Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court's First Division issued a Resolution dated **November 13, 2023**, *which reads as follows:*

"G.R. No. 230681 (*Ezra Clothing Corporation and Sincerely C. Te vs. Rufino Lee, represented by his wife, Felisa M. Lee*). — This resolves the Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court seeking to set aside the August 19, 2016 Decision[2] and the March 15, 2017 Resolution[3] of the Court of Appeals (*CA*) in CA-G.R. SP No. 123250 which denied the Petition for *Certiorari*[4] assailing the validity and legality of the Writ of Execution[5] dated November 28, 2011 issued by Labor Arbiter Thomas T. Que, Jr. (*LA Que*) in NCR Case No. 06-08400-10.

Antecedents

Respondent Rufino Lee (*Rufino*) was a former employee of Futura Clothing International, Inc. (*Futura*), who began his employment as a mechanic for the company as far back as 1992. Due to business losses, Futura closed shop and the successor company, petitioner Ezra Clothing Corporation (*Ezra*) absorbed Futura's employees. Effective March 1, 2008, Rufino was accepted by Ezra and was given the same position he held in Futura.[6]

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1 *Rollo*, pp. 3-17.
2 Id. at 19-25; penned by Associate Justice Leoncia Real-Dimagiba and concurred in by Associate Justices Ramon R. Garcia and Victoria Isabel A. Paredes.
3 Id. at 27-28.
4 Id. at 70-84.
5 Id. at 61-63.
6 Id. at 6.

On December 22, 2009, Rufino received a *Liham Notipikasyon Para sa Retirement*[7] (*Liham*) from the company President, co-petitioner Sincerely C. Te (*Te*), in connection with the ongoing restructuring and cost-cutting measures at Ezra, informing him that his position will be abolished but that he is already qualified for early/optional retirement benefits. Rufino was asked to fill up forms attached to the letter and submit the same to Ezra's Human Resources Division. Rufino thereafter submitted the attached forms on December 27, 2009.[8]

On March 5, 2010, Rufino filed a Complaint[9] against Ezra and Te (collectively, *petitioners*) for non-payment of salaries/wages, holiday pay, service incentive leave, 13th month pay, separation pay, and retirement benefits, which was docketed as NCR Case No. 03-03445-10 and was assigned to Labor Arbiter Madjayran H. Ajan (*LA Ajan*).

On June 18, 2010, while NCR Case No. 03-03445-10 was still pending, Rufino filed another Complaint[10] against petitioners for illegal dismissal, actual, moral, and exemplary damages, which was docketed as NCR Case No. 06-08400-10 and was assigned to LA Que.

Proceedings before the LA and the National Labor Relations Commission (*NLRC*)

On September 30, 2010, LA Ajan rendered a Decision[11] in NCR Case No. 03-03445-10, the dispositive portion of which reads:

> WHEREFORE, premises above considered, judgment is hereby rendered dismissing the instant case for lack of merit.
>
> However, respondent company is hereby directed to pay complainant the total amount of SIXTEEN THOUSAND SEVEN HUNDRED SEVENTY-TWO PESOS AND SEVENTEEN CENTAVOS ([₱]16,772.17), computed as follows:
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> 1. EIGHT THOUSAND THREE HUNDRED SIXTY-ONE PESOS AND NINETY-FOUR CENTAVOS ([₱]8,361.94) representing his last pay from January 16 to 31, 2009;

7 CA *rollo*, p. 80.
8 Id. at 99.
9 Id. at 60-62.
10 Id. at 94-97.
11 Id. at 125-128.

2. TWO THOUSAND FOUR HUNDRED SIXTY PESOS AND EIGHTY-THREE CENTAVOS ([₱]2,460.83) representing his proportionate 13th month pay from December 2009 to January 31, 2010; and

3. FIVE THOUSAND NINE HUNDRED FORTY-NINE PESOS AND FOUR CENTAVOS ([₱]5,949.[04]) representing his service incentive leave pay for two-year period of employment with the respondent company.

