FIRST DIVISION

[G.R. No. 219637. April 26, 2023]

ANSELMO P. BULANON, *PETITIONER*, VS. MENDCO DEVELOPMENT CORPORATION / PINACLE CASTING AND/OR MASTERCRAFT PHILIPPINES, INC., AND/OR JACQUER INTERNATIONAL AND/OR ERIC NG MENDOZA, *RESPONDENTS*.

D E C I S I O N

HERNANDO, J.:

The instant Petition for Review on *Certiorari*[1] filed under Rule 45 of the Rules of Court seeks to reverse and set aside the April 30, 2014 Decision[2] and July 2, 2015 Resolution[3] of the Court of Appeals (CA), Cebu City in CA G.R. SP No. 05103.

The facts of the case are as follows:

Petitioner Anselmo Bulanon alleged that he was hired as a Welder/Fabricator in the furniture business of respondent Eric Ng Mendoza (Eric). Eric owns various furniture businesses namely, Mendco Development Corporation (Mendco), Pinnacle Casting Corporation (Pinnacle), Mastercraft Phil. Inc. (Mastercraft), and Jacquer International (Jaquer).[4]

The case arose when petitioner initially filed on January 6, 2006 a Complaint[5] against respondents Eric, Mendco, Pinnacle, Mastercraft, and Jacquer (respondents collectively), before the Department of Labor and Employment (DOLE) for non-payment of overtime pay, legal holiday pay, 13th month pay, holiday and rest day premium pay as well as his non-inclusion in SSS, Philhealth and PAG-IBIG coverage.[6]

Acting on the Complaint, the DOLE inspected the premises of respondent Pinnacle on January 13, 2006. After inspection, the DOLE found that petitioner was not paid his 13th month pay, legal holiday pay, service incentive leave pay and overtime pay.[7]

On January 14, 2006, petitioner reported for work, however, Human Resources representative named Raquel allegedly gave his salary and instructed him not to report for work anymore. Petitioner went back on January 16, 2006 but the security guard on duty

prevented him from entering the premises.[8]

This prompted petitioner to file Complaints[9] against respondents before the National Labor Relations Commission, Regional Arbitration Branch VII (NLRC-RAB) for illegal suspension and illegal dismissal with claims for payment of backwages, separation pay, attorney's fees, and moral and exemplary damages.[10]

Respondents denied petitioner's allegations and riposted that petitioner was not their employee. His services were engaged by respondent Eric and the other members of his family to perform masonry works in their residences which are located in the same compound in Burgos, Street, Mandaue City.[11]

Ruling of the Labor Arbiter

On June 17, 2008, the NLRC-RAB issued a Decision[12] finding that petitioner was illegally dismissed from employment. The Labor Arbiter (LA) treated respondents' Position Paper[13] as a mere scrap of paper on the grounds that it lacked the required Certification of Non-Forum Shopping and the same was not properly verified. The LA found that the Verification was signed by a certain Edgardo Albia (Albia), alleged Human Resource Manager of Mendco and Pinnacle, without any authority from the Board of Directors of both corporations.[14] Considering that respondents' Position Paper was invalid, the LA found the allegations in the Complaint as deemed admitted. The *fallo* of the LA Decision reads:

> WHEREFORE, premises considered[,] judgment is hereby rendered:
>
> 1. Finding respondents guilty of illegal dismissal;
>
> 2. Ordering respondents jointly and solidarily to pay complainant the following:
>
> a.) Backwages from the time complainant was illegally dismissed up to this promulgation in the amount of P268,450.00;
> (1/16/06 – 6/08 = 29.5mos. – P350 x 26 days x 29.50 mos.)
> b) Separation pay computed at 1 month pay for every year in the amount of P72,800.00;
> (July 2001 – June 2008 = 8 yrs./ P350 x 26 days x 8 mos.)
> c) 10% of an Attorney's fees – P34,125.00
>
> Total Award – P375,375.00

> SO ORDERED.[15]

Aggrieved, respondents filed an Appeal[16] before the National Labor Relations Commission (NLRC).

