MELENCIA REBETILLO, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, 7TH DIVISION, CEBU CITY, JIMKY FARMS/ SPOUSES GENALYN F. GARCIA AND JAMES S. GARCIA, RESPONDENTS.

Ponente: INGLES, G. T., J.

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INGLES, G. T., J.:

THE CASE

Before this court is a petition for certiorari filed under Rule 65 of the 1997 Revised Rules on Civil Procedure, as amended seeking to annul and set aside the Decision[1] dated August 31, 2010 of the National Labor Relations Commission, Seventh Division (formerly Fourth Division), Cebu City, in NLRC VAC-02-000077-2010 which modified the Decision dated December 14, 2009 of the Executive Labor Arbiter ordering respondents to jointly and severally pay complainant Angelito Laging wage differentials, 13[th] month pay, service incentive leave and holiday pay while declaring petitioner Melencia Rebetillo not an employee of respondents. Also assailed is the Resolution[2] dated November 25, 2010 which denied petitioner's Motion for reconsideration.

THE FACTS:

Respondent Jimky Farms is a four-hectare vegetable and palay plantation owned and managed by respondents spouses Genalyn and James Garcia. Hogs are also raised on the farm.

In March, 1999, respondent spouses decided to embark on vegetable production aside from growing palay. They hired Melchor Rebetillo, petitioner's husband, as overseer because of his skills in the field of vegetable growing. Petitioner's husband relocated their house within the premises of the farm upon the advice of respondents bringing along with him his family.

Upon the insistence of the spouses Garcia, petitioner was made to work at the farm but she was considered her husband's assistant at first despite working long hours like her husband. She performed all types of work needed at the farm including weeding, transplanting, plotting and cultivating, among others. Petitioner and her husband worked eight hours a day, seven days a week including all holidays of the year. During her first year, petitioner was not paid most of time since her services were deemed merely as payment of her debt of gratitude for their stay in the premises of the farm. However, she did not complain to the spouses Garcia.

In 2000, she was finally considered an employee even if she received only P800.00 a month whether or not there were holidays. She was not issued any pay slip or placed in the payroll of the farm. Neither did she enjoy social security benefits.

In 2001, petitioner's salary increased to P 1,000.00 which became her regular monthly salary until 2004. In 2005, she was paid P70.00 per day or P 490.00 per week which was increased to P 80.00 per day in 2006.

During her period of employment, she was not paid any holiday pay, service incentive leave, and 13[th] month

pay despite working eight hours a day for seven days a week.

On November 7, 2006, petitioner was dismissed from service without any cause. She was not paid separation pay.

Petitioner Rebetillo filed a Complaint for underpayment of salaries/wages with claims for non-payment of holiday pay, service incentive leave (SIL) and 13[th] month pay against respondents spouses which she later amended to include Jimky Farms and/or together with the spouses Garcia, as owners. Petitioner alleged that she was hired on March 14, 1999 but was later dismissed on November 6, 2006 without cause.

On the other hand, Angelino Layaging, another employee of the farm, filed a Complaint for illegal dismissal with a claim for underpayment of salaries/wages and non-payment of holiday pay, service incentive leave pay and 13[th] month pay against the spouses Garcia.

Subsequently, the parties filed their respective position paper.

In their position paper, respondents contended that petitioner was the wife of their in-house farm laborer who was known as Nonoy Cebuano introduced to them by Ever Sobesta of Gawahon, Victorias City. Respondents entrusted Melchor Rebetillo in the delivery and sale of vegetables to the local market in Victorias City . He worked with respondents from March 15, 1999 until April 15, 2003 when he left the farm without their consent and knowledge. In March, 2005, Melchor Rebetillo returned to their farm and asked for their forgiveness. They agreed to allow him to work for them again. However, without their knowledge and consent, he left the farm again on October 23, 2006 after he had a heated argument with Edwin Badiana, the farm's foreman. Respondents alleged that petitioner likewise left the farm on November 4, 2006 upon the advice of her husband without remitting the amount of P1,200.00 which she collected from vegetable dealers. Respondents also added that during Melchor Rebetillo's employment, he and his family were assigned a house with free water and electricity, and meal allowances.

