

**SECOND DIVISION**

**ARTURO M. ROMERO,**  
Petitioner,

**G.R. No. 142803**

Present:

- versus -

QUISUMBING, *J.*,  
Chairperson,  
CARPIO,  
CARPIO MORALES  
TINGA, and  
VELASCO, JR., *JJ.*

**COURT OF APPEALS,  
NATIONAL LABOR RELATIONS  
COMMISSION, CBM  
INTERNATIONAL MANPOWER  
SERVICES, HADI HAIDER &  
BROS. CO., and ELPIDIO TAN,**  
Respondents.

Promulgated:

November 20, 2007

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**R E S O L U T I O N**

**CARPIO, *J.*:**

**The Case**

This petition for review assails the Resolutions dated 29 October 1999<sup>[1]</sup> and 6 March 2000<sup>[2]</sup> of the Court of Appeals in CA-G.R. SP No. 55119. The Court of Appeals dismissed the petition for certiorari filed by petitioner Arturo M. Romero (Romero) questioning the Resolutions dated 12 March 1999 and 31 May 1999 of the National Labor Relations Commission (NLRC).

### **The Antecedent Facts**

On 3 July 1995, Hadi Haider & Bros. Co. (HHBC) hired Romero and deployed him to Saudi Arabia. In October of 1995, HHBC sent back Romero to the Philippines to recruit workers for deployment to Syria. According to Romero, HHBC did not remit his full salary for the period beginning October to December 1995. Romero thus requested for the differential. Instead of receiving his salary differential, Romero received on 6 March 1996 a notice from HHBC terminating his employment as of 19 February 1996. HHBC further instructed Romero to cease recruiting workers in Manila and to return to Saudi Arabia.

Instead of returning to Saudi Arabia, Romero filed a complaint for illegal dismissal against HHBC before the Labor Arbiter. Romero likewise impleaded in his complaint CBM International Manpower Services (CBM), the local recruiter, and its owner Elpidio Tan.

In its Answer, CBM alleged that Romero has no cause of action against it because it was not the agency responsible for deploying Romero to Saudi Arabia.

In a Decision<sup>[3]</sup> dated 27 April 1998, the Labor Arbiter ruled that Romero failed to establish that CBM processed his employment papers and was responsible for his deployment to Saudi Arabia. Hence, the Labor Arbiter dismissed Romeros complaint for lack of merit:

Nowhere in the records of the case, specially in the evidence presented by the complainant, would show or establish the fact that it was the respondent agency which processed the employment papers and was therefore responsible for his

deployment in Saudi Arabia. Although it is an established principle in law that in illegal dismissal cases, it is the employer (or the respondent) that has the burden of proof in showing that the employee concerned was dismissed for a just cause, it is, however, incumbent upon the complainant employee to show the existence of employee-employer relationship, or in this case complainant has to show his relationship with the respondent placement agency and the fact that it was said agency which caused his employment to Saudi Arabia, failing such, his action must necessarily fail.<sup>[4]</sup>

On appeal, the NLRC sustained the decision of the Labor Arbiter in a Resolution dated 12 March 1999.<sup>[5]</sup> The NLRC likewise denied Romeros motion for reconsideration.<sup>[6]</sup>

### **The Court of Appeals Ruling**

The Court of Appeals dismissed the petition based on Section 4, Rule 65 of the 1997 Rules of Civil Procedure, as amended by Circular No. 39-98, which took effect on 1 September 1998.

The Court of Appeals stated that when Romero filed his motion for reconsideration on 26 April 1999, twelve (12) days had elapsed from 14 April 1999, the day Romero received the NLRC Resolution dated 12 March 1999. Since Romero received the denial of his motion for reconsideration on 9 August 1999, the Court of Appeals held that when Romero filed his petition for certiorari on 28 September 1999, sixty two (62) days had lapsed since his receipt of the NLRC Resolution of 12 March 1999. The Court of Appeals thus dismissed Romeros petition for being filed out of time.

### **The Issues**

Petitioner raises the following issues before this Court:<sup>[7]</sup>

- I. Whether the Court of Appeals committed reversible error in dismissing Romero's petition for certiorari for being filed out of time;
- II. Whether the NLRC erred in finding that HHBC did not illegally dismiss Romero; and
- III. Whether the NLRC erred in finding that CBM was not responsible for the recruitment and deployment of Romero.

