Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

UNIVERSITY OF PANGASINAN, INC., CESAR DUQUE/JUAN LLAMAS AMOR/DOMINADOR REYES,	**G.R. No. 211228**
	Present:
Petitioners,	VELASCO, JR., *J.*, *Chairperson*,
	VILLARAMA, JR.,
	REYES,
- versus -	PERLAS-BERNABE,* and
	JARDELEZA, *JJ.*
FLORENTINO FERNANDEZ and HEIRS OF NILDA FERNANDEZ,	Promulgated:
Respondents.	November 12, 2014

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DECISION

REYES, *J*:

University of Pangasinan, Inc. (UPI), an educational institution, and its former officials, Cesar Duque, Juan Llamas Amor and Dominador Reyes (collectively referred to as the petitioners), are before this Court with a petition for review on *certiorari*[1] filed under Rule 45 of the Rules of Court to assail the Decision[2] rendered by the Court of Appeals (CA) on November 5, 2013 and the Resolution[3] thereafter issued on February 7, 2014 in CA-G.R. SP No. 107230. The CA reversed and set aside the Decision[4] dated July 21, 2008 and Resolution[5] dated November 11, 2008 of the

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* Acting member per Special Order No. 1866 dated November 4, 2014 *vice* Associate Justice Diosdado M. Peralta.

1 *Rollo*, pp. 9-43.

2 Penned by Associate Justice Rosalinda Asuncion-Vicente, with Associate Justices Ramon R. Garcia and Rodil V. Zalameda, concurring; id. at 45-59.

3 Id. at 60-62.

4 Id. at 162-170.

5 Id. at 171-172.

National Labor Relations Commission's (NLRC) First Division in NLRC-NCR CA No. 027116-01 (AE-09-06) granting the appeal filed by the petitioners against the Order[6] dated August 22, 2006 of Labor Arbiter [LA] Luis D. Flores (LA Flores). The CA, in effect, reinstated LA Flores' order approving an updated computation of the money claims of Florentino Fernandez (Florentino) and his now deceased wife, Nilda Fernandez (Nilda),[7] both faculty members of UPI, who were illegally dismissed from service on May 9, 2000 for alleged dishonesty, abuse of authority and unbecoming conduct.

Antecedents

The CA aptly summarized the facts of the case up to the filing before it of the Petition for *Certiorari*[8] by Florentino and the heirs of Nilda (respondents), *viz*:

> This case arose from a complaint for illegal dismissal filed by [Florentino and Nilda] on May 18, 2000 against [UPI], its President Cesar Duque, Executive Vice-President Juan Llamas Amor and Director for Student Affairs Dominador Reyes x x x.
>
> In a Decision dated November 6, 2000, [Labor Arbiter Rolando D. Gambito (LA Gambito)] ruled that [Florentino and Nilda] were illegally dismissed by [the petitioners]. The dispositive portion of the Decision reads:
>
> > "ACCORDINGLY, judgment is hereby rendered as follows:
> >
> > 1. Declaring that [the petitioners] are not liable for unfair labor practice;
> >
> > 2. Declaring that [Florentino and Nilda] were dismissed from their positions as college instructors without just and valid cause;
> >
> > 3. Ordering [UPI] and/or its president Cesar T. Duque, and vice-president, Juan Llamas Amor to pay [Florentino and Nilda] backwages, allowances and other benefits computed from the date of their dismissal on May 9, 2000 up to November 6, 2000, date of promulgation of decision;
> >
> > 4. Ordering that instead of reinstatement of [Florentino and Nilda] to their former positions, [the petitioners] should pay them separation pay equivalent to one (1) month salary for every year of

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6 Id. at 150.

7 Nilda died on May 7, 2006 (id. at 187) and was ordered substituted by her heirs on August 22, 2006 (id. at 150).

8 Id. at 173-190.

service, a fraction of at least six (6) months shall be considered as one (1) whole year;

5. Ordering the [petitioners] to pay [Florentino and Nilda] attorney's fees in the amount of P20,000[.00];

6. Denying [Florentino and Nilda's] claim for moral and exemplary damages and all other claims for want of merit.

COMPUTATION OF AWARD:

(1) BACKWAGES (May 9-November 6, 2000);

a) [Florentino]
P10,706.95 (mo. rate) x 5 mos. &
21 days = P63,754.82

b) [Nilda]
P11,282.28 (mo. rate) x 5 mos. &
21 days = P67,180.83

TOTAL BACKWAGES P 130,935.65

(2) Separation Pay:

[Florentino]
P10,706.95 x 26 years P278,380.70

[Nilda]
P11,282.28 x 29 years P327,186.12
TOTAL P605,566.82

ATTORNEY'S FEES:
P 20,000.00

TOTAL AWARD:

BACKWAGES	P130,935.65
SEPARATION PAY	P605,566.82
ATTORNEY'S FEES	P 20,000.00
	P756,502.47

SO ORDERED."

