness on the part of the RTWPB-NCR when it included in Wage Order No. NCR-07 the disputed exclusionary provisions; and that the RTWPB-NCR was able to submit strong and justifiable reasons for the inclusion of the exemptible categories in Wage Order No. NCR-07.

With regard to the excluded sectors provided for in Section 2(A) of Wage Order No. NCR-07, the NWPC took cognizance of the precarious situation in the Philippines in 1997 because of the Asian economic turmoil that had prompted the RTWPB-NCR to issue Wage Order No. NCR-06 to prescribe a staggered amount of wage increases for the agricultural workers, cottage/handicraft industry, private hospitals with bed capacity of 100 or less, and retail/service establishments employing 15 or less workers. It noted that the effects of that economic turmoil were still felt in the NCR when Wage Order No. NCR-07 was issued considering that the unemployment rate was 15.4% in July 1999; that the RTWPB-NCR thought it wise to defer the implementation of the new wage increase until a future date; and that the non-inclusion of some sectors from the coverage of the Wage Order No. NCR-07 was only temporary in character.

As regards the exemption granted to the exporting firms, the NWPC considered the nature of the business wherein the exporters would normally enter into forwarding contracts with their principals. It held that the recent adjustment imposed by Wage Order No. NCR-07 could not have been anticipated by the parties at the time they agreed on the price of their forward contract; that the implementation of the wage adjustment would surely result, therefore, into either financial loss or at the very least a marked reduction of profits on the part of the exporters; and that the exemption given to exporting firms was not automatic because the RTWPB-NCR had

⁷ Id. at 56-66.

the discretion to ascertain if the exporter had complied with the requirements, and the exemption given was only for a period of one year.⁸

Accordingly, the NWPC denied the appeal of APL and TNMR for its lack of merit. It also denied TNMR's motion for reconsideration through its resolution of July 17, 2000.⁹

Ruling of the CA

The APL and TNMR assailed the decisions of the NWPC on *certiorari* in the CA (C.A.-G.R. SP No. 60833), attributing grave abuse of discretion to the NWPC in upholding Section 2(A) and Section 9(2) of Wage Order No. NCR-07, and contending that the power of the RTWPB-NCR to determine exemptible categories was not an adjunct to its wage fixing function.

On June 15, 2001, the CA granted the petition for *certiorari*,¹⁰ holding that the powers and functions of the NWPC and RTWPB-NCR as set forth in Republic Act No. 6727 did not include the power to grant additional exemptions from the adjusted minimum wage; that an administrative rule or regulation must be in harmony with the enabling law; and that the statutory grant of power could not be extended by implication beyond what was necessary for their just and reasonable execution. It disposed as follows:

WHEREFORE, the petition is GRANTED and the Decisions of the respondent Commission dated February 28, 2000 and July 17, 2000 are hereby SET ASIDE.

Sections 2A and 9(2) of the Wage Order No. NCR-07 are hereby declared NULL and VOID.

SO ORDERED.¹¹

The NWPC and RTWPB-NCR moved to reconsider the decision, but the CA denied their motion in the resolution promulgated on September 11,

⁸ Section 10 of Wage Order No. NCR-07 states:

Section 10. All applications for exemption from compliance with this Order shall be filed within sixty (60) days from the date of the publication of the Rules Implementing this Order. The Board has the discretion to grant full or partial exemption but in no case shall it exceed one (1) year from the effectivity of this Order.

⁹ *Rollo*, pp. 67-70.

¹⁰ *Supra* note 2.

¹¹ *Id.* at. 44-49.

2001,¹² ruling that notwithstanding the pronouncement in *Nasipit Lumber Company, Inc. v. National Wages and Productivity Commission*¹³ to the effect that the NWPC had the power not only to prescribe guidelines to govern wage orders but also to issue exemptions therefrom, Section 2(A) and Section 9(2) of Wage Order No. NCR-07 were invalid due to lack of approval by the NWPC.

Hence, this appeal by petition for review on *certiorari* by the NWPC and RTWPB-NCR.

Issues

The NWPC and RTWPB-NCR submit for resolution that:

I

SECTION 3 OF REPUBLIC ACT NO. 6727 MAY BE CONSTRUED TO AUTHORIZE THE NWPC AND RTWPB TO PROVIDE FOR ADDITIONAL EXEMPTIONS IN THE MINIMUM WAGE ADJUSTMENTS SUCH AS IN WAGE ORDER NO. NCR-07.

