



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

CONCEPCION A. VILLENNA,  
Petitioner,

G.R. No. 205735

Present:

- versus -

SERENO, C.J., Chairperson,  
LEONARDO-DE CASTRO,  
BERSAMIN,  
PEREZ, and  
PERLAS-BERNABE, JJ.

BATANGAS II ELECTRIC  
COOPERATIVE, INC. and  
GEORGE A. DIN,

Respondents.

Promulgated:

**FEB 04 2015**

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DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*<sup>1</sup> are the Decision<sup>2</sup> dated October 18, 2012 and the Resolution<sup>3</sup> dated February 7, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 120170 which denied the inclusion of retirement pay and allowances for representation, transportation, and cellular phone usage in the computation of the monetary awards granted to petitioner Concepcion A. Villena (Villena) as a result of her illegal dismissal.

The Facts

Villena was hired by respondent Batangas II Electric Cooperative, Inc. (BATELEC II) as bookkeeper in 1978. She rose from the ranks and was

<sup>1</sup> Rollo, pp. 3-40.

<sup>2</sup> Id. at 42-50. Penned by Associate Justice Japar B. Dimaampao with Associate Justices Elihu A. Ybañez and Victoria Isabel A. Paredes, concurring.

<sup>3</sup> Id. at 51-52.

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promoted as Finance Manager in 1985. In 1994, she was demoted to the position of Auditor, which caused her to file a complaint for constructive dismissal before the Labor Arbiter (LA), docketed as NLRC NCR Case No. 12-07073-94-B (NLRC CA No. 016643-98).<sup>4</sup>

In a Decision dated July 22, 1998, the LA dismissed Villena's complaint, prompting her to seek recourse before the National Labor Relations Commission (NLRC).<sup>5</sup>

The ruling of the LA was reversed in a Resolution<sup>6</sup> dated January 31, 2000 (January 31, 2000 NLRC Resolution), whereby the NLRC declared Villena to have been illegally dismissed, and thus, ordered BATELEC II to reinstate her to her former position as Finance Manager, or its equivalent, and to pay her salary differentials. However, the NLRC's judgment was silent on the payment of allowances, benefits, and attorney's fees. Hence, Villena moved for reconsideration, but was denied.<sup>7</sup> At odds with the verdict, she elevated the matter to the CA *via* petition for *certiorari*, docketed as CA-G.R. SP No. 59073.<sup>8</sup>

In a **Decision<sup>9</sup> dated August 31, 2001** (August 31, 2001 CA Decision), the CA modified the January 31, 2000 NLRC Resolution and declared Villena to be "entitled to the difference between the salary of the Finance Manager and that of the auditor, plus allowances and any other benefits pertaining to the position of Finance Manager at the time she was removed therefrom up to the date of her actual reinstatement."<sup>10</sup> It also granted her attorney's fees in the amount of 10% of the total monetary award. The case was then remanded to the NLRC for the computation of the total amount due to Villena.<sup>11</sup>

In the course thereof, the LA declared<sup>12</sup> that Villena was entitled only to "salary differentials, 13<sup>th</sup> month pay, unused sick leave, leave of absence" amounting to ₱1,078,890.14,<sup>13</sup> excluding from the computation claims for bonus, representation allowance, transportation benefits, and attorney's fees. Moreover, her claim for separation pay in lieu of reinstatement was denied.<sup>14</sup>

<sup>4</sup> See *id.* at 6 and 42-43.

<sup>5</sup> Aforesaid July 22, 1998 LA Decision is not attached to the records of this case. (See *id.* at 43.)

<sup>6</sup> *Id.* at 130-141. See also *CA rollo*, pp. 62-73. Penned by Commissioner Tito F. Genilo with Presiding Commissioner Lourdes C. Javier and Commissioner Ireneo B. Bernardo, concurring.

<sup>7</sup> *Id.* at 43.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 142-147. See also *CA rollo*, pp. 74-79. Penned by Associate Justice (now Ombudsman) Conchita Carpio Morales with Associate Justices Rebecca De Guia-Salvador and Juan Q. Enriquez, Jr., concurring.

<sup>10</sup> *Id.* at 146.

<sup>11</sup> *Id.*

<sup>12</sup> The Order dated January 14, 2004 and the Writ of Execution dated January 19, 2004 issued by Labor Arbiter Clarito D. Demaala, Jr. are not attached to the records of this case. (See *CA rollo*, p. 29.)

