

ZAREIKO PRODUCTIONS INC. AND COUNTRY BANKERS INSURANCE CORP., PETITIONERS, VS. MICHELLE A. COMIA AND HON. ROSALINDA BALDOZ, SECRETARY OF THE DEPARTMENT OF LABOR AND EMPLOYMENT, ...

Ponente: LOPEZ, J.

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LOPEZ, J.:

This Petition for Certiorari assails the September 5, 2012 Order of the Department of Labor and Employment (DOLE), which affirmed the July 18, 2011 Order of the Philippine Overseas Employment Administration (POEA), finding Zareiko Productions, Inc. liable for violations of the Rules and Regulations Governing the Recruitment and Employment of Land-Based Overseas Workers (POEA Rules).

Michelle Comia alleged that sometime in September 2007, she applied as beautician/manicurist with Zareiko Productions, Inc. and was assured of work in the United Arab Emirates (UAE). At the agency, she met Mr. Kaleed and Mr. Amro, who were recruiting beauticians and manicurists. Comia paid P16,000.00 as placement fee. She also underwent physical examination and paid P2,600.00 to Lheslie Canilang, the agency's liaison officer to the UAE Embassy.[1]

In January 2008, Zareiko informed Comia that her employment contract has arrived. It was a two year contract as a manicurist with a monthly salary of 2,000 Dirhams. Comia, however, told the agency that she was no longer interested in the job. Zareiko then informed her that she would pay for the contract if she would not push through. Thus, Comia accepted the employment. Her passport and ticket were given on the day of her departure, but she was not given a copy of the contract. She left the Philippines on January 18, 2008.[2]

Comia further alleged that in UAE, she underwent another medical examination and signed another contract. She first worked as manicurist, then as helper in a salon. After a few weeks, she was sent home. She arrived in the Philippines on April 5, 2008. Upon inquiry, she discovered that her departure was not registered with the POEA.[3]

On May 30, 2008, Comia filed a complaint before the POEA against Zareiko Productions, Inc. for violation of Sections 2 (b), (d), (e) and (p), Rule I,[4] Part VI of the POEA Rules.[5] During the October 20, 2008 hearing, Comia submitted photocopies of her medical examination receipts, passport, and a POEA Licensing Certification stating that her name is not in the database of deployed overseas worker.[6]

Zareiko denied the allegations and claimed that Comia was not its bona fide applicant. As evidence, Zareiko presented a notarized Withdrawal of Application[7] dated November 14, 2007 that Comia signed. Zareiko also claimed that Canilang was no longer its employee and presented a letter from the POEA stating that Canilang's appointment was canceled on December 12, 2007.[8]

On July 18, 2011 the POEA issued an Order finding Zareiko liable for: (1) engaging in acts of misrepresentation in connection with recruitment and placement of workers; (2) deploying workers whose employment and travel

documents were not processed by the POEA; and (3) collecting fees from a worker without issuing the appropriate receipts.[9] Zareiko was sanctioned as follows:

WHEREFORE, premises considered, we find respondent Zareiko Productions Inc. liable for violation of Section 2(e) (d) and (p) of Rule I, Part VI of the Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers and is hereby imposed with the following penalties:

2(e) – 9 months suspension or fine in the amount of P90,000.00 this being respondent's 2nd violation thereof;

2(d) – 4 months suspension or fine in the amount of P40,000.00; and

2(p) – 4 months suspension or fine in the amount of [P]40,000.00.

Other charges are dismissed for lack of merit.

SO ORDERED.[10]

Zareiko filed an appeal before the DOLE insisting that the POEA's ruling was based on Comia's "mere self-serving and unsubstantiated allegations".[11] According to Zareiko, the POEA ignored its evidence, particularly the notarized Withdrawal of Application, which shows that Comia did not pursue her application for overseas employment. Zareiko also pointed out that Canilang's appointment was canceled on December 12, 2007 or before Comia was deployed on January 18, 2008.[12]

On September 5, 2011, the DOLE dismissed the appeal ratiocinating thus:

In the instant case, the findings of the POEA Administrator are supported by evidence. Verification with the POEA records revealed that complainant's foreign employer, Amro Ladies Saloon (sic), is accredited with the petitioner but the latter had no approved job order for either beautician or manicurist. Clearly, this constitutes misrepresentation. As certified also by POEA, complainant was not processed and documented as OFW. And, for the payments made by complainant, no official receipt was issued therefor.

The POEA was correct in not giving credence and value to the Notice of Withdrawal signed by complainant as the latter was still able to depart in January 2008. The denial of petitioner of the alleged act of Ms. Canilang in meeting complainant at the airport at the time of departure, