

SOCIAL JUSTICE IN THE AWARD OF REINSTATEMENT PAY IN
PHILIPPINE TERMINATION DISPUTES
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Chapter 1
INTRODUCTION

Social Justice in the Philippine Legal Framework

Social justice was expressly declared as a state principle in the 1935 Philippine Constitution. Section 5 of Article 2, Declaration of Principles provides:

SEC. 5. The promotion of social justice to insure the well-being and economic security of all the people should be the concern of the State.¹

Social Justice as philosophy of law in Philippine jurisprudence was first defined in the case of MAXIMO CALALANG, v. A. D. WILLIAMS, ET AL.,². In the said case, the Supreme Court declared social justice as:

Social justice is "neither communism, nor despotism, nor atomism, nor anarchy," but the humanization of laws and the equalization of social and economic forces by the State so that justice in its rational and objectively secular conception may at least be approximated. Social justice means the promotion of the welfare of all the people, the adoption by the Government of measures calculated to insure economic stability of all the competent elements of society, through the maintenance of a proper economic and social equilibrium in the interrelations of the members of the community, constitutionally, through the adoption of measures legally

¹ (1935 Philippine Constitution)

² (MAXIMO CALALANG, v. A. D. WILLIAMS, ET AL., , 1940)

justifiable, or extra-constitutionally, through the exercise of powers underlying the existence of all governments on the time-honored principle of *salus populi est suprema lex*.

Social justice, therefore, must be founded on the recognition of the necessity of interdependence among divers and diverse units of a society and of the protection that should be equally and evenly extended to all groups as a combined force in our social and economic life, consistent with the fundamental and paramount objective of the state of promoting the health, comfort, and quiet of all persons, and of bringing about "the greatest good to the greatest number."

When the 1973 Philippine Constitution was drafted, the framers decided to expand social justice as a state principle. Thus, Section 6 of Article 2, Declaration of State Principles provides:

SEC. 6. The State shall promote social justice to ensure the dignity, welfare, and security of all the people. Towards this end, the State shall regulate the acquisition, ownership, use, enjoyment, and disposition of private property, and equitably diffuse property ownership and profits.³

After the EDSA Revolution, the 1987 Philippine Constitution was drafted. The Constitutional Commission not only declared social justice as a guiding principle, to wit:

³ (1973 Philippine Constitution)

The State shall promote social justice in all phases of national development.⁴

but deemed it proper to devote one article of the constitution to social justice alone. For purposes of this paper, the provisions of social justice in labor are as follows:

The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and

⁴ (1987 Philippine Constitution)

the right of enterprises to reasonable returns to investments, and to expansion and growth.⁵

Social justice is not only a philosophy of law but a state principle not only applied in Philippine jurisprudence, particularly in the labor termination disputes but deeply entrenched in our Philippine Constitution. This paper will briefly discuss the concept of social justice and illustrate the application of such concept in Philippine termination disputes specifically in the award of reinstatement pay.

⁵ *(1987 Philippine Constitution)*

Chapter 2 DISCUSSION

Social Justice as Philosophy of Law

Matthew Robinson in his article defined Social justice as "... promoting a just society by challenging injustice and valuing diversity." It exists when "all people share a common humanity and therefore have a right to equitable treatment, support for their human rights, and a fair allocation of community resources." In conditions of social justice, people are "not be discriminated against, nor their welfare and well-being constrained or prejudiced on the basis of gender, sexuality, religion, political affiliations, age, race, belief, disability, location, social class, socioeconomic circumstances, or other characteristic of background or group membership" (Toowoomba Catholic Education, 2006).⁶

Social justice is generally equated with the notion of equality or equal opportunity in society. Although equality is undeniably part of social justice, the meaning of social justice is actually much broader (Scherlen and Robinson, 2008).⁷

Two of the most prominent statements about social justice, each of which posits its own theory of social justice, are John Rawls' (2003) *Justice as Fairness* and David Miller's (2003) *Principles of Social Justice*.⁸

⁶ (Matthew Robinson)

⁷ (Matthew Robinson)

⁸ (Matthew Robinson)

Rawl's Social Justice

To Rawls, social justice is about assuring the protection of equal access to liberties, rights, and opportunities, as well as taking care of the least advantaged members of society. Thus, whether something is just or unjust depends on whether it promotes or hinders equality of access to civil liberties, human rights, opportunities for healthy and fulfilling lives, as well as whether it allocates a fair share of benefits to the least advantaged members of society.⁹

