

MEGUMI ACADEMY, INC./NAOMI O. TSUJINO, PRES., PETITIONER, VS. CELMA M. PIDO AND NLRC SEVENTH DIVISION, CEBU CITY, RESPONDENTS.

Ponente: QUIJANO-PADILLA, J.

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QUIJANO-PADILLA, J.:

Before Us is a Petition for Certiorari[1] under Rule 65 of the Rules of Court assailing the Decision[2] promulgated on November 29, 2012 of the National Labor Relations Commission (NLRC) Seventh (7th) Division, Cebu City, as well as the Resolution[3] of the same NLRC dated February 28, 2013 in NLRC Case No. VAC-07-000486-2012 which denied the Motion for Reconsideration[4] of herein petitioner.

The Antecedents

Version of the Petitioner[5]

Petitioner Megumi Academy, Inc./Naomi Tsujino averred that in the year 2002, it constructed a school building at Barangay Alijis, Bacolod City as an extension of the main campus at Megumi Green Plain Subdivision, Bacolod City.

Private respondent was among the construction workers assigned by the building contractor to work on the school. However, as construction was in progress, the petitioner was not able to acquire a road right of way, as the adjacent lot owner did not accede to it and in fact closed the school's access to the highway. Left with no other choice, petitioner was forced to stop construction and failed to operate. The unfinished school site thus became an abandoned site.

In the year 2006, the private respondent approached the petitioner and inquired for work. Petitioner informed private respondent that he could not be given any work as he has no qualification to become a regular employee. In view thereof, private respondent asked if he could stay at the abandoned school building and become its caretaker. Petitioner agreed to such a proposition.

On May 2, 2006, the parties entered into an Agreement,[6] which was in the Ilonggo dialect and translated as follows:

"May 2, 2006

I, Celman M. Pido, janitor of Megumi Academy obligate myself to perform my responsibilities to the best and utmost capacity;

That I must and [sic] guard diligently the school site in Alijis and must clean (the) surrounding and (the) school building itself.

That I will report to the Megumi, Main Campus every Monday and Friday (8:00-5:00), if I cannot report, my pay will be deducted.

That if my service are needed in the [sic] helping the school at its Main Campus, I must do it.

That whatever incident in the school, problem, I must report to those concerned in writitng.

That the tools I must take care with the utmost [sic] and will give progress report about it to the property custodian.

Truthfully,

MR. CELMAN M. PIDO

Witness:

JEMINA O. GARIN

Principal "

On November 8, 2007, another agreement[7] but containing similar stipulations was executed by the private respondent and the principal of the petitioner, Evelyn A. Lacson.

On June 19, 2008, the final agreement[8] between the parties was executed. The contents as translated in English are as follows:

"I, Celman M. Pido, caretaker of Megumi Academy located at Alijis, Bacolod City, promise to comply (with) my responsibilities within my capabilities.

I will stay and watch the school site located at Alijis and will clean the premises and the school building.

I will be responsible whatever happened [sic] to the building and its equipments.

I will take good care of the tools and I will report it to the property custodian if necessary.

I agree that for my services, I will receive a fee in the sum of One Thousand (Php1,000.00) a month from Megumi Academy.

I affix my signature attesting I am agreeable to this agreement this date June 10, 2008 at Barangay Hall of Barangay Alijis, Bacolod City."

Private respondent was allowed to stay at the abandoned school site in order to maintain the petitioner's properties and to prevent squatters from entering the site.

Private respondent did not have a fix time of work. He was also allowed to engage in other construction work of his choice and was never subjected to the control of the petitioner. He only reports twice a week and this was not even strictly imposed upon him.

Moreover, private respondent, as a caretaker of the abandoned site, used it as his residence. He used the abandoned rooms for hanging clothes. He also made a pig pen near the buildings. Private respondent did not report to the main campus except only to claim his allowance of P1,000.00 per month.

Further, private respondent reneged his duties as incorporated in the agreement but this was tolerated by the petitioner as the latter was not a regular worker and was not even considered an employee of the school.

Version of the Private Respondent[9]

Private respondent Celma M. Pido countered that since 1969, he was already a resident of Purok Kasilingan, Barangay Tangub, Bacolod City, where the abandoned school site of the petitioner was located.

Sometime in 2001, the petitioner started construction of the Megumi Academy, Alijis Branch. He was one of the construction workers engaged for this site. However, the management of the petitioner was not able to acquire a

road right of way, hence construction was stopped.

Petitioner then urgently needed a person who can do all around chores such as that of a caretaker, janitor and guard for the abandoned school site. Thus, private respondent was hired to do these tasks considering that he lived nearby.

