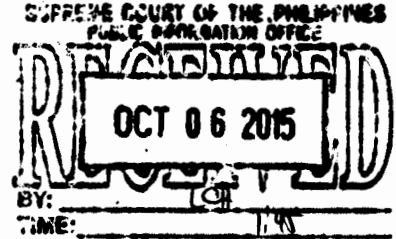




REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE



Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **16 September 2015** which reads as follows:

G.R. No. 212869 – Pharmacia Phils., Inc., (now Pfizer, Inc.) v. Christine A. Alcala

This is a petition for review on *certiorari* seeking to reverse and set aside the September 9, 2013 Decision¹ and the May 14, 2014 Resolution² of the Court of Appeals (CA) which affirmed the August 16, 2012 Resolution³ of the National Labor Relations Commission (NLRC), in LER Case No. 02-029-12, in a case involving execution of a judgment ordering reinstatement and payment of backwages pending appeal.

The Antecedents

Respondent Christine A. Alcala (*Alcala*) was a former employee of Searle Philippines (*Searle*), a pharmaceutical firm, for seven years. When Searle ceased its business operations; Alcala was hired by petitioner Pharmacia Phils., Inc. (*PPI*) as a medical representative for a probationary period of six months or from July 1, 2001 up to December 31, 2001.

In a letter, dated December 28, 2001, Alcala's employment was terminated effective January 1, 2002 on the ground that her behavior and performance were below the work standards of the company.⁴

Aggrieved, Alcala filed a complaint for illegal dismissal, unfair labor practice, damages, and attorney's fees before the Labor Arbiter (*LA*). She contended that the termination of her probationary employment was triggered by her signing of union documents. She explained that her performance and behavior could not have fallen below the working standards of the company as she had been performing the same task and work with Searle for seven years. Alcala added that no reasonable standards by which she would qualify for regular employment were made known to her by PPI.

PPI, on the other hand, countered that Alcala's termination was done in good faith. Compared to the other probationary employees, she ranked the lowest after the evaluation of their performance. The employees, including

¹ Penned by Associate Justice Marlene Gonzales-Sison, with Associate Justice Hakim S. Abdulwahid and Associate Justice Edwin D. Sorongon, concurring; *rollo*, pp. 47-59.

² *Id.* at 62-65.

³ Penned by Commissioner Herminio V. Suelo, with Presiding Commissioner Angelo Ang Palana and Commissioner Numeriano D. Villena, concurring; *id.* at 151-161.

⁴ *Id.* at 67.

Alcala, were evaluated based on the following criteria: (a) Year to Date Sales Performance; (b) Performance of the Products she handled; (c) Medical doctor call rate; (d) Market share based on Drug Distribution Data; (e) Product knowledge and selling skills; and (f) Building trust and integrity in action.⁵

Ruling of the LA

In its Decision,⁶ dated July 15, 2003, LA Fedriel Panganiban (*LA Panganiban*) ruled that Alcala was illegally dismissed. He explained that the absence of any reminder or memo that she was to be graded along such criteria, much less, that she was deficient under the said standards, underscored the fact that she was not apprised of the standard. Further, the timing by which her probation was terminated or three days prior to its completion without furnishing her the results of such evaluation, rendered it suspicious. Due to PPI's failure to apprise Alcala of the standards by which she would qualify as regular employee at the time of her employment, she became a regular employee. The dispositive portion reads:

WHEREFORE, premises considered, the dismissal of the complainant is hereby declared illegal. Respondent is hereby ordered to reinstate the complainant to her former position without loss of seniority rights and other privileges with full backwages until actually reinstated which amount to date is computed in the total sum of ₱223,500.00, plus ten percent (10%) thereof as and for attorney's fee.

All other claims are hereby dismissed for lack of merit.

SO ORDERED.⁷

Aggrieved, PPI filed its appeal before the NLRC.

Meanwhile, on February 5, 2004, Alcala filed a motion for the issuance of a writ of execution regarding the reinstatement aspect. On October 13, 2005, she filed her second motion for the issuance of a writ of execution.

Ruling of the NLRC

On November 28, 2007, the NLRC *reversed* the ruling of LA Panganiban. The NLRC found substantial evidence which showed that Alcala was properly informed of the reasonable standards of regularization.

⁵ Id. at 68.

⁶ Id. at 67-71.

⁷ Id. at 70-71.

It appears that Alcalá was made to accomplish a Mid-Year Review Form at the start of her employment. In the box of Professional and Career Aspirations, she wrote the following: (1) To be a regular employee after six months probationary period; (2) To stay long in the company; and (3) Career advancement from a medical representative to district sales supervisor, two to three years from now.⁸

Alcalá's listed commitments coincided with the standards or criteria for assessing her sales performance. On the basis of these commitments, her performance was measured and monitored by her immediate supervisor. She also did not deny that her performance was unsatisfactory. Hence, there was a valid basis for PPI to terminate her employment.