[The petitioners] interposed an appeal to the NLRC, which affirmed [LA Gambito's] Decision in a Resolution dated June 29, 2001 x x x[.]

x x x x

[The petitioners] filed a *Motion for Reconsideration* which was granted by the NLRC in a Resolution dated February 21, 2002, the dispositive portion of which reads:

"WHEREFORE, finding compelling reasons to reverse Our previous ruling, the Motion for Reconsideration is hereby GRANTED, the Resolution dated June 29, 2001 is hereby SET ASIDE and the decision of [LA Gambito] REVERSED. The complaint is hereby

DISMISSED with costs against [Florentino and Nilda].

SO ORDERED."

Aggrieved, [Florentino and Nilda] filed a *Petition for Certiorari* with [the CA] to annul the NLRC's Resolution dated February 21, 2002. On September 13, 2004, [the CA] rendered a Decision granting the petition. The dispositive portion thereof reads:

> "WHEREFORE, premises considered, the petition is hereby GRANTED. The assailed resolution dated February 21, 2002 of x x x NLRC (First Division) in NLRC NCR Case No. SUB-RAB 01-07-05-0092-00; NLRC NCR CA No. 027116-2001 is hereby REVERSED and SET ASIDE. The decision of [LA Gambito] dated November 6, 2000 is hereby REINSTATED.
>
> SO ORDERED."

[UPI] appealed [the CA's] Decision to the Supreme Court but which was denied by the Supreme Court in a Resolution dated February 21, 2005 on the ground that [UPI] failed to properly verify its petition in accordance with Section 1, Rule 45 in relation to Section 4, Rule 7, and A.M. No. 00-2-10-SC. [UPI's] motion for reconsideration was likewise denied with finality by the Supreme Court in a Resolution dated June 6, 2005.

As a consequence, an Entry of Judgment was issued by the Supreme Court declaring its Resolution dated February 21, 2005 final and executory as of July 11, 2005.

Subsequently, [Florentino and Nilda] moved for a re-computation of their award to include their backwages and other benefits from the date of the decision of [LA Gambito] up to the finality of the decision on July 11, 2005. They likewise moved for the issuance of a writ of execution. During the pre-execution conference, [UPI] questioned the re-computation of [Florentino and Nilda's] backwages and awards. In view of a stand-off, [LA Flores] required both parties to submit their respective computations and justifications.

On August 22, 2006, [LA Flores] issued an Order ruling as follows:

> "Before Us is an Omnibus Motion filed by [UPI] through its legal counsel alleging among other things the adoption of the final decision of [LA Gambito] dated November 6, 2000.
>
> "xxx Please take note that x x x the decision rendered by the [CA] reinstating the decision of [LA Gambito] x x x was declared final and executory by no less than the Supreme Court of the Philippines by its issuance of a final entry of Judgment dated July 11, 2005.
>
> Hence, there is a need to update and upgrade the computation of money claims and separation pay which has amounted now to P2,165,467.02 as finally completed by

> our Labor Arbitration Associate Galo Regino L. Esperanza hereto attached as Annex "A".
>
> The pending motion to Dismiss is hereby set aside for lack of merit.
>
> The substitution of [the] heirs of [Nilda] is hereby granted.
>
> SO ORDERED."

On the same date (August 22, 2006), [LA Flores] issued a writ of execution.

[UPI] filed a *Motion for Reconsideration* of the above Order but it was denied by [LA Flores] in an Order dated September 12, 2006 on the ground that no motion for reconsideration of any order or decision is allowed under Section 19, Rule V of the NLRC Rules of Procedure.

In another Order likewise dated September 12, 2006, [LA Flores] denied [UPI's] *Motion to Quash Writ of Execution* and directed the sheriff to proceed with the due execution of the writ.

