



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

PHILIPPINE AIRLINES, INC.,      G.R. No. 192924  
Petitioner,

Present:

LEONARDO-DE CASTRO,\* J.,  
PERALTA,  
Acting Chairperson,  
VILLARAMA, JR.,  
REYES, and  
JARDELEZA, JJ.

- versus -

Promulgated:

REYNALDO V. PAZ,  
Respondent.      November 26, 2014

X-----X

DECISION

REYES, J.:

Before this Court is a petition for review on *certiorari*<sup>1</sup> filed under Rule 45 of the Rules of Court by Philippine Airlines, Inc. (PAL), seeking to annul and set aside the Amended Decision<sup>2</sup> dated June 29, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 75618.

Reynaldo V. Paz (respondent) was a former commercial pilot of PAL and a member of the Airlines Pilots Association of the Philippines (ALPAP), the sole and exclusive bargaining representative of all the pilots in PAL.

\* Additional member per Special Order No. 1887 dated November 24, 2014 *vice* Associate Justice Presbitero J. Velasco, Jr.

<sup>1</sup> Rollo, pp. 3-25.

<sup>2</sup> Penned by Associate Justice Portia Aliño-Hormachuelos, with Associate Justices Rebecca De Guia-Salvador and Mariflor P. Punzalan Castillo, concurring; *id.* at 28-32.

On December 9, 1997, ALPAP filed a notice of strike with the National Conciliation and Mediation Board of the Department of Labor and Employment (DOLE). Pursuant to Article 263(g) of the Labor Code, the DOLE Secretary assumed jurisdiction over the labor dispute and enjoined the parties from committing acts which will further exacerbate the situation.<sup>3</sup>

On June 5, 1998, notwithstanding the directive of the DOLE Secretary, the ALPAP officers and members staged a strike and picketed at the PAL's premises. To control the situation, the DOLE Secretary issued a return-to-work order on June 7, 1998, directing all the striking officers and members of ALPAP to return to work within 24 hours from notice of the order. The said order was served upon the officers of ALPAP on June 8, 1998 by the DOLE Secretary himself. Even then, the striking members of ALPAP did not report for work.<sup>4</sup>

On June 25, 1998, Atty. Joji Antonio, the counsel for ALPAP, informed the members of the union that she has just received a copy of the return-to-work order and that they have until the following day within which to comply. When the striking members of the ALPAP reported for work on the following day, the security guards of PAL denied them entry.<sup>5</sup>

On June 13, 1998, the DOLE Secretary issued a resolution on the case from which both parties filed a motion for reconsideration. Pending the resolution of the motions, PAL filed a petition for approval of rehabilitation plan and for appointment of a rehabilitation receiver with the Securities and Exchange Commission (SEC), claiming serious financial distress brought about by the strike. Subsequently, on June 23, 1998, the SEC appointed a rehabilitation receiver for PAL and declared the suspension of all claims against it.<sup>6</sup>

On June 1, 1999, the DOLE Secretary resolved the motions for reconsideration filed by both parties and declared the strike staged by ALPAP illegal and that the participants thereof are deemed to have lost their employment.<sup>7</sup>

On June 25, 1999, the respondent filed a complaint for illegal dismissal against PAL for not accepting him back to work, claiming non-participation in the illegal strike. In his position paper, he alleged that on the day the ALPAP staged a strike on June 5, 1998, he was off-duty from work and was in Iligan City. However, when he reported back to work on

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<sup>3</sup> Id. at 48.

<sup>4</sup> Id. at 34-35, 48.

<sup>5</sup> Id. at 34, 49.

<sup>6</sup> Id. at 49.

<sup>7</sup> Id.

June 12, 1998, after a week-long break, he was no longer allowed to enter PAL's premises in Nichols, Pasay City.<sup>8</sup>

The respondent further alleged that on June 25, 1998, he learned that the DOLE Secretary issued a return-to-work order, requiring all the striking pilots to return to work within 24 hours from notice. Notwithstanding his non-participation in the strike, he signed the logbook at the entrance of PAL's office on the following day. When he tried to report for work, however, he was denied entry by the PAL's security guards.<sup>9</sup>