On October 16, 2009, LA Panganiban voluntarily inhibited from hearing the motion because the NLRC reversed his decision.

On October 18, 2011, Alcalá filed a third motion for issuance of a writ of execution, this time, before LA Antonio Macam (*LA Macam*). PPI then filed its manifestation opposing the third motion for execution.

On December 13, 2011, as the motions for execution remained unresolved, Alcalá filed a motion to resolve pending motions for issuance of a writ of execution.⁹

On January 6, 2012, LA Macam issued an Order (*January 2012 Order*), approving the re-computation of the monetary award. The Computation of Monetary Award as per Decision of the First Division,¹⁰ dated November 28, 2007, was as follows:

Period	Mos.	Rate	Basic Monthly	13 th Month Pay	SILP	Total
July 15, 2003 to November 28, 2007	52.43	11,000	576,730	48,060.83	9242.83	634,033.33

The re-computation included the accrued salaries of Alcalá from the time of the promulgation of the LA Decision until its reversal by the NLRC.

⁸ Id. at 77.

⁹ Id.

¹⁰ Id. at 90.

Consequently, Alcala again filed a motion for alias writ of execution,¹¹ dated September 10, 2012, before LA Macam, which PPI opposed in its Comment/Opposition,¹² dated September 19, 2012.

Meanwhile, on February 17, 2012, PPI filed a petition with prayer for the issuance of temporary restraining order and writ of preliminary injunction¹³ (*February 2012 petition*) before the NLRC, seeking to annul the January 2012 Order which approved the re-computation of the monetary award in favor of Alcala.

On August 16, 2012, the NLRC issued its Resolution,¹⁴ denying the February 2012 petition. PPI filed its motion for reconsideration but it was again denied in a Resolution, dated September 21, 2012.

Two separate petitions for *certiorari* under Rule 65 of the Rules of Court were filed by Alcala and PPI before the CA, docketed as CA-G.R. SP No. 104671 and CA-G.R. SP No. 127574, respectively. Alcala's petition was with respect to the reinstatement aspect, while PPI's petition assailed the August 16, 2012 and September 21, 2012 resolutions of the NLRC.

Ruling of the CA

CA-G.R. SP No. 104671

On August 28, 2008, the CA issued a Resolution dismissing the petition for being filed out of time. Alcala filed a motion for reconsideration but her motion was denied in the Resolution, dated January 15, 2009.¹⁵

Alcala then filed a petition for review on *certiorari*, docketed as G.R. No. 186086, before the Supreme Court. Subsequently, the petition was denied in a Resolution,¹⁶ dated April 15, 2009, for failure to show any reversible error on the part of the CA.

CA-G.R. SP No. 127574

On September 9, 2013, the CA promulgated the assailed decision affirming the August 16, 2012 and September 21, 2012 Resolutions of the NLRC.¹⁷ The CA reasoned that the LA declared Alcala as a regular employee entitled to reinstatement and the payment of backwages. The

¹¹ Id. at 189-190.

¹² Id. at 192-195.

¹³ Id. at 96-118.

¹⁴ Id. at 151-161.

¹⁵ Id. at 84.

¹⁶ Id. at 87.

¹⁷ Id. at 58.

reinstatement aspect of the LA's decision, albeit under appeal was immediately enforceable. The regular status of Alcalá remained until the contrary was found by the NLRC.¹⁸

Thus, Alcalá had the right to collect her accrued salaries during the period between the LA's decision ordering her reinstatement pending appeal and the NLRC resolution overturning the same because PPI's failure to reinstate her, either actually or through payroll, was due to its unjustified refusal to effect reinstatement.¹⁹

Hence, this petition.

ISSUE

WHETHER ALCALÁ IS ENTITLED TO COLLECT ₱634,033.33 AS PAYMENT FOR BACKWAGES COMPUTED FROM THE PERIOD BETWEEN THE LA DECISION ORDERING HER REINSTATEMENT PENDING APPEAL AND THE NLRC RESOLUTION OVERTURNING THE SAME.

In its petition for review on *certiorari* with prayer for the issuance of a Temporary Restraining Order and a Writ of Preliminary Injunction,²⁰ PPI averred that Alcalá, as a probationary employee, only had a right to backwages until the end of her contract of probationary employment. Even assuming that Alcalá was entitled to backwages, the same could no longer be executed as she failed to obtain a writ of execution prior to the NLRC's reversal of the LA's Decision. PPI's comments or oppositions did not prevent the LA from issuing the writ of execution in favor of Alcalá.