II

THE APPROVAL GIVEN BY THE NWPC WHICH WAS CONTAINED IN ITS DECISIONS DATED FEBRUARY 28, 2000 AND JULY 17, 2000 COMPLIES WITH THE REQUIREMENT OF REVIEW/APPROVAL REQUIRED UNDER SECTION 2 OF THE REVISED GUIDELINES ON EXEMPTIONS FROM WAGE ORDER.¹⁴

Restated, the issues are: (a) whether or not the RTWPB-NCR had the authority to provide additional exemptions from the minimum wage adjustments embodied in Wage Order No. NCR-07; and (b) whether or not Wage Order No. NCR-07 complied with the requirements set by NWPC Guidelines No. 01, Series of 1996.

Ruling

The petition for review on *certiorari* is meritorious.

¹² Id. at 50-51.

¹³ G.R. No. 113097, April 27, 1998, 289 SCRA 667.

¹⁴ *Rollo*, p. 23.

Indisputably, the NWPC had the authority to prescribe the rules and guidelines for the determination of the minimum wage and productivity measures, and the RTWPB-NCR had the power to issue wage orders.

Pursuant to its statutorily defined functions, the NWPC promulgated NWPC Guidelines No. 001-95 (*Revised Rules of Procedure on Minimum Wage Fixing*) to govern the proceedings in the NWPC and the RTWPBs in the fixing of minimum wage rates by region, province and industry. Section 1 of Rule VIII of NWPC Guidelines No. 001-95 recognized the power of the RTWPBs to issue exemptions from the application of the wage orders subject to the guidelines issued by the NWPC, *viz*:

SECTION 1. APPLICATION FOR EXEMPTION.

Whenever a wage order provides for exemption, applications for exemption shall be filed with the appropriate Board which shall process these applications, subject to the guidelines issued by the Commission.

The NWPC also issued NWPC Guidelines No. 01, Series of 1996, to fix the rules on the exemption from compliance with the wage increases prescribed by the RTWPBs. Section 2 of the Guidelines No. 01 reads:

SECTION 2. CATEGORIES OF EXEMPTIBLE ESTABLISHMENTS

Exemption of establishments from compliance with the wage increases and cost of living allowances prescribed by the Boards may be granted in order to (1) assist establishments experiencing temporary difficulties due to losses maintain the financial viability of their businesses and continued employment of their workers; (2) encourage the establishment of new businesses and the creation of more jobs, particularly in areas outside the National Capital Region and Export Processing Zones, in line with the policy on industry dispersal; and (3) ease the burden of micro establishments, particularly in the retail and service sector, that have a limited capacity to pay.

Pursuant to the above, the following categories of establishments may be exempted upon application with and as determined by the Board, in accordance with applicable criteria on exemption as provided in this Guidelines; provided further that such categories are expressly specified in the Order.

1. Distressed establishments
2. New business enterprises (NBEs)

3. Retail/Service establishments employing not more than ten (10) workers

4. Establishments adversely affected by natural calamities

Exemptible categories outside of the abovementioned list may be allowed only if they are in accord with the rationale for exemption reflected in the first paragraph of this section. The concerned Regional Board shall submit strong and justifiable reason/s for the inclusion of such categories which shall be subject to review/approval by the Commission.

Under the guidelines, the RTWPBs could issue exemptions from the application of the wage orders as long as the exemptions complied with the rules of the NWPC. In its rules, the NWPC enumerated four exemptible establishments, but the list was not exclusive. The RTWPBs had the authority to include in the wage orders establishments that belonged to, or to exclude from the four enumerated exemptible categories. If the exempted category was one of the listed ones, the RTWPB issuing the wage order must see to it that the requisites stated in Section 3 and Section 4 of the NWPC Guidelines No. 01, Series of 1996 were complied with before granting fully or partially the application of an establishment seeking to avail of the exemption, to wit:

SECTION 3. CRITERIA FOR EXEMPTION

The following criteria shall be used to determine whether the applicant-establishment is qualified for exemption:

A. Distressed Establishments

1. For Stock Corporations/Cooperatives

- a. When deficit as of the last full accounting period or interim period, if any, immediately preceding the effectivity of the Order amounts to 20% or more of the paid-up capital for the same period; or
- b. When an establishment registers capital deficiency i.e., negative stockholders' equity as of the last full accounting period or interim period, if any, immediately preceding the effectivity of the Order.

