

[\[Syllabus\]](#)

## THIRD DIVISION

**[G.R. No. 114132. November 14, 1996]**

**FE M. ALINDAO, *petitioner*, vs. HON. FELICISIMO O. JOSON, in his capacity as the Administrator, Philippine Overseas Employment Administration; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION, and HISHAM GENERAL SERVICES CONTRACTOR, *respondents*.**

### DECISION

**DAVIDE, JR., J.:**

In this petition for *certiorari*, prohibition and *mandamus* under Rule 65 of the Rules of Court, petitioner Fe M. Alindao seeks to set aside the 10 February 1994 Order of respondent Philippine Overseas Employment Administration (POEA) Administrator Felicisimo O. Joson in POEA Case No. (L) 89-08-703, which reversed the 28 November 1990 Order, for having been issued with grave abuse of discretion.

The material facts leading to the instant petition are not disputed.

Petitioner applied, was interviewed and qualified for employment in Saudi Arabia as a laboratory aide, for a term of one year and with a monthly salary of US\$370.00, through private respondent Hisham General Services Contractor (hereinafter Hisham).<sup>[1]</sup> She paid Hisham P15,000.00 as a placement fee, but no receipt was issued. She did not insist on a receipt as she saw her name written in a logbook to record the transaction and Hisham assured her of employment by presenting her passport already stamped with a visa and her plane ticket.

Petitioner left for Saudi Arabia on 9 March 1988. Upon arrival, she was met by a representative of her employer, the Dahem Clinic. She was told she would stay at Alcobar until needed.

Two weeks later, the petitioners employer brought her to his residence and was made to work as a domestic helper. Her employer did not treat her well and paid her only 660 Saudi riyals. The unfair working conditions prompted the petitioner to ask that she be sent home, but she was merely returned to Alcobar. She worked for only a month and six days. From there, she worked at several residences until she saved enough money to return home.

She arrived in the Philippines on 7 July 1989, and filed with the POEA a complaint against Hisham for breach of contract, violation of the terms and conditions of its authority as a service contractor, and violation of the following provisions of the Labor Code: Article 32 (requiring issuances of receipts for fees paid), Article 34 (a) (prohibiting one from charging an amount greater than that specified in the schedule of allowable fees), and Article 34(b) (prohibiting one from furnishing false information in relation to recruitment or employment [misrepresentation]).<sup>[2]</sup> The case was docketed as POEA Case No. (L) 89-08-703.

A request for verification revealed that Hishams license as a service contractor was to expire on 7 March 1991.<sup>[3]</sup>

After appropriate proceedings, POEA Administrator Jose N. Sarmiento handed down on 28

November 1990 in POEA Case No. (L) 89-08-703: (a) a *Decision* on the petitioners money claims; and (b) an *Order* pertaining to the administrative aspect (recruitment) of the case.

The dispositive portion of the *Decision* reads as follows:

In view of the foregoing, respondent Hisham General Services Contractor is hereby ordered to pay complainant the following:

1. US\$3,120 or its peso equivalent based on the current rate of exchange representing the total salary differentials for 12 months at US\$260.00 a month.
2. ₱20,603.00 refund of the plane ticket.

SO ORDERED.<sup>[4]</sup>

The dispositive portion of the *Order* reads:

WHEREFORE, premises considered, respondent Hisham General Services is hereby ordered to refund complainant the amount of ₱13,500.00 representing the excess amount of her placement fee. (as Hisham was licensed merely as a service contractor, it was authorized only to recruit workers for its own employment abroad and to charge a maximum of ₱1,500.00 as documentation expenses.

Further, respondent is hereby ordered suspended for two (2) months or pay a penalty fine of ₱20,000.00 for illegal exaction, and an additional penalty of suspension for two (2) months or fine of ₱20,000.00 for misrepresentation.

It is understood that the penalty of suspension shall be cumulatively served.