Rawls' conception of social justice is developed around the idea of a social contract, whereby people freely enter into an agreement to follow certain rules for the betterment of everyone, without considering the implications of these rules for their own selfish gain. Rawls posits that rational, free people will agree to play by the rules under fair conditions and that this agreement is necessary to assure social justice because public support is critical to the acceptance of the rules of the game (Rawls, 2003: 27-28). These rules or principles "specify the basic rights and duties to be assigned by the main political and social institutions, and they regulate the division of benefits arising from social cooperation and allot the burdens necessary to sustain it" (Rawls, 2003: 7).¹⁰

Miller's Social Justice

To Miller, social justice deals with the distribution of good (advantages) and bad (disadvantages) in society, and more specifically with how these things should be distributed

⁹ (Matthew Robinson)

¹⁰ (Matthew Robinson)

within society. Further, social justice is concerned with the ways that resources are allocated to people by social institutions (Miller, 2003: 11). Some of the advantages relevant for social justice include money, property, jobs, education, medical care, child care, care for the elderly, honors and prizes, personal security, housing, transportation, and opportunities for leisure. Some of the disadvantages include military service, dangerous work, and other hardships. Keep in mind that Miller's theory applies to both public goods as well as private commodities (Miller, 2003: 10).¹¹

Whether something is just or unjust thus depends on whether advantages and disadvantages are distributed appropriately in society. Miller (2003: 1) explains that when "we attack some policy or some state of affairs as socially unjust, we are claiming that a person, or more usually a category of persons, enjoys fewer advantages than that person or group of persons ought to enjoy (or bears more of the burdens than they ought to bear), given how other members of the society in question are faring."¹²

When considering policies to allocate advantages and disadvantages, we must not judge them based on how they benefit us personally: "Justice is about assigning benefits whose values are established by their worth to the relevant population taken as a whole, and it must be blind to personal preferences (Miller, 2003: 8, emphasis added). Further, Miller (2003: 22) says that "justice fundamentally requires us to treat people as equals; or we should understand justice as what people would agree to in advance of knowing their own

¹¹ (Matthew Robinson)

¹² (Matthew Robinson)

stake in the decision to be reached." Social justice efforts can not merely be rationalizations of self-interest (Miller, 2003: 87).¹³

Social justice is a social virtue that pertains to what you are due or owed, as well as what you owe others (Miller, 2003: 21, 33). It requires that everyone agrees to treat others as equals in a manner that is not egocentric or selfish. This does not mean that everyone has to agree on all procedures to bring about justice, for people generally agree on what justice demands (this is called the stability of justice) (Miller, 2003: 24).¹⁴

Inequalities in society are at times just. There are at least two reasons for this. First, economic inequalities that motivate people to strive for more can sometimes be justified. Second, inequalities may result from differential claims on merit. That is, those individuals who are more meritorious because of their performances deserve more than those who are less meritorious because of their education, skills, and performances (Miller, 2003: 68-70). Yet, Miller (2003: 70) notes that today's economic disparities are not acceptable. Further, he asserts that citizens believe: 1) the gap between the rich and the poor today is too large; 2) the bottom wage is not a living wage; and 3) the amount of money being paid to those at the top have not earned it (Miller, 2003: 71).¹⁵

To call for a living wage is not to embrace a form of communism or socialism, rather it is based on the recognition that everyone who is working -- regardless of job -- deserves a salary to provide for basic necessities. Salaries can still be based on education level, skill level, degree of responsibility associated with the job, dangers faced, and so forth (Miller,

¹³ (Matthew Robinson)

¹⁴ (Matthew Robinson)

2003: 78, 83). This means social justice is not inconsistent with a market economy (Miller, 2003: 109).¹⁶

Social justice as a Standard in the Award of Reinstatement Pay in Termination Disputes

In a termination dispute, the basic issue is the validity of the termination. It must be emphasized that workers are entitled to the right of security of tenure thus under Article 279 of the Labor Code, if the termination is illegal, the dismissed employee is entitled to the immediate relief of reinstatement and backwages. If it is the Labor Arbiter who orders the reinstatement, the reinstatement is automatic without the need for a writ of execution. It is the obligation of the employer to communicate within ten (10) days from receipt of the decision of the Labor Arbiter to communicate the choice of the mode of reinstatement (either actual or payroll). The backwages shall then be computed from the time the worker was illegally dismissed until the actual reinstatement.