SO ORDERED.[12]

LA Ajan held that Futura was a company separate and distinct from Ezra, and thus, Rufino had worked for Ezra only for two years. It was further ruled that Rufino availed of optional retirement at the age of 63. Records confirmed that Rufino made withdrawals from his PAG-IBIG Fund contributions twice: he first received the amount of ₱41,616.24 while still with Futura, and then during his employment with Ezra, he was able to withdraw ₱12,180.34. LA Ajan thus considered Rufino as having availed of retirement benefits, and therefore, opted to resign or retire due to old age.[13]

Consequently, Rufino's claim for separation pay was denied for lack of factual and legal basis. However, the claims for last salary, proportionate 13th month pay and service incentive leave pay were awarded since no payrolls were shown by the petitioners to prove these had been paid.[14]

On November 3, 2010, petitioners filed a Motion to Admit[15] copy of the September 30, 2010 Decision of LA Ajan in NCR Case No. 03-03445-10, as supplemental pleading in NCR Case No. 06-08400-10 before LA Que.

Rufino appealed the Decision of LA Ajan to the NLRC by way of a Partial Memorandum of Appeal[16] which was docketed as NLRC LAC No. 11-002905-10. The appeal sought only to contest the ruling with regard to the award of service incentive leave, as Rufino alleged that he should be awarded instead the value equivalent to his 19 days sick leave pay and 19 days vacation leave pay, in accordance with company policy. It was specifically mentioned therein that Rufino was no longer assailing the claim for retirement benefits

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[12] Id. at 128.
[13] Id. at 127.
[14] Id.
[15] Id. at 123-124.
[16] Id. at 84-89.

considering that a separate case for illegal dismissal was already pending before LA Que.[17]

In its May 23, 2011 Decision,[18] the NLRC denied Rufino's appeal and affirmed the ruling of LA Ajan *in toto*. Rufino timely moved for reconsideration but was eventually denied by the NLRC *via* its August 23, 2011 Resolution.[19] Said Resolution became final and executory on September 27, 2011.[20]

Meanwhile, on June 27, 2011, LA Que rendered his Decision[21] in NCR-06-08400-10, the dispositive portion of which reads:

> **WHEREFORE**, premises considered, the complaint for illegal dismissal is DISMISSED for lack of merit. Respondents EZRA Clothing Corporation, Sincerely C. Te are, however, ordered to jointly and severally pay complainant:
>
> 1. the sum of [₱]294,841.05 ([₱]15,517.95 x 19 years) as and by way of separation pay equivalent to one month for every year of service, it being understood that a fraction of six months be considered one year; and,
>
> 2. [₱]15,517.95 representing one month salary in lieu of the one month notice provided for under Article 283 of the Labor Code.
>
> All other claims are dismissed for lack of merit.
>
> **SO ORDERED.**[22]

LA Que held that Rufino never applied for retirement as the offered optional retirement was initiated by the employer, hence not voluntary on his part. Neither had he reached the mandatory retirement age.[23] LA Que disagreed with petitioners' contention that Rufino had already retired under a PAG-IBIG Fund retirement plan as the fact remains that Rufino did not file any application for retirement with his employer.[24]

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[17] Id. at 87.
[18] Id. at 201-206; penned by Commissioner Dolores M. Peralta-Beley and concurred in by Presiding Commissioner Leonardo L. Leonida and Commissioner Mercedes R. Posada-Lacap.
[19] *Rollo*, pp. 47-49.
[20] Id. at 50.
[21] Id. at 51-60.
[22] Id. at 59.
[23] Id. at 56.
[24] Id. at 58.

Petitioners' *Liham* was found to be misleading because while purportedly informing Rufino of his retirement, his position was actually being abolished due to redundancy in relation to the reorganization and cost-cutting measures then being implemented by the company. The *Liham* sought to inform Rufino that his position was being abolished, and that he was already qualified to receive early retirement benefits.[25]

LA Que thus declared that redundancy was the cause of Rufino's termination, for which Rufino is entitled to separation pay,[26] emphasizing that separation due to redundancy is different from retirement.[27] Rufino was also awarded one-month salary in lieu of the one-month notice which the petitioners failed to accord him.[28]

On November 28, 2011, LA Que issued a Certificate of Finality and a Writ of Execution in relation to his Decision in NCR-06-08400-10.[29]

Proceedings before the CA

On February 9, 2012, petitioners filed before the CA an Urgent Petition for *Certiorari* Under Rule 65 (With Application for Preliminary Mandatory Injunction and/or Temporary Restraining Order),[30] docketed as CA-G.R. SP No. 123250. Petitioners claimed they were not informed of the June 27, 2011 Decision of LA Que and learned about it only when the Writ of Execution was served upon them on January 19, 2012, thus depriving them of the right to appeal the decision. They further pointed out that the decision subject of the writ of execution had not been entered in the Book of Judgments.[31]

Attached to said petition are the certified true copies of the challenged Decision and Writ of Execution issued by LA Que, the August 23, 2011 Resolution of the NLRC affirming the ruling of LA Ajan, and the entry of judgment relative to said NLRC Resolution.[32]

In its February 22, 2012 Resolution,[33] the CA required the submission of certain documents to rectify infirmities in the petition before it.

