795 Phil. 891

SECOND DIVISION

[G.R. No. 218009. September 21, 2016]

MARVIN G. FELIPE AND REYNANTE L. VELASCO, PETITIONERS, VS. DANILO DIVINA TAMAYO KONSTRACT, INC. (DDTKI) AND/OR DANILO DIVINA TAMAYO, PRESIDENT/OWNER, RESPONDENTS.

D E C I S I O N

MENDOZA, J.:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking the annulment of the March 27, 2013 Decision[1] and the March 26, 2015 Resolution[2] of the Court of Appeals (*CA*) in CA-G.R. SP No. 123413, which affirmed the September 30, 2011 Decision[3] and the December 7, 2011 Resolution[4] of the National Labor Relations Commission (*NLRC*), in a case of illegal dismissal filed by petitioners Marvin G. Felipe (*Felipe*) and Reynante L. Velasco (*Velasco*) against respondents Danilo Divina Tamayo Konstract, Inc. (*DDTKI*) and its president/owner, Danilo Divina Tamayo (*Tamayo*).

The Antecedents:

DDTKI hired Felipe as Formworks Aide on December 19, 2005, and Velasco as Warehouse Aide on March 14, 2007. Felipe and Velasco claimed regular employment status for having continuously worked for DDTKI until September 2010 when they were no longer given working assignments. They wrote a letter, dated September 28, 2010, to the respondents inquiring about their employment status and why they were not transferred to the Glorietta Project which supposedly started on September 17, 2010, based on a document denominated as a Manpower Requisition Form (*MRF*). The respondents, however, did not reply to their letter.[5]

On October 12, 2010, Felipe and Velasco filed their complaint for illegal dismissal and non-payment of service incentive leave and 13th month pay against the respondents before the arbitration branch of the NLRC.[6]

The respondents, on the other hand, claimed that the petitioners were former project employees of DDTKI who were hired for a particular project. They presented various project employment contracts duly signed by Felipe and Velasco to support their claim that these employees were hired for specific construction projects for a specific period, and that they were informed of the nature and duration of their employment from the beginning of their engagement.[7]

The respondents further averred that as of September 2010, Felipe and Velasco were not rehired as the company "did not need any more workers after the completion of their respective projects." After the completion of their last project, the US Embassy New Office Annex 1 Project (MNOX-1), Felipe and Velasco were not rehired and their termination was reported to the Department of Labor and Employment (*DOLE*) as "completion of phase of work." DDTKI stressed that they were never employed for the Glorietta Project and the illegally obtained MRF, a confidential document of DDTKI, did not serve as its employment contract with Felipe and Velasco.[8]

At the Labor Level

On March 28, 2011, the Labor Arbiter (*LA*) rendered his decision[9] dismissing the complaint for utter lack of merit. The LA found that Felipe and Velasco were project employees as borne out by their contracts of employment and, thus, ruled that they were not illegally dismissed. It was pointed out that:

> A close examination of their respective employment contracts would readily reveal that they specifically mention the duration of the contract for a specific client. On the last part thereof, **there is a specific provision that the period indicated shall serve as a notice to the employee for the termination of the project employment**.[10] [Emphasis supplied]

On appeal, the NLRC affirmed the ruling of the LA that the termination of the services of Felipe and Velasco on the ground of the expiration of their project employment contracts was legitimate and valid. The decision was, however, modified as DDTKI was directed to pay Felipe and Velasco their proportionate 13th month pay. The latter moved for reconsideration, but their motion was denied.