SO ORDERED.<sup>[5]</sup>

On 27 December 1990, Hisham appealed the *Decision* to the National Labor Relations Commission (NLRC),<sup>[6]</sup> which docketed the appeal as NLRC NCR CA 00150291, and filed a motion for reconsideration of the *Order* with the POEA.<sup>[7]</sup>

In its resolution of 30 July 1992,<sup>[8]</sup> the NLRC affirmed *in toto* the challenged *Decision*. Hishams motion to reconsider<sup>[9]</sup> the NLRC resolution was denied by the NLRC in its resolution of 17 February 1993.<sup>[10]</sup> The NLRC resolution became final and executory on 4 April 1993 and the corresponding entry of judgment was made on 18 May 1993.<sup>[11]</sup>

On 22 April 1993, the petitioner filed with the POEA a motion for execution of the *Decision* on the money claims,<sup>[12]</sup> which Hisham opposed on 29 April 1993 on the ground that Dahem Clinic was already accredited with another agency.<sup>[13]</sup> On 10 September 1993, the POEA granted the petitioners motion<sup>[14]</sup> and on 7 October 1993, it issued a writ of execution<sup>[15]</sup> which was, however, for execution of both the *Decision* on the money claims and the *Order* in the administrative aspect of the case.

On 14 October 1993, Hisham then filed a motion for clarification and/or modification of the writ of execution, asserting that the *Order* in the administrative case could not be enforced as the motion for reconsideration of the *Order* was still pending with the POEA and remained unresolved.<sup>[16]</sup>

On 10 February 1994, respondent POEA Administrator Felicisimo O. Joson issued the Order subject of this petition, the pertinent portions of which read as follows:

Complainant failed to establish or even show the details of how, when, and where and to whom she paid the amount of ₱15,000.00. [W]e subscribe to the Jurisprudence on this matter that mere general allegations of payment of excessive placement fees cannot be given merit as the charge of illegal exaction is considered a grave offense which could cause the suspension or cancellation of the agencys license and should be proven and substantiated by clear, credible and competent evidence which is not obtaining in the case at bar.

We likewise find unmeritorious the charge of misrepresentation under Article 34 (b) of the Labor Code, as amended. We understand that complainant worked beyond the term of her employment contract which was sixteen (16) months while she was hired for twelve (12) months. We find it improbable that if there was really a violation of the contract, complainant could not have waited for the expiration of said contract much more extended her stay with her employer. Complainants allegations are contrary to the normal reaction of a person who was aggrieved. Taking into consideration her applied position as a laboratory aide which calls for a higher educational qualification than a domestic helper, she could have well asserted her rights and availed of the remedy if not immediately but within a reasonable length of time.

We noted that the alleged change of complainants position was without the knowledge and consent of respondent agency. It was shown that respondent never knew or learned that complainant had a complaint not until after the filing of the instant case. Based from the foregoing circumstances respondents liability is limited if there is substantial evidence that it has committed representation in the processing of complainant which is not obtaining in this case.

WHEREFORE, in the light of the foregoing premises, we find the Motion for Reconsideration [17] meritorious and this case is hereby ordered dismissed. [17]

Respondent Joson took cognizance of Hishams Motion for Reconsideration of the 28 November 1990 *Order* because it was filed prior to the effectivity of the 1991 POEA Rules and Regulations; hence, it was governed by the 198[5] POEA Rules and Regulations.

On 16 March 1994, the petitioner filed this petition for *Certiorari*, Prohibition and *Mandamus*, with prayer for Temporary Restraining Order and/or Writ of Preliminary Injunction, Damages, and Disbarment with this Court. In the main, the petitioner asserts most strongly that the 28 November 1990 Decision had become final and executory, thus respondent Josons 10 February 1994 Order which had the effect of modifying the said decision, was issued with grave abuse of discretion. She maintains that respondent Joson should have applied the 1991 POEA Rules and Regulations, for, being rules of procedure, they may be applied retroactively. She further contends that Hishams appeal of the money claims case carried with it the appeal of the recruitment case, as the POEA could not have disposed of one without disposing of the other; moreover, citing *Nual vs. Court of Appeals*, [18] a final and executory judgment may not be modified even if the modification was meant to correct what was perceived to be erroneous conclusions of fact. As to the propriety of this petition, despite the absence of a motion for reconsideration, the petitioner alleges inadequacy of an appeal or a motion for reconsideration, and the patent nullity of the 10 February 1994 Order. She concludes with a prayer for the reversal of the questioned order, immediate execution of the 28 November 1990 Decision, an award of ₱100,00.00 as exemplary damages, and the disbarment of respondent Joson for professional misconduct. [19]