[25] Id. at 56-57.
[26] Id. at 58.
[27] Id. at 57.
[28] Id. at 58.
[29] Id. at 61-63.
[30] CA *rollo*, pp. 3-14.
[31] Id. at 8-11.
[32] Id. at 18-35.
[33] Id. at 38-40.

Accordingly, petitioners filed their Compliance[34] and attached several additional documents thereto.[35]

During the pendency of CA-G.R. SP No. 123250, Rufino died and was substituted by his wife, Felisa M. Lee, but only after the CA considered the case submitted for decision, sans Rufino's memorandum.[36]

In its assailed August 19, 2016 Decision, the CA denied the petition, applying the fundamental rule that unless the contrary is proven, official duty is presumed to have been performed regularly and judicial proceedings regularly conducted. The presumption of regularity of the quasi-judicial proceedings before the NLRC includes the presumption of regularity in the service of summons and other notices. The CA thus declared that it was incumbent upon petitioners to prove otherwise, which they failed to do. Other than the bare allegation that they were not served a copy of LA Que's Decision, petitioners failed to adduce other competent and proper evidence to prove their cause. Hence, the presumption stands.[37]

The CA further held that the extraordinary remedy of *certiorari* lies only where there is no appeal nor plain, speedy and adequate remedy in the ordinary course of law; it cannot be allowed when a party to a case fails to appeal a judgment despite the availability of that remedy, *certiorari* not being a substitute for a lapsed or lost appeal.[38]

Petitioners filed a Motion for Reconsideration.[39] Attached to the motion were copies of documents already submitted before the CA. The CA found that the arguments raised in the motion were mere rehash of those which had already been submitted and resolved in its assailed Decision.[40] The motion for reconsideration was thus denied, hence this appeal.

In a Letter[41] dated September 3, 2019, Felisa Lee explained that she failed to comment on the petition because the documents relative to the case

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[34] Id. at 50-54.
[35] Id. at 55-128. Petitioners submitted the following annexes: verification and certification of non-forum shopping; secretary's certificate; special power of attorney; summons in NCR Case No. 03-03445-10; petitioners' position paper in NCR Case No. 03-03445-10; Rufino's position paper and memorandum of appeal in NCR Case No. 03-03445-10; summons in NCR Case No. 06-08400-10; Rufino's complaint, and the parties' position papers in NCR Case No. 06-08400-10; and Motion to Admit LA Ajan's decision filed in NCR Case No. 06-08400-10.
[36] Id. at 163-177, 181-182.
[37] *Rollo*, pp. 23-24.
[38] Id. at 24.
[39] CA *rollo*, pp. 188-200.
[40] *Rollo*, pp. 27-28.
[41] Id. at 134-135.

are in the possession of a family friend who left for Zamboanga City due to her illness. In its January 20, 2021 Resolution,[42] the Court dispensed with the comment of respondent on the petition.

Issues

Essentially, the Court is tasked to resolve whether the CA erred in denying the Rule 65 petition before it and in not ruling that the November 28, 2011 Writ of Execution was irregularly issued.

Petitioners insist that LA Que's Decision had not been entered in the Book of Judgment and copy thereof was not served on them, thus the issuance of the November 28, 2011 Writ of Execution was unconstitutional as it collides with their right to due process.[43]

Furthermore, petitioners argue that LA Que's Decision is without basis in law and was issued in excess of jurisdiction, because the issue of entitlement to retirement benefits had already been settled with finality in the case decided by LA Ajan.[44]

The Court's Ruling

The petition has no merit.