At the CA Level

Aggrieved, petitioners filed their petition for *certiorari* before the CA. In its assailed Decision, dated March 27, 2013, the CA denied the petition after finding that the NLRC did not act whimsically or arbitrarily to warrant the nullification of its judgment. Further, the CA reiterated that the length of service and the continuous rehiring of petitioners did not automatically accord them regular status. DDTKI contracted petitioners for specific undertakings, the scope and duration of which had been determined and made known to them. Their termination from work was found by the CA not illegal, as the specific project for which they were hired merely expired. The CA stated that the MRF, an internal memo for administrative purposes, did not constitute a project employment contract between DDTKI and petitioners. It, therefore, could not serve as basis for the rehiring of petitioners.[11] Thus, the CA disposed the case as follows:

> WHEREFORE, the instant Petition is DENIED and the assailed Decision dated 30 September 2011 and Resolution dated 07 December 2011 of the National Labor Relations Commission are hereby AFFIRMED *in toto*.
>
> SO ORDERED.[12]

Unsatisfied, petitioners moved for reconsideration, but their motion was denied in the assailed CA Resolution, dated March 26, 2015, for being a mere rehash of the arguments that were already raised and passed upon in their petition.

Hence, the present petition raising the following

> ISSUES
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> I.
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> WHETHER OR NOT PETITIONERS WERE REGULAR (WORK POOL) EMPLOYEES OF THE PRIVATE RESPONDENTS.
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> II.
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> WHETHER OR NOT PETITIONERS WERE ILLEGALLY DISMISSED.

III.

WHETHER OR NOT PETITIONERS ARE ENTITLED TO ALL THEIR MONETARY CLAIMS, INCLUDING MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES.[13]

Petitioners contend that there was grave abuse of discretion amounting to lack or in excess of jurisdiction on the part of the CA in denying their petition for *certiorari* and their motion for reconsideration despite the evidence they presented in support of their petition. They argue that contrary to the findings of the CA, it cannot be said that their employment was project-based because there was no project contract presented by the respondents supporting the one (1) month duration of their employment contract and stating that the phase of the project ended on particular dates mentioned in their employment contracts. They insist that they were regular employees considering that they had been employed to perform activities which were usually necessary or desirable in the usual business or trade of their employer, continuously for a period of four (4) years, and contracted for a total of seven (7) successive projects. Felipe's position as Formworks Aide and Velasco's as Warehouse Aide clearly required them to perform tasks inculcated in the usual operation of DDTKI's construction business. As regular employees, they claim that they were entitled to security of tenure and could only be dismissed for a just or authorized cause. The alleged cause of dismissal (completion of project) was not a valid cause under Articles 282 and 283 of the Labor Code. Thus, petitioners posit that they were entitled to reinstatement to their former or equivalent positions without loss of seniority rights and other privileges; to their full back wages, inclusive of allowances; and to their other benefits or their monetary equivalent computed from the time their compensations were withheld up to the time of their actual reinstatement. Petitioners also argue that having rendered uninterrupted service for four (4) years, they were, under the law, entitled to service incentive leave pay three (3) years backward from the filing of the case.[14]

Respondents' Position

Respondents DDKTI and Tamayo (*respondents*), in their Comment,[15] dated August 24, 2015, counter that the petition should be dismissed because grave abuse of discretion is not the proper subject matter of a petition under Rule 45. Even assuming that grave abuse of discretion may be used as basis, petitioners failed to show grave abuse on the part of the CA. Respondents insist that petitioners were project employees because they were

contracted to work for a specific task not permanently continuing within a particular period that was already determined at the time of their hiring. An uninterrupted service for four (4) years did not automatically make them regular employees. Hence, they were not entitled to reinstatement, back wages, moral and exemplary damages, and attorney's fees.

Basically, petitioners are asking the Court to resolve whether the CA correctly ruled that there was no grave, abuse of discretion on the part of the NLRC, thus, affirming the finding that petitioners were project employees.

The Court's Ruling

The issue as to whether petitioners were project employees or regular employees is factual in nature. Well-entrenched is the rule in our jurisdiction that only questions of law may be entertained by this Court in a petition for review on *certiorari*. Moreover, the factual findings of quasi-judicial bodies like the NLRC, if supported by substantial evidence, are accorded respect and even finality by this Court, more so when they coincide with those of the LA.[16] Such factual findings are given more weight when the same are affirmed by the CA as in this case.