In her comment,²¹ Alcalá contended that the arguments of PPI had already been ruled upon by the NLRC and the CA. An award by the LA for reinstatement shall be immediately executory even pending appeal. Moreover, the rule that a final judgment may be executed by mere motion within five years from the date of entry of judgment is not absolute and admits one notable exception, that is, when the delay in enforcing the judgment is caused by the party assailing the filing of the motion. In addition to the accrued wages, Alcalá prayed that PPI pay legal interest of 12% per annum plus attorney's fees until their full satisfaction.²²

¹⁸ Id. at 53.

¹⁹ Id. at 56.

²⁰ Id. at 14-39.

²¹ Id. at 50-73.

²² Id. at 310.

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In its Reply,²³ PPI reiterated its stand that the failure to reinstate Alcala was due to the inaction of the LA for four years. On that ground alone, Alcala was already barred from recovering any accrued wages. She could not legally recover the amount of ₱634,033.30, or that computed until November 28, 2007, as such date was clearly beyond the expiration of her probationary employment contract, December 31, 2001.

The Court's Ruling

The petition is bereft of merit.

*Award or order of reinstatement
is immediately executory*

The requirement for employers to pay wages to employees obtaining favorable rulings in illegal dismissal suits pending appeal is statutorily mandated under the second paragraph of Article 223 of the Labor Code, which states:

In any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be executory, even pending appeal. The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation or, at the option of the employer, merely reinstated in the payroll. The posting of a bond by the employer shall not stay the execution for reinstatement provided herein.

Article 223 gives employers two options, namely: to (1) actually reinstate the dismissed employees; or (2) constructively reinstate them in the payroll. Either way, this must be done immediately upon the filing of their appeal, without need of any executory writ.²⁴

Reinstatement pending appeal necessitates that it must be immediately self-executory without need for a writ of execution during the pendency of the appeal, if the law is to serve its noble purpose, and any attempt on the part of the employer to evade or delay its execution should not be allowed.²⁵ Unless there is a restraining order issued, it is ministerial upon the LA to implement the order of reinstatement.

In this case, PPI, anchoring on its stand that Alcala as a probationary employee is not entitled to reinstatement salaries for the period beyond her probationary contract, did not immediately admit her back to work.

²³ Id. at 295-327.

²⁴ *Magana v. Mediacard Philippines, Inc.*, 653 Phil. 286, 293 (2010).

²⁵ *Pfizer, Inc. v. Velasco*, 660 Phil. 434, 455 (2011).

According to the law, reinstatement should have been done as soon as an order or award of reinstatement was handed down by the LA without the need for the issuance of writ of execution. In spite of the reversal of the LA's decision by the NLRC, Alcala is still entitled to the payment of backwages from the moment she was ordered reinstated per LA Decision. **From the LA decision up until the reversal by the NLRC, Alcala was classified as a regular employee and, thus, entitled to reinstatement salaries.**

Alcala is not barred from collecting the accrued wages

PPI heavily relied on *Garcia v. Philippine Airlines, Inc.*,²⁶ where it was held that an employee may be barred from collecting the accrued wages after the reversal of the LA order if it would be shown that the delay in enforcing the reinstatement pending appeal was without fault on the part of the employer.

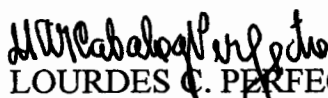
It must be noted, however, that Alcala filed several motions for execution even when there was no need to do the same. In spite of such fact, no reinstatement or payment was ever effected in her favor. PPI cannot simply point its fingers to the LA and NLRC in not issuing a writ of execution. As the employer, PPI was obliged to reinstate Alcala and pay her the corresponding wages during the period of appeal until the reversal of the decision.

PPI could not give any concrete justification as to why it failed to reinstate Alcala pending appeal. There was no showing that PPI was suffering from financial losses or that her position was dissolved. In the Court's mind, PPI simply refused to reinstate Alcala without any acceptable reason. This is contrary to the clear mandate of Article 223 of the Labor Code.

WHEREFORE, the petition is **DENIED**. The September 9, 2013 Decision and May 14, 2014 Resolution of the Court of Appeals in CA-G.R. SP No. 127574 is **AFFIRMED** in toto. (*Brion, J., on leave, Perez, J., designated Acting Member, per Special Order No. 2191, dated September 16, 2015; Del Castillo, J., recused himself from the case due to close relationship to a member of the law firm representing a party; Jardeleza, J., designated Additional Member, per Raffle, dated September 22, 2014*)

SO ORDERED. "

Very truly yours,


MA. LOURDES C. PERFECTO
Division Clerk of Court

²⁶ 596 Phil. 510-586 (2009).

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