

**ROGELIO G. REYES, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION-THIRD DIVISION, MANILA ELECTRIC COMPANY (MERALCO)/MERALCO INDUSTRIAL ENGINEERING SERVICES CORPORATION (MIES...**

Ponente: CARANDANG, J.

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**CARANDANG, J.:**

This is a petition for certiorari under Rule 65 of the Rules of Court assailing the Decision[1] dated June 25, 2012 dismissing petitioner's appeal and the Resolution[2] dated July 25, 2012 denying petitioner's motion for reconsideration rendered by the National Labor Relations Commission (NLRC) in NLRC LAC NO. 01-000387-12.

**Antecedents:**

On 18 January 2011, a complaint[3] for regularization, underpayment of: salary/wages, overtime pay, holiday pay, holiday premium, rest day premium, service incentive leave pay and 13[th] month pay, moral and exemplary damages and attorney's fees was filed by complainant Rogelio Reyes against Manila Electric Company (Meralco), Meralco Industrial Engineering Service Corp. (Miescor), Manny V. Pangilinan and Jesus Francisco.

In his Position Paper,[4] complainant averred that on August 17, 1992, he was hired as Junior Branch Field man by respondent Meralco at its Branch Services Department with a starting salary of P2,940.00 which was paid to him every 15[th] and 30[th] of the month. He rendered service directly and exclusively for Meralco's Streetlight Survey Project which involved the following activities: survey/verification of Meralco's streetlighting facilities in the field, updating maps with data on these facilities and transcribing streetlight data. Said activities are usually necessary and desirable to Meralco which is engaged in the business of electric power distribution. He worked under the direct supervision of Meralco Dasmarinas Branch head and supervisors. His temporary employment contract was renewed yearly from 1992 to 1994. On February 2, 1995, complainant was again hired by respondent Meralco as Temporary Branch Field Representative/Collector/ Lineman and was assigned at Meralco Bacoor Branch Office with a monthly salary of P4,130.00. His contract lasted until September 30, 1999. From October 1, 1999 up to December 31, 1999, complainant was hired as temporary Single Phase Inspector with a salary of P7,118. 00 per month.

On October 2, 2000, complainant was recommended by Meralco to its subsidiary corporation, MIESCOR, to work as Electrical Engineer I and assigned at Meralco Dasmarinas Contract Administration performing field inspections, engineering works and surveys. For more than 18 years, Meralco did not consider complainant as a regular employee, but as merely a Project employee of Miescor, thus, on January 18, 2011, he filed a complaint for regularization and money claims against Meralco.[5]

Complainant averred that he is entitled to the status and benefits of a regular employee of Meralco because of the following reasons: 1. he performed activities which are usually necessary or desirable in the usual business or trade of the employer; 2. that he continues to perform his job for more than one year.[6]

Complainant was also underpaid. At the time of his employment, he was only receiving P9,020.00 per month way below the salary of a regular Electrical Engineer of Meralco. Because he was not regularized, complainant was not given the benefits of the Meralco CBA.[7]

On the other hand, Meralco contends that Miescor is a legitimate independent contractor engaged in the conduct of scientific, technical, engineering, consulting, construction and general contracting business. Contracts between Meralco and Miescor are covered by “Job Contracting Service Agreements”. Pursuant to the said service agreement, complainant was assigned and deployed at the branch offices of Meralco to do the specific task mentioned in the contract. During the duration of the service contract, complainant never had any direct and material dealings or transactions with Meralco. Complainant was left to the sole control and supervision of Miescor as to the manner and procedure of accomplishing the tasks assigned to him and his salary/wage was left to the sole discretion of Miescor. It was also Miescor which imposed disciplinary measures including dismissal from employment. Thus, there was no employer-employee relationship between Meralco and complainant. Not being an employee, complainant is not entitled to his claims for regularization and monetary claims against Meralco.[8]

Respondent Miescor averred that complainant is its project employee and a member in good standing of the MIESCOR Employees Union-PTGWO Local Chapter enjoying the benefits under the CBA. Miescor hired complainant as a project employee and assigned him to one of its clients, herein Meralco.[9]

The Labor Arbiter dismissed the complaint in its decision dated October 28, 2011. The Labor Arbiter declared that there is no employer-employee relationship between Meralco and complainant for the following reasons: first, complainant applied for and underwent the process of application at Miescor in the year 2000; second, the power of control and supervision over complainant was exercised by Miescor; third, salaries, wages and benefits due complainant were paid by Miescor and fourth, complainant himself admitted being a member of Miescor Employees Union-PTGWO Local Chapter which substantially proved that he is a project employee of Miescor and not of Meralco.[10]

On appeal, the NLRC affirmed the Labor Arbiter in its decision dated June 25, 2012, the dispositive portion of which reads:

“WHEREFORE, premises considered, complainant's appeal from the Decision of the Labor Arbiter dated October 28, 2011 is hereby DISMISSED for lack of merit.”[11]

Likewise, the NLRC also denied the motion for reconsideration in its Resolution[12] dated July 25, 2012, hence the present petition.

Petitioner claims that he should be declared a regular employee of respondent Meralco for the following reasons, to wit: first, he was consistently hired by Meralco from 1992 up to 1999 and was recommended to Miescor on October 2, 2000; second, he performed work which was usually desirable or necessary in the usual business of Meralco and third, he has rendered more than one year of service. Citing the case of *San Miguel Corporation vs. Eduardo L. Teodosio*,[13] petitioner insists that there are two kinds of regular employees, to wit: (1) regular employees – by nature of work and (2) regular employees by years of service. Therefore, petitioner is deemed a regular employee based on the foregoing categories.[14]

Is the petitioner correct?

We hold in the negative.