The Labor Arbiter's Ruling:

On December 14, 2009, the Executive Labor Arbiter Elbert Restauro, RAB VI, National Labor Relations Commission, Bacolod City rendered a Decision[3], the pertinent portion of which reads:

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> "WHEREFORE, premises considered, judgment is hereby rendered dismissing the complaint for illegal dismissal for lack of merit. However, respondents Jimky Farms and/or the spouses Genalyn F. Garcia and James S. Garcia are hereby ordered to pay the complainants, namely, Melencia Rebetillo and Angelito Layaging their claimed salary differentials, 13[th] month pay, SILP, and holiday pay in the total sum of ONE HUNDRED TWENTY FOUR THOUSAND EIGHT HUNDRED ONE PESOS & 54/100 (P124,801.54)
>
> All other claims not herein discussed are dismissed for lack of legal and factual basis.
>
> SO ORDERED."

Aggrieved, petitioner filed an appeal with the National Labor Relations Commission, Fourth Division, Cebu City.

The NLRC Ruling:

On August 31, 2010, the NLRC, Fourth Division, Cebu City rendered a Decision[4], the pertinent portion of which reads as follows:

> "An indispensable precondition of illegal dismissal is the prior existence of an employer-employee relationship. Since it was established that there was no such relationship between complainant Melencia Repetillo[5] (sic) and the respondents, the allegation of illegal dismissal does not have any leg to stand on. The

claims for backwages, separation pay and other benefits must, likewise fail (Palomado vs NLRC, 257 SCRA 680). Thus, complainant Melencia Repetillo's awards of salary differentials, 13[th] month pay, service incentive leave pay and holiday pay in the aggregate amount of P83,811.10 should be as it is, hereby deleted.

On the second issue, complainant Angelito Layaging alleges that during his employment with respondents since 15 October 2002 until 15 June 2005, he was not paid the minimum wage, 13[th] month pay, service incentive leave pay and holiday pay.

The respondents failed to present payroll or any other proof that would show that complainant Angelito Layaging had been paid said benefits. The burden of proving payments of monetary claims rests on the employer (Villar vs NLRC, 331 SCRA 686). Accordingly, complainant Layaging is entitled to wage differentials, 13[th] month pay, SILP, and holiday pay in the total amount of P 40,990.44 as computed by the Labor Arbiter.

WHEREFORE, premises considered, the decision of the Executive Labor Arbiter dated 14 December 2009 is hereby MODIFIED to wit:

Ordering the respondents to jointly and severally pay complainant Angelito Layaging wage differentials, 13[th] month pay, service incentive leave and holiday pay in the aggregate amount of Forty Thousand Nine Hundred Ninety and 44/100 (P40,990.44) as computed by the Labor Arbiter and broken down as follows:

a) wage differential - P31,538.10
b) 13[th] month pay - 5,053.96
c) SILP - 1,933.33
d) Holiday pay - 2,465.00

Total P 40,990.44

SO ORDERED.”

Dissatisfied, petitioner filed a Motion for reconsideration which was denied in a Resolution[6] dated November 25, 2010, the pertinent portion of which states as follows:

“It bears stressing that although we considered the document submitted by the respondents in their appeal particularly the affidavit of Melchor Rebetillo which stated that complainant Melencia P. Rebetillo was never an employee of respondents but only helped her husband in his work. The said document was never the sole basis in rendering said decision. The allegations of complainant that the said affidavit was obtained through fraud and deceit would not thwart our findings that complainant Melencia P. Rebetillo was not an employee of respondent.

Finding no employer-employee relationship between the parties, the monetary award granted by the Labor Arbiter to complainant Melencia Rebetillo has no basis.

WHEREFORE, premises considered, the Motion for reconsideration of complainant Melencia Rebetillo is DENIED. The Decision sought to be reconsidered hereby STANDS.”

Hence, this petition for certiorari.

THE ISSUES:

I.
“WHETHER OR NOT PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO WANT AND EXCESS OF JURISDICTION WHEN IT RULED THAT PETITIONER WAS NOT AN EMPLOYEE OF THE PRIVATE RESPONDENTS;

> II.
> WHETHER OR NOT PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO WANT AND EXCESS OF JURISDICTION WHEN IT FAILED TO RULE THAT PETITIONER WAS ILLEGALLY DISMISSED WHEN IT FAILED TO GRANT PETITIONER'S LABOR STANDARD CLAIMS.

Petitioner's Contentions:

Petitioner asserts that public respondent erred in declaring that she was not an employee of respondents. According to petitioner, public respondent erred in relying on an Affidavit allegedly executed by Melchor Rebetillo, her husband, attesting that she never worked for respondent spouses Garcia. Petitioner contends that her husband was made to sign a blank piece of paper sometime in February, 2010 by James Garcia which now appears to have been filled up with statements denying that petitioner worked for respondents. Melchor Rebetillo then executed an Affidavit to set the records straight and impugn James Garcia's sworn statement as falsified and spurious.

