

GOODHAVEN CONSTRUCTION & DEVELOPMENT CORPORATION/ EMETERIO A. EUGENIO, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (FIFTH DIVISION) AND JAIME C. AREGLADO, CIRILO BATOTO...

Ponente: DIMAAMPAO, J.

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DIMAAMPAO, J.:

Petitioners declaim against the Decision[1] and Resolution[2] dated 20 February 2012 and 26 July 2012 of the National Labor Relations Commission (NLRC) affirming the Labor Arbiter's judgment that private respondents were illegally dismissed, and denying the Motion for Reconsideration thereof, respectively, in NLRC NCR Case No. 02-03015-11.

The diegesis of the controversy is uncomplicated.

Petitioner Goodhaven Construction and Development Corporation (Goodhaven) is engaged in construction and property development. Co-petitioner Emeterio Eugenio (Emeterio) is its Chairman and Chief Executive Officer.

Upon the other hand, private respondents Jaime Areglado, Cirilo Batoto, Silvano Taguena, Jr., and Antonio Sallave (collectively, private respondents) were construction workers of Goodhaven holding positions as tinsmith, car-penter, and tile setter posted to various projects.

As a customary practice, Goodhaven would interchange-ably assign private respondents to its projects depending on manpower demand. They were made to routinely report to work Monday to Saturday from 8:00 o'clock in the morning to 5:00 o'clock in the afternoon.

Sometime in January 2011, Emeterio informed private respondents of the company's intention to employ workers merely on a "piece work" or "pakyaw" basis. As a consequence, they would have to sign a Kasunduan o Kontrata Bilang Proyeklong Manggagawa.[3] Private respondents professed that they wanted the company to pay their unpaid benefits for the past years before signing the Kasunduan. But Emeterio opposed and insisted that they sign the project employment contracts. Private respondents flatly refused.

As it happened, Goodhaven demanded an explanation from private respondents for their unwillingness to sign the proposed Kasunduan. Private respondents stood pat on their earlier stance that they would sign only if they would be paid their benefits. Most of them had rendered service for more than five years and had not yet received full benefits. All the same, Goodhaven maintained that they sign on or before the end of the month, otherwise, they would no longer be allowed to enter the project sites. When private respondents refused, Goodhaven considered their employment terminated.

Aggrieved by the turn of events, private respondents sought the intervention of Goodhaven's Human Resources Department (HRD). Lamentably, they were told that if they refused to sign, they were deemed dismissed from service. Left without any means of livelihood, private respondents filed a Complaint[4] before the Labor Arbiter for illegal dismissal praying for payment of salary differentials, overtime pay, holiday pay, rest day pay, service

incentive leave pay, 13th month pay and attorney's fees.

In the interregnum, private respondent Cirilo Batoto (Cirilo) died due to a vehicular accident. Jerico Batoto, Cirilo's son, filed a motion to substitute his father as complainant. For failure of Goodhaven to object despite notice, the motion for substitution was granted.[5] The hearing of the case proceeded ex parte as Goodhaven failed to file its Position Paper. In due course, the Labor Arbiter rendered the Decision[6] dated 29 June 2011 pronouncing that private respondents were illegally dismissed, thusly:

"WHEREFORE, premises considered, judgment is hereby rendered declaring that the complainants' (sic) were illegally dismissed by the respondents' (sic). Concomitantly, respondents' (sic) GOODHAVEN CONSTRUCTION AND DEVELOPMENT CORPORATION and Emeterio A. Eugenio are ordered to pay complainants back wages, separation pay, 13th month pay and service incentive leave pay contained in Annex 'A' of this decision.

SO ORDERED."[7]

Goodhaven appealed before the NLRC[8] asserting that private respondents were merely project employees. Goodhaven adduced in evidence the various Kasunduan[9] allegedly signed by private respondents reflecting, inter alia, that one, their respective project assignments already ended on 31 December 2010, and two, their assignment to different projects did not make them regular employees as they were merely hired for a specific period of employment at the time of their engagement.[10]

On 20 February 2012, the NLRC rendered the impugned Decision, disposing in this wise:

"WHEREFORE, premises considered, judgment is rendered:

- Granting Respondents' Motion to Reduce Bond; and
- Dismissing the appeal for lack of merit.

The June 29, 2011 decision of the Labor Arbiter stands AFFIRMED.

SO ORDERED."[11]

The Motion for Reconsideration[12] ensuingly filed by Goodhaven was denied in the challenged Resolution.[13]

Via the instant Petition for Certiorari,[14] Goodhaven and Emeterio (now, petitioners) seek relief before Us raising the following issue:

WHETHER OR NOT THE PUBLIC RESPONDENT HAD COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION FOR DISMISSING THE APPEAL TAKEN BY THE PETITIONERS FOR ALLEGED LACK OF MERIT AND DENYING THE MOTION FOR RECONSIDERATION, THEREBY AFFIRMING ITS DECISION DATED FEBRUARY 20, 2012.

The Petition is meritless.

The conundrum in this case is not atypical— Are private respondents project employees?