[The petitioners] interposed an appeal to the NLRC questioning [LA Flores'] Orders dated August 22, 2006 and September 12, 2006 basically alleging that [Florentino and Nilda] are only entitled to the amount of P756,502.47 awarded by [LA Gambito] in the Decision dated November 6, 2000, and not the recomputed amount of P2,165,467.02.

In the assailed Decision dated July 21, 2008, the NLRC granted the appeal. x x x

x x x x

[Florentino and Nilda] filed a *Motion for Reconsideration* but it was denied by the NLRC in a Resolution dated November 11, 2008 x x x[.]

x x x x[9] (Citations omitted and italics in the original)

Proceedings before the CA

The respondents filed before the CA a Petition for *Certiorari*[10] primarily anchored on the issue of what the proper basis was for the computation of backwages and benefits to be paid to an employee. They claimed that the reckoning period should be from the time of illegal dismissal on May 9, 2000 up to the finality of the decision to be executed on July 11, 2005 as stated in the Entry of Judgment. Further, an interest of 12% *per annum* should be imposed upon the total adjudged award.

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9 Id. at 46-50.

10 Id. at 173-190.

On November 5, 2013, the CA rendered the assailed Decision, the decretal portion of which reads:

> **WHEREFORE,** premises considered, the *Petition for Certiorari* is **GRANTED**. The Decision dated July 21, 2008 and Resolution dated November 11, 2008 of the [NLRC] are **REVERSED** and **SET ASIDE** and [LA Flores'] Order dated August 22, 2006 is REINSTATED.
>
> [The petitioners] are **ORDERED** to **PAY** [the respondents] the following:
>
> 1) backwages computed from May 9, 2000 (the date when [Florentino and Nilda] were illegally dismissed from employment) up to July 11, 2005 (the date of the finality of the Supreme Court's Resolution per Entry of Judgment);
>
> 2) separation pay computed from [Florentino and Nilda's] respective first day[s] of employment with [UPI] up to July 11, 2005 at the rate of one month pay per year of service;
>
> 3) attorney's fees in the amount of P20,000.00; and
>
> 4) legal interest of twelve percent (12%) per annum of the total monetary awards computed from July 11, 2005 until their full satisfaction.
>
> The [LA] is hereby **ORDERED** to make another re-computation according to the above directives.
>
> **SO ORDERED**.[11]

In explaining its decision, the CA cited the following reasons:

> We are mindful of the principle of immutability of judgment [and] that 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. However, said doctrine finds no application in the case at bench.
>
> It must be stressed that in illegal dismissal cases, the re-computation of backwages and similar benefits is merely an inevitable consequence of the delay in paying the awards stated in the [LA's] decision. The instant controversy is not novel and was settled and adequately explained by the Supreme Court in the case of ***Session Delights Ice Cream and Fast Foods vs. [CA]***, *viz*:
>
> x x x x
>
> In concrete terms, **the question is whether a re-computation in the course of execution of the [LA's] original computation of the awards made, pegged as of the time the decision was rendered and confirmed with**

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11 Id. at 58-59.

modification by a final CA decision, is legally proper. The question is posed, **given that the petitioner did not immediately pay the awards stated in the original [LA's] decision; it delayed payment because it continued with the litigation until final judgment at the CA level.**

A source of misunderstanding in implementing the final decision in this case proceeds from the way the original [LA] framed his decision. **The decision consists essentially of two parts.**

The first is that part of the decision that cannot now be disputed because it has been confirmed with finality. This is 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 [LA] 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. This is the part, too, that the petitioner now posits should no longer be re-computed because the computation is already in the [LA's] decision that the CA had affirmed. The public and private respondents, on the other hand, posit that a re-computation is necessary because the relief in an illegal dismissal decision goes all the way up to reinstatement if reinstatement is to be made, or up to the finality of the decision, if separation pay is to be given in lieu reinstatement.

That the [LA's] decision, at the same time that it found that an illegal dismissal had taken place, also made a computation of the award, is understandable in light of Section 3, Rule VIII of the then NLRC Rules of Procedure which requires that a computation be made. This Section in part states:

> [T]he [LA] of origin, in cases involving monetary awards and at all events, as far as practicable, shall embody in any such decision or order the detailed and full amount awarded.