Ruling of the National Labor Relations Commission

In a Decision[17] dated October 30, 2009, the NLRC reversed and set aside the LA Decision and dismissed the illegal dismissal complaint against respondents. The NLRC held that it was physically and legally impossible for petitioner to be an employee of five different employers namely, Mendco, Mastercraft, Pinnacle, Jacquer and Eric.[18] Moreover, petitioner failed to establish the existence of employer-employee relationship between him and respondents. Instead, petitioner was a mere neighborhood carpenter, plumber or electrician who was engaged on a task basis as shown in the irregular nature of his work.[19] The *fallo* of the NLRC Decision reads:

> **WHEREFORE**, premises considered, the decision of the Labor Arbiter dated 17 June 2008 is **REVERSED and SET ASIDE** and a **NEW ONE** is entered **DISMISSING** the complaint.
>
> **SO ORDERED.**[20]

Petitioner moved for reconsideration[21] which was denied in a Resolution[22] dated February 25, 2010. Hence, the matter was elevated to the CA via a Petition for *Certiorari*.[23]

Petitioner argued that respondents' appeal was not perfected because they failed to furnish him (petitioner) with a certified true copy of the Surety Bond and its supporting documents. He further averred that it is not impossible for him to be a regular employee of five different employers because these employers refer to one and the same owner, Eric, who is the President of all these companies.[24]

Petitioner maintained that the Daily Time Records (DTRs) and Affidavit that he submitted are clear evidence of his employment which respondents failed to rebut in view of their submission of an invalid Position Paper before the LA.[25]

Ruling of the Court of Appeals

On April 30, 2014, the CA rendered its assailed Decision[26] dismissing the petition. The appellate court sustained the NLRC's act of giving due course to respondents' appeal holding that the requirement to furnish petitioner with a certified true copy of the Surety Bond is not mandatory for the perfection of an appeal.[27] With respect to the alleged invalid position paper submitted by respondents before the LA, the CA held that respondents' timely appeal before the NLRC which was accompanied by additional evidence gave the NLRC sufficient grounds to reverse the LA's findings. It added that rules of evidence prevailing in courts of law or equity are not controlling in labor cases.[28]

Anent the merits of the case, the appellate court concurred with the NLRC. It regarded petitioner as an independent operator or freelance service contractor based on the evidence on record. He was akin to a "maintenance" man who performed odd jobs and offered his services not only to one person but to everybody who might need his skills and services. In short, the CA held that petitioner's evidence was wanting to establish the existence of an employer-employee relationship between him and the company.[29] The decretal portion of the CA Decision reads:

> **WHEREFORE**, absent grave abuse of discretion, the instant Petition for Certiorari is **DISMISSED**.
>
> **SO ORDERED.**[30]

Petitioner sought reconsideration[31] but the same was denied by the appellate court in a Resolution[32] dated July 2, 2015.

Undaunted, petitioner is now before this Court via the present Petition for Review on *Certiorari* contending that the appellate court erred in holding that he was not an employee of the respondents.[33]

Petitioner claims that he was able to prove the existence of an employer-employee relationship between him and respondents through the DTRs and Affidavit he submitted which remained unrebutted considering that respondents' Position Paper before the LA was unaccompanied by a Certification of Non-Forum Shopping and a board resolution authorizing Albia to sign the Verification.

Issue

In a nutshell, the main issue in this case is whether petitioner was able to prove by substantial evidence his employment with respondents.

Our Ruling

We rule in the negative.

At the outset, it must be noted that the issue of petitioner's alleged illegal dismissal is anchored on the existence of an employer-employee relationship between him and respondents. This is essentially a question of fact. It is settled that a petition for review on *certiorari* under Rule 45 of the Rules of Court generally precludes Us from resolving factual issues. However, this rule is not absolute and admits of exceptions like in labor cases where the Court may look into factual issues when the factual findings of the Labor Arbiter the NLRC and the CA are conflicting. In this case, the findings of the 'Labor Arbiter' differed from those of the NLRC and the CA necessitating this Court to review and to re-evaluate the factual issues and to look into the records of the case, as well as re-examine the questioned findings.[34]

Strict application of technical rules should be set aside to serve the broader interest of substantial justice.