2. For Single Proprietorships/Partnerships

- a. Single proprietorships/partnerships operating for at least two (2) years may be granted exemption:
 - a.1. When the net accumulated losses for the last two (2) full accounting periods and interim period, if any, preceding the effectivity of the Order amounts to 20% or more of the total invested capital at the beginning of the period under review; or

- a.2. When an establishment registers capital deficiency i.e., negative net worth as of the last full accounting period or interim period, if any, immediately preceding the effectivity of the Order.
 - b. Single proprietorships/partnerships operating for less than two (2) years may be granted exemption when the net accumulated losses for the period immediately preceding the effectivity of the Order amounts to 20% or more of the total invested capital at the beginning of the period under review.
3. For Non-stock Non-profit Organizations
 - a. Non-stock Non-profit organizations operating for at least two (2) years may be granted exemption:
 - a.1. When the net accumulated losses for the last two (2) full accounting periods and interim period, if any, immediately preceding the effectivity of the Order amounts to 20% or more of the fund balance/members' contribution at the beginning of the period under review; or
 - a.2. When an establishment registers capital deficiency i.e., negative fund balance/members' contribution as of the last full accounting period or interim period, if any, immediately preceding the effectivity of the Order.
 - b. Non-stock non-profit organizations operating for less than two (2) years may be granted exemption when the net accumulated losses for the period immediately preceding the effectivity of the Order amounts to 20% or more of the fund balance/members' contribution at the beginning of the period under review.

4. For Banks and Quasi-banks

- a. Under receivership/liquidation

Exemption may be granted to a bank or quasi-bank under receivership or liquidation when there is a certification from the Bangko Sentral ng Pilipinas that it is under receivership or liquidation as provided in Section 30 of RA 7653, otherwise known as the New Central Bank Act.

- b. Under controllership/conservatorship

A bank or quasi-bank under controllership/conservatorship may apply for exemption as a distressed establishment under Section 3 A of this Guideline.

B. New Business Enterprises

Exemption may be granted to New Business Enterprises established outside the National Capital Region (NCR) and Export

Processing Zones within two (2) years from effectivity of the Order, classified under any of the following:

1. Agricultural establishments whether plantation or non-plantation.
2. Establishments with total assets after financing of five million pesos (₱5,000,000.00) and below.

C. Retail/Service Establishments Regularly Employing Not More Than Ten (10) Workers

Exemption may be granted to a retail/service establishment when:

1. It is engaged in the retail sale of goods and/or services to end users for personal or household use; and
2. It is regularly employing not more than ten (10) workers regardless of status, except the owner/s, for at least six (6) months in any calendar year.

D. Establishments Adversely Affected by Natural Calamities

1. The establishment must be located in an area declared by a competent authority as under a state of calamity.
2. The natural calamities, such as earthquakes, lahar flow, typhoons, volcanic eruptions, fire, floods and similar occurrences, must have occurred within 6 months prior to the effectivity of the Wage Order.
3. Losses suffered by the establishment as a result of the calamity that exceed the insurance coverage should amount to 20% or more of the stockholders' equity as of the last full accounting period in the case of corporations and cooperatives, total invested capital in the case of partnerships and single proprietorships and fund balance/members' contribution in the case of non-stock non-profit organizations.

Only losses or damage to properties directly resulting from the calamity and not incurred as a result of normal business operations shall be considered.

4. Where necessary, the Board or its duly-authorized representative shall conduct an ocular inspection of the establishment or engage the services of experts to validate the extent of damages suffered.

SECTION 4. DOCUMENTS REQUIRED

The following supporting documents shall be submitted together with the application:

For All Categories of Exemption

Proof of notice of filing of the application to the President of the union/contracting party if one is organized in the establishment, or if there

is no union, a copy of a circular giving general notice of the filing of the application to all the workers in the establishment. The proof of notice, which may be translated in the vernacular, shall state that the workers' representative was furnished a copy of the application with all the supporting documents. The notice shall be posted in a conspicuous place in the establishment.

A. For Distressed Establishments

1. For corporations, cooperatives, single proprietorships, partnerships, non-stock non-profit organizations.
 - a. Audited financial statements (together with the Auditor's opinion and the notes thereto) for the last two (2) full accounting periods preceding the effectivity of the Order filed with and stamped "received" by the appropriate government agency.
 - b. Audited interim quarterly financial statements (together with the Auditor's opinion and the notes thereto) for the period immediately preceding the effectivity of the Order.
2. For Banks and Quasi-banks
 - a. Certification from Bangko Sentral ng Pilipinas that it is under receivership/liquidation.

B. For New Business Enterprises

1. Affidavit from employer regarding the following:
 - a. Principal economic activity
 - b. Date of registration with appropriate government agency
 - c. Amount of total assets
2. Certificate of registration from the appropriate government agency.

C. For Retail/Service Establishments Employing not more than Ten (10) Workers:

1. Affidavit from employer stating the following:
 - a. It is a retail/service establishment.
 - b. It is regularly employing not more than ten (10) workers for at least six months in any calendar year.
2. Business Permit for the current year from the appropriate government agency.