The case, *Garcia et al. vs. Philippine Airlines*¹⁷, decided *en banc* by the Supreme Court illustrates the application of social justice in reversing a doctrine based on unjust enrichment.

Garcia et al. vs. Philippine Airlines: A Critique

In this case, the Supreme Court rendered a doctrinal ruling which reversed an earlier ruling which required a dismissed employee to refund the salary received due to reinstatement ordered by the Labor Arbiter but which was reversed on appeal. To justify the

¹⁵ (Matthew Robinson)

¹⁶ (Matthew Robinson)

¹⁷ (*Juanito Garcia and Alberto Dumago, 2009*)

reversal of the said ruling, the Supreme Court applied the principle of social justice as counterweight to the principle of unjust enrichment.

The case stemmed from the administrative charge filed by PAL against its employees Juanito A. Garcia and Alberto J. Dumago, after they were allegedly caught in the act of sniffing shabu when a team of company security personnel and law enforcers raided the PAL Technical Center's Toolroom Section on July 24, 1995.

After due notice, PAL dismissed both employees for transgressing the PAL Code of Discipline, prompting them to file a complaint for illegal dismissal and damages which was resolved by the Labor Arbiter in their favor, thus ordering PAL to, *inter alia*, immediately comply with the reinstatement aspect of the decision.

From the Labor Arbiter's decision PAL appealed to the NLRC which reversed said decision and dismissed petitioners' complaint for lack of merit.

Petitioners' Motion for Reconsideration was denied and an Entry of Judgment was issued on July 13, 2000. Subsequently or on October 5, 2000, the Labor Arbiter issued a Writ of Execution (Writ) respecting the reinstatement aspect of his January 11, 1999 Decision, and on October 25, 2000, he issued a Notice of Garnishment (Notice). Respondent thereupon moved to quash the Writ and to lift the Notice while petitioners moved to release the garnished amount.

PAL elevated the matter to the appellate Court of Appeals which issued the herein challenged Decision and Resolution nullifying the NLRC Resolutions on two grounds, essentially espousing that: (1) a subsequent finding of a valid dismissal removes the basis

for implementing the reinstatement aspect of a labor arbiter's decision (the first ground), and (2) the impossibility to comply with the reinstatement order due to corporate rehabilitation provides a reasonable justification for the failure to exercise the options under Article 223 of the Labor Code (the second ground).

In view of the termination of the rehabilitation proceedings, the Court now proceeds to resolve the remaining issue for consideration, which is whether Juanito A. Garcia and Alberto J. Dumago may collect their wages during the period between the Labor Arbiter's order of reinstatement pending appeal and the NLRC decision overturning that of the Labor Arbiter, now that respondent has exited from rehabilitation proceedings.

The appellate court counted on as its first ground the view that a subsequent finding of a valid dismissal removes the basis for implementing the reinstatement aspect of a labor arbiter's decision.

There were divergent decisions concerning reinstatement pending appeal or, particularly, the option of payroll reinstatement. On the one hand is the jurisprudential trend as expounded in a line of cases including *Air Philippines Corp. v. Zamora*, while on the other is the recent case of *Genuino v. National Labor Relations Commission*. At the core of the seeming divergence is the application of paragraph 3 of Article 223 of the Labor Code which reads:

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, 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.

In other words, a dismissed employee whose case was favorably decided by the Labor Arbiter is entitled to receive wages pending appeal upon reinstatement, which is immediately executory. Unless there is a restraining order, it is ministerial upon the Labor Arbiter to implement the order of reinstatement and it is mandatory on the employer to comply therewith.

The opposite view was articulated in *Genuino* which states:

If the decision of the labor arbiter is later reversed on appeal upon the finding that the ground for dismissal is valid, then the employer has the right to require the dismissed employee *on payroll reinstatement* to refund the salaries s/he received while the case was pending appeal, or it can be deducted from the accrued benefits that the dismissed employee was entitled to receive from his/her employer under existing laws, collective bargaining agreement provisions, and company practices. However, if the employee was reinstated to work during the pendency of the appeal, then the employee is entitled to the compensation received for actual services rendered without need of refund.

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It has thus been advanced that there is no point in releasing the wages to petitioners since their dismissal was found to be valid, and to do so would constitute unjust enrichment.

The above stated principle laid down in the *Genuino* case was reversed by the Supreme Court by applying social justice as a philosophy of law. The Supreme Court ruled:

[T]he law itself has laid down a compassionate policy which, once more, vivifies and enhances the provisions of the 1987 Constitution on labor and the working man.