Private respondent performed tasks such as school sweeper, garbage collector, grass cutter, guard and other functions necessary for the maintenance of the site. He was paid P1,000.00 every month.

The engagement of the services of the private respondent continued until petitioner wanted to define his scope of work and responsibilities. Thus, on May 2, 2006, they entered into an agreement, which was signed by the private respondent and the petitioner's school principal, Jemima O. Garin. Subsequently, on November 8, 2007, a new agreement was signed by the private respondent and this time by the new principal of the petitioner, Evelyn A. Lacson. Lastly, on June 28, 2008, private respondent was again made to sign a new agreement.

During the duration of private respondent's services, he performed all his tasks and obeyed all the instructions of herein petitioner.

On January 14, 2012, private respondent reached the age of sixty (60) and opted to retire. But petitioner refused to give him his retirement benefits, thus private respondent was constrained to file a complaint at the NLRC, RAB VI, Bacolod City.

The Ruling of the Labor Arbiter

In a Decision[10] dated June 29, 2012, Acting Executive Labor Arbiter Romulo P. Sumalinog dismissed the complaint and ruled that private respondent was not a regular employee of the petitioner because the most important element in determining employer-employee relationship, which is control or supervision, was not present in this case.

The decretal portion of the decision states:

"WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered DISMISSING the above-entitled case for lack of merit.

SO ORDERED."[11]

The Ruling of the National Labor Relations Commission

In its assailed Decision[12] promulgated on November 29, 2012, the National Labor Relations Commission reversed the findings of the Labor Arbiter. The NLRC, in its assailed decision posited that given the circumstances and facts of the case, private respondent was able to show that he was under the control and supervision of the petitioner. The NLRC also cited a jurisprudence which states that actual supervision is not essential, as long as the right to wield such a power exists. The dispositive portion of the decision reads, as follows:

WHEREFORE, premises considered, the Decision of Acting Executtive Labor Arbiter Romulo P. Sumalinog, dated 29 June 2012, is hereby REVERSED. Complainant was an employee of respondent Megumi Academy, Inc., hence, he is entitled to his optional retirement benefits and other money claims. Respondent Megumi Academy, Inc. is hereby directed to pay complainant the amount of Three Hundred Two Thousand Seven Hundred Sixty-Nine and 36/100 (P302,769.36), representing his optional retirement benefits, salary wage differentials, 13th month pay and attorney's fees.

SO ORDERED.[13]

Aggrieved, petitioner then filed a Motion for Reconsideration.[14] However, such motion was also denied by the NLRC in a Resolution[15] dated February 28, 2013.

Undeterred, petitioner comes before Us raising the following issues, to wit:

I. THERE IS GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF IN EXCESS OF JURISDICTION ON THE PART OF THE NATIONAL LABOR RELATIONS COMMISSION, SEVENTH DIVISION CEBU CITY IN AWARDING THE HEREIN RESPONDENT WITH WAGE DIFFERENTIAL, RETIREMENT BENEFITS AND 13TH MONTH PAY.

II. THERE IS GRAVE ABUSE OF DISCRETION ON THE PART OF THE NLRC SEVENTH DIVISION, CEBU CITY IN DISREGARDING THE EVIDENCE OF PETITIONER MEGUMI ACADEMY, INC./NAOMI O. TSUJINO THAT RESPONDENT IS NOT A REGULAR WORKER BUT ONLY AS A CARETAKER WHOSE TIME WORK IS MINIMAL OR IRREGULAR.

The Ruling of this Court

The petition is bereft of merit.

At the core of the present controversy is the determination of whether or not there exists an employer-employee relationship between the petitioner and the private respondent.

We rule in the affirmative.

Jurisprudence is firmly settled that whenever the existence of an employment relationship is in dispute, four elements constitute the reliable yardstick: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee's conduct. It is the so-called "control test" which constitutes the most important index of the existence of the employer-employee relationship—that is, whether the employer controls or has reserved the right to control the employee not only as to the result of the work to be done but also as to the means and methods by which the same is to be accomplished. Stated otherwise, an employer-employee relationship exists where the person for whom the services are performed reserves the right to control not only the end to be achieved but also the means to be used in reaching such end.[16]

In the case at bench, the presence of the first three (3) elements are quite evident. First, it was the petitioner who actually selected and hired the services of the private respondent. Second, it is admitted that private respondent was paid by the petitioner the amount of P1,000.00 per month for the services the latter has rendered. Third, there is no argument that the petitioner has the power to dismiss or terminate the private respondent, which in fact it did, after the latter filed the instant complaint.