Clearly implied from this original computation is its currency up to the finality of the [LA's] decision. As we noted above, this implication is apparent from the terms of the computation itself, and no question would have arisen had the parties terminated the case and implemented the decision at that point.

x x x x

We see no error in the CA decision confirming that a re-computation is necessary as it essentially considered the [LA'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 [LA's] original decision.

To illustrate these points, had the case involved a pure money claim for a specific sum (e.g., salary for a specific period) or a specific benefit (e.g., 13th month pay for a specific year) made by a former employee, the [LA's] computation would admittedly have continuing currency because the sum is specific and any variation may only be on the interests that may run from the finality of the decision ordering the payment of the specific sum.

In contrast with a ruling on a specific pure money claim, is a claim that relates to status (as in this case, where the claim is the legality of the termination of the employment relationship). In this type of cases, the decision or ruling is essentially declaratory of the status and of the rights, obligations and monetary consequences that flow from the declared status (in this case, the payment of separation pay and backwages and attorney's fees when illegal dismissal is found). When this type of decision is executed, **what is primarily implemented is the declaratory finding on the status and the rights and obligations of the parties therein; the arising monetary consequences from the declaration only follow as component of the parties' rights and obligations**.

In the present case, the CA confirmed that indeed an illegal dismissal had taken place, so that separation pay in lieu of reinstatement and backwages should be paid. How much that separation pay would be, would ideally be stated in the final CA decision; if not**, the matter is for handling and computation by the [LA] of origin as the labor official charged with the implementation of decisions before the NLRC**.

As the CA correctly pointed out, the basis for the computation of separation pay and backwages is Article 279 of the Labor Code, as amended, which reads:

> "xxx An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement."

x x x x

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 x

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 [LA'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. [CA]*.

x x x The strict legalism in limiting the computation of the backwages and other benefits simply because the Decision of the [LA] provided a computation only up to the date of the promulgation of his Decision on November 6, 2000 cannot override or prejudice the substantive rights of an illegally dismissed employee under the law and extant jurisprudence.

> Likewise, pursuant to the above ruling of the Supreme Court, the monetary award in favor of [the respondents] should earn legal interest at the rate of 12% from July 11, 2005, the date of the finality of the Decision, as a necessary consequence of [the petitioners'] legal actions in questioning the execution of the [LA's] Decision x x x.
>
> x x x x
>
> With regard to [the respondents'] claims for additional attorney's fees as well as moral and exemplary damages, suffice it to state that the [LA] has already awarded [in their favor] the amount of P20,000.00 as attorney's fees but denied [their] claim for damages in his Decision dated November 6, 2000. Any modification, which effectively increases or decreases the original amount awarded as attorney's fees is not included or contemplated in the discussion above on re-computation of monetary awards. Pursuant to the *Session Delights Ice Cream and Fast Foods* ruling, the award of attorney's fees involves a specific sum and "would have continuing currency". If at all, the attorney's fees awarded in favor of [the respondents] will earn legal interest pursuant to the rules laid down in *Eastern Shipping Lines vs. [CA]*.
>
> [The respondents'] claim for moral and exemplary damages was correctly denied by the [LA]. While their dismissal may be illegal, there was no showing that [the petitioners] acted in bad faith. x x x.[12] (Citations omitted)

The CA, in the herein assailed Resolution issued on February 7, 2014, denied the petitioners' Motion for Reconsideration.[13]

Issues

Unperturbed, the petitioners seek to reverse the CA's ruling by presenting before this Court the arguments below:

A.

> A FINAL AND EXECUTORY DECISION IS IMMUTABLE AND CAN NO LONGER BE MODIFIED. THE ORDER OF [LA] FLORES, AS SUSTAINED IN THE ASSAILED RULINGS, CANNOT MODIFY THE FINAL AND EXECUTORY GAMBITO DECISION.

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12 Id. at 52-58.

13 Id. at 192-206.

B.

EVEN ASSUMING *ARGUENDO* THAT THE RE-COMPUTATION OF AWARDS IS VALID, [UPI] IS NOT LIABLE TO PAY BACKWAGES AND SEPARATION PAY FOR THE FULL PERIOD FROM 06 NOVEMBER 2000 UP TO 11 JULY 2005. RESPONDENTS WERE NOT REINSTATED IN THE GAMBITO DECISION.

C.