On 28 July 1994, the Office of the Solicitor General filed its Comment contending that the 28 November 1990 Order imposing administrative disciplinary sanctions for violations not arising from an employer-employee relationship was immediately executory and inappealable pursuant

to Section 6 (Inappealable Disciplinary Cases), Rule V (Appeal), Book VI (Adjudication Rules) and Section 3 (Imposition of Administrative Sanctions Immediately Executory), Rule VI, Book VI (Adjudication Rules) of the 1985 POEA Rules and Regulations. Moreover, while a motion for reconsideration was not expressly prohibited, no provision in the said Rules and Regulations allowed such a motion. Further, even disregarding jurisdictional infirmities, what stands unrebutted is that Hisham committed misrepresentation, breach of contract and illegal exaction. The Office of the Solicitor General continues that under the circumstances, it would have been impossible to require the petitioner to produce a receipt and unreasonable to expect her to have lodged a complaint against Hisham at an earlier time. It then recommends that the petitioners complaint for disbarment be referred to the Integrated Bar of the Philippines for investigation and appropriate action and that the POEA be granted a new period within which to file its

[20]  
Comment.

On 3 January 1995, Hisham filed its Comment and admitted the final and executory nature of the *Decision* on the money claims. However, it points to Section 1, Rule IV, Book VI and Rule V, Book VII of the 1991 POEA Rules and Regulations as support for its thesis that the administrative aspect of the case could not have been deemed final and executory. Hisham then questions the propriety of the petition in light of the non-observance of the rule on exhaustion of administrative remedies, which mandates that the questioned Order should have been first appealed to the Office of the Secretary of the Department of Labor and Employment and the

Office of the President, with resort to this Court on pure questions of law.  
[21]

On 9 March 1995, the POEA filed its Comment wherein it rejects the applicability of the provisions of the 1985 POEA Rules and Regulations cited by the Solicitor General, as such pertain to disciplinary cases against overseas contract workers, not to agencies. It contends that the applicable provision is Section 18, Rule VI, Book II of the 1985 POEA Rules and  
[22] Regulations.  
[23] Moreover, in accordance with POEA Office Order No. 3, Adjudication Office,

Series of 1991,  
[24] it was the POEA Adjudication Office which was empowered to resolve all Motions for Reconsideration filed prior to the effectivity of the 1991 POEA Rules and Regulations. Finally, the POEA claimed that the dispositive portion of the questioned Order dismissing the case merely referred to the recruitment violation and did not include the complaint for money

claims.  
[25]

We gave due course to the petition and required the parties to submit their respective memoranda. Hisham and the POEA adopted their respective Comments as their Memoranda, while the petitioner filed her Memorandum on 23 August 1996.

The petition must be granted.

We first assess the propriety of this special civil action under Rule 65 of the Rules of Court. The petitioner has explained why she forthwith availed of this remedy without first filing a motion to reconsider the assailed order of 10 February 1994. Evidently, she anticipated the invocation of the doctrines requiring the filing of such motion for reconsideration  
[26] and the exhaustion of administrative remedies.  
[27] We rule in her favor. The petition involves a pure question of law and the challenged order is void for want of jurisdiction on the part of respondent Joson. It has been held that the requirement of a motion for reconsideration may be dispensed with in the following instances: (1) when the issue raised is one purely of law; (2) where public interest is involved; (3) in cases of urgency; and (4) where special circumstances warrant immediate or

more direct action.  
[28] On the other hand, among the accepted exceptions to the rule on exhaustion of administrative remedies are: (1) where the question in dispute is purely a legal one; and (2) where the controverted act is patently illegal or was performed without jurisdiction

or in excess of jurisdiction.<sup>[28]</sup>

We likewise agree with the petitioner that the 1991 POEA Rules and Regulations should be given retroactive application. The position taken by respondent Joson on this issue is tenuous. The said Rules and Regulations, not affecting substantive rights, are clearly procedural in nature. It is settled that procedural laws may be given retroactive effect, there being no vested rights in rules of procedure.<sup>[29]</sup>

