

JOHLYN L. MENDOZA, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (SIXTH DIVISION), CENTER FOR HEALTH SERVICES, INC. AND DR. REYNALDO MARIANO, RESPONDENTS.

Ponente: DICDICAN, J.

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DICDICAN, J.:

Before this Court is a Petition for Certiorari[1] filed pursuant to Rule 65 of the Revised Rules of Court assailing, for having been rendered with grave abuse of discretion amounting to lack or excess of jurisdiction, the October 22, 2013 Decision[2] of the National Labor Relations Commission (NLRC), Sixth Division, in labor case docketed as NLRC LAC No. 01-000464-12 (RA-08-13) (NLRC NCR Case No. 06-09615-11) which affirmed the March 27, 2013 Decision[3] of the Labor Arbiter. Also assailed in this petition is the November 29, 2013 Resolution[4] of the same Commission which denied the Motion for Reconsideration filed by the petitioner.

The material and relevant facts, as culled from the record, are as follows:

Private respondent Center for Health Services, Inc. (“CHSI”) is a corporation duly organized and existing under Philippine laws. It is a company which provides health care services such as clinic management services, manpower, mobile PE, clinic services, hospital coordination, medical information system, ancillary and medical supplies services, diagnostics, on-site home care projects and cost effective vaccination to schools and communities. Private respondent Dr. Reynaldo Mariano is the President and the CEO thereof.

Petitioner Johlyn Mendoza (“petitioner”) was previously an occupational health nurse of San Miguel Corporation (“SMC”). She resigned in 2005 to join the private respondent CHSI which was created as an independent health care service provider.

In 2006, the petitioner, since she was a former employee of San Miguel Corporation, was given priority in the assignment of nurses by the private respondent to SMC.

According to the petitioner, her first contract under the CHSI was a 6-month contract with a monthly salary of P20,000.00. Although no copy of the same was presented for the reason that it was destroyed during the typhoon Ondoy. The petitioner also claimed that she continued working for the private respondent despite the lapse of her contract.

In January 2007, the private respondent corporation experienced financial troubles which forced them to reduce the salary of its employees. The petitioner's monthly salary was reduced to P18,000.00. On April 1, 2011, the monthly salary of the petitioner was further reduced to P12,000.00.

By reason of the foregoing, the petitioner filed a complaint with the Labor Arbiter for the declaration of her status as a regular employee, the payment of her salary differentials plus moral and exemplary damages.

As all efforts to reach an amicable settlement proved futile during the conciliation conference conducted by the Labor Arbiter, the case underwent proceedings to determine the merit of petitioner's complaint. The parties were

made to submit their respective position papers and evidence in support thereof which they did dutifully submit.

In her position paper, the petitioner claimed that, as a nurse employed to provide health care services which was necessary and desirable to the private respondent corporation's business, she is deemed a regular employee. For the petitioner, the transfer of her employment to private respondent CSHI from SMC merely connotes a change of employer which did not affect her status as an employee thereof. She likewise alleged that the CHSI could not validly invoke management prerogative in classifying her as a contractual employee as well as in the diminution of her salary as the practice of the same must be exercised with limitations.

The private respondents, on the other hand, alleged that the petitioner was not a regular employee as she knew fully well that she was hired as a contractual employee only for deployment to its clients. It was likewise claimed that yhe petitioner was hired under several contracts of employment as occupational health nurse for SMC-SM Purefoods Hormel-Marikina. She was hired on January 1, 2007 to December 31, 2007 wherein she received a monthly salary of P12,600.00. Said contract was renewed under the same terms and conditions effective January 1, 2008 to December 31, 2008. It was again renewed on the following year from January 1, 2009 to December 31, 2008. Because of the typhoon Ondoy on November 2008, the aforementioned contract was cut short as SMC-SM Purefoods Hormel-Marikina was forced to close its operations.

The private respondents further alleged that the petitioner was rehired two years thereafter and was assigned at Canon Information Technology in Bagumbayan, Libis, Quezon City with a monthly salary of P12,000.00. The private respondent claimed that the petitioner had just started her contract with the private respondents at the time that the complaint was filed with the Labor Arbiter.

With respect to the diminution of the petitioner's salary, the private respondents averred that the same was dependent on the terms and conditions of its contract with its clients.

Meanwhile, after the filing of the complaint, or on September 30, 2011, the petitioner's contract with CHSI expired and the same was not renewed by reason of the lack of available employment[5].

On account of the alleged premature expiration of her contract with the private respondents, the petitioner sought for the amendment of her complaint on October 3, 2011 to include illegal dismissal as additional cause of action[6].

On November 29, 2011, Labor Arbiter Michelle P. Pagtalunan rendered a Decision[7] dismissing the complaint without first ruling on the motion to amend the same. Thus, the petitioner filed a Motion for Reconsideration with the NLRC which was granted in a Resolution[8] dated May 23, 2012.

On February 12, 2013, Labor Arbiter Renaldo O. Hernandez granted the motion to amend the complaint[9].

