

ROBERTO A. CALIP, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (FIRST DIVISION), LHP TRADING & #038; LABOR SERVICES AND/OR SAN MIGUEL FOODS, INC.,/ERNESTO EBRADA, RESPONDENTS.

Ponente: GONZALES-SISON, M., J.

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GONZALES-SISON, M., J.:

Before this Court is a Petition for Certiorari[1] which seeks to reverse and set aside the decision[2] and resolution[3] of the National Labor Relations Commission First Division in NLRC LAC No. 02-000542-13 (NLRC Case No. SUB RAB 1-7-01-184-12) dated 18 June 2013 and 30 October 2013 respectively.

Briefly, the facts of the case are as follows:

Private respondent LHP Trading & Labor Service (LHP) is a manpower agency owned by private respondent Ernesto Ebrada with business address at Bued, Binalonan, Pangasinan. Meanwhile, private respondent San Miguel Foods Incorporated (SMFI) is a domestic corporation engaged in poultry, meats and feeds business and is the owner of B-Meg Plant in Binalonan, Pangasinan.

On the other hand, petitioner Roberto A. Calip (Calip) was employed by LHP to work as a laborer for SMFI. Calip claims that he was hired in 1999 until he was dismissed in October 2009. According to Calip he worked with varying schedule from Monday to Saturday for twelve hours. He was paid on a per piece basis, which started at 60 centavos per bag of feeds or other products with 50 kilos weight. This was later on increased to 80 centavos per bag.

On 9 October 2009, Calip allegedly reported to his usual work in the B-Meg Plant in Binalonan, Pangasinan but was refused entry by a certain “Jerrold”, an LHP checker. Calip returned the next day and was told to secure the necessary papers, such as bio-data with picture for him to resume work with B-Meg. Despite submitting the same, Calip was no longer notified to report to work, hence, on 24 January 2012, a case was filed by him against the private respondents before the National Labor Relations Commission Sub-Regional Arbitration Branch No. 1 in Dagupan City for illegal dismissal, non-payment of separation pay, backwages, underpayment of salaries, non-payment of overtime pay, 13[th] month pay, service incentive leave pay, holiday pay, rest day pay, as well as moral and exemplary damages including attorney's fees.

In its position paper,[4] SMFI defended itself by arguing that Calip was never its employee but that of LHP, a legitimate independent contractor. Hence, SMFI averred that it could not have dismissed Calip from service as there was no employer-employee relationship between them to begin with. Moreover, SMFI contended that the claims of Calip have already prescribed.

In a decision[5] dated 28 December 2012, the Labor Arbiter, to whom the case was assigned, agreed with the contentions of SMFI. The Labor Arbiter explained that Calip was not able to prove his employment relations with SMFI. The contract of employment of Calip only shows that he was hired by LHP for a limited period from May

2002 to May 2004 and was merely assigned at the B-Meg Plant of SMFI. Calip's payslips which are until 2007, on the other hand, appear to be also issued by LHP and not by SMFI. Finally, as to his SSS records, the same reveal that Calip's employer was private respondent Ernesto C. Ebrada and not SMFI. Further, the Labor Arbiter found that based on Calip's latest payslip, the action for illegal dismissal and the monetary claims have already prescribed.

On appeal, the National Labor Relations Commission First Division (NLRC) made a different finding as to who is the real employer of Calip. According to the NLRC, LHP is mere labor-only contractor as it failed to prove that it has enough capitalization to be considered as an independent contractor, on top of the fact that it was not registered with the Department of Labor and Employment as a legitimate contractor. As a labor-only contractor, LHP then is considered as an agent of SMFI, making the latter the true employer of Calip. Nonetheless, the NLRC did not grant the appeal of Calip on the ground of prescription. Considering that Calip was not able to produce any identification card or payslip indicating that he worked with SMFI after 2007, the NLRC concluded that Calip's employment with SMFI was terminated on 31 December 2007, the expiration of the contract of services between LHP and SMFI. When the case was filed on 24 January 2012, more than four (4) years have elapsed, hence already barred by prescription in accordance with Article 1146 of the New Civil Code and Article 291 of the Labor Code.

The fallo of the decision of the NLRC dated 18 June 2013 reads:

“WHEREFORE, the appeal filed by the complainant is hereby DISMISSED for lack of merit. Accordingly, the Decision dated December 28, 2012 of Labor Arbiter Isagani Laurence G. Nicolas is AFFIRMED.

SO ORDERED.”[6]

Aggrieved, Calip filed a motion for reconsideration of the above decision, but to no avail. The NLRC thus decreed as follows:

“WHEREFORE, the motion for reconsideration is hereby DENIED for lack of merit. No further motion for reconsideration of the same tenor shall be entertained.

SO ORDERED.”[7]

Undaunted, Calip now comes to this Court via this instant Petition for Certiorari and in support thereof, assigns the following errors on the part of the NLRC:

I.

WHETHER THE PUBLIC RESPONDENT COMMISSION (NLRC) COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION IN RULING THAT THE PETITIONER'S CAUSES OF ACTION FOR ILEL GAL DISMISSAL AND MONEY CLAIMS ARE BARRED BY PRESCRIPTION.