Petitioner asserts that the said sworn statement was the only basis for the public respondent in ruling that there was no illegal dismissal. Respondents never submitted any evidence to prove the absence of employer-employee relationship. Petitioner adds that in a casual agricultural employment which is prevalent in rural areas, records are scant and sworn statements are often dismissed because the oppressed employee has nothing to support his claims. As such, the Affidavit[7] of petitioner's husband should be entitled to great weight in light of the failure of respondents to rebut such claim. After all, petitioner claims that the burden of proof is always placed on the employer to prove the non-existence of employment relationship as well as payment of benefits. Petitioner insists that she presented adequate proof to show that she was a regular employee of respondents and that she was ultimately dismissed from service without due process.

As a regular employee, petitioner contends that she enjoys security of tenure and thus should not be dismissed from service without just cause and due process under Art. 279 of the Labor Code. Petitioner stresses that it is the employer who has the burden of proving that such causes exist. Article 277(b) of the Labor Code states in no uncertain terms that the burden of proving that the termination was for a valid or authorized cause shall rest on the employer. In the case at bar, petitioner posits that respondents have failed to adduce evidence showing that petitioner had done acts or offenses considered as valid grounds for dismissal. Neither is there proof that she received benefits in accordance with law. During her tenure, petitioner asseverates that she was not paid holiday pay, service incentive leave pay, and 13[th] month pay. Thus, petitioner should be granted monetary compensation. Citing Villar vs NLRC, GR No. 100935, May 11, 2000, the Supreme Court held that the onus probandi that all monetary claims of employees have been paid rests on the employer. And that, one who pleads payment has the burden of proving it.

THIS COURT'S RULING:

It is a basic rule in evidence that each party must prove his affirmative allegation.[8] If he claims a right granted by law, he must prove his claim by competent evidence and not upon the weakness of his opponent.[9] Invoking the case of Lopez vs Bodega City, GR No. 155731, September 3, 2007, the Supreme Court held that burden of proof is upon the complainant who claims to be an employee. It is essential that an employer-employee relationship must be proved by substantial evidence. Thus, it cites:

> “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.”

We apply the four-fold test expounded in Abante vs Lamadrid Bearing and Parts Corp, GR No. 159890, May 28, 2004, to wit:

> "To ascertain the existence of an employer-employee relationship, jurisprudence has invariably applied the four-fold test, namely: (1) the manner of selection and engagement; (2) the payment of wages; (3) the presence or absence of the power of dismissal; and (4) the presence or absence of the power of control. Of these four, the last one is the most important. The so-called "control test" is commonly regarded as the most crucial and determinative indicator of the presence or absence of an employer-employee relationship. Under the control test, an employer-employee relationship exists where the person for whom the services are performed reserves the right to control not only the end achieved but also the manner and the means to be used in reaching that end.[10]

As such, in the following:

(1) manner of selection and engagement

There is only proof that Melchor Rebetillo, petitioner's husband was employed by respondents in March, 1999 as overseer of the farm. No substantial evidence was presented by her to prove that she was likewise hired to do any kind of farm work. What is apparent is that she lived in respondents' farm together with her family. She only helped her husband in record keeping and his functions as overseer.

(2) payment of wages

There is no proof whatsoever that petitioner received any form of payment from respondents. No employment contract, payroll, SSS registration or a piece of paper tabulating her salaries, as well as testimonies of her co-employees were submitted by petitioner to support her claim.

(3) presence or absence of the power of dismissal

Since petitioner was never hired by respondents in the first place, her services could not be subject to dismissal.

(4) presence of absence of the power of control

Petitioner failed to establish that respondents exercised control over her in any kind of work in the farm. She failed to cite a particular instance wherein the performance of the manner in the execution of her job was subject to respondents' control.

It can therefore be concluded that petitioner was not an employee of respondents.

