

FIR INTERNATIONAL SERVICE CORP. AND HYUNDAI HEAVY INDUSTRIES CO. LTD., PETITIONERS, VS. EDUARDO E. BERNARDINO, JR. AND THE NATIONAL LABOR RELATIONS COMMISSION, RESPONDENTS.

Ponente: LOPEZ, J.

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LOPEZ, J.:

On February 9, 2011, Eduardo Bernardino, Jr. was hired, through a local manpower agency Fir International Service Corporation, as a Paralegal (Project Coordinator) by Hyundai Heavy Industries Co., Ltd. in its Al Dur IWPP Project in the Kingdom of Bahrain. His monthly salary is US\$1,800.00. His Appointment Letter states that the contract duration is for one year with a probationary period of three months.[1]

Bernardino was deployed to Bahrain on March 28, 2011 and immediately assumed his post. However, on April 16, 2011, he received a letter informing him that his employment was terminated for failing to perform his duties and responsibilities and, therefore, failing to pass the three-month probationary period. Bernardino was repatriated to the Philippines on April 19, 2011.[2]

Aggrieved, Bernardino filed a complaint for illegal dismissal, non-payment of salary, overtime pay, vacation and sick leave pay, refund of transportation expenses, damages and attorney's fees. According to Bernardino, he was dismissed without just cause and due process. The employer did not lay down the standards, criteria or guidelines on how he can qualify as a regular employee. Also, it would have been impossible to rate his performance since he worked for a very short period of less than a month. As a consequence of his illegal dismissal, he is entitled to salaries representing the unexpired portion of his employment contract and all his money claims.[3]

In response, Fir International and Hyundai claimed that Bernardino was apprised of his duties and functions as paralegal, as well as the expectations and quality of service needed for him to pass his probationary employment. Bernardino exhibited poor performance and failed to meet the standards set by Hyundai. He cannot feign ignorance of the nature and implications of his engagement on a probationary basis, considering that he took up Bachelor of Laws and has a considerable work experience as a paralegal officer. Bernardino accepted his dismissal without protest and even signed the Notice. Consequently, Bernardino has no cause of action for illegal dismissal and is not entitled to his money claims.[4]

On June 22, 2012, the Labor Arbiter rendered a decision finding that Bernardino was illegally dismissed, to wit:

It bears underscoring that while respondents assert that complainant failed to perform his duties and responsibilities during his three (3) months probationary employment, the duties and responsibilities that complainant allegedly failed to perform was not specified. Absent any showing of the duties and responsibilities upon which complainants' work was evaluated, complainants' dismissal was not well grounded. Conformably thereto, this Arbitration Office finds complainant to have been illegally dismissed. Hence, he is awarded his salaries for the unexpired portion of his contract to be computed from April 16, 2011 to March 30, 2012.

Respecting complainants' money claims, the same are denied for lack of factual basis.

Finally, equally unavailing is complainant's claim for moral and exemplary damages and attorney's fee for lack of evidence to support its award.

xxxWHEREFORE, respondents FIR International Service Corporation, Hyundai Heavy Industries Co. Ltd. are hereby ordered to solidarily pay complainant his salaries for the unexpired portion of his contract computed at 7,808.50 Bahrain Dinar or its Philippine Peso equivalent at the time of payment.

SO ORDERED.[5]

Fir International and Hyundai filed an appeal but the National Labor Relations Commission (NLRC) affirmed the Labor Arbiter's findings.[6] They moved for reconsideration, to no avail.[7] Hence, this petition for certiorari under Rule 65 of the Rules of Court on the sole ground that:

THE NLRC COMMITTED SERIOUS ERROR AND GRAVE ABUSE OF DISCRETION IN RULING THAT PRIVATE RESPONDENT WAS ILLEGALLY DISMISSED FROM SERVICE CONSIDERING THAT THE FACTS AND EVIDENCE SHOW THAT HIS CONTRACT WAS VALIDLY TERMINATED FOR FAILURE TO QUALIFY AND PASS THE STANDARDS FOR REGULARIZATION.[8]

Petitioners Fir International and Hyundai insist that private respondent Bernardino was advised of the expectations and quality of service needed for him to pass his probationary employment. He cannot feign ignorance of the nature and implications of his employment considering that he took up Bachelor of Laws and has a considerable experience working as a paralegal officer. Besides, private respondent's dismissal is based on a just cause for failing to comply with the standards set for regularization, which is akin to gross inefficiency and/or gross neglect of duties.[9]