II.

WHETHER THE PUBLIC RESPONDENT COMMISSION (NLRC) COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF (SIC) JURISDICTION IN NOT HOLDING THAT THE PETITIONER WAS ILLEGALLY DISMISSED, HENCE ENTITLED TO BACKWAGES AND SEPARATION PAY, PLUS HIS MONETARY CLAIMS (I.E. UNDERPAYMENT OF WAGES, MORAL AND EXEMPLARY DAMAGES, OVERTIME PAY, 13[th] MONTH PAY, SERVICE INCENTIVE LEAVE PAY, AND ATTORNEY'S FEES).

In essence, Calip contends that his complaint for illegal dismissal and money claims is not barred by prescription

since he was dismissed from service only in October 2009 and not on 31 December 2007 as espoused by both the Labor Arbiter and the NLRC. In support of this argument, Calip first cites the memorandum issued by private respondent Ernesto Ebrada of LHP to its employees dated 31 January 2008 reminding them to stop working at the B-Meg Plant effective 1 March 2008 as the contract of services between LHP and SMFI has already expired on 30 December 2007.[8] According to Calip, said memorandum indubitably proves that LHP (SMFI)'s employees including Calip were still allowed to work notwithstanding the expiration of the contract of services between SMFI and LHP. Second, Calip points to a related decision in a labor case between SMFI and the other employees of LHP dated 31 May 2011, where it was held that the contract of services between SMFI and LHP subsisted from 1997 until 31 January 2011.[9] Third, Calip notes the two (2) affidavits executed by Calip's former co-workers where they mentioned that Calip continued to work at B-Meg Plant after 1 March 2008 and was only dismissed from service in 2009.[10] Last, Calip mentions that his failure to produce his identification card and payslips after 2007 was because his house was totally washed away by the typhoon "Pepeng".[11] With the above averments, Calip prays the payment of his monetary claims as well as the payment of backwages and separation pay in lieu of reinstatement.

At the outset it bears to stress that a petition for certiorari is the proper remedy when any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction and there is no appeal, nor any plain speedy, and adequate remedy at law. There is "grave abuse of discretion " when public respondent acts in a capricious or whimsical manner in the exercise of its judgment as to be equivalent to lack of jurisdiction.[12]

As often repeated by the Supreme Court; the sole purpose of the writ of certiorari is the correction of errors of jurisdiction including the commission of grave abuse of discretion amounting to lack of jurisdiction. A special civil action of certiorari does not include correction of the NLRC's evaluation of the evidence and factual findings thereon.[13]

A perusal of the records, however, reveal that the errors assigned by Calip in the instant petition do not pertain to the jurisdiction of the NLRC; it is rather an error of judgment supposedly committed by the NLRC in its decision and resolution and thus, not the proper subject of a petition for certiorari. Although this Court is aware that there are some instances where an evaluation of the evidence and factual findings is required such as when the facts complained of are not supported by the evidence on record; when it is necessary to prevent a substantial wrong or to do substantial justice; when the findings of the NLRC contradict those of the Labor Arbiter; and when necessary to arrive at a just decision of the case,[14] the foregoing are not present in the instant case, thus meriting an immediate dismissal of the instant petition.

Nonetheless, an examination of the arguments raised by Calip reveal, that the same hold no water.

Undoubtedly, the main issue before us is whether the complaint of Calip was seasonably filed. We rule in the negative.

Article 1146 of the New Civil Code provides:

"Art. 1146. The following actions must be instituted within four years:

1. Upon an injury to the rights of the plaintiff;

xxxx."

When one is arbitrarily and unjustly deprived of his job or means of livelihood, the action instituted to contest the legality of one's dismissal from employment constitutes, in essence, an action predicated "upon an injury to the rights of the plaintiff," as contemplated under Art. 1146 of the New Civil Code, which must be brought within

four (4) years.[15]

With regard to the prescriptive period for money claims, Article 291 of the Labor Code states:

“Article 291. Money Claims. – All money claims arising from employer-employee relations accruing during the effectivity of this Code shall be filed within three (3) years from the time the cause of action accrued; otherwise they shall be barred forever.

xxxx.”

Consequently, SMFI contends that LHP employees including Calip were let go when SMFI's contract of service with LHP expired on 31 December 2007. Calip argues otherwise. Calip maintains that he was allowed to work beyond 2007 and until October of 2009, hence, when he filed his complaint on 24 January 2012, it was still well-within the four (4) and three (3) year periods set by law.