<sup>13</sup> *Rollo*, p. 44. See also *CA Petition* (*CA rollo*, p. 7) and NLRC Resolution dated March 22, 2007 (*CA rollo*, pp. 84-85).

<sup>14</sup> *CA rollo*, p. 84.

While Villena received the amount of ₱1,078,890.14, she appealed to the NLRC the exclusion of her other benefits as well as her claim for separation pay.<sup>15</sup>

Meanwhile, on September 20, 2003, BATELEC II issued Policy No. 03-003,<sup>16</sup> which provided for retirement benefits to its regular employees.

In a **Resolution<sup>17</sup> dated March 22, 2007** (March 22, 2007 NLRC Resolution), the NLRC granted the appeal of Villena, holding that since reinstatement was no longer possible, separation pay in lieu of reinstatement was justified. It then directed BATELEC II “to pay [Villena] her claim for separation pay in lieu of reinstatement equivalent to one (1) month pay for every year of service from the date of her hiring up to the date of the finality of the judgment, salary differentials and other benefits[,] from the date of her dismissal up to the date of the payment of her separation pay, and [attorney’s] fees equivalent to ten percent (10%) of the totality of her award.”<sup>18</sup> BATELEC II moved for reconsideration, but the same was denied.<sup>19</sup>

With no further action having been taken by BATELEC II, the March 22, 2007 NLRC Resolution attained finality.<sup>20</sup> Thus, Villena moved for its execution.<sup>21</sup>

### The LA Ruling

Acting on the motion for execution, the Executive Labor Arbiter issued an Order<sup>22</sup> dated November 24, 2009 (November 24, 2009 LA Order), finding Villena to be entitled to the following benefits: (a) salary differentials; (b) 13<sup>th</sup> month pay; (c) 14<sup>th</sup> month pay; (d) bonus cash gift; (e) unused sick leave; (f) leave of absence; (g) uniform allowance; (h) separation pay; (i) representation allowance;<sup>23</sup> (j) transportation allowance;<sup>24</sup> (k) cellular phone allowance;<sup>25</sup> (l) retirement pay;<sup>26</sup> and (m) attorney’s fees, in the total amount of ₱6,294,290.99 net of the amount earlier partially satisfied.<sup>27</sup>

<sup>15</sup> *Rollo*, pp. 9-10.

<sup>16</sup> Entitled “Employees Retirement Benefits”; *id.* at 69-72.

<sup>17</sup> *Id.* at 148-159. See also CA *rollo*, pp. 80-91. Penned by Commissioner Tito F. Genilo with Presiding Commissioner Lourdes C. Javier and Commissioner Gregorio O. Bilog, III, concurring.

<sup>18</sup> *Id.* at 158.

<sup>19</sup> *Id.* at 44.

<sup>20</sup> In the sense that it could not anymore be assailed through a petition for *certiorari*. This is the only recourse against an NLRC Decision, which are unappealable by nature. (See *St. Martin Funeral Home v. NLRC*, 356 Phil. 811, 823 [1998].)

<sup>21</sup> See Motion for Issuance of a Writ of Execution dated July 2, 2007; *rollo*, pp. 160-164.

<sup>22</sup> *Id.* at 209-216. Penned by Executive Labor Arbiter Generoso V. Santos.

<sup>23</sup> In the amount of ₱361,900.00.

<sup>24</sup> In the amount of ₱1,406,350.00.

<sup>25</sup> In the amount of ₱204,230.00.

<sup>26</sup> In the amount of ₱1,649,375.00.

<sup>27</sup> *Rollo*, p. 215. See also CA *rollo*, p. 151.

Insisting that Villena was not entitled to salary differentials, allowances and benefits of a Finance Manager, separation pay, and allowances for representation, transportation, and cellular phone usage, BATELEC II appealed<sup>28</sup> to the NLRC.