For its part, PAL claimed that the respondent was among the participants of the strike staged by ALPAP on June 5, 1998 who did not heed to the return-to-work order issued on June 7, 1998 by the DOLE Secretary. The said order directed all the participants of the strike to return to work within 24 hours from notice thereof. However, ALPAP and its counsel unjustifiably refused to receive the copy of the order and was therefore deemed served. The 24-hour deadline for the pilots to return to work expired on June 9, 1998, without the respondent reporting back to work. Subsequently, the DOLE Secretary issued the Resolution dated June 1, 1999, declaring that the striking pilots have lost their employment for defying the return-to-work order. Thus, PAL argued that the respondent's charge of illegal dismissal is utterly without merit.<sup>10</sup>

On March 5, 2001, the Labor Arbiter (LA) rendered a Decision,<sup>11</sup> holding that the respondent was illegally dismissed and ordered that he be reinstated to his former position without loss of seniority rights and other privileges and paid his full backwages inclusive of allowances and other benefits computed from June 12, 1998 up to his actual reinstatement. The dispositive portion of the decision reads, as follows:

WHEREFORE, judgment is hereby rendered:

1. Declaring that this Arbitration Branch has jurisdiction over the causes of action raised by the [respondent] in this case;
2. Declaring that the causes of action raised in the complaint in this case have not been barred by prior judgment of the Secretary of Labor and Employment in his Resolution of June 1, 1999;
3. Declaring that the termination of the services of the [respondent] was not for any just or authorized cause and also without due process and therefore illegal;

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<sup>8</sup> Id. at 33-34, 49.

<sup>9</sup> Id. at 34.

<sup>10</sup> Id. at 34-36.

<sup>11</sup> Issued by LA Luis D. Flores; id. at 33-45.

4. Ordering Philippine Airlines, Inc. to reinstate immediately upon receipt of this decision [respondent] Reynaldo V. Paz to his former position as commercial pilot without loss of seniority rights and other privileges and to pay him his full backwages inclusive of allowances and other benefits or their monetary equivalent computed from June 12, 1998 up to his actual reinstatement even pending appeal but the respondent has the option to actually reinstate [the respondent] to his former position or to reinstate him merely in payroll. As of September 5, 2000, the full backwages due to the [respondent] total ₱2,629,420.00;

5. Ordering Philippine Airlines, Inc. to pay the [respondent] the following:

Productivity Pay (₱22,383.62 x 27 months.....	₱ 604,357.74
Retirement Fund Contribution	
(₱9,800.00 x 27 months).....	264,600.00
PODF (₱4,663.25 x 27 months).....	125,907.75
Sick Leave (₱3,000.62 x 42 days).....	126,026.04
Vacation Leave (₱3,000.62 x 42 days).....	125,026.04
Rice Subsidy (₱600.00 x 27 months).....	16,200.00
13 <sup>th</sup> Month Pay (₱93,265.00 x 2 years).....	188,030.00
Longevity Pay (₱500.00 x 2 years) .....	1,000.00

6. Ordering Philippine Airlines, Inc. to pay [the respondent] attorney’s fees equivalent to 10% of the whole monetary award (*Art. III, Labor Code*);

7. Ordering Philippine Airlines, Inc. to pay [the respondent] moral damages equivalent to Five Hundred Thousand Pesos (₱500,000.00) and exemplary damages of Five Hundred Thousand Pesos (₱500,000.00)

SO ORDERED.<sup>12</sup>

Unyielding, PAL appealed the foregoing decision to the National Labor Relations Commission (NLRC). Pending appeal, the respondent filed a motion for partial execution of the reinstatement aspect of the decision. The LA granted the said motion and issued a partial writ of execution on May 25, 2001.

Subsequently, on June 27, 2001, the NLRC rendered a Resolution,<sup>13</sup> reversing the LA decision. The NLRC ruled that the pieces of evidence presented by PAL proved that the respondent participated in the strike and defied the return-to-work order of the DOLE Secretary; hence, he is deemed to have lost his employment. The pertinent portions of the decision read:

<sup>12</sup> Id. at 43-45.  
<sup>13</sup> Id. at 46-59.