RESPONDENTS ARE NOT ENTITLED TO BACKWAGES AND SEPARATION PAY BEYOND THEIR RETIREMENT AGES. NEITHER ARE THEY ENTITLED TO LEGAL INTEREST AT 12%.[14]

In support of the instant petition, the petitioners allege that the doctrines enunciated in *Session Delights Ice Cream and Fast Foods v. Court of Appeals (Sixth Division)*[15] do not apply in the case at bar. LA Gambito explicitly qualified the award of backwages and separation pay to be computed from the date of dismissal up to November 6, 2000. The said qualification appears both in the immutable and computation portions of the judgment.[16]

The petitioners also lament that the writ of execution issued by LA Flores included an award of 13th month pay, which is nowhere to be found in LA Gambito's decision.[17]

It is further claimed that the petitioners did not immediately satisfy LA Gambito's award because the NLRC reversed the same. Hence, the petitioners cannot be faulted for relying upon the NLRC decision and defending it before the CA. Consequently, even if backwages and separation pay were really due, their computation should not include the period from February 21, 2002 to September 13, 2004,[18] during which time the NLRC's disquisition that there was no illegal dismissal stood.[19]

The petitioners likewise aver that since Florentino and Nilda turned 60 on December 11, 2002 and April 30, 2002, respectively, backwages and separation pay could only be computed up to those

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14 The fourth issue raised by the petitioners relates to the first three, hence, it need not be restated; id. at 20.
15 G.R. No. 172149, February 8, 2010, 612 SCRA 10.
16 *Rollo*, pp. 28-31.
17 Id. at 23-24.
18 Id. at 92-100, 101-112.
19 Id. at 32-33.

dates. Under both UPI's retirement plan and Article 287[20] of the Labor Code, 60 is the optional retirement age. On July 18, 2005, Florentino and Nilda filed separate claims for retirement benefits. They, in effect, had admitted that 60 and not 65 is the retirement age for UPI's faculty members. Relevantly, in *Espejo v. NLRC*,[21] the Court ruled that an employee may retire, or may be retired by his employer upon reaching the age of 60.[22]

Lastly, the petitioners cite *Nacar v. Gallery Frames*[23] to argue that legal interest should only be 6% and not 12%.[24]

In their Comment,[25] the respondents insist that Florentino's compulsory retirement was due only on the day before he turned 65 on December 11, 2002. Nilda, on the other hand, would have been retired only on the day before she died on May 7, 2006.[26] The respondents likewise claim that 12% and not 6% should be imposed upon the award as annual interest.

Ruling of the Court

This Court affirms but modifies the ruling of the CA.

The issues, being interrelated, shall be discussed jointly.

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20 Article 287. Retirement. Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.

In case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining agreement and other agreements: Provided, however, That an employee's retirement benefits under any collective bargaining and other agreements shall not be less than those provided therein.

In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty-five (65) years which is hereby declared the compulsory retirement age, who has served at least five (5) years in the said establishment, may retire and shall be entitled to retirement pay equivalent to at least one-half (1/2) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.

Unless the parties provide for broader inclusions, the term 'one-half (1/2) month salary' shall mean fifteen (15) days plus one-twelfth (1/12) of the 13th month pay and the cash equivalent of not more than five (5) days of service incentive leaves.

Retail, service and agricultural establishments or operations employing not more than ten (10) employees or workers are exempted from the coverage of this provision.

Violation of this provision is hereby declared unlawful and subject to the penal provisions under Article 288 of this Code.

21 325 Phil. 753 (1996).

22 Id. at 759.

23 G.R. No. 189871, August 13, 2013, 703 SCRA 439.

24 Id. at 456; *rollo*, p. 38.

25 *Rollo*, pp. 223-234.

26 Id. at 231-232.

Updating the computation of awards to include as well backwages and separation pay corresponding to the period after the rendition of LA Gambito's decision on November 6, 2000 up to its finality on July 11, 2005 is not violative of the principle of immutability of a final and executory judgment.

This Court need not belabor the first two issues raised since they have been amply discussed by the CA in the assailed decision and resolution.

In *Session Delights* aptly quoted by the CA and reiterated in several cases including *Nacar* and *Gonzales v. Solid Cement Corporation*,[27] the Court was emphatic that:

> [N]o 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 x
>
> 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. x x x.[28] (Citation omitted and underscoring ours)

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27 G.R. No. 198423, October 23, 2012, 684 SCRA 344.