### The NLRC Ruling

In a Resolution<sup>29</sup> dated February 28, 2011 (February 28, 2011 NLRC Resolution), the NLRC partly granted the appeal and excluded from the computation of monetary awards the sums for representation, transportation, and cellular phone usage allowances, as well as retirement pay. It found that Villena was not able to prove that she was qualified to receive representation allowance or that she was authorized to travel.<sup>30</sup> The NLRC likewise found no basis for the award of cellular phone allowance to Villena.<sup>31</sup>

With the substantial modification, Villena moved for partial reconsideration,<sup>32</sup> which the NLRC partly granted in a Resolution<sup>33</sup> dated May 17, 2011 (May 17, 2011 Resolution), deleting the award for separation pay and in lieu thereof, ordering the payment of retirement pay in the interest of justice and fairness and in order to be consistent with the spirit of the law on retirement to grant the more beneficial retirement gratuity to the worker, including 15<sup>th</sup> month pay.<sup>34</sup>

Dissatisfied, Villena filed a petition for *certiorari*<sup>35</sup> before the CA, docketed as CA-G.R. SP No. 120170.

### The CA Ruling

In a Decision<sup>36</sup> dated October 18, 2012, the CA reversed and set aside the ruling of the NLRC, pointing out that the earlier August 31, 2001 CA Decision finding Villena to have been illegally dismissed and the March 22, 2007 NLRC Resolution ordering the payment of separation pay in lieu of reinstatement had **both become final and executory and, thus, immutable and unalterable**.<sup>37</sup> As the NLRC, in its May 17, 2011 Resolution, awarded retirement pay instead of separation pay, the CA found that the NLRC acted beyond its authority in modifying the aforesaid final and executory

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<sup>28</sup> See Memorandum of Appeal dated October 14, 2010; *id.* at 217-236.

<sup>29</sup> *Id.* at 94-101. See also CA *rollo*, pp. 27-34. Penned by Commissioner Pablo C. Espiritu, Jr. with Presiding Commissioner Alex A. Lopez and Commissioner Gregorio O. Bilog, III, concurring.

<sup>30</sup> *Id.* at 100.

<sup>31</sup> *Id.*

<sup>32</sup> See Motion for Partial Reconsideration dated March 25, 2010; *id.* at 107-120.

<sup>33</sup> *Id.* at 103-106.

<sup>34</sup> *Id.* at 105.

<sup>35</sup> CA *rollo*, pp. 3-24.

<sup>36</sup> *Rollo*, pp. 42-50.

<sup>37</sup> *Id.* at 46.

judgments.<sup>38</sup> The CA, however, affirmed the February 28, 2011 NLRC Resolution disallowing the inclusion of allowances for representation, transportation, and cellular phone usage as Villena did not perform her duties as Finance Manager not being a certified public accountant which is a required qualification for such position.<sup>39</sup>

Contesting the exclusions, Villena filed the present petition.

### **The Issue Before the Court**

The issue for the Court's resolution is whether or not (a) retirement pay, and (b) representation, transportation, and cellular phone usage allowances should be awarded in favor of Villena.

### **The Court's Ruling**

The petition is partly meritorious.

Retirement pay as well as representation, transportation, and cellular phone usage allowances were not specifically mentioned in the **final and executory** August 31, 2001 CA Decision<sup>40</sup> and March 22, 2007 NLRC Resolution.<sup>41</sup> On its face, both issuances only mention that Villena is entitled to "other benefits," hence, the Court's task is to render a proper interpretation.

#### **A. ON RETIREMENT PAY.**

As the Court sees it, the "other benefits" mentioned in these rulings cannot be construed to include retirement pay for the primary reason that they adjudged awards relative to Villena's illegal dismissal complaint, which remains barren of a specific cause of action for retirement pay. In order for her retirement pay claim to be considered, Villena's complaint should have contained substantial allegations which would show that she (a) had applied

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<sup>38</sup> Id. at 47-48.

<sup>39</sup> Id.

<sup>40</sup> The dispositive portion of the final and executory August 31, 2001 CA Decision reads that Villena is "entitled to the difference between the salary of the Finance Manager and that of the auditor plus allowances and **any other benefits** pertaining to the position of Finance Manager at the time she was removed therefrom up to the date of her actual reinstatement[, and Villena] having been forced to litigate to protect her rights, attorney's fees in the amount of 10% of the total monetary award is hereby adjudged against [BATELEC II]"; id. at 146; emphasis and underscoring supplied.

