



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames

Please take notice that the Court, Third Division, issued a Resolution dated February 13, 2023, which reads as follows:

G.R. No. 263912 – PUBLIC SAFETY MUTUAL BENEFIT FUND, INC., MILAN ROCHELLE N. BERNARDO, DIR. MARIO A. AVENIDO, President/CEO (Now Represented by ATTY. JOEL NAPOLEON M. CORONEL/current President/CEO), Petitioners, v. GELINE G. LOPEZ and ZYRON C. BASTO, Respondents.

Before this Court is a Petition for Review on *Certiorari*¹ assailing the Resolutions, dated October 29, 2021² and October 10, 2022,³ of the Court of Appeals (CA) in CA-G.R. SP No. 170197. The CA Resolutions denied the Petition for *Certiorari*, filed by the Public Safety Mutual Benefit Fund, Inc. (PSMBFI), its then PSMBFI President/CEO Mario A. Avenido, and Milan Rochelle N. Bernardo (**Bernardo**), assailing the Decision, dated July 29, 2021, of the National Labor Relations Commission (NLRC) in NLRC LAC No. 02-000693-21 (NLRC NCR Case No. 11-00506-19), which affirmed the reinstatement of PSMBFI's employees, Geline Genandoy Lopez (**Lopez**) and Zyron Corpuz Basto (**Basto**).

The Facts

This case stemmed from a Complaint filed by Lopez and Basto against PSMBFI for unfair labor practice, illegal dismissal, underpayment of salaries and wages, damages, and other causes of action – commutation of leave credits, payment of productivity bonus, incentive bonus, anniversary bonus, cash basket, cash gift and amelioration.⁴

¹ *Rollo*, pp. 6-19.

² *Id.* at 38-41. Penned by Associate Justice Pablito A. Perez, and concurred in by Associate Justices Ramon M. Bato, Jr. and Raymond Reynold R. Lauigan.

³ *Id.* at 43-49. Penned by Associate Justice Pablito A. Perez, and concurred in by Associate Justices Ramon M. Bato, Jr. and Raymond Reynold R. Lauigan.

⁴ *Id.* at 190.

PSMBFI is a non-stock non-profit domestic corporation, organized as a mutual benefit association offering membership and insurance coverage to public safety practitioners.⁵

Lopez and Basto were regular employees of PSMBFI for 18 years. They actively took part in organizing the rank-and-file union, PSMBFI Concerned Employees Organization. The union was certified as the sole and exclusive bargaining agent for rank-and-file employees of PSMBFI on July 31, 2019.⁶

On March 7, 2019, Lopez and Basto, who both worked as Membership Relations Specialists, were instructed to set up information desks and conduct marketing activities for PSMBFI. Lopez was assigned to the Land Transportation Office (**LTO**) in East Avenue, Quezon City, while Basto was assigned to the Bureau of Fire Protection (**BFP**) in Agham Road, Quezon City.⁷

From the PSMBFI main office, they rode the company vehicle to LTO and BFP. Their supervisor, Charisse Del Mundo (**Del Mundo**), instructed them to head straight to their assigned stations. After their drop off, the driver of the company vehicle was to proceed to St. Luke's Medical Center in Quezon City for an errand – to handover PhilHealth forms to another co-worker whose son was confined in the hospital.⁸ According to PSMBFI, Del Mundo's instruction to directly proceed to their assigned stations was specifically given so that Lopez and Basto will be able to set up their information desks before 10:00 a.m. and take advantage of the morning breaks of LTO and BFP employees for their marketing activities.⁹

However, instead of proceeding directly to LTO and BFP, Lopez and Basto headed to St. Luke's first.¹⁰ Because of their detour, they arrived after 10:00 a.m. PSMBFI contended that they missed marketing opportunities because of their tardiness.¹¹

Bernardo, the Human Resource Department Manager of PSMBFI, allegedly prodded Del Mundo to prepare and file the incident report on the refusal of Lopez and Basto to comply with her directive as the same constituted a violation of the PSMBFI Code of Discipline.¹²

⁵ Id. at 4 and 246.

⁶ Id. at 191.

⁷ Id.

⁸ Id.

⁹ Id. at 192.

¹⁰ Id. at 191.

¹¹ Id. at 192.

¹² Id. at 223.

On June 10, 2019, Lopez and Basto were each served with a Notice to Explain.¹³ Both complied and filed their respective written explanations. Lopez, who was merely serving as a substitute that day, claimed that when he realized the vehicle took the route going to the hospital, he assumed that the change in their itinerary was coordinated with their supervisor.¹⁴ As for Basto, he averred that they headed to the hospital first believing that the forms were urgently needed by their co-worker. He further stressed that the hospital was closer to the PSMBFI main office.¹⁵

On July 25, 2019, an administrative hearing was held. Thereafter, upon evaluation of the PSMBFI management, they were found guilty of “willful refusal to accept work, shift assignment, or specific instructions (verbal or written) or perform assigned work and other lawful orders given by a superior without justifiable reason.”¹⁶

PSMBFI issued their Notice of Dismissal from Service on October 17, 2019, prompting them to file the Complaint before the Labor Arbiter.