We have recognized an exception to the rule that where a court has already obtained and is exercising jurisdiction over a controversy, its jurisdiction to proceed to the final determination of the case is not affected by new legislation transferring jurisdiction over such proceedings to another tribunal. This exception is when the change in jurisdiction is curative in character.<sup>[30]</sup> Thus, this Court gave retroactive effect to P.D. No. 1691 which substantially re-enacted Article 217 of the Labor Code after the latter was amended by P.D. No. 1367 by, *inter alia*, removing from the enumeration of cases falling under the exclusive jurisdiction of Labor Arbiters money claims arising from employer-employee relations.<sup>[31]</sup> If this were so, then it is with more reason that the provision of the 1991 POEA Rules and Regulations vesting upon the Secretary of Labor jurisdiction over motions for reconsideration (to be treated as petitions for review) should be given retroactive effect, not only because it is a rule of procedure, but also because it is *remedial or curative* since the 1985 POEA Rules and Regulations is unclear as to the agency which shall resolve such motions. Section 18, Rule VI of Book II of the latter merely states that a motion for reconsideration of an order of suspension or an appeal to the Minister (Secretary) from an order cancelling a license or authority may be entertained only when filed with the LRO within ten (10) working days from service of the order or decision. Office Order No. 3, Series of 1991, dated 14 November 1991 and issued by POEA Adjudication Office Director Jaime P. Jimenez, ordering all Hearing Officers of the Adjudication Office to resolve on or before the end of November 1991 all pending motions for reconsideration filed prior to the effectiveness of the 1991 POEA Rules and Regulations provided no authority for respondent Joson to resolve on 10 February 1994 Hishams motion to reconsider the *Order* of 20 November 1990.

We now examine the pertinent provisions of the 1991 POEA Rules and Regulations. Book VI is entitled Recruitment Violation and Related Cases, while Rule IV (Review) thereof provides the procedure and mechanisms of an appeal from an order of the POEA in recruitment violation cases. Section 1 of Rule IV vests exclusive jurisdiction to review the said cases upon the Secretary of Labor and Employment, while Sections 2 and 3 of Rule IV declare:

Section 2. *When to File.* -- Petitions for review shall be filed within ten (10) calendar days from receipt of the Order by the parties.

All Motions for Reconsideration shall be treated as a petition for review.

Section 3. *Effects of Filing a Petition for Review.* -- The filing of a petition for review shall not automatically stay the execution of the order of suspension unless restrained by the Secretary.

It is thus clear that under the 1991 POEA Rules and Regulations, Hishams Motion for the Reconsideration of the *Order* of 28 November 1990 on the administrative aspect of the case (recruitment, etc.) was to be treated as a petition for review which should have been resolved by the Secretary of Labor and Employment.

We agree, however, with the POEA that the questioned Order of 10 February 1994, taken in its entirety, only pertains to the 28 November 1990 *Order* on the Administrative aspect (recruitment) of the case. Any vague reference to the subject or merits of the *Decision* of 28 November 1990 cannot modify nor amend the *Decision* which had long become final and already the subject of a writ of execution. Such reference is, at worst, merely imprecise

statements which cannot alter the final character of the *Decision*. Even Hisham, in its Comment to the petition, explicitly admits that:

The case filed with the NLRC became final and executory and subject of a writ of execution and [32]  
petitioner at this point in time was able to claim and receive the entire amount of said claim ...

Aside from this statement, however, the record before this Court is bereft of evidence tending to show that the writ of execution as regards the money claims case has indeed been implemented to any extent.

**WHEREFORE**, the instant petition is GRANTED. The challenged Order of 10 February 1994 of respondent POEA Administrator Felicisimo O. Joson in POEA Case No. (L) 89-08-703 is hereby SET ASIDE. The public respondent Philippine Overseas Employment Administration is hereby DIRECTED to transmit the record of the said case to the Secretary of Labor and Employment for the prompt disposition, under the 1991 POEA Rules and Regulations, of the Motion for Reconsideration of the POEA Order of 28 November 1990 on the administrative aspect (recruitment) of the case, and ORDERED to implement with reasonable dispatch the Writ of Execution of 7 October 1993 for the execution of the *Decision* of 28 November 1990 on the money claims.