D. For Establishments Adversely Affected by Natural Calamities

1. Affidavit from the General Manager or Chief Executive Officer of the establishment regarding the following:
 - a. Date and type of calamity

- b. Amount of losses/damages suffered as a direct result of the calamity
 - c. List of properties damaged/lost together with estimated valuation
 - d. For properties that are not insured, a statement that the same are not covered by insurance.
2. Copies of insurance policy contracts covering the properties damaged, if any.
 3. Adjuster's report for insured properties.
 4. Audited financial statements for the last full accounting period preceding the effectivity of the Order stamped received by the appropriate government agency.

The Board may require the submission of other pertinent documents to support the application for exemption.

On the other hand, if the exemption was outside of the four exemptible categories, like here, the exemptible category should be: (1) in accord with the rationale for exemption; (2) reviewed/approved by the NWPC; and (3) upon review, the RTWPB issuing the wage order must submit a strong and justifiable reason or reasons for the inclusion of such category. It is the compliance with the second requisite that is at issue here.

The CA reversed the decisions of the NWPC dated February 28, 2000 and July 17, 2000 mainly on the ground that Wage Order No. NCR-07, specifically its Section 2(A) and Section 9(2), had not been reviewed or approved by the NWPC. However, the NWPC stated that it had reviewed and approved the challenged sections when it upheld the validity of Wage Order No. NCR-07 in its decisions of February 28, 2000 and July 17, 2000.

We rule in favor of petitioners.

The wage orders issued by the RTWPBs could be reviewed by the NWPC *motu proprio* or upon appeal.¹⁵ Any party aggrieved by the wage order issued by the RTWPBs could appeal. Here, APL and TNMR appealed on October 26, 1999, submitting to the NWPC precisely the issue of the validity of the Section 2(A) and Section 9(2) of Wage Order No. NCR-07. The NWPC, in arriving at its decision, weighed the arguments of the parties and ruled that the RTWPB-NCR had substantial and justifiable reasons in exempting the sectors and establishments enumerated in Section 2(A) and

¹⁵ Section 6 of Rule IV, *Revised Rules of Procedure on Minimum Wage Fixing*.

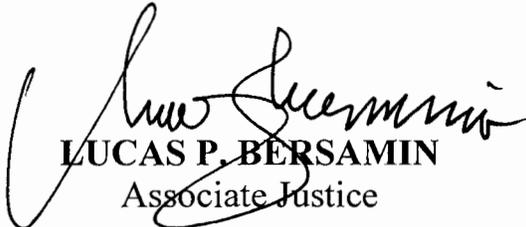
Section 9(2) based on the public hearings and consultations, meetings, social-economic data and informations gathered prior to the issuance of Wage Order No. NCR-07. The very fact that the validity of the assailed sections of Wage Order No. NCR-07 had been already passed upon and upheld by the NWPC meant that the NWPC had already given the wage order its necessary legal imprimatur. Accordingly, the requisite approval or review was complied with.

In creating the RTWPBs, Congress intended to rationalize wages, firstly, by establishing full time boards to police wages round-the-clock, and secondly, by giving the boards enough powers to achieve this objective. In *Employers Confederation of the Phils. v. National Wages and Productivity Commission*,¹⁶ this Court all too clearly pronounced that Congress meant the RTWPBs to be creative in resolving the annual question of wages without Labor and Management knocking on the doors of Congress at every turn. The RTWPBs are the thinking group of men and women guided by statutory standards and bound by the rules and guidelines prescribed by the NWPC. In the nature of their functions, the RTWPBs investigate and study all the pertinent facts to ascertain the conditions in their respective regions. Hence, they are logically vested with the competence to determine the applicable minimum wages to be imposed as well as the industries and sectors to exempt from the coverage of their wage orders.

Lastly, Wage Order No. NCR-07 is presumed to be regularly issued in the absence of any strong showing of grave abuse of discretion on the part of RTWPB-NCR. The presumption of validity is made stronger by the fact that its validity was upheld by the NWPC upon review.

WHEREFORE, we **GRANT** the petition for review on *certiorari*; **SET ASIDE** the decision promulgated on June 15, 2001 and resolution promulgated on September 11, 2001 by the Court of Appeals; **REINSTATE** the decisions rendered on February 28, 2000 and July 17, 2000 by the National Wages and Productivity Commission; and **DIRECT** the respondents to pay the costs of suit.

SO ORDERED.


LUCAS P. BERSAMIN
Associate Justice

¹⁶ G.R. No. 96169, September 24, 1991, 201 SCRA 759, 764.

WE CONCUR:



MARIA LOURDES P. A. SERENO
Chief Justice

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

Martin S. Villarama, Jr.
MARTIN S. VILLARAMA, JR.
Associate Justice

Bienvenido L. Reyes
BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

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



MARIA LOURDES P. A. SERENO
Chief Justice