<sup>41</sup> The dispositive portion of the final and executory March 22, 2007 NLRC Resolution directed BATELEC II "to pay [Villena] her claim for separation pay in lieu of reinstatement equivalent to one (1) month pay for every year of service from the date of her hiring up to the date of the finality of the judgment, salary differentials, and **other benefits**, from the date of her dismissal up to the date of the payment of her separation pay, and attorney[']s fees equivalent to ten percent (10%) of the totality of her award"; id. at 158; emphasis and underscoring supplied.

for the same, and (b) her application squares with the requirements of entitlement under the terms of the company's retirement plan, *i.e.*, Policy No. 03-003, which, in fact, was issued on September 20, 2003, or after the August 31, 2001 CA Decision had already attained finality. However, based on the records, what she sought for in her illegal dismissal complaint were the reliefs of reinstatement, payment of salary differentials, all benefits and allowances that she may have received as Finance Manager, attorney's fees, and damages.<sup>42</sup> Thus, as the matter left for determination is whether or not the aforesaid rulings, when executed, should include retirement pay and representation, transportation, and cellular phone usage allowances, the Court will harken back only to the context of the illegal dismissal complaint from which such awards of "other benefits" stemmed from.

Verily, the Court is not unaware of its rulings wherein it pronounced that retirement pay and separation pay are not mutually exclusive (unless there is a specific prohibition in the collective bargaining agreement or retirement plan against the payment of both benefits);<sup>43</sup> however, with Villena's entitlement to retirement pay not included as an issue in **an illegal dismissal case which had already been finally decided**, it is quite absurd for Villena to submit a "contemporaneous"<sup>44</sup> claim for retirement pay on the execution phase of these proceedings. In fine, the plea to include retirement pay in the execution of the final and executory August 31, 2001 CA Decision and March 22, 2007 NLRC Resolution, under the phrase "other benefits," cannot be granted.

**B. ON TRANSPORTATION, REPRESENTATION,  
AND CELLULAR PHONE USAGE ALLOWANCES.**

Meanwhile, on the matter of the claimed allowances, it is clear from BATELEC II's pleadings and submissions that representation allowance,<sup>45</sup> transportation allowance,<sup>46</sup> and cellular phone usage allowance<sup>47</sup> are given to the Finance Manager/Department Manager as part of their benefits,<sup>48</sup> unlike the separate entitlement to retirement pay which may be recovered only upon a meritorious subsequent application when the employee decides to retire. Consequently, these allowances ought to be included in the "other benefits pertaining to the position of Finance Manager" to which Villena is entitled to and which were awarded to her under the final and executory CA Decision and NLRC Resolution.

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<sup>42</sup> CA *rollo*, pp. 5, 126, 145, and 191.

<sup>43</sup> See *Santos v. Servier Philippines, Inc.*, 593 Phil. 133, 141 (2008). See also *Aquino v. NLRC*, G.R. No. 87653 February 11, 1992, 206 SCRA 118, 125.

<sup>44</sup> *Rollo*, p. 14.

<sup>45</sup> *Id.* at 297.

<sup>46</sup> *Id.* at 189-190.

<sup>47</sup> *Id.* at 190-191

<sup>48</sup> *Id.* at 189.

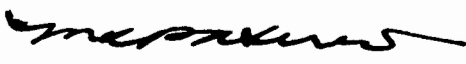
With the award of the “other benefits pertaining to the position of Finance Manager” made by the CA in its August 31, 2001 Decision lapsing into finality, the same had already become immutable and unalterable;<sup>49</sup> this means that they may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law.<sup>50</sup> Thus, it was an error on the part of the CA to still consider, rule upon, and vary the previous CA Ruling, *i.e.*, August 31, 2001 CA Decision, on the entitlement of Villena to the benefits of representation, transportation, and cellular phone usage allowances. On this score, therefore, the claim of Villena is granted.


**WHEREFORE**, the petition is **PARTLY GRANTED**. The Decision dated October 18, 2012 and the Resolution dated February 7, 2013 of the Court of Appeals in CA-G.R. SP No. 120170 are hereby **AFFIRMED** with **MODIFICATION** ordering the payment of representation, transportation, and cellular phone usage allowances to petitioner Concepcion A. Villena, in accordance with the Order dated November 24, 2009 of the Executive Labor Arbiter.

**SO ORDERED.**

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

**WE CONCUR:**

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

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

  
**LUCAS P. BERSAMIN**  
 Associate Justice

  
**JOSE PORTUGAL PEREZ**  
 Associate Justice

<sup>49</sup> See *Abalos v. Philiex Mining Corporation*, 441 Phil 386, 392-393 (2002).

<sup>50</sup> *Id.* at 393.

**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