Costs against the private respondent.

**SO ORDERED.**

*Narvaza, C.J., (Chairman), Melo, Francisco, and Panganiban, JJ.*, concur.

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[1] POEA Information Sheet, Original Record (OR), vol. 1, 1, 14; Employment Contract dated 9 March 1988, *Id.*, 2, 15.

[2] Petitioners affidavit dated 1 August 1989, OR, vol. 1, 7, 12, 22; Petitioners Sworn Statement dated 7 August 1989, *Id.*, vol. 2, 221-226.

[3] *Id.*, vol. 1, 24.

[4] *Id.*, 63.

[5] OR, vol. 1, 73.

[6] *Id.*, 147-154.

[7] *Id.*, 109-114.

[8] *Id.*, 165-171.

[9] *Id.*, 184-188.

[10] *Id.*, 191-192.

[11] *Id.*, 202.

[12] *Id.*, vol. 2, 239-240.

[13] *Id.*, 244-246.

[14] *Id.*, 250-251.

[15] *Id.*, 260.

[16] *Id.*, 269-270.

[17] OR, vol. 2, 271-282; *Rollo*, 33-38.

[18] 221 SCRA 26 [1993].

[19] *Rollo*, 2-32.

[20] *Rollo*, 82-96.

[21] *Id.*, 104-111.

[22] The section provides:

A motion for reconsideration of an order or suspension or an appeal to the Minister from an order cancelling a license or authority may be entertained only when filed with the LRO within ten (10) working days from service of the order or decision.

[23] *Rollo*, 184.

[24] *Id.*, 133-138.

[25] FLORENZ D. REGALADO, REMEDIAL LAW COMPENDIUM, vol. 1, Fifth Rev. Ed. [1988], 459-460, citing Villa-Rey Transit vs. Bello, 7 SCRA 735 [1963]; Liberty Insurance Corp. vs. Court of Appeals, 222 SCRA 37, 47 [1993]; PNCC vs. NLRC, 245 SCRA 668, 674-675 [1995].

[26] Rufino Lopez and Sons, Inc. vs. CTA, 100 Phil. 850, 856-857 [1957]; Cruz vs. Del Rosario, 9 SCRA 755, 758 [1963].

[27] Liberty Insurance Corp. vs. Court of Appeals, *supra* note 25.

[28] Gonzales vs. Hechanova, 9 SCRA 230, 235-236 [1963]; Madrigal vs. Lecaroz, 191 SCRA 20, 26 [1990].

[29] See People vs. Sumilang, 77 Phil. 764, 765-766 [1946]; Alday vs. Camilon, 120 SCRA 521, 523 [1983]; Liam Law vs. Olympic Sawmill Co., 129 SCRA 439, 442 [1984]; Bernardo vs. Court of Appeals, 168 SCRA 439, 443 [1988]; Duremdes vs. Commission on Elections, 178 SCRA 746, 756 [1989]; Ocampo vs. Court of Appeals, 180 SCRA 27, 33 [1989]; Peoples Financing Corp. vs. Court of Appeals, 192 SCRA 34, 40 [1990]; Aris (Phil.) Inc. vs. NLRC, 200 SCRA 246, 256-257 [1991]; Asset Privatization Trust vs. Court of Appeals, 229 SCRA 627, 634 [1994]; Del Rosario vs. Court of Appeals, 241 SCRA 519, 526 [1995]; Diu vs. Court of Appeals, 251 SCRA 472, 481 [1995].

[30] Philippine Long Distance Telephone Co. vs. Dulay, 172 SCRA 31, 41-42 [1989], citations omitted.

[31] *Supra* note 30. See Getz Corp. Philippines vs. Court of Appeals, 116 SCRA 86 [1982]; Sentinel Insurance Co., Inc. vs. Bautista, 127 SCRA 623 [1984]; Atlas Fertilizer Corp. vs. Navarro, 149 SCRA 432 [1987]; Abad vs. Regional Trial Court, 154 SCRA 664 [1987].

[32] *Rollo*, 103.