28 Supra note 15, at 25-26.

Prescinding from the above, the Court finds no reversible error committed by the CA when it affirmed LA Flores' Order dated August 22, 2006, which allowed the updating beyond November 6, 2000 of the computation of backwages and separation pay awarded to the respondents. The CA correctly ruled that the backwages should be computed from May 9, 2000, the date of illegal dismissal, up to July 11, 2005, the date of the Entry of Judgment, while separation pay should be reckoned from the respective first days of employment of Florentino and Nilda up to July 11, 2005 as well.

While the dispositive portion of the herein assailed CA decision did not explicitly refer to the 13th month pay, its inclusion in the computation approved by LA Flores is proper.

Presidential Decree No. 851[29] (P.D. No. 851) is the law directing the 13th month payment. On the other hand, Article 279 of the Labor Code in part provides that an illegally-dismissed employee shall be entitled to full backwages, inclusive of allowances, and other benefits or their monetary equivalent computed from the time compensation was withheld up to the time of actual reinstatement.

In *Gonzales*, a final and executory decision of the LA did not explicitly award the 13th month pay. During the execution proceedings, the NLRC included it in the computation. The CA deleted the same. This Court thereafter ruled that the CA abused its discretion since "the 13th month pay fell due x x x by legal mandate."[30]

In the body and dispositive portion of LA Gambito's Decision[31] dated November 6, 2000, which became final and executory on July 11, 2005, he did not explicitly include the 13th month pay in the award. However, the decision stated that Florentino and Nilda were entitled to full backwages and other benefits.

Subsequently, the Labor Arbitration Associate's updated computation of the award[32] included the 13th month pay and was approved by LA Flores through the latter's August 22, 2006 Order. The NLRC set aside LA Flores' order, but the CA reinstated the same. The dispositive portion of the CA decision expressly ordered the award of backwages, separation pay, attorney's fees and legal interest, but conspicuously absent was a reference

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29 Requiring All Employers to Pay Their Employees a 13th Month Pay, effective December 16, 1976.
30 Supra note 27, at 364.
31 *Rollo*, pp. 63-86.
32 Id. at 151.

to the inclusion of the 13th month pay.[33]

The Court finds that despite the CA's non-explicit reference to the 13th month pay, following the doctrine in *Gonzales*, its inclusion in the computation is proper. Entitlement to it is a right granted by P.D. No. 851. Besides, the computation of award for backwages and other benefits is a mere legal consequence of the finding that there was illegal dismissal.[34]

In computing the backwages and benefits awarded to the respondents, the reckoning period is not interrupted by the NLRC's reversal of LA Gambito's finding of illegal dismissal.

The petitioners argue that even if backwages and benefits were really due, the computation should not include the period from February 21, 2002 to September 13, 2004, during which time the NLRC's disquisition that there was no illegal dismissal stood.

The argument fails to persuade.

In *Gonzales*, the Court stated that the increase in the amount that the corporation had to pay "is a consequence that it cannot avoid as it is the risk that it ran when it continued to seek recourses against the [LA's] decision."[35]

Further, in *Reyes v. NLRC, et al.*,[36] the Court declared that:

> One of the natural consequences of a finding that an employee has been illegally dismissed is the payment of backwages corresponding to the period from his dismissal up to actual reinstatement. The statutory intent of this matter is clearly discernible. The payment of backwages allows the employee to recover from the employer that which he has lost by way of wages as a result of his dismissal. Logically, it must be computed from the date of petitioner's illegal dismissal up to the time of actual reinstatement. There can be no gap or interruption, lest we defeat the very reason of the law in granting the same. x x x.[37] (Citation omitted and underscoring ours)

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33 Id. at 58-59.

34 *Henlin Panay Company v. NLRC*, G.R. No. 180718, October 23, 2009, 604 SCRA 362, 372.

35 Supra note 27, at 356-357, citing *Session Delights Ice Cream and Fast Foods v. Court of Appeals (Sixth Division)*, supra note 15, at 26.

36 598 Phil. 145 (2009).