Now, as to the last element, which is contested and significantly the most crucial element which is the power of control or supervision, We find it imperative to revisit and reevaluate the circumstances and evidence presented by the parties, considering that the ruling of the lower tribunals were conflicting.

Private respondent for his part presented agreements,[17] which he entered into with the petitioner, as well as the payslips[18] representing his salaries. He also submitted a Joint Affidavit[19] executed by three (3) disinterested persons, one of which is the Barangay Chairman, attesting to the veracity of his claims.

On the other hand, petitioner also made reference to these agreements and anchored its claim upon the stipulations embodied therein. However, aside from such agreements and petitioner's denials, no other evidence of material value was presented.

Hence, the Court made an exacting perusal of the agreements and found that the allegations therein sufficiently

buttress private respondent's claim that petitioner exercised control and supervision over his work.

It bears stressing that if We take a holistic perspective of the stipulations in the Agreement, it evidently partakes that of an employment contract, as it delineates the obligations and conditions imposed upon the private respondent. The tenor of these agreements clearly compels or demands from the private respondent a positive act to do or perform the tasks imposed upon him. As stipulated, the private respondent was instructed to maintain the cleanliness of the school site and to secure its vicinity. Moreover, these agreements were formalized three (3) times and except for the last agreement, were signed by the school main campus' principal.

In addition, it can also be inferred from the agreements that the private respondent was provided with the necessary tools to achieve these assigned tasks. In fact, he was instructed to take care of these tools and to report any progress to the property custodian. Therefore, it is beyond cavil that the means and methods to accomplish the end result was provided by the petitioner, indubitably depicting control and supervision.

Another indicia of the presence of employer-employee relationship and supervision are the payslips submitted by the private respondent. It negates the petitioner's claim that the private respondent was not subjected to any working hour as such payslips showed deductions for tardiness and absences. There were also deductions for Social Security System (SSS) contributions, cash advances and certain materials connected with the school.

Petitioner also posited that private respondent is not a regular employee and in fact, did not perform his duties and obligations, since the latter constructed a pig pen inside the site and tall grasses were abundant.

We are not persuaded.

It bears stressing that this aspect does not sufficiently repudiates the existence of employer-employee relationship between the parties. This is because how an employee perform his work is immaterial as long as supervision and control by the employer is being exercised.

In the present case, it can be deduced from the evidence that petitioner had knowledge about these incidents as evidenced by the payslip showing a deduction for "piggery." [20] There were even deductions for materials such as "jalousie," [21] which We conclude as those damaged under private respondent's watch. Further, if private respondent was really remiss of his duties, petitioner could have reprimanded him or terminated his services. Suffice it to state, the reasoning proposed by the petitioner that they tolerated private respondent's acts because he was not a regular employee is simply flimsy.

Petitioner also argues that private respondent only works twice a week or during Mondays and Fridays and was given an allowance of P1,000.00 a month.

Again, We are not convinced.

As aptly indicated in the agreements, private respondent was to guard and maintain the premises of the abandoned school site in Barangay Alijis and to report on Monday and Friday to the main campus. There is also a clause that states that if private respondent's services are needed in the main campus, he would likewise render his service. Clearly, the import of these conditions would show that private respondent is mainly responsible for the upkeep of the Alijis campus, however, he is also obligated to report to the main campus on Monday and Friday, or when his services are needed.

The P1,000.00 given to the private respondent even if claimed by the petitioner as mere allowance would still be considered as a form of wage as evidenced by the payslips which We reiterate were subjected to various deductions.

By analogy, the principles laid down in *Legend Hotel (Manila), owned by Titanium Corp. v. Realuyo* [22] proves

instructive, thus:

Respondent's remuneration, albeit denominated as talent fees, was still considered as included in the term wage in the sense and context of the Labor Code, regardless of how petitioner chose to designate the remuneration. Anent this, Article 97(f) of the Labor Code clearly states:

xxx wage paid to any employee shall mean the remuneration or earnings, however designated, capable of being expressed in terms of money, whether fixed or ascertained on a time, task, piece, or commission basis, or other method of calculating the same, which is payable by an employer to an employee under a written or unwritten contract of employment for work done or to be done, or for services rendered or to be rendered, and includes the fair and reasonable value, as determined by the Secretary of Labor, of board, lodging, or other facilities customarily furnished by the employer to the employee.