On this score, it is well to point the rule that the one who alleges a fact has the burden of proving it;[16] thus, Calip is burdened to prove his allegation of working beyond 2007. It must be stressed that the evidence to prove this fact must be clear, positive and convincing.[17]

However, we take note that there is a dearth of evidence to support Calip's position. First, the memorandum dated 31 January 2008 issued by LHP and attached to the position paper of SMFI does not indicate that it was specifically addressed to Calip. It must be stressed that the said memorandum is directed towards the employees of LHP who have violated the company policies, rules and regulations; failed to remit their share in SSS contribution; filed baseless criminal and labor cases against their supervisor; and made libelous response to the letter-Memorandum.[18] From the records of the case, it does not seem that Calip is a member of the above-mentioned class of employees, hence the memorandum is not applicable to him. Also, it is a basic rule of evidence that a party must prove his claim by competent evidence, relying on the strength of his own evidence and not upon the weakness of that of his opponent.[19]

Second, we cannot take judicial notice of the findings of the Labor Arbiter in a separate case for it refers to different parties, issues and set of facts. Moreover, there is no evidence that said decision has attained finality.

Third, the two (2) affidavits executed by the purported co-workers of Calip are of dubious validity. By themselves, generalized and pro forma affidavits cannot constitute relevant evidence which a reasonable mind may accept as adequate. There must be some other relevant evidence to corroborate such affidavits, which are definitely lacking in this case.[20]

Last, the mere fact that Calip was a victim of a typhoon does not excuse him from producing substantial evidence proving that he was employed beyond 2007 by LHP. What is surprising is that Calip was still able to produce some of his payslips despite the typhoon which however are only up to 2007 that coincides with the termination of the contract of service between LHP and SMFI. Consequently, there is no proscription for Calip to have filed a motion or a request for the issuance of subpoena duces tecum before the Labor Arbiter to order SMFI and LHP to produce his complete employment records, but for reasons unknown, Calip, failed to do so.[21] It then gives rise to the presumption that evidence willfully suppressed would be adverse if produced.[22]

In fine, we rule that both the Labor Arbiter and the NLRC did not commit grave abuse of discretion in finding that Calip's complaint has prescribed for it was only filed more than four (4) years from the cessation of his employment on 31 December 2007. At any rate, it is settled that by reason of the special knowledge and expertise of said administrative agencies over matters falling under their jurisdiction, they are in a better position to pass judgment thereon; thus, their findings of fact in that regard are generally accorded great respect, if not finality, by the courts. The findings of fact of an administrative agency must be respected as long as they are supported by

substantial evidence, even if such evidence might not be overwhelming or even preponderant. It is not the task of an appellate court to weigh once more the evidence submitted before the administrative body and to substitute its own judgment for that of the administrative agency in respect of sufficiency of evidence.[23]

With the above finding, we need not belabor on other other issues raised by Calip.

WHEREFORE, premises considered, the instant Petition for Certiorari is DENIED and the assailed decision and resolution of the National Labor Relations Commission First Division dated 18 June 2013 and 30 October 2013 respectively are hereby AFFIRMED.

SO ORDERED.

De Guia-Salvador, R. Chairperson and Cruz, R. A., JJ., concur.

[1] Rollo, p. 3.

[2] Penned by Commissioner Perlita B. Velasco with Presiding Commissioner Gerardo C. Nograles and Commissioner Romeo L. Go concurring.

[3] Penned by Commissioner Perlita B. Velasco with Presiding Commissioner Gerardo C. Nograles and Commissioner Romeo L. Go concurring.

[4] Rollo, pp.50-60.

[5] Penned by Labor Arbiter Isagani Laurence G. Nicolas

[6] Rollo, p. 38.

[7] Rollo, pp. 26-27.

[8] Rollo, p. 68.

[9] Rollo, p. 134.

[10] Rollo, pp. 115-117.

[11] Certification for the Office of the Punong Barangay, Rollo, p. 142.

[12] People's Broadcasting v. The Sec. of the Department Labor and Employment, etc., G.R. No. 179652, 08 May 2009.

[13] See Cosmos Bottling Corp. v. Nagrama, Jr., G.R. No. 164403, 04 March 2008.

[14] See Cocomangas Hotel Beach Resort v. Visca, G.R. No. 167045, 29 August 2008.

[15] Teekay Shipping Phils. Inc., v. Concha, G.R. No. 185463, 22 February 2012.

[16] Morales v. Skills International Company, G.R. No. 149285, 30 August 2006.

[17] Ledesma, Jr., v. NLRC, G.R. No. 174585, 19 October 2007.

[18] Supra, note 8.

[19] See Lopez v. Bodega City, G.R. No. 155731, 3 September 2007.

[20] See Philippine Long Distance Telephone Company v. Tiamson, G.R. Nos. 164684-85, 11 November 2005.

[21] Rule 1, Section 3 of the 2011 NLRC Rules of Procedure - SUPPLEMENTARY APPLICATION OF THE RULES OF COURT. - In the absence of any applicable provision in these Rules, and in order to effectuate the objectives of the Labor Code, the pertinent provisions of the Rules of Court of the Philippines may, in the interest of expeditious dispensation of labor justice and whenever practicable and convenient, be applied by analogy or in a supplementary character and effect.

[22] Rule 131, Section 3(e) of the Rules on Evidence.

[23] Amigo Manufacturing, Inc. v. Cluett Peobody Co., Inc., G.R. No. 139300, 14 March 2001.

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