37 Id. at 161-162.

Although in *Reyes,* the issue relates to the delay in filing of the complaint for illegal dismissal from the time of termination, there is no preclusion to apply the doctrine that there should be no gap or interruption in the reckoning period during which the dismissed employee is entitled to backwages and benefits. The statutory intent in the award of backwages and benefits is clear. Further, as declared in *Gonzales*, an employer takes a risk in assailing the LA's finding of illegal dismissal, but there is no insulation from the consequences therefrom.

The CA properly imposed a legal interest upon the total monetary award reckoned from the Entry of Judgment on July 11, 2005 until full satisfaction thereof, but the Court modifies the rate indicated in the assailed decision to conform to the doctrine in *Nacar*.

In *Gonzales*, the Court stated that when there is a finding of illegal dismissal and an award of backwages and separation pay, "[t]he decision also becomes a judgment for money from which another consequence flows—the payment of interest in case of delay."[38]

Again in *Gonzales*, the Court instructed that legal interest is imposable upon the "total unpaid judgment amount, from the time x x x the decision (on the merits in the original case) became final."[39]

In the case at bar, the CA properly imposed the legal interest upon the total monetary award even if none was explicitly included in the fine print of LA Gambito's decision and LA Flores' order. The imposition of legal interest is not to be considered as an alteration of the final judgment to be executed. The legal interest is already deemed read into the decision.

As to the correct rate of imposable interest, the petitioners argue that only 6% and not 12% is mandated pursuant to the ruling in *Nacar*.

Nacar is instructive anent the rate of interest imposable upon the total adjudged monetary award, *viz*:

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[38] Supra note 27, at 357, citing *Session Delights Ice Cream and Fast Foods v. Court of Appeals (Sixth Division)*, supra note 15, at 26.

[39] Supra note 27, at 360.

[T]he Bangko Sentral ng Pilipinas Monetary Board (BSP-MB), in its Resolution No. 796 dated May 16, 2013, approved the amendment of Section 2[40] of Circular No. 905, Series of 1982 and, accordingly, issued Circular No. 799,[41] Series of 2013, effective July 1, 2013, the pertinent portion of which reads:

> The Monetary Board, in its Resolution No. 796 dated 16 May 2013, approved the following revisions governing the rate of interest in the absence of stipulation in loan contracts, thereby amending Section 2 of Circular No. 905, Series of 1982:
>
> > **Section 1**. The rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of an express contract as to such rate of interest, shall be six percent (6%) *per annum.*
> >
> > **Section 2**. In view of the above, Subsection X305.1 of the Manual of Regulations for Banks and Sections 4305Q.1, 4305S.3 and 4303P.1 of the Manual of Regulations for Non-Bank Financial Institutions are hereby amended accordingly.
> >
> > This Circular shall take effect on 1 July 2013.

Thus, from the foregoing, in the absence of an express stipulation as to the rate of interest that would govern the parties, the rate of legal interest for loans or forbearance of any money, goods or credits and the rate allowed in judgments shall no longer be twelve percent (12%) *per annum* – as reflected in the case of *Eastern Shipping Lines* and Subsection X305.1 of the Manual of Regulations for Banks and Sections 4305Q.1, 4305S.3 and 4303P.1 of the Manual of Regulations for Non-Bank Financial Institutions, before its amendment by BSP-MB Circular No. 799 – but will now be six percent (6%) *per annum* effective July 1, 2013. It should be noted, nonetheless, that the new rate could only be applied prospectively and not retroactively. Consequently, the twelve percent (12%) *per annum* legal interest shall apply only until June 30, 2013. Come July 1, 2013 the new rate of six percent (6%) *per annum* shall be the prevailing rate of interest *when applicable*.

x x x x

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40 SEC. 2. The rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of express contract as to such rate of interest, shall continue to be twelve percent (12%) per annum.

41 Rate of interest in the absence of stipulation.

> Nonetheless, with regard to those judgments that have become final and executory prior to July 1, 2013, said judgments shall not be disturbed and shall continue to be implemented applying the rate of interest fixed therein.[42] (Some citations omitted and underscoring ours)

In *Nacar*, during the execution proceedings, the LA, NLRC and the CA did not impose a legal interest upon the total adjudged award. Thereafter, this Court granted the petition filed before it by the dismissed employee pleading for the imposition upon the monetary award of the legal interest, which the Court declared to be 12% *per annum* from the date of the Entry of Judgment on May 27, 2002 to June 30, 2013, and 6% *per annum* from July 1, 2013 until their full satisfaction.