Indeed, other than [the respondent's] self-serving assertions, he has failed to substantiate his claim that he was in Iligan City and that he reported for work a week after June 5, 1998. [PAL], on the other hand, has presented photographs of the complainant picketing [at the PAL's] premises on June 15 & 26, 1998. x x x

x x x x

In sum, [PAL's] concrete evidence submitted in the proceedings below should prevail over the self-serving assertions of [the respondent]. Consequently, we are of the view that [PAL] acted within its rights when it refused to accept [the respondent] when he reported for work on June 26, 1998. This is consistent with the finding[s] of the DOLE Secretary when he declared the strikers to have lost their employment status. x x x.

x x x x

WHEREFORE, premises considered, the appeal is hereby GRANTED, and the decision dated March 5, 2001, is REVERSED and SET ASIDE for utter lack of merit.

SO ORDERED.<sup>14</sup>

Notwithstanding the reversal of the LA decision, the respondent pursued his move for the issuance of a writ of execution, claiming that he was entitled to reinstatement salaries which he supposedly earned during the pendency of the appeal to the NLRC. On August 28, 2001, the LA granted the motion and issued the corresponding writ of execution.<sup>15</sup>

On September 17, 2001, the LA issued an Order,<sup>16</sup> clarifying the respondent's entitlement to reinstatement salaries. He ratiocinated that the order of reinstatement is immediately executory even pending appeal and that under Article 223 of the Labor Code, the employer has the option to admit the employee back to work or merely reinstate him in the payroll. Considering, however, that there was no physical reinstatement, the respondent, as a matter of right, must be reinstated in the payroll. The accrued salaries may now be the subject of execution despite the NLRC's reversal of the decision.

PAL appealed the LA Order dated September 17, 2001 to the NLRC, arguing that the writ of execution lacked factual and legal basis considering that the NLRC reversed and set aside the LA decision and categorically declared the order of reinstatement as totally devoid of merit. It contended that entitlement to salaries pending appeal presupposes a finding that the employee is entitled to reinstatement. Absent such finding, the employee is

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<sup>14</sup> Id. at 55, 58, 59.

<sup>15</sup> Id. at 127-128.

<sup>16</sup> Id. at 60-61.

not entitled to reinstatement salaries and the writ of execution issued pursuant thereto is a complete nullity.<sup>17</sup>

On June 28, 2002, the NLRC rendered a Resolution,<sup>18</sup> sustaining the award of reinstatement salaries to the respondent albeit suspending its execution in view of the fact that PAL was under rehabilitation receivership. PAL filed a motion for reconsideration but the NLRC denied the same in its Resolution<sup>19</sup> dated November 22, 2002.

Unperturbed, PAL filed a petition for *certiorari* with the CA, questioning the NLRC Resolution dated June 28, 2002. Subsequently, in a Decision<sup>20</sup> dated January 31, 2005, the CA affirmed with modification the NLRC Resolution dated June 28, 2002, the dispositive portion of which reads, as follows:

WHEREFORE, the NLRC Resolution dated June 28, 2002 is **AFFIRMED with the MODIFICATION** that, in lieu of reinstatement salaries, petitioner Philippine Airlines, Inc. is ordered to pay respondent Paz separation pay equivalent to one month salary for every year of service, to *be computed from the time respondent commenced employment with petitioner PAL until the time the Labor Arbiter issued the writ ordering respondent's reinstatement, i.e., on May 25, 2001.*

SO ORDERED.<sup>21</sup>

The CA ruled that while the respondent is entitled to reinstatement, the prevailing circumstances rendered the same difficult if not impossible to execute. It noted that at the time the reinstatement was ordered, there was no vacant B747-400 pilot position available for the respondent. Further complicating the situation is the fact that PAL has been under receivership since July 1998. Thus, in lieu of reinstatement salaries, the CA ordered PAL to pay the respondent separation pay equivalent to one (1) month salary for every year of service.<sup>22</sup>

PAL filed a motion for reconsideration of the CA decision. Subsequently, the CA rendered the assailed Amended Decision<sup>23</sup> dated June 29, 2010, holding thus:

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<sup>17</sup> Id. at 65-66.

<sup>18</sup> Id. at 88-95.

<sup>19</sup> Id. at 97-99.

<sup>20</sup> Id. at 124-134.

<sup>21</sup> Id. at 133.

<sup>22</sup> Id. at 131-133.

<sup>23</sup> Id. at 28-32.

Accordingly, compliance with the reinstatement order is not affected by the fact that private respondent's previous position had been filled-up. In reinstatement pending appeal, payroll reinstatement is an alternative to actual reinstatement. Hence, public respondent did not err when it upheld the Labor Arbiter that private respondent is entitled to reinstatement salaries during the period of appeal.