Article 280 of the Labor Code[15] specifically provides that a project employee is one whose 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. The principal test is whether or not the employee were assigned

to carry out a specific project, the duration of which was specified at the time the employees were engaged for that project.

Petitioners postulate that the Kasunduan signed by private respondents clearly denoted that they are project employees and are not entitled to the benefits enjoyed by regular employees. The Kasunduan mentioned the project assigned to each of the private respondents and the term of their respective employment. As they knowingly agreed and voluntarily signed the same, they are bound by its terms and conditions.

Petitioners' postulation holds no water.

The Kasunduan heavily relied upon by petitioners to prove that private respondents were project employees bears no weight and substance.

First. Private respondents were not shown to have signed the Kasunduan at the time their services were first engaged.

Second. The genuineness and due execution of the Kasunduan were denied by private respondents. They adamantly maintained that their signatures were forged and petitioners caused them to sign blank contracts as a condition for the release of their wages.[16]

Third. Petitioners did not present the Kasunduan before the Labor Arbiter. These were attached only to its Motion for Reconsideration[17] before the NLRC. Petitioners' pretext that it was not presented earlier as they were irrelevant and immaterial deserves short shrift. The presentation thereof at the late stage of the case raises suspicion on its authenticity. So, too, it has not escaped Our attention that petitioners did not present original copies of the said Kasunduan before the NLRC.

Given the foregoing, petitioners failed to convince Us that private respondents were its project employees. The Kasunduan cannot be used as basis to hold that their employment was on a per project basis.

Perforce, We give Our imprimatur to the disquisition of the NLRC, viz:

“(Petitioners) presented copies of the contracts of project employment allegedly executed by the (private respondents) to support their claim that (private respondents) were project employees. A perusal thereof revealed that (private respondents) were indeed hired for specific projects as either Tinsmith, Carpenter or Tile Setter, which nature of work were necessary and important to (petitioners') construction business. However, it appeared that at the time of their engagement, or at the time they were hired, the completion or termination of the particular projects for which they were hired were not determined.

Records disclosed that (private respondents) Areglado, Batoto, Taguenca, Jr. and Sallone were hired in 2004, 2006, 2006 and 2008, respectively. (Petitioners) only produced “KASUNDUANS” dated from 2009 to 2010 specifying particular projects/assignments and tenure to prove that (private respondents) were “project employees.” The failure of (petitioners) to produce the “KASUNDUANS” of (private respondents) at the time they were hired from 2004 to 2008, only proved that at the time (private respondents) were hired, the completion or termination of the projects for which they were hired was not determined. This alone removed them from the classification of “project employees.” (Private respondents) were regular employees of (petitioners) since they were engaged to perform activities which were usually necessary or desirable in the construction business of (petitioners).”[18] (Emphasis Ours)

"Although it is made to appear by the (petitioners) that the (private respondents) had signed separate contracts entitled 'Kasunduan Bilang Project Worker,' such contracts did not determine the status of their employment. A perusal of the alleged contracts of employment disclose that they contained alterations, the signatures affixed thereat vary and some of the contracts particularly that of Areglado failed to stipulate the covered period of employment. x x x"[19]

Rivetingly, petitioners failed to comply with Section 6 of Department Order No. 019-93[20] or the Guidelines Governing the Employment of Workers In The Construction Industry which directs employers to submit a report of an employee's termination due to project completion. The failure to report on the part of petitioners is detrimental to its interest and bolsters private respondents' assertion that they were regular employees. Quite illuminating is the recent case of *Pasos v. Philippine National Construction Corporation*[21] wherein the Supreme Court edifyingly held:

"In this case, records clearly show that PNCC did not report the termination of petitioner's supposed project employment for the NAIA II Project to the DOLE. Department Order No. 19, or the "Guidelines Governing the Employment of Workers in the Construction Industry," requires employers to submit a report of an employee's termination to the nearest public employment office every time an employee's employment is terminated due to a completion of a project. PNCC submitted as evidence of its compliance with the requirement supposed photocopies of its termination reports, each listing petitioner as among the employees affected. Unfortunately, none of the reports submitted pertain to the NAIA II Project. Moreover, DOLE NCR verified that petitioner is not included in the list of affected workers based on the termination reports filed by PNCC on August 11, 17, 20 and 24, 1998 for petitioner's supposed dismissal from the NAIA II Project effective August 4, 1998. This certification from DOLE was not refuted by PNCC. In *Tomas Lao Construction v. NLRC*, we emphasized the indispensability of the reportorial requirement:

Moreover, if private respondents were indeed employed as "project employees," petitioners should have submitted a report of termination to the nearest public employment office every time their employment was terminated due to completion of each construction project. The records show that they did not. Policy Instruction No. 20 is explicit that employers of project employees are exempted from the clearance requirement but not from the submission of termination report. We have consistently held that failure of the employer to file termination reports after every project completion proves that the employees are not project employees. Nowhere in the New Labor Code is it provided that the reportorial requirement is dispensed with. The fact is that Department Order No. 19 superseding Policy Instruction No. 20 expressly provides that the report of termination is one of the indicators of project employment." [22] (Emphasis Supplied)

Ineluctably, We concur with the disposition of the NLRC. Petitioners evidently failed to establish that private respondents were project employees and that their dismissal was justified. Aside from the *Kasunduan*, petitioners proffered no other evidence to support their postulation.