### **The Courts Ruling**

The petition has merit.

When the Court of Appeals dismissed Romeros petition, Circular No. 39-98, which embodied the amendments to Section 4, Rule 65 of the 1997 Rules of Civil Procedure, was already in effect. The Circular provides:

SEC. 4. *Where and when petition to be filed.* The petition may be filed not later than sixty (60) days from notice of the judgment, order or resolution sought to be assailed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, and unless otherwise provided by law or these Rules, the petition shall be filed in and cognizable only by the Court of Appeals.

If the petitioner had filed a motion for new trial or reconsideration in due time after notice of said judgment, order or resolution, the period herein fixed shall be interrupted. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of such denial. No extension of time to file the petition shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days.

However, Romero claims that the Court of Appeals erred in dismissing his petition since he filed the same within the 60-day reglementary period. According to Romero, he received the Resolution of the NLRC on 14 April 1999 and he filed his Motion for Reconsideration on 26 April 1999, since the 10<sup>th</sup> day, 24 April 1999, fell on a Saturday. Romero posits that 26 April 1999 should now be considered as the 10<sup>th</sup> day, thus he still had a period of fifty (50) days upon receipt of the denial of his motion for reconsideration to file a petition for certiorari under Rule 65 of the Rules of Civil Procedure. Since he received the denial of his motion for reconsideration on 9 August 1999, Romero argues that he filed the petition on time on 29 September 1999.

Romeros argument that 26 April 1999, which is a Monday, should be considered as the 10<sup>th</sup> day considering that the 10<sup>th</sup> day, 24 April 1999, fell on a Saturday is bereft of merit. The case of *Narzoles v. NLRC*<sup>[8]</sup> is instructive on the manner of computation of the 60-day period under Circular No. 39-98:

There is no question that the amendments brought about by Circular No. 39-98, which took effect on September 1, 1998, were already in force, and therefore applicable when petitioners filed their petition. Statutes regulating the procedure of the courts are applicable to actions pending and undetermined at the time of their passage. Procedural laws are retroactive in that sense. No vested rights attach to procedural laws. **Consequently, the CA, in accordance with Circular No. 39-98, correctly deducted the 16 days (the fifteenth day was a Sunday) it took for petitioners to file their motion for reconsideration from the 60 day reglementary period. As petitioners only had the remaining period of 44 days from 19 October 1998, when it received a copy of the resolution denying reconsideration, to file the petition for certiorari, or until 8 December 1998, the filing of the petition on 17 December 1998 was nine (9) days too late.**

<sup>[9]</sup> (Emphasis supplied)

At the time Romero filed his petition for Certiorari before the appellate court, Circular No. 39-98 was already in force, hence the appellate court correctly dismissed his petition. Likewise, Circular No. 39-98 was still in force when Romero filed his motion for reconsideration, thus the appellate court correctly dismissed his motion on the ground that his petition was filed two days late.

However, on 1 September 2000, A.M. No. 00-2-03-SC took effect amending Section 4, Rule 65 of the 1997 Rules of Civil Procedure whereby the 60-day period within which to file the petition starts to run from receipt of notice of the denial of the motion for reconsideration, if one is filed. This Court has in several cases<sup>[10]</sup> ruled that A.M. No. 00-2-03-SC, being a curative statute, should be applied retroactively. In the case of *Narzoles v. NLRC*, we explained the rationale for this retroactive application:

The Court has observed that Circular No. 39-98 has generated tremendous confusion resulting in the dismissal of numerous cases for late filing. This may have been because, historically, i.e., even before the 1997 revision to the Rules of Civil Procedure, a party had a fresh period from receipt of the order denying the motion for reconsideration to file a petition for certiorari. Were it not for the amendments brought about by Circular No. 39-98, the cases so dismissed would have been resolved on the merits. Hence, the Court deemed it wise to revert to the old rule allowing a party a fresh 60-day period from notice of the denial of the motion for reconsideration to file a petition for certiorari. Earlier this year, the Court resolved, in A.M. No. 00-2-03-SC, to further amend Section 4, Rule 65 to read as follows:

Sec. 4. *When and where petition filed.* The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.