Petitioners' allegations that they were not served a copy of LA Que's June 27, 2011 Decision and that no Entry of Judgment was actually issued therefor, are factual matters which cannot be entertained in the present petition. This Court not being a trier of facts, our jurisdiction in cases brought before us from the CA via Rule 45 of the Rules of Court is generally limited to reviewing errors of law.[45]

Furthermore, what is under review in this Rule 45 petition is the decision of the CA in a Rule 65 petition. Under such review, the Court has to view the CA Decision in the same context that the petition for *certiorari* was presented to it; We have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of

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[42] Id. at 141.
[43] Id. at 8-11.
[44] Id. at 11-12.
[45] *INC Shipmanagement, Inc. v. Moradas*, 724 Phil. 374, 391 (2014).

discretion in the challenged orders of LA Que, not on the basis of whether his decision on the merits of the case was correct.[46]

The actions of the NLRC and its officials are covered by the presumption of regularity. In the absence of evidence to the contrary, it is presumed that public officers have performed their duties in accordance with law. This includes the presumption of regularity of service of notices.[47]

The portions of the 2011 NLRC Rules of Procedure pertaining to the promulgation of decisions and service of notice thereof, prevailing at the time, provide:

> RULE III
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> x x x x
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> SECTION 4. *Service of Notices, Resolutions, Orders and Decisions.* — a) Notices and copies of resolutions or orders, shall be served personally upon the parties by the bailiff or duly authorized public officer within three (3) days from his/her receipt thereof or by registered mail or by private courier;
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> x x x x
>
> RULE V
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> x x x x
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> SECTION 19. *Finality of the Decision or Order and Issuance of Certificate of Finality.* —
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> (a) Finality of the Decision or Order of the Labor Arbiter. — If no appeal is filed with the Commission within the time provided under Article 223 of the Labor Code, as amended, and Section 1, Rule VI of these Rules, the decision or order of the Labor Arbiter shall become final and executory after ten (10) calendar days from receipt thereof by the counsel or authorized representative or the parties if not assisted by counsel or representative.
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> (b) Certificate of Finality. — Upon expiration of the period provided in paragraph (a) of this Section, the Labor Arbiter shall issue a certificate of finality.

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[46] See *Montoya v. Transmed Manila Corp.*, 613 Phil. 696, 707 (2009).

[47] *Genuino Ice Company, Inc. v. Magpantay*, 526 Phil. 170, 179 (2006), citing *Columbus Philippines Bus Corp. v. National Labor Relations Commission*, 417 Phil. 81, 96 (2001); see also *Santos v. Court of Appeals*, 296 Phil. 558, 567 (1993).

> In the absence of return cards, certifications from the post office or courier or other proofs of service to the parties, the Labor Arbiter may issue a certificate of finality after sixty (60) calendar days from date of mailing.
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> x x x x
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> RULE XI
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> SECTION 1. *Execution Upon Finality of Decision or Order.* — a) A writ of execution may be issued *motu proprio* or on motion, upon a decision or order that has become final and executory.

Here, the challenged Writ of Execution itself indicates that LA Que issued a Certificate of Finality on November 28, 2011. There being no evidence to the contrary, the Court is left to presume that the procedures detailed in the rules of the NLRC were observed, leading up to such issuance. Particularly, that upon the promulgation of the June 27, 2011 Decision, a copy thereof was given to the bailiff or some other duly authorized public officer in order for the latter to serve notice of the decision and a copy of such decision upon the parties, and that such service was in fact made in a manner and within the periods allowed by the rules.

When the plaintiff's case depends upon the establishment of a negative fact, and the means of proving the fact are equally within the control of each party, the burden of proof is placed upon the party averring the negative fact.[48] Here, petitioners' assertion that they were not served notice of LA Que's June 27, 2011 Decision is a negative fact, and petitioners have the burden of proof to show that they were indeed neither notified nor furnished a copy of said decision.[49]

Unfortunately for petitioners, nothing in the documents they submitted before the CA, or even before this Court, can serve as evidence of their claims. Petitioners merely assert that the records of the case do not show proof of service of the challenged decision. Mere allegation is not proof. All the more in this case where the burden of proof falls upon them, and presumption of regularity operates in favor of the challenged issuances.

Thus, the Court finds no reversible error on the part of the CA in dismissing the Rule 65 petition before it.

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[48] *Republic v. Pasig Rizal Co., Inc.*, G.R. No. 213207, February 15, 2022, citing *Spouses O and Cheng v. Spouses Javier and Dailisan*, 609 Phil. 434, 441 (2009).

[49] See *Spouses O and Cheng v. Spouses Javier and Dailisan*, id.; *Hipe v. Commission on Elections*, 617 Phil. 782, 789 (2009).

WHEREFORE, the Petition is **DENIED**. The August 19, 2016 Decision and the March 15, 2017 Resolution of the Court of Appeals in CA-G.R. SP No. 123250 are hereby **AFFIRMED**.

SO ORDERED."

By authority of the Court:

MARIA TERESA B. SIBULO
Division Clerk of Court

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