Clearly, respondent received compensation for the services he rendered as a pianist in petitioner's hotel. Petitioner cannot use the service contract to rid itself of the consequences of its employment of respondent. There is no denying that whatever amounts he received for his performance, howsoever designated by petitioner, were his wages.

x x x

That respondent worked for less than eight hours/day was of no consequence and did not detract from the CA's finding on the existence of the employer-employee relationship. In providing that the "normal hours of work of any employee shall not exceed eight (8) hours a day," Article 83 of the Labor Code only set a maximum of number of hours as "normal hours of work" but did not prohibit work of less than eight hours.

Now, as to the computation and reckoning period for the computation of the monetary awards, We subscribe to the sound ratiocination of the NLRC, to wit:

Contrary to the respondents assertion that complainant was hired as caretaker only on 28 June, 2008, We give credence to complainant's claim that he was hired in 2002 when the construction of the school building was stopped. Respondents themselves admitted that in 2002, they constructed a skeletal building and in the midst of the construction, adjacent lot owners refused to grant respondent Megumi a right of way, hence, the construction was stopped and abandoned.

It would certainly be unwise on the part of respondents not to hire a caretaker of the abandoned school site from the period 2002 up to 28 June 2008, were We to believe their claim that they hired complainant only on the latter date.[23]

Certainly, given the circumstances of the case, We find more credence to the postulation of the private respondent that he was hired by the petitioner as early as 2002, when the construction of the school building was halted. This is only logical considering that the need for a caretaker of the abandoned site materialized during this time.

Furthermore, the petitioner's argument that the last agreement executed before the Office of the Barangay should be given more weight than the other two (2) agreements, is plainly trivial. This is because even if in the last agreement some clauses were excluded, it is not enough to refute the existence of employer-employee relationship.

Finally, well-settled is the rule that if doubts exist between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the employee. Since it is a time-honored rule that in controversies between a laborer and his master, doubts reasonably arising from the evidence, or in the interpretation of agreements and writings should be resolved in the former's favor.[24]

All told, We cannot ascribe grave abuse on the part of the NLRC, as it merely based its rulings upon substantial

evidence presented before it in conjunction with the applicable laws and jurisprudence.

Settled is the rule that a court or tribunal may only be considered to have acted in grave abuse of discretion when the same was performed in a capricious or whimsical exercise of judgment, which is equivalent to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility.[25] Failure to substantiate these requisites, the claim of grave abuse of discretion cannot be sustained.

WHEREFORE, in view of the foregoing, the Petition is DENIED. The assailed Decision and Resolution in NLRC Case No. VAC-07-000486-2012 of the National Labor Relations Commission (NLRC), Seventh Division, Cebu City, promulgated on November 29, 2012 and February 28, 2013, respectively are hereby AFFIRMED.

SO ORDERED.

Hernando, Chairperson and Azcarraga-Jacob, JJ., concur.

[1] See Petition for Certiorari with Application for Restraining Order and/or Writ of Preliminary Injunction, rollo, pp. 6-169.

[2] Rollo, pp. 126-141.

[3] Rollo, p. 168-169.

[4] Rollo, pp. 142-166.

[5] See Petition, Statement of Facts, rollo, pp. 10-12. (Portions are culled therefrom.)

[6] See Kasugtanan, rollo, p. 54; see also Petition, rollo, pp. 10-11.

[7] See Kasugtanan, rollo, p. 55.

[8] See Kasugtanan, rollo, p. 56; see also Petition, pp. 11-12.

[9] See Position Paper (of Complainant), rollo, pp. 35-49. (Portions are culled therefrom.)

[10] Rollo, pp. 25-34.

[11] Rollo, p. 34.

[12] Rollo, pp. 126-141.

[13] Rollo, p. 140.

[14] Rollo, pp. 142-166.

[15] Rollo, p. 168-169.

[16] Pacific Consultants International Asia, Inc.v. Schonfeld, G.R. No. 166920, February 19, 2007, citing Aurora Land Projects Corporation v. National Labor Relations Commission, 334 Phil. 4 (1997).

[17] See Kasugtanan, rollo, pp. 54, 55, 56.

[18] Rollo, pp. 57-70.

[19] Rollo, pp. 74-76.

[20] See Payslip dated 3/15/05, rollo, p. 66.

[21] See Payslips dated 9/16/08, 10/15/08, 9/13, rollo, p. 59.

[22] G.R. No. 153511, July 18, 2012.

[23] See Decision of the NLRC, rollo, pp. 135-136.

[24] Prangan v. NLRC, G.R. No. 126529, April 15, 1998, citing L.T. Datu and Co., Inc. v. NLRC, 253 SCRA 440 (1996); Soriano v. Offshore Shipping and Manning Corp., 177 SCRA 513 (1989).

[25] Santos v. People, G.R. No. 173176, August 26, 2008.

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