It is settled that no particular form of evidence is required to prove the existence of an employer-employee relationship. Any competent and relevant evidence to prove the relationship may be admitted.[11] Hence, while no particular form of evidence is required, a finding that such relationship exists must still rest on substantial evidence. In the instant case, the sole documentary evidence presented by petitioner to prove that she was an employee of respondents – Melchor Rebetillo's Affidavit impugning James Garcia's sworn statement, is sorely deficient. No other employee in the farm executed an affidavit to prove that he or she worked with petitioner in the farm. As opposed to respondents' affidavits of witnesses Vicente Lobaton and Ever Sobesta attached to their Consolidated Position Paper dated April 21, 2008, the same shows that petitioner's husband, Melchor Rebetillo left the farm to work in Bacolod City only to return in 2005 and leave again in 2006. Consequently, when Melchor left the employment of respondents, they narrated that petitioner also left their house in the farm. They attested that petitioner did not work for respondents but merely assisted her husband in his duties as overseer. Helping her husband in the performance of his work in the farm does not automatically make petitioner an employee.

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We thus dismiss petitioner's claims of employment as baseless assertions. Aside from Melchor Rebetillo's Affidavit, we reiterate that she presented nothing to substantiate her status as employee of respondents.

Public respondent correctly found petitioner's claim of employment with respondents as wanting and insufficient. Although Section 10, Rule VII of the New Rules of Procedure of the NLRC allows a relaxation of the rules of procedure and evidence in labor cases, this rule of liberality does not mean a complete dispensation of proof. Labor officials are enjoined to use reasonable means to ascertain the facts speedily and objectively with little regard to technicalities or formalities but nowhere in the rules are they provided a license to completely discount evidence, or the lack of it. The quantum of proof required, however, must still be satisfied. Hence when confronted with conflicting versions on factual matters, it is for them in the exercise of discretion to determine which party deserves credence on the basis of evidence received, subject only to the requirement that their decision must be supported by substantial evidence. Accordingly, the petitioner needs to show by substantial evidence that he was indeed an employee of the company against which he claims illegal dismissal. [12]

In sum, the rule of thumb remains, the onus probandi falls on petitioner to establish or substantiate such claim by the requisite quantum of evidence. Whoever claims entitlement to the benefits provided by law should establish his or her right thereto. As already discussed, petitioner failed to adduce substantial evidence as basis for the grant of relief. Finding no illegal dismissal herein, she is not entitled to the benefits mandated by law.

Too, while the Constitution is committed to the policy of social justice and the protection of the working class, it should not be supposed that every labor dispute will be automatically decided in favor of labor. Management also has its rights which are entitled to respect and enforcement in the interest of simple fair play. Out of its concern for the less privileged in life, the Court has inclined more often than not, toward the worker and upheld his cause in his conflicts with the employer. Such favoritism, however, has not blinded the Court to the rule that justice is in every case for the deserving, to be dispensed in the light of the established facts and applicable law and doctrine.

One final note. In Mercardo vs AMA Computer College Paranaque City, GR No. 183572, April 13, 2010, the Supreme Court ruled that in certiorari proceedings under Rule 65 of the Rules of Court, the appellate court does not assess and weigh the sufficiency of evidence upon which the Labor Arbiter and the NLRC based their conclusion. The query in this proceeding is limited to the determination of whether or not the NLRC acted without or grave abuse of discretion in rendering its decision. Grave abuse of discretion in certiorari proceedings amounts to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law or that public respondent acted in an arbitrary and despotic manner by reason of passion or personal hostility or in such whimsical and capricious exercise of judgment equivalent to lack of jurisdiction.[13] However, as an exception, the appellate court may examine and measure the factual findings of the NLRC if the same are not supported by substantial evidence.

Verily, we find that public respondent's Decision and Resolution were not attended with grave abuse of discretion being supported by substantial evidence.

WHEREFORE, the petition is DENIED. The Decision dated August 31, 2010 of the National Labor Relations Commission, Seventh Division (formerly Fourth Division), Cebu City, in NLRC VAC-02-000077-2010 and Resolution dated November 25, 2010 are AFFIRMED.

No pronouncement as to costs.

SO ORDERED.

Maxino, P.A.A. and Francisco, R.C., JJ., concur.

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[1] Rollo, p. 21

[2] Rollo, p. 31

[3] Rollo, p. 54

[4] Rollo, p. 21

[5] *Rebetillo

[6] Rollo, p. 31

[7] Rollo, p. 38

[8] Martinez vs NLRC, 272 SCRA 793

[9] Rufina Patis Factory vs Alusitain, GR No. 146202, July 14, 2004

[10] Lopez vs Bodega City, GR No. 155731, September 3, 2007

[11] Lirio vs Genovia, GR No. 169757, November 23, 2011

[12] Javier vs Fly Ace Corp, GR No. 192558, February 15, 2012

[13] FEBTC vs Shemberg Marketing Corp, GR No. 163878, December 12, 2006

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