Petitioner argues that the NLRC should not have considered the evidence belatedly submitted by respondents on appeal since the same were not given credence by the LA in view of the invalid Position Paper filed by respondents.[35]

To recall, the LA set aside the respondents' Position Paper as a mere scrap of paper as it did not contain the required certificate of non-forum shopping and proof that the filing officer was authorized to sign the verification. Hence, the allegations of petitioner in the Complaint were deemed admitted.[36]

Indeed, the verification and the attachment of a certificate of non-forum shopping are requirements that – as pointed out by the Court, time and again – are basic, necessary and mandatory for procedural orderliness. However, this Court has relaxed this rule in cases where, as here, there is a sufficient and justifiable ground that compels a liberal application

of the rule. Simply stated, the application of the Rules may be relaxed when rigidity would result in a defeat of equity and substantial justice.[37]

The rules on compliance with the requirement of the verification and certification of non-forum shopping were already sufficiently outlined in *Altres v. Empleo*[38] as follows:

> For the guidance of the bench and bar, the Court restates in capsule form the jurisprudential pronouncements already reflected above respecting non-compliance with the requirements on, or submission of defective, verification and certification against forum shopping:
>
> 1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and non-compliance with the requirement on or submission of defective certification against forum shopping.
>
> 2) **As to verification**, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective. The court may order its submission or correction or act on the pleading if the attending circumstances are such that **strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby**.
>
> 3) Verification is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.
>
> 4) **As to certification against forum shopping**, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, **unless there is a need to relax the Rule on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons."**[39]

In the case at bench, a scrutiny of the record reveals that petitioner failed to substantiate his claim that he was a regular employee of respondents. Hence, there exists a compelling reason to relax the rules as it would be unjust to burden the respondents with the claims of petitioner when he is not in fact their employee.

Settled is the tenet that allegations in the complaint must be duly proven by competent evidence and the burden of proof is on the party making the allegation. In an illegal dismissal case, the *onus probandi* rests on the employer to prove that its dismissal of an employee was for a valid cause. However, before a case for illegal dismissal can prosper, an employer-employee relationship must first be established.[40] Thus, in filing a complaint before the Labor Arbiter for illegal dismissal, based on the premise that he was an employee of respondents, it is incumbent upon the petitioner to prove the employer-employee relationship by substantial evidence or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[41]

Here, the appellate court applied the four-fold test, to wit: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power to discipline and dismiss; and (d) the employer's power to control the employee with respect to the means and methods by which the work is to be accomplished,[42] in finding that no employer-employee existed between petitioner and respondents. The Court is constrained to agree.

Although no particular form of evidence is required to prove the existence of an employer-employee relationship, and any competent and relevant evidence to prove the relationship may be admitted, a finding that the relationship exists must nonetheless rest on substantial evidence.[43] In this case, a scrutiny of the records will bear out that the petitioner failed to establish that he was indeed an employee of respondents.

Petitioner primarily relied on his allegations in his Affidavit which the Court finds to be self-serving as no other witnesses were presented to corroborate the same.

Likewise, the DTRs he submitted are entitled to little weight for being dubious in nature. For one, these DTRs are neither originals nor certified true copies. These are plain photocopies of the originals, if the latter really do exist. More importantly, a careful examination thereof reveals that those that allegedly originated from Mastercraft and Jacquer bore no signatures of any of their representatives. On the other hand, the DTRs from Pinnacle, though bearing signatures, the signatories thereof were not duly identified nor their authority to sign admitted. As such, the CA was correct in not giving evidentiary value to the said DTRs as the genuineness and due execution of the same are unverifiable.