The Ruling of the LA

The Labor Arbiter found that the dismissal of Lopez and Basto was for just cause, and that PSMBFI substantially complied with the requirements of due process.¹⁷ The Labor Arbiter noted that both Lopez and Basto admitted that they failed to comply with Del Mundo’s directive.¹⁸

On the charge of unfair labor practice, the Labor Arbiter held that PSMBFI was not guilty as Lopez and Basto failed to proffer substantial proof apart from their bare allegations.¹⁹

In a Decision, dated February 28, 2020, the Labor Arbiter dismissed the complaint against PSMBFI for lack of merit.²⁰

The Ruling of the NLRC

On appeal, the NLRC reversed the Labor Arbiter with respect to the finding on illegal dismissal.

¹³ Id. at 192.

¹⁴ Id. at 224.

¹⁵ Id.

¹⁶ Id. at 225.

¹⁷ Id. at 198.

¹⁸ Id. at 194.

¹⁹ Id. at 199.

²⁰ Id. at 201.

The NLRC found that the actions of Lopez and Basto could not be characterized as “willful or intentional” refusal to follow their superior’s orders, for they did follow the instructions to set up information booths at their assigned stations although they arrived late. Their behavior was not marked with wrongful or perverse attitudes consistent with insubordination. The NLRC further observed that neither Lopez nor Basto personally gained from going to the hospital to assist a colleague. Finally, even assuming *arguendo* that there was insubordination, the NLRC found the penalty of dismissal too harsh and incommensurate with the violation.²¹

On the claim of unfair labor practice, the NLRC affirmed the findings of the Labor Arbiter that the complainants failed to substantiate their claim.²²

Thus, in its Decision, dated July 29, 2021, the NLRC partly granted the appeal. The dispositive portion of the Decision reads:

WHEREFORE, complainants’ appeal is PARTLY GRANTED. The Decision dated 28 February 2020 of Labor Arbiter Rommel R. Veluz is MODIFIED in that (a) Public Safety Mutual Benefit Fund, Inc. is ORDERED to reinstate the complainants to their former positions without loss of seniority rights and with full backwages minus complainants’ salary equivalent to fifteen (15) days, and (b) the complaint against individual respondent Milan Rochelle Bernardo is DISMISSED for lack of merit.

SO ORDERED.²³

The Ruling of the CA

From the NLRC’s Decision, PSMBFI filed a Petition for *Certiorari*, under Rule 65 of the Rules of Court, with an Application for the Issuance of Temporary Restraining Order (TRO) and Writ of Injunction. PSMBFI sought to reverse and set aside the NLRC Decision and stay its execution.

In its Resolution, dated October 29, 2021, the CA dismissed the Petition for *Certiorari* for failure of PSBMBFI to comply with procedural requirements, and to justify their failure to file a Motion for Reconsideration with the NLRC. The application for TRO was likewise denied. The CA held that:

As a general rule, a motion for reconsideration is an indispensable condition before an aggrieved party can resort to the special civil action for certiorari under Rule 65 of the Rules of Court. The rationale for the rule is that the law intends to afford the NLRC an opportunity to rectify such errors or mistakes it may have committed before resort to courts of justice can be

²¹ Id. at 236-238.

²² Id. at 238.

²³ Id. at 241-242.

had. A petition for certiorari inherently requires the filing of a motion for reconsideration, which is the tangible representation of the opportunity given to the office to correct itself. Unless it is filed, there could be no occasion to rectify.

While there are recognized exceptions to this general rule, petitioner has not offered any of those grounds to justify why this petition can be given due course extraordinarily despite such failure by petitioner to avail itself of an available remedy.

WHEREFORE, premises considered, this petition is DISMISSED. The prayer for issuance of a temporary restraining order and/or writ of preliminary injunction is accordingly DENIED.

SO ORDERED.²⁴

In its Motion for Reconsideration, PSMBFI maintained that a motion for reconsideration is not required under the Rules of the NRLC.²⁵ In response to the procedural lapses noted by the CA, PSMBFI clarified that there is no other material date it can declare as compliance with Section 3, Rule 46 of the Rules of Court, precisely because it opted to directly file a Petition for *Certiorari* in lieu of a motion for reconsideration.²⁶

Despite the assertions of PSBMBFI, the CA reiterated that the Petition for Certiorari “suffers from a serious procedural defect that warrants its outright dismissal.”²⁷ The CA was firm that the filing of a motion for reconsideration from the Decision of the NLRC was a *sine qua non* for the filing of a petition for *certiorari*.²⁸ In the Resolution, dated October 10, 2022, the CA denied PSBMBFI’s Motion for Reconsideration.²⁹

The Issue

Did the CA commit reversible error when it dismissed the Petition for *Certiorari* filed by PSBMBFI to question the Decision of the NLRC partially granting the appeal of Lopez and Basto, finding PSBMBFI guilty of illegal dismissal?

The Ruling of the Court

The Petition is patently without merit.

²⁴ Id. at 41.

²⁵ Id. at 44.