WHEREFORE, premises considered, the modification contained in Our January 31, 2005 Decision is DELETED and SET ASIDE. The June 28, 2002 Resolution of the National Labor Relations Commission is hereby REINSTATED in toto.

**SO ORDERED.**<sup>24</sup>

On August 3, 2010, PAL filed the instant petition with the Court, contending that the CA acted in a manner contrary to law and jurisprudence when it upheld the award of reinstatement salaries to the respondent.<sup>25</sup>

The petition is meritorious.

The same issue had been raised and addressed by the Court in the case of *Garcia v. Philippine Airlines, Inc.*<sup>26</sup> In the said case, the Court deliberated on the application of Paragraph 3, Article 223 of the Labor Code in light of the apparent divergence in its interpretation, specifically on the contemplation of the reinstatement aspect of the LA decision. The pertinent portion of the provision reads, thus:

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, 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.<sup>27</sup> (Emphasis and underscoring in the original)

Briefly, in *Garcia*, the petitioners were dismissed by their employer, respondent PAL, after they were allegedly caught in the act of sniffing *shabu* when a team of company security personnel and law enforcers raided the PAL Technical Center's Toolroom Section. After they filed a complaint for illegal dismissal, respondent PAL was placed under rehabilitation receivership due to serious financial losses. Eventually, the LA resolved the case in favor of the petitioners and ordered their immediate reinstatement. Upon appeal, however, the NLRC reversed the LA decision and dismissed

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<sup>24</sup> Id. at 31-32.

<sup>25</sup> Id. at 12.

<sup>26</sup> G.R. No. 164856, January 20, 2009, 576 SCRA 479.

<sup>27</sup> Id. at 489, citing *Genuino v. National Labor Relations Commission*, 564 Phil. 315, 335 (2007).

the complaint. Even then, the LA issued a writ of execution, with respect to the reinstatement aspect of the decision, and issued a notice of garnishment. Respondent PAL filed an urgent petition for injunction with the NLRC but the latter, by way of Resolutions dated November 26, 2001 and January 28, 2002, affirmed the validity of the writ and the notice issued by the LA but suspended and referred the action to the rehabilitation receiver. On appeal, the CA ruled in favor of respondent PAL and nullified the NLRC resolutions, holding that (1) a subsequent finding of a valid dismissal removes the basis for the reinstatement aspect of a LA decision, and (2) the impossibility to comply with the reinstatement order due to corporate rehabilitation justifies respondent PAL's failure to exercise the options under Article 223 of the Labor Code. When the case was further elevated to this Court, the petition was partially granted and reinstated the NLRC resolutions insofar as it suspended the proceedings. Subsequently, respondent PAL notified the Court that it has exited from the rehabilitation proceedings. The Court then proceeded to determine the main issue of whether the petitioners therein are entitled to collect salaries pertaining to the period when the LA's order of reinstatement is pending appeal to the NLRC until it was reversed.

The factual milieu of the instant case resembles that of *Garcia*. The respondent herein obtained a favorable ruling from the LA in the complaint for illegal dismissal case he filed against PAL but the same was reversed on appeal by the NLRC. Also, PAL was under rehabilitation receivership during the entire period that the illegal dismissal case was being heard. A similar question is now being raised, *i.e.*, whether the respondent may collect reinstatement salaries which he is supposed to have received from the time PAL received the LA decision, ordering his reinstatement, until the same was overturned by the NLRC.

The rule is that the employee is entitled to reinstatement salaries notwithstanding the reversal of the LA decision granting him said relief. In *Roquero v. Philippine Airlines*,<sup>28</sup> the Court underscored that it is obligatory on the part of the employer to reinstate and pay the wages of the dismissed employee during the period of appeal until reversal by the higher court. This is so because the order of reinstatement is immediately executory. Unless there is a restraining order issued, it is ministerial upon the LA to implement the order of reinstatement. The unjustified refusal of the employer to reinstate a dismissed employee entitles him to payment of his salaries effective from the time the employer failed to reinstate him.<sup>29</sup>

In *Garcia*, however, the Court somehow relaxed the rule by taking into consideration the cause of delay in executing the order of reinstatement of the LA. It was declared, thus:

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<sup>28</sup> 449 Phil. 437 (2003).

<sup>29</sup> Id. at 446.