The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction or in the Sandiganbayan if it is in aid of its appellate jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed in and cognizable only by the Court of Appeals.

No extension of time to file the petition shall be granted except for compelling reason and in no case exceeding fifteen (15) days.

The latest amendments took effect on September 1, 2000, following its publication in the Manila Bulletin on August 4, 2000 and in the Philippine Daily Inquirer on August 7, 2000, two newspapers of general circulation.

In view of its purpose, the Resolution further amending Section 4, Rule 65 can only be described as curative in nature, and the principles governing curative statutes are applicable.

Curative statutes are enacted to cure defects in a prior law or to validate legal proceedings which would otherwise be void for want of conformity with certain legal requirements. They are intended to supply defects, abridge superfluities and curb certain evils. They are intended to enable persons to carry into effect that which they have designed or intended, but has failed of expected legal consequence by reason of some statutory disability or irregularity in their own action. They make valid that which, before the enactment of the statute was invalid. Their purpose is to give validity to acts done that would have been invalid under existing laws, as if existing laws have been complied with. Curative statutes, therefore, by their very essence, are retroactive.

Accordingly, while the Resolution states that the same shall take effect on September 1, 2000, following its publication in two (2) newspapers of general circulation, its retroactive application cannot be denied. In short, the filing of the petition for certiorari in this Court on 17 December 1998 is deemed to be timely, the same having been made within the 60-day period provided under the curative Resolution. We reach this conclusion bearing in mind that the substantive aspects of this case involves the rights and benefits, even the livelihood, of petitioner-employees.<sup>[11]</sup>(Citations omitted)

In view of the application of A.M. No. 00-2-03-SC, Romeros petition before the Court of Appeals was filed on time.

Considering that the issues on whether HHBC illegally dismissed Romero and whether CBM was responsible for Romeros foreign employment are factual in nature, there is a need to remand this case to the Court of Appeals for proper determination of these issues.

**WHEREFORE**, we **GRANT** the petition. We **SET ASIDE** the Court of Appeals Resolutions of 29 October 1999 and 6 March 2000. We **REMAND** this case to the Court of Appeals for appropriate action.

**SO ORDERED.**

**ANTONIO T. CARPIO**

Associate Justice

**WE CONCUR:**

**LEONARDO A. QUISUMBING**

Associate Justice

Chairperson

**CONCHITA CARPIO MORALES DANTE O. TINGA**

Associate Justice Associate Justice

**PRESBITERO J. VELASCO, JR.**

Associate Justice

**ATTESTATION**

I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Courts Division.



**LEONARDO A. QUISUMBING**

Associate Justice

Chairperson

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairpersons Attestation, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Courts Division.

**REYNATO S. PUNO**

Chief Justice

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<sup>[1]</sup> *Rollo*, p. 43. Penned by Hon. Angelina Sandoval-Gutierrez, concurred in by Hon. Romeo A. Brawner and Martin S. Villarama, Jr.

<sup>[2]</sup> *Id.* at 44-45.

<sup>[3]</sup> *Id.* at 106-109. Penned by Labor Arbiter Emerson C. Tumanon.

<sup>[4]</sup> *Id.* at 108-109.

<sup>[5]</sup> *Id.* at 137-143. Penned by Commissioner Angelita A. Gacutan concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Victoriano T. Calaycay.

<sup>[6]</sup> *Id.* at 157.

<sup>[7]</sup> *Id.* at 275-276.

<sup>[8]</sup> 395 Phil. 758 (2000).

<sup>[9]</sup> *Id.* at 763.

<sup>[10]</sup> *Dela Cruz v. Golar Maritime Services, Inc.*, G.R. No. 141277, 16 December 2005, 478 SCRA 173; *Ramatek Philippines, Inc. v. De Los Reyes*, G.R. No. 139526, 25 October 2005, 474 SCRA 129; *PCI Leasing and Finance, Inc. v. Go Ko*, G.R. No. 148641, 31 March 2005, 454 SCRA 586. .

<sup>[11]</sup> *Supra* note 8, at 763-765.