²⁶ Id.

²⁷ Id. at 45.

²⁸ Id. at 46.

²⁹ Id. at 49.

A motion for reconsideration is a condition precedent to the filing of a petition for certiorari

Under Section 1, Rule 65 of the Rules of Court, a petition for *certiorari* should only be resorted to when “there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law.” To challenge decisions issued by the NLRC, the NLRC Rules of Procedure provides a plain, speedy, and adequate remedy by way of a motion for reconsideration. Section 15, Rule VII thereof reads:

SECTION 15. MOTIONS FOR RECONSIDERATION. – Motion for reconsideration of any decision, resolution or order of the Commission shall not be entertained except when based on palpable or patent errors; provided that, the motion is filed within ten (10) calendar days from receipt of decision, resolution or order, with proof of service that a copy of the same has been furnished, within the reglementary period, the adverse party; and provided further, that only one such motion from the same party shall be entertained.³⁰

In *Del Monte Land Transport Bus Co. v. Abergos*,³¹ this Court articulated the long settled rule that in instances when it is allowed to be filed, a motion for reconsideration becomes an indispensable condition to the filing of a petition for *certiorari*.

*Lagera v. NLRC*³² is likewise instructive:

The precipitate filing of this special civil action for *certiorari* without first moving for reconsideration of the assailed judgment of NLRC warrants the outright dismissal of this case. As we consistently held in numerous cases, a motion for reconsideration is indispensable for it affords the NLRC an opportunity to rectify errors or mistakes it might have committed before resort to the courts can be had.

It is settled that *certiorari* will lie only if there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law against acts of public respondent. In the case at bar, the plain and adequate remedy expressly provided by law was a motion for reconsideration of the impugned decision, based on palpable or patent errors, to be made under oath and filed within ten (10) days from receipt of the questioned judgment of the NLRC, a procedure which is jurisdictional. Hence, original action of *certiorari*, as in this case will not prosper.³³

³⁰ 2011 NLRC Rules of Procedure.

³¹ G.R. No. 245344, December 2, 2020.

³² 385 Phil. 1087 (2000).

³³ Id. Citations omitted and emphasis supplied.

Verily, the rule is not an absolute bar to petitions for *certiorari* sans motions for reconsideration. The Court has on occasion recognized exceptions, which are recounted in *Sim v. NLRC*:³⁴

Under Rule 65, the remedy of filing a special civil action for *certiorari* is available only when there is no appeal; or any plain, speedy, and adequate remedy in the ordinary course of law. A "plain" and "adequate remedy" is a motion for reconsideration of the assailed order or resolution, the filing of which is an indispensable condition to the filing of a special civil action for *certiorari*. This is to give the lower court the opportunity to correct itself.

There are, of course, exceptions to the foregoing rule, to wit:

(a) where the order is a patent nullity, as where the court *a quo* has no jurisdiction;

(b) where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;

(c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable;

(d) where, under the circumstances, a motion for reconsideration would be useless;

(e) where petitioner was deprived of due process and there is extreme urgency for relief;

(f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;

(g) where the proceedings in the lower court are a nullity for lack of due process;

(h) where the proceeding was *ex parte* or in which the petitioner had no opportunity to object; and

(i) where the issue raised is one purely of law or public interest is involved.

³⁴ 560 Phil. 762 (2007).

Petitioner, however, failed to qualify her case as among the few exceptions. In fact, the Court notes that the petition filed before the CA failed to allege any reason why a motion for reconsideration was dispensed with by petitioner. It was only in her motion for reconsideration of the CA's resolution of dismissal and in the petition filed in this case that petitioner justified her non-filing of a motion for reconsideration.³⁵

Despite these recognized exceptions, it behooves the petitioner to plead the extraordinary circumstances that justify the immediate recourse to a petition for *certiorari*; otherwise, the petition ought to be dismissed.

In this case, PSMBFI failed to allege or offer any justification as to why no motion for reconsideration was filed with the NLRC before the CA. Thus, the CA cannot be faulted for dismissing PSMBFI's Petition for *Certiorari*.

On a final note, the present Petition fails to fully comply with the Court's procedural requirements as it lacks the verified declaration of electronic submission required under Rules on E-filing (A.M. No. 10-3-7-SC) and the Efficient Use of Paper Rule (A.M. No. 11-9-4-SC). Those who come before this Court are reminded that the rules of procedure are essential to the proper, efficient, and orderly dispensation of justice, and as such ought to be diligently complied with.³⁶

WHEREFORE, the Petition for Review on *Certiorari* filed by PSMBFI is **DENIED**. The Resolutions, dated October 29, 2021 and October 10, 2022, of the Court of Appeals in CA-G.R. SP No. 170197 are **AFFIRMED** with the **MODIFICATION** that the total monetary award shall earn legal interest at the rate of six percent (6%) *per annum*, from the finality of this Resolution until full payment.

SO ORDERED.

By authority of the Court:

Misael C. Batt
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court

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³⁵ Id.

³⁶ *Lazaro v. Court of Appeals*, 386 Phil. 412 (2000).

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