The petitioner filed her Amended Position Paper[10] on March 9, 2013 which sought for her reinstatement to her previous position without loss of seniority rights, plus payment of full backwages and other benefits, exemplary damages in the amount of P50,000.00 as well as attorney's fees.

After evaluating the evidence and contentions adduced and set forth by both parties, Labor Arbiter Renaldo O. Hernandez rendered a Decision dated March 27, 2013[11] which dismissed the case for lack of merit.

The Labor Arbiter found that the records bear out that the petitioner was hired under several contracts of employment as Occupational Health Nurse for SMC-SM Purefoods Hormel-Marikina. Her first contract was for a period beginning on January 1, 2007 to December 31, 2007 with a monthly salary of P12,600. Her contract was renewed under the same terms effective January 1, 2008 to December 31, 2008. It was again renewed for another year on January 1, 2009 to December 31, 2009. The petitioner's fixed assignment contract with Purefoods was

shortened because SMC-SM Purefoods Hormel-Marikina closed in November 2009 because of serious damage thereon caused by Typhoon Ondoy.

After almost two (2) years or on April 1, 2011, the petitioner applied with and was given another contractual employment by the private respondents. She was assigned with Canon Information Technology – Bagumbayan, Libis, Quezon City, with a monthly salary of P12,000. On account of her fixed period contract assignment, she was made to sign an employment contract for an agreed period of 6 months but she refused to sign the same. At the end of her contract on September 30, 2011, CHSI was compelled to end her contractual employment for lack of new assignments.

According to the Labor Arbiter, there was therefore no basis for the petitioner's claim that she was a regular employee who merely continued her work when she was still with Purefoods-Hormel. Her argument that she already possessed immediate regular status when she was hired by CHSI as there was a mere change in the employer is untenable. As a matter of fact, the petitioner even admitted that she signed up with the private respondents as contractual employee in 2008 and 2009.

Dissatisfied, the petitioner appealed from the decision of the Labor Arbiter to the NLRC.

On October 22, 2013, the NLRC, Sixth Division, rendered the assailed Decision[12] which affirmed the decision of the Labor Arbiter, to wit:

“WHEREFORE, the appeal is denied for lack of merit.

“SO ORDERED.”

The NLRC adopted the findings of the Labor Arbiter. According to the NLRC, the contracts of employment presented by the petitioner clearly indicated that she was hired by the private respondents only for a definite period.

The petitioner filed a Motion for Reconsideration of the decision of the NLRC but the said motion was denied in a Resolution[13] dated November 29, 2013, viz:

“WHEREFORE, the instant motion for reconsideration is hereby DENIED for lack of merit.

“SO ORDERED.”

Unstirred by the foregoing disposition of the NLRC, the petitioner filed the instant petition with this Court assigning the following acts of grave abuse of discretion which were purportedly committed by the NLRC:

I.

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FINDING THE PETITIONER'S CLAIM TO BE A REGULAR EMPLOYEE AS CONTRADICTORY TO HER ADMISSION THAT SHE SIGNED UP WITH THE PRIVATE RESPONDENTS AS CONTRACTUAL EMPLOYEE IN 2008 AND 2009.

II.

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION IN FINDING THAT THIS CASE DID NOT INVOLVE ILLEGAL DISMISSAL AND THAT THE BURDEN OF PROOF WAS WITH THE EMPLOYER.

In sum, the primordial issue brought before this Court for resolution is whether or not the petitioner was employed by the private respondents as a regular employee and, as such, she could not be validly terminated from

employment on the ground of expiration of contract.

After a careful and judicious scrutiny of the whole matter, together with the applicable laws and jurisprudence in the premises, we find the instant petition to be devoid of merit.

The petitioner contends that since she was a regular employee of SMC, the transfer of her employment to the private respondents, did not, in any manner, change her status as such. According to the petitioner, her status as regular employee was not affected by the contracts that she signed with the private respondents as her new employer.

Article 280 of the Labor Code provides as follows:

“Article 280. Regular and casual employment.—The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.

“An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That, any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.”

In the case at bench, we are in conformity with the findings of the Labor Arbiter, as affirmed by the NLRC that the petitioner was hired under several contracts of employment with the private respondents, which covered the following periods: January 1, 2007 to December 31, 2007 with a monthly salary of P12,600; January 1, 2008 to December 31, 2008; January 1, 2009 to December 31, 2009. The petitioner's last fixed assignment contract with Purefoods was shortened because SMC-SM Purefoods Hormel-Marikina closed in November 2009 because of serious damage thereon caused by Typhoon Ondoy. She was given another contract after almost 2 years or on April 1, 2011 where she was assigned with Canon Information Technology – Bagumbayan, Libis, Quezon City, with a monthly salary of P12,000. Indeed, there was therefore no basis for the petitioner's claim that she is a regular employee who merely continued her work when she was still with Purefoods-Hormel.

Two criteria validate a contract of employment with a fixed period: (1) the fixed period of employment was knowingly and voluntarily agreed upon by the parties without any force, duress or improper pressure being brought to bear on the employee and without any circumstances vitiating consent or, (2) it satisfactorily appears that the employer and employee dealt with each other on more or less equal terms with no moral dominance whatever being exercised by the former on the latter[14]. Against these criteria, the petitioner's contracts of employment with a fixed period were valid.