The issue of whether or not Miescor is a legitimate labor contractor has already been decided by the Supreme Court on December 15, 2010 when it upheld the Court of Appeals decision in the case of *Dela Cruz, et al. vs.*

NLRC (CA GR SP No. 103716)<sup>15</sup> which involved project employees similarly situated as the herein petitioner. In the said case, the complainants also filed complaints for regularization and recovery of employee benefits against Meralco and Miescor alleging that Meralco and Miescor were engaged in labor-only contracting and that Miescor merely supplies workers to perform service for Meralco. Complainants therein claimed that they were performing jobs which were directly related to the business of Meralco; that Miescor and Meralco were housed in the same building and Meralco was the one exercising control over their work; that their services had been engaged by Meralco from four to ten years. The Court of Appeals (First Division) denied the petition and declared Miescor a legitimate labor contractor. The Supreme Court affirmed the CA ruling.

The present case is similar in its factual antecedents with the aforesaid case of Dela Cruz. The CA decision which was affirmed by the Supreme Court stated:

“Having established that it has substantial capital, it is no longer necessary for MIESCOR to further adduce evidence to prove that it does not fall within the purview of labor-only contracting. MIESCOR does not even need to refute the petitioners' contention that they are performing services which are directly related to the business of MERALCO.” [16]

Jurisprudence dictates that the present petition should be dismissed on the ground of stare decisis, to wit:

‘Adherence to the Mecer case is dictated by this Court's policy of maintaining stability in jurisprudence in accordance with the legal maxim ‘stare decisis et non quieta movere’ (Follow past precedents and do not disturb what has been settled.) Where, as in this case, the same questions relating to the same event have been put forward by parties similarly situated as in a previous case litigated and decided by a competent court, the rule of stare decisis is a bar to any attempt to relitigate the same issue (J.M. Tuason & Corp. v. Mariano, 85 SCRA 644 [1978]). In Woulfe v. Associated Realities Corporation (130 N.J. Eq. 519, 23 A. 2d 399, 401 [1942]), the Supreme Court of New Jersey held that where substantially similar cases to the pending case were presented and applicable principles declared in prior decisions, the court was bound by the principle of stare decisis. Similarly, in State ex rel. Tollinger v. Gill (75 Ohio App., 62 N.E. 2d 760 [1944]), it was held that under the doctrine of stare decisis a ruling is final even as to parties who are strangers to the original proceeding and not bound by the judgment under the res judicata doctrine. The Philadelphia court expressed itself in this wise: ‘Stare decisis simply declares that, for the sake of certainty, a conclusion reached in one case should be applied to those which follow, if the facts are substantially the same, even though the parties may be different’ (Heisler v. Thomas Colliery Co., 274 Pa. 448, 452, 118A, 394, 395 [1922]. Manogahela Street Ry, Co. v. Philadelphia Co., 350 Pa 603, 39 A. 2d 909, 916 [1944]; In re Burt's Estate, 353 Pa. 217, 4 A. 2d 670, 677 [1945]). Thus, in J.M. Tuason v. Mariano, supra, this Court relied on its rulings in other cases involving different parties in sustaining the validity of a land title on the principle of ‘stare decisis et non quieta movere.’ (underscoring, Ours)[17]

The Supreme Court already recognized Miescor as a legitimate labor contractor in the case of Dela Cruz, et al. (supra), hence We are behooved to uphold the same. There is no cogent reason to disturb the findings of the Labor Arbiter and the NLRC when the same merely adhere to existing jurisprudence.

Moreover, respondent Miescor avers that at present, there are three separate collective bargaining agent at MIESCOR: Miescor Supervisors' Union (MSU), the Miescor Employees Labor Organization (MELO) representing the regular rank and file employees of Miescor and the Miescor Employees Union- PTGWO Local Chapter which represents the project-hired rank and file employees. Petitioner is a member in good standing of the Meralco Industrial Engineering Services Corporation and MIESCOR Employees' Union-PTGWO.[18] Article-V Section 1 of the Collective Bargaining Agreement (CBA)[19] of said Union provides:

Section 1. The appropriate bargaining unit covered by this agreement shall apply to the project-hired rank and file employees of the COMPANY assigned to projects currently designated as DISTRIBUTION UTILITY

SERVICES (DUS) and LINE DESIGN SERVICES (LDS) of MERALCO (or whatever project names these maybe designated later on or in the future) xxx.

Petitioner does not deny that since October 2, 2000, he was already with respondent Miescor as Electrical Engineer I and enjoying the benefits of the CBA as Miescor's project employee. Therefore, petitioner is not an employee of respondent Meralco, but of respondent Miescor. As such, his claim for regularization as Meralco's employee and monetary claims against Meralco must fail.

WHEREFORE, in view of the foregoing, the instant petition is hereby DISMISSED.

**SO ORDERED.**

### **C E R T I F I C A T I O N**

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Gonzales-Sison and Sorongon, JJ., concur.

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[1] Rollo, at 16-24

[2] Ibid, at 26-27

[3] ibid, at 127-128

[4] Ibid, at 130-138

[5] Ibid

[6] ibid

[7] ibid

[8] Ibid, at 150-171

[9] Ibid, at 294-298

[10] Ibid, at 101-112

[11] Ibid, at 16-25; at 25

[12] Ibid, at 26-27

[13] GR No. 163033, October 2, 2009

[14] Rollo, at 3-13

[15] Rollo, at 77-89

[16] CA GR. SP No. 103716 as affirmed by the Supreme Court in GR No. 193622, December 15, 2010

[17] Tala Realty Services Corp. vs. Banco Filipino Savings and Mortgage Bank, GR No. 132051, June 25, 2001

[18] Rollo, at 419

[19] ibid, at 320-344

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