These duties and responsibilities of the State are imposed not so much to express sympathy for the workingman as to forcefully and meaningfully underscore labor as a primary social and economic force, which the Constitution also expressly affirms with equal intensity. Labor is an indispensable partner for the nation's progress and stability.

In short, with respect to decisions reinstating employees, the law itself has determined a sufficiently overwhelming reason for its execution pending appeal.

Then, by and pursuant to the same power (police power), the State may authorize an immediate implementation, pending appeal, of a decision reinstating a dismissed or separated employee since that saving act is designed to stop, although temporarily since the appeal may be decided in

favor of the appellant, a continuing threat or danger to the survival or even the life of the dismissed or separated employee and his family.

As opined by the majority of the Supreme Court, the social justice principles of labor law outweigh or render inapplicable the civil law doctrine of unjust enrichment espoused by Justice Presbitero Velasco, Jr. in his Separate Opinion. The constitutional and statutory precepts portray the otherwise “unjust” situation as a condition affording full protection to labor.

Even outside the theoretical trappings of the discussion and into the mundane realities of human experience, the “refund doctrine” easily demonstrates how a favorable decision by the Labor Arbiter could harm, more than help, a dismissed employee. The employee, to make both ends meet, would necessarily have to use up the salaries received during the pendency of the appeal, only to end up having to refund the sum in case of a final unfavorable decision. It is a mirage of a stop-gap leading the employee to a risky cliff of insolvency.

The Supreme Court further ruled that the *Genuino* ruling not only disregards the social justice principles behind the rule, but also institutes a scheme unduly favorable to management. Under such scheme, the salaries dispensed *pendente lite* merely serve as a bond posted in installment by the employer. For in the event of a reversal of the Labor Arbiter’s decision ordering reinstatement, the employer gets back the same amount without having to spend ordinarily for bond premiums. This circumvents, if not directly contradicts, the proscription that the “posting of a bond [even a cash bond] by the employer shall not stay the execution for reinstatement.”

In playing down the stray posture in *Genuino* requiring the dismissed employee on payroll reinstatement to refund the salaries in case a final decision upholds the validity of the dismissal, the Court realigns the proper course of the prevailing doctrine on reinstatement pending appeal vis-à-vis the effect of a reversal on appeal.

Indeed, it is odd to even think to require a worker to refund the salary he received by reason of reinstatement if the same is later on reversed on appeal. Thus, the Supreme Court's ruling reversing the earlier doctrine declared in the *Genuino* case is more in keeping with the principle of social justice as enunciated in the 1987 Constitution and taking care of the least advantaged members of society.

Regrettably however, the above ratiocination by the Supreme Court did not result to a favorable ruling to the petitioners, Garcia and Dumago. The decision turned on different twist after the Supreme Court considered the fact that the delay in the reinstatement of the said petitioners was not intentional but was on account that PAL was undergoing corporate rehabilitation. It must be pointed out that social justice also demands to "follow certain rules for the betterment of everyone, without considering the implications of these rules for their own selfish gain". Thus, considering that there was a judicial order for the corporate rehabilitation of PAL compliance with the rules on corporate rehabilitation had the effect of suspending payment of claims by legislative fiat which partakes of the nature of a restraining order that constitutes a legal justification for respondent's non-compliance with the reinstatement order. PAL's failure to exercise the alternative options of actual reinstatement and payroll reinstatement was thus justified. Such being the case, PAL's obligation to pay the salaries pending appeal, as the normal effect of the non-exercise of the options, did not attach.

Social justice is so pervasive in termination disputes by reason of constitutional mandate. However, in the application of such philosophy of law, while the state attempts to equalize the relationship of labor vis-à-vis the employers, there must be observance of rules.

Bibliography

- 1935 Philippine Constitution. (n.d.).
- Maximo Calalang, v. A. D. Williams, et al., G.R. No. 47800 (Supreme Court of the Philippines December 2, 1940).
- 1973 Philippine Constitution. (n.d.).
- 1987 Philippine Constituion. (n.d.). Section 10, Article 2.
- 1987 Philippine Constitution. (n.d.). Section 3, Article 13.
- Juanito Garcia and Alberto Dumago, G.R. No. 164856 (Supreme Court of the Philippines January 20, 2009).
- Matthew Robinson, P. (n.d.). *What is Social Justice?* Retrieved October 10, 2014, from Department of Government and Justice Studies Appalachian State University: <http://gjs.appstate.edu/social-justice-and-human-rights/what-social-justice>