Similarly, in the case of Florentino and Nilda, LA Gambito's decision became final and executory on July 11, 2005, during which time, the prevailing rate of legal interest was 12%. Note, however, that LA Gambito's decision and subsequently, even LA Flores' Order, dated August 22, 2006, made no explicit award of legal interest. As discussed above though, the imposition of the legal interest is already deemed read into the decision and order. For the same reason, the CA, in the herein assailed decision, expressly included the said interest in the computation.

In *Nacar*, and in the case before this Court now, the judgments finding that the employees were illegally dismissed became final and executory before July 1, 2013. In both cases too, the said judgments did not explicitly include the imposition of the legal interest upon the total adjudged award. In the case of Florentino and Nilda, it was the CA, which first expressly included the legal interest in the equation. In *Nacar*, this Court made the explicit inclusion and pegged the rate at 12% from the date of the Entry of Judgment up to June 30, 2013, and at 6% from July 1, 2013 until full satisfaction thereof. The circumstances in the instant petition are similar to the foregoing, hence, *Nacar* finds application. Consequently, the Court imposes upon the total adjudged award an interest of 12% interest *per annum* reckoned from July 11, 2005 until June 30, 2013. The interest of 6% *per annum* is imposed from July 1, 2013 until full satisfaction of the judgment award.

The computation of backwages and separation pay due to Florentino and Nilda properly includes the period from 2002 to 2005.

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42 Supra note 23, at 454-457.

The petitioners point out that Florentino and Nilda turned 60 on December 11, 2002 and April 30, 2002, respectively. Thus, backwages and separation pay could only be computed up to those dates since under both UPI's retirement plan and Article 287 of the Labor Code, 60 is the optional retirement age. Further, on July 18, 2005, Florentino and Nilda filed separate claims for retirement benefits, hence, effectively admitting that 60 and not 65 is the retirement age for UPI's faculty members.

Nilda and Florentino were born on April 30, 1942 and December 11, 1942, respectively. In 2002, both had turned 60 and can opt to retire. The Court cannot, however, agree that this is the cut-off date for the computation of backwages and separation pay due to them because of the reasons discussed below.

First, 60 is merely an optional but not the mandatory retirement age. *Second*, the evidence submitted do not show at whose option it is to retire the faculty members before the age of 65. *Third*, there is no proof whatsoever that the faculty members of UPI indeed retire at 60 years of age. *Fourth*, Florentino and Nilda filed claims for retirement pay in 2005 when they were both 63, hence, their acts did not necessarily constitute an admission that 60 is the retirement age for UPI's faculty members.

In view of the above, the Court finds that no mistake was committed by LA Flores and the CA in allowing the computation of backwages and separation pay due to Florentino and Nilda to include the period beyond 2002.

WHEREFORE, premises considered, the Decision of the Court of Appeals rendered on November 5, 2013, and the Resolution issued on February 7, 2014 in CA-G.R. SP No. 107230 are **AFFIRMED** with **MODIFICATIONS**. The petitioners herein, **University of Pangasinan, Inc.** and its former officials, **Cesar Duque, Juan Llamas Amor and Dominador Reyes** are **ORDERED TO PAY Florentino Fernandez and the Heirs of Nilda Fernandez** the following:

(1) backwages, including the 13th month pay, to be computed from May 9, 2000, the date of illegal dismissal from employment, up to July 11, 2005, the date of finality of the Court Resolution in G.R. No. 166103 per Entry of Judgment;

(2) separation pay computed from Florentino Fernandez and Nilda Fernandez's respective first days of employment with the University of Pangasinan, Inc. up to July 11, 2005 at the rate of one month pay per year of service;

(3) attorney's fees in the amount of ₱20,000.00; and

(4) interest of twelve percent (12%) *per annum* of the total monetary award, computed from July 11, 2005 to June 30, 2013, and six percent (6%) *per annum* from July 1, 2013 until full satisfaction.

The **LABOR ARBITER** is hereby **ORDERED** to make a **RECOMPUTATION** of the total monetary benefits awarded and due to Florentino Fernandez and Nilda Fernandez in accordance with this Resolution.

SO ORDERED.

BIENVENIDO L. REYES
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

MARTIN S. VILLARAMA, JR.
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

ATTESTATION

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.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division 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.

ANTONIO T. CARPIO
Acting Chief Justice