There is no reason to depart from these rules. The CA did not err in affirming the findings of the NLRC that petitioners were project employees of DDTKI. Article 280 of the Labor Code, which distinguishes a project employee from a regular employee, provides:

> Art. 280. Regular and casual employment. The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, **except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee**, or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.
>
> An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a

> regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists. [Emphasis supplied]

A project employee is assigned to a project which begins and ends at determined or determinable times. Unlike regular employees who may only be dismissed for just and/or authorized causes under the Labor Code, the services of employees who are hired as "project employees" may be lawfully terminated at the completion of the project. According to jurisprudence, the principal test for determining if particular employees are properly characterized as "project employees," as distinguished from "regular employees," is whether or not the employees are assigned to carry out a "specific project or undertaking," the duration (and scope) of which are specified at the time they are engaged for that project. The project can either be (1) a particular job or undertaking that is within the regular or usual business of the employer company, but which is distinct and separate, and identifiable as such, from the other undertakings of the company; or (2) a particular job or undertaking that is not within the regular business of the corporation.[17]

In this case, the LA, the NLRC and the CA were one in finding that petitioners were project employees hired by DDTKI for a specific task within a particular period already determined at the time of their hiring as evidenced by their employment contracts.

As correctly noted by the CA, petitioners' employment was terminated due to the expiration of the period for which they were contracted. Considering that their employment contract for the US Embassy New Office Annex 1 Project (MNOX-1) had been terminated on September 18, 2010, the CA correctly ruled that their termination from work was not illegal but that the project for which they were hired merely expired.

On their contention that they were regular employees due to their uninterrupted service for DDTKI for four (4) years and the continuous employment contract renewal every month, petitioners are mistaken. In *Aro v. NLRC*,[18] the Court explained:

> [T]he **length of service or the re-hiring of construction workers on a project-to-project basis does not confer upon them regular employment status**, since their, re-hiring is only a natural consequence of the fact that experienced construction workers are preferred. Employees who are hired for carrying out a separate job, distinct from the other undertakings of the company, the scope and duration of which has been determined and made known to the

> employees at the time of the employment, are properly treated as project employees and their services may be lawfully terminated upon the completion of a project. xxx.[19] [Emphasis supplied]

Therefore, being project employees who have been validly terminated by reason of the completion of the specific project, MNOX-1, for which they were hired, petitioners Felipe and Velasco are not entitled to reinstatement and back wages.

On the issue of non-payment of service incentive leave, the Court rules that petitioners are not entitled to this benefit either. Based on records and as correctly noted by respondents, they have not rendered at least one year of continuous service.

WHEREFORE, the petition is **DENIED**.

SO ORDERED.

Brion, (Acting Chairperson), Del Castillo, and *Leonen, JJ.*, concur.
Carpio, J., on official leave.

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[1] Penned by Associate Justice Jane Aurora C. Lantion with Associate Justices Vicente S.E. Veloso, and Eduardo B. Peralta, Jr. concurring. *Rollo*, pp. 31-41.

[2] Associate Justice Samuel H. Gaerlan, additional member due to Associate Justice Veloso's retirement. Id. at 43-44.

[3] Id. at 64-73.

[4] Id. at 75-76.

[5] Id. at 32-33.

[6] Id. at 64-65.

[7] Id. at 33-34.

[8] Id. at 34.

[9] Id. at 78-87. Penned by Labor Arbiter Antonio R. Macam.

[10] Id. at 35.

[11] Id. at 39-40.

[12] Id. at 40.

[13] Id. at 15.

[14] Id. at 17-24.

[15] Id. at 513-543.

[16] *Oasay, Jr. v. Palacio del Gobernador Condominium Corporation, et al.*, 681 Phil. 69, 79 (2012).

[17] *Gadia v. Sykes Asia, Inc.*, G.R. No. 209499, January 28, 2015, 748 SCRA 633, 643, citing *Omni Hauling Services, Inc. v. Bon*, G.R. No. 199388, September 3, 2014, 734 SCRA 270, 279.

[18] 683 Phil. 605 (2012).

[19] Id. at 614, citing *Hanjin Heavy Industries and Co., Ltd v. Ibaez*, 578 Phil. 497, 510 (2008).

Date created: November 22, 2018