In *Jarcia Machine Shop and Auto Supply, Inc. v. National Labor Relations Commission*,[44] the Court disregarded the DTRs submitted by therein petitioner on the grounds that the same were mere photocopies and were not signed by the employer or any of its

representatives. It held that the said DTRs have not been established as pertaining to the complaining employee, thus raising the probability that the same may have been simulated to justify the claim of demotion and transfer. Consequently, the Court considered the DTRs therein as mere scraps of paper with doubtful or dubious probative value.[45]

The Court further observes that most of the DTRs[46] adduced by petitioner described the scope of work he performed as well as the corresponding compensation he received therefor (*i.e.*, installation of gate, hanging carpet, trellis, fabrication of partition, chipping of concrete for steel column foundation, etc.). In fact, petitioner was also engaged by Eric to fabricate the railings in his (Eric's) own residence.[47] To Our minds, the foregoing circumstances are consistent with respondents' vigorous assertion that petitioner was a handyman whose services were engaged from time to time by Eric's family to perform masonry works either in their respective residences or the premises of the companies they own.[48]

In effect, this bolsters the CA's finding that petitioner is a skilled worker who offered diverse services to respondents when the need arose. To be sure, if petitioner was indeed a regular employee of the respondents, there would have been no need to describe the varying works that he rendered on a weekly basis in order to justify his receipt of compensation, for the nature and scope work of an employee is usually discussed the moment of his or her engagement. As it is, the DTRs adduced by petitioner do not conclusively establish the existence of an employer-employee relationship between him and respondents.

As to payment of wages, petitioner admitted that he regularly received his salary from a certain Terry Godinez, who appears to be the personal assistant of respondent Eric, and not from the Accounting or Cash Department of respondent companies.[49] Petitioner even conceded that he performed work for all five respondents alternatively in a span of one week. Petitioner seems to engage in a semantic interplay of words in claiming that he did not work for all the respondents at the same time. Instead, he avers that his work for respondents was spread for an entire week, meaning, he reported from one employer to another during the entire work week. Thus, he insists that he was a regular employee of all the respondents concurrently.[50]

We are not convinced.

It is difficult to fathom how petitioner managed to render work for five different employers

simultaneously in a span of one week. To Our minds, it is highly improbable that an employer would permit an employee, regular at that, to joggle from one workplace to another. Neither would an employee, who truly believes to have attained a regular employment status, permit such kind of setup. No matter how petitioner puts it, it is undeniable that he was engaged by the respondents to perform work only when the need arose. As aptly held by the NLRC and the CA, it is both legally and physically impossible for petitioner to be a regular employee of all five respondents.

As to the element of control, petitioner again heavily relies on the DTRs he submitted to prove that respondents effectively monitored his working time. Significantly, as discussed above, the subject DTRs provide no evidentiary value since the genuineness and due execution thereof are questionable.

In any case, the fact alone that respondent was subjected to definite working hours does not necessarily mean the presence of the power of control. Jurisprudence teaches that the power of control addresses the details of day to day work like assigning the particular task that has to be done, monitoring the way tasks are done and their results, and determining the time during which the employee must report for work or accomplish his/her assigned task.[51]

In this regard, it was not shown that petitioner was subjected to a set of rules and regulations governing the performance of his duties. Neither can it be said that he was required to devote his time exclusively to working for any of the respondents considering that he admittedly worked for all five respondents concurrently.[52]

It is elementary that he who asserts an affirmative of an issue has the burden of proof.[53] Since it is petitioner here who is claiming to be an employee of respondents, it is thus incumbent upon him to proffer evidence to prove the existence of employer-employee relationship between them. Unfortunately, petitioner failed to discharge this burden.

In contrast, respondents were able to rebut petitioner’s contention that he was their regular employee by presenting company payroll records which did not include petitioner as one of their employees.[54]

Fittingly, the NLRC and the CA reconsidered these pieces of evidence and properly appreciated them. Hence, both tribunals were correct in dismissing petitioner’s claim of illegal dismissal for his failure to discharge his burden to prove the existence of an employer-employee relationship between him and respondents.