Petitioners seek refuge with the ruling of Labor Arbiter Quintin Cueto III (Arbiter Cueto) in NLRC NCR Case Nos. 01-01577-11 and 03-0342311[23] which declared other project employees hired by petitioners.

We are unconvinced.

It is jurisprudentially settled that *res judicata* means a matter adjudged, a thing judicially acted upon or decided; a thing or matter settled by judgment. The doctrine of *res judicata* provides that a final judgment, on the merits rendered by a court of competent jurisdiction is conclusive as to the rights of the parties and their privies and constitutes an absolute bar to subsequent actions involving the same claim, demand, or cause of action. The doctrine of *res judicata* are applicable to second actions involving substantially the same parties, the same subject matter, and cause or causes of action.[24]

In this case, the elements of *res judicata* are not obtaining. A cursory reading of the decision of Arbiter Cueto reveals that complainants therein involved other employees of petitioners. So, too, the issue threshed out therein did not dwell on the illegality of private respondents' dismissals. Considering the dissimilarity with respect to the parties involved and the issues adjudicated, the decision of Arbiter Cueto is not controlling and does not constitute *res judicata*.

A final note. Article 280 of the Labor Code recognizes the validity of fixed-term contracts where the employee agrees at the time of engagement that his employment shall be for a fixed or pre-determined period. Be that as it may, a contract of employment is impressed with public interest. The parties are not at liberty to insulate themselves and their relationships from the impact of labor laws and regulations by simply contracting them with each other.[25] Agreements that frustrate the security of tenure must be nullified.[26]

Although We do not advocate the destruction of the employer, We will temper agreements which frustrate rather than promote the rights of workers to security of tenure. In giving their acquiescence to readily prepare agreements or contracts carefully drafted by the employer, more often than not, employees act out of need instead of any genuine acquiescence.[27]

In light of the foregoing discourse, We discern no grave abuse of discretion on the part of the NLRC in rendering the assailed Decision and issuing the impugned Resolution.

WHEREFORE, the Petition for Certiorari is hereby DISMISSED. The Decision dated 20 February 2012 and Resolution dated 26 July 2012 of the National Labor Relations Commission, in NLRC NCR Case No. 02-03015-11, are AFFIRMED.

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.

Ybañez and Manahan, JJ., concur.

[1] Rollo, pp. 252-259.

[2] Id., pp. 261-267.

[3] Also referred to in the records as Employment Contract as Project Worker/Employee; Rollo, p. 507.

[4] Id., pp. 468-472.

[5] Rollo, p. 269.

[6] Id., pp. 268-273.

[7] Id., p. 273.

[8] Id., pp. 275-276.

[9] Id., pp. 70-124.

[10] See Memorandum of Appeal; Id., pp. 277-287.

[11] Rollo, pp. 257-259.

[12] Id., pp. 125-132.

[13] Id., pp. 34-40.

[14] Id., pp. 3-23.

[15] ART. 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.

[16] See Memorandum of the Private Respondents; Rollo, pp. 557-574.

[17] See Motion for Reconsideration of the Respondents-Appellants; Id., pp. 125-132

[18] See Decision dated 20 February 2012; Rollo, pp. 257-258.

[19] Rollo, p. 262.

[20] SECTION 6. Liabilities/Responsibilities of the Employer and the Workers.

6.1 Requirements of labor and social legislations. —

(a) The construction company and the general contractor and/or subcontractor referred to in Sec. 2.5 shall be responsible for the workers in its employ on matters of compliance with the requirements of existing laws and regulations on hours of work, wages, wage-related benefits, health, safety and social welfare benefits, including submission to the DOLE-Regional Office of Work Accident/Illness Report, Monthly Report on Employees' Terminations/Dismissals/ Suspensions and other reports. The prime/general contractor shall exercise sound judgment and discretion in contracting out projects to ensure compliance with labor standards.

(b) Project and non-project employees shall observe the requirements of labor and social legislations and reasonable company rules and regulations on matters pertaining to their obligations.

[21] 700 SCRA 608 (3 July 2013).

[22] *Pasos v. Philippine National Construction Corporation*, 700 SCRA 608, 628-629 (3 July 2013).

[23] See Decision dated 5 January 2011; Rollo, pp. 444-458.

[24] See *Land Bank of the Philippines v. Pagayatan*, 644 SCRA 133, 141 (23 February 2011), citing *Lanuza v. Court of Appeals*, 454 SCRA 54, 61-62. (28 March 2005).

[25] See *Price v. Innodata Phils., Inc.*, 567 SCRA 269, 281 (30 September 2008).

[26] See *Poseidon Fishing v. National Labor Relations Commission*, 482 SCRA 717, 728 (20 February 2006).

[27] See *Jaculbe v. Siliman University*, 518 SCRA 445, 451-452 (16 March 2007).

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