After the labor arbiter's decision is reversed by a higher tribunal, the employee may be barred from collecting the accrued wages, if it is shown that the delay in enforcing the reinstatement pending appeal was *without fault on the part of the employer*.

The test is two-fold: (1) there must be actual delay or the fact that the order of reinstatement pending appeal was not executed prior to its reversal; and (2) the delay must not be due to the employer's unjustified act or omission. If the delay is due to the employer's unjustified refusal, the employer may still be required to pay the salaries notwithstanding the reversal of the Labor Arbiter's decision.<sup>30</sup> (Italics ours and emphasis and underscoring deleted)

It is clear from the records that PAL failed to reinstate the respondent pending appeal of the LA decision to the NLRC. It can be recalled that the LA rendered the decision ordering the reinstatement of the respondent on March 5, 2001. And, despite the self-executory nature of the order of reinstatement, the respondent nonetheless secured a partial writ of execution on May 25, 2001. Even then, the respondent was not reinstated to his former position or even through payroll.

A scrutiny of the circumstances, however, will show that the delay in reinstating the respondent was not due to the unjustified refusal of PAL to abide by the order but because of the constraints of corporate rehabilitation. It bears noting that a year before the respondent filed his complaint for illegal dismissal on June 25, 1999, PAL filed a petition for approval of rehabilitation plan and for appointment of a rehabilitation receiver with the SEC. On June 23, 1998, the SEC appointed an Interim Rehabilitation Receiver. Thereafter, the SEC issued an Order<sup>31</sup> dated July 1, 1998, suspending all claims for payment against PAL.

The inopportune event of PAL's entering rehabilitation receivership justifies the delay or failure to comply with the reinstatement order of the LA. Thus, in *Garcia*, the Court held:

It is settled that upon appointment by the SEC of a rehabilitation receiver, all actions for claims before any court, tribunal or board against the corporation shall *ipso jure* be suspended. As stated early on, during the pendency of petitioners' complaint before the Labor Arbiter, the SEC placed respondent under an Interim Rehabilitation Receiver. After the Labor Arbiter rendered his decision, the SEC replaced the Interim Rehabilitation Receiver with a Permanent Rehabilitation Receiver.

Case law recognizes that unless there is a restraining order, the implementation of the order of reinstatement is ministerial and mandatory. This injunction or suspension of claims by legislative fiat partakes of the nature of a restraining order that constitutes a legal justification for

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<sup>30</sup> Supra note 26, at 494.

<sup>31</sup> *Rollo*, pp. 83-84.

respondent's non-compliance with the reinstatement order. Respondent's failure to exercise the alternative options of actual reinstatement and payroll reinstatement was thus justified. Such being the case, respondent's obligation to pay the salaries pending appeal, as the normal effect of the non-exercise of the options, did not attach.<sup>32</sup> (Citations omitted)

In light of the fact that PAL's failure to comply with the reinstatement order was justified by the exigencies of corporation rehabilitation, the respondent may no longer claim salaries which he should have received during the period that the LA decision ordering his reinstatement is still pending appeal until it was overturned by the NLRC. Thus, the CA committed a reversible error in recognizing the respondent's right to collect reinstatement salaries albeit suspending its execution while PAL is still under corporate rehabilitation.

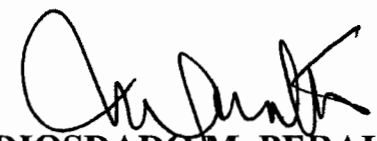
**WHEREFORE**, the petition is **GRANTED**. The Amended Decision dated June 29, 2010 of the Court of Appeals in CA-G.R. SP No. 75618 is hereby **REVERSED and SET ASIDE**. Respondent Reynaldo V. Paz is not entitled to the payment of reinstatement salaries.


**SO ORDERED.**

  
**BIENVENIDO L. REYES**  
Associate Justice

**WE CONCUR:**

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

  
**DIOSDADO M. PERALTA**  
Associate Justice  
Acting Chairperson

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

<sup>32</sup>

Supra note 26, at 496.



**FRANCIS H. JARDELEZA**  
Associate Justice

### **A T T E S T A T I O N**

I attest 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.



**DIOSDADO M. PERALTA**  
Associate Justice  
Acting Chairperson, Third Division

### **C E R T I F I C A T I O N**

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, 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