At the outset, We stress that in the extraordinary writ of certiorari, neither questions of fact nor of law are entertained, but only questions of lack or excess of jurisdiction or grave abuse of discretion. The sole object of the writ is to correct errors of jurisdiction or grave abuse of discretion. The phrase 'grave abuse of discretion' has a precise meaning in law, denoting abuse of discretion "too patent and gross as to amount to an evasion of a positive duty, or a virtual refusal to perform the duty enjoined or act in contemplation of law, or where the power is exercised in an arbitrary and despotic manner by reason of passion and personal hostility." It does not encompass an error of law. Nor does it include a mistake in the appreciation of the contending parties' respective evidence or the evaluation of their relative weight.[10]

The primordial issue in this case is whether private respondent, a probationary employee, was informed of the standards under which he will qualify as a regular employee. A question which both the Labor Arbiter and NLRC answered in the negative, leading them to conclude that private respondent was illegally dismissed. For petitioners to assail the identical findings of the Labor Arbiter and the NLRC is to raise a question of fact, which cannot be raised in an original action for certiorari.[11] Consequently, for this reason alone, the petition can now be dismissed.

Nevertheless, in examining the records, We find that the NLRC did not gravely abuse its discretion when it declared that private respondent was illegally dismissed.

Article 281 of the Labor Code and its Implementing Rules provide:

ART. 281. Probationary employment. - Probationary employment shall not exceed six (6) months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. An employee who is allowed to work

after a probationary period shall be considered a regular employee.

Section 6(c) and (d) of the Implementing Rules of Book VI, Rule VIII-A of the Labor Code:

Sec. 6. Probationary employment. – There is probationary employment where the employee, upon his engagement, is made to undergo a trial period where the employee determines his fitness to qualify for regular employment, based on reasonable standards made known to him at the time of engagement.

Probationary employment shall be governed by the following rules:

xxx

(c) The services of an employee who has been engaged on probationary basis may be terminated only for a just cause, when he fails to qualify as a regular employee in accordance with the reasonable standards prescribed by the employer.

(d) In all cases of probationary employment, the employer shall make known to the employee the standards under which he will qualify as a regular employee at the time of his engagement. Where no standards are made known to the employee at that time, he shall be deemed a regular employee.

Clearly, the rules require that the employer informs the probationary employee of such reasonable standard for his qualification at the time of his engagement; otherwise, the employee shall be considered a regular employee.[12] Here, while the petitioners are claiming that private respondent was informed of the standards for regularization, no evidence was presented to prove this claim. Petitioners could not even state what these standards are. Although private respondent is a Bachelor of Laws graduate and is aware of the implications of his probationary status, the petitioners, as employers, are not relieved from their duty to inform private respondent of the specific standards set by Hyundai for his regularization as paralegal employee. Petitioners know that different employers set different standards upon which they may assess the specific qualification of their employees. Hence, the need to inform them of these standards.

In fine, employers must be reminded that while probationary employees do not enjoy permanent status, they enjoy the constitutional protection of security of tenure. They can only be terminated for cause or when they otherwise fail to meet the reasonable standards made known to them by the employer at the time of their engagement.[13] Petitioners failed to prove that the dismissal of private respondent was for a just cause. Hence, private respondent was illegally dismissed.

ACCORDINGLY, the petition is DISMISSED.

SO ORDERED.

Reyes, Jr., J.C., (Chairperson) and Inting, S.B., JJ., concur.

[1] Appointment Letter, Rollo, p. 21. January 31, 2013 NLRC Decision, id., p. 103.

[2] Termination of Employment, id., p. 23. January 31, 2013 NLRC Decision, id., p. 103.

[3] Position Paper (For the Complainant), id., pp. 48-57. Reply (To Respondents' Position Paper), id., pp. 67-73.

[4] Position Paper, id., pp. 24-36. Reply, id., pp. 42-46.

[5] Id., pp. 77-79.

[6] January 31, 2013 Decision, id., pp. 102-110.

[7] May 30, 2013 Resolution, id., p. 123-124.

[8] Id., p. 7.

[9] Id., pp. 7-14.

[10] See *Malayang Manggagawa ng Stayfast Phil., Inc. v. National Labor Relations Commission*, G.R. No. 155306, August 28, 2013 citing *Romy's Freight Service v. Castro*, 523 Phil. 540, 546 (2006).

[11] Id., citing *Korea Technologies Co., Ltd. v. Lerma*, 566 Phil. 1, 35 (2008).

[12] See *Armando Aliling v. Jose B. Feliciano, et al.*, G.R. No. 185829, April 25, 2012.

[13] *Armando Aliling v. Jose B. Feliciano, et al.*, supra, citing *Agoy v. NLRC*, G.R. No. 112096, January 30, 1996, 252 SCRA 588, 595.

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