Besides, it is settled that proceedings before the Labor Arbiter and the NLRC are non-litigious in nature where they are encouraged to avail of all reasonable means to ascertain the facts of the case without regard to technicalities of law or procedure.[55]

In sum, We find that the appellate court did not err in holding that no employer-employer relationship existed between petitioner and respondents.

WHEREFORE, the petition is **DENIED**. The April 30, 2014 Decision and July 2, 2015 Resolution of the Court of Appeals, Cebu City in CA G.R. SP No. 05103 are **AFFIRMED**.

SO ORDERED.

Gesmundo, C.J. (Chairperson), Zalameda, Rosario, and *Marquez, JJ.*, concur.

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[1] *Rollo*, Vol. 1, pp. 28-69.

[2] *Id.* at 9-20. Penned by Associate Justice Jhosep Y. Lopez (now a member of the Court) and concurred in by Associate Justices Edgardo Delos Santos (now a retired member of the Court) and Pamela Ann Abella Maxino.

[3] *Id.* at 21-23. Penned by Associate Justice Jhosep Y. Lopez (now a member of the Court) and concurred in by Associate Justices Edgardo Delos Santos (now a retired member of the Court) and Pamela Ann Abella Maxino.

[4] *Id.* at 129.

[5] *Id.* at 10.

[6] *Id.*

[7] *Id.*

[8] *Id.* at 11.

[9] *Id.* at 138-140.

[10] *Id.* at 10.

[11] *Id.* at 216.

[12] *Id.* at 245-248. Penned by Labor Arbiter Henry F. Te.

[13] *Id.* at 215-221.

[14] *Id.* at 247.

[15] *Id.* at 248.

[16] *Id.* at 249-260.

[17] *Id.* at 127-133. Penned by Commissioner Julie C. Rendoque and concurred in by Presiding Commissioner Violeta Ortiz-Bantug and Commissioner Aurelio D. Menzon.

[18] *Id.* at 131.

[19] *Id.* at 131-132.

[20] *Id.* at 132.

[21] *Id.* at 135.

[22] *Id.* at 134-137. Penned by Commissioner Julie C. Rendoque and concurred in by Presiding Commissioner Violeta Ortiz-Bantug and Commissioner Aurelio D. Menzon.

[23] *Id.* at 86-126.

[24] *Id.* at 100-121.

[25] *Id.*

[26] *Id.* at 7-20.

[27] *Id.* at 15.

[28] *Id.* at 16.

[29] *Id.* at 19.

[30] *Id.* at 20.

[31] *Id.* at 21.

[32] *Id.* at 21-23.

[33] *Id.* at 28-61.

[34] 853 Phil. 661, 677 (2019).

[35] *Rollo*, Vol. 1, pp. 28-61.

[36] *Id.*

[37] **Manila Hotel Corporation v. Court of Appeals**, 433 Phil. 911, 917 (2002).

[38] 594 Phil. 246 (2008).

[39] *Id.* at 261-262. Citations omitted; emphases supplied.

[40] **Atienza v. Saluta**, *supra* note 34.

[41] **Parayday v. Shogun Shipping Co., Inc., G.R. No. 204555**, July 6, 2020.

[42] *Id.*

[43] **Atienza v. Saluta**, *supra* note 34.

[44] 334 Phil. 84 (1997).

[45] *Id.* at 92.

[46] *Rollo*, Vol. 1, pp. 227-324.

[47] *Id.* at 314-315.

[48] *Rollo*, Vol. 2, p. 833.

[49] *Rollo*, Vol. 1, p. 130.

[50] *Id.* at 374.

[51] **Marsman & Company, Inc. v. Sta. Rita**, 830 Phil. 470, 495 (2018).

[52] See **Reyes v. Glaucoma Research Foundation, Inc.**, 760 Phil. 779, 791 (2015).

[53] **Valencia v. Classique Vinyl Products Corporation**, 804 Phil. 492, 499 (2017).

[54] *Rollo*, Vol. 1, pp. 222-243.

[55] **De Roca v. Dabuyan**, 827 Phil. 98, 111 (2018).

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