Each contract provided for an expiration date. Petitioner knew from the beginning that the employment offered to her was not permanent but only for a certain fixed period. She was free to accept or to refuse the offer. When she expressed her acceptance, she bound herself to the contract.

In this case, there was no allegation of vitiated consent. The private respondents did not exercise moral dominance over the petitioner. The contracts were even mutually advantageous to the parties. The petitioner cannot feign knowledge that she was hired by CHSI as a contractual employee. No less than the previous contracts that she voluntarily and willingly signed and undertaken with CHSI from 2007 to 2011 would show her status as a fixed-term employee.

We stress the rule in *Cartagenas v. Romago Electric Co.*,^[15] that contract workers are not considered regular employees, their services being needed only when there are projects to be undertaken. The rationale of this rule is that if a project has already been completed, it would be unjust to require the employer to maintain them in the payroll while they are doing absolutely nothing except waiting until another project is begun, if at all. In effect, these stand-by workers would be enjoying the status of privileged retainers, collecting payment for work not done, to be disbursed by the employer from profits not earned. This is not fair by any standard and can only lead to a coddling of labor at the expense of management^[16].

Furthermore, there can be no controversy for it is a principle well-recognized, that it is within the employer's legitimate sphere of management control of the business to adopt economic policies or make some changes or adjustments in their organization or operations that would insure profit to itself or protect the investment of its stockholders^[17]. When the petitioner was separated from SMC, she was fully aware of its consequences as she very well agreed to the contracts that she signed with the private respondents, who became her new employer. The petitioner was well-informed that the private respondent corporation was an entity separate and distinct from SMC. Thus, her argument that she retained her status as a regular employee when she transferred to the private respondents is without basis.

The petitioner would also like to convince us that, assuming the scenario that she was a probationary employee for the period from June 1, 2006 to November 30, 2006, she already became a regular employee after that period.

Central to the matter at hand is Article 281 of the Labor Code which provides that:

“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.”

In contrast, the fixed-term character of employment essentially refers to the period agreed upon between the employer and the employee^[18]. Employment exists only for the duration of the term and ends on its own when the term expires^[19].

In a sense, employment on probationary status also refers to a period because of the technical meaning "probation" carries in Philippine labor law – a maximum period of six months. Their similarity ends there, however, because of the overriding meaning that being "on probation" connotes, i.e., a process of testing and observing the character or abilities of a person who is new to a role or job.

In the instant case, the petitioner could not be considered a probationary employee. As established earlier, the petitioner's employment with the private respondents was defined by the contract that she had agreed to undertake which she clearly admitted was for a fixed period. Having entered into her employment contracts freely and voluntarily, she knew that her employment was only for a fixed period and would end on the prescribed expiration date.

Simply put, the petitioner was not a regular employee. Consequently, there could have been no illegal dismissal when her services was terminated on the expiration of her contract. There was even no need for notice of termination because she knew exactly when her contract would end. Contracts of employment for a fixed period terminate on their own at the end of such period.

On a final note, contracts of employment for a fixed period are not unlawful. What is objectionable is the practice

of some scrupulous employers who try to circumvent the law protecting workers from the capricious termination of employment. Employers have the right and prerogative to choose their workers. The law, while protecting the rights of the employees, authorizes neither the oppression nor destruction of the employer. When the law angles the scales of justice in favor of labor, the scale should never be so tilted if the result is an injustice to the employer[20].

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us DENYING the petition filed in this case.

SO ORDERED.

Paredes[*] and Galapate-Laguilles,**] JJ., concur.

[*] Acting Senior Member per Office Order No. 258-14-ABR dated June 2, 2014.

**] Acting Junior Member per Office Order No. 258-14-ABR dated June 2, 2014.

[1]Rollo, pp. 3-24.

[2] Ibid, pp. 28-33.

[3] Ibid, pp. 34-42.

[4] Ibid, pp. 25-26.

[5] Ibid, p. 126.

[6] Ibid, pp. 87-88.

[7] Ibid, pp. 89-96.

[8] Ibid, pp. 103-106.

[9] Ibid, pp. 109-110.

[10]Ibid, p. 111-125.

[11] Ibid, pp. 34-42.

[12] Ibid, pp. 28-32.

[13] Ibid, pp. 25-26.

[14] Philippine National Oil Company Energy Development Corporation v. National Labor Relations Commission, G.R. No. 97747, 31 March 1993, 220 SCRA 695.

[15] G.R. No. 82973, September 15, 1989.

[16] Ibid.

[17] SME Bank, Inc., et al. v. de Guzman, et al., G.R. No. 184517, October 8, 2013.

[18] Colegio del Santisimo Rosario v. Rojo, G.R. No. 170388, September 4, 2013.

[19] Ibid.

[20] St. Theresa's School of Novaliches Foundation v. NLRC, 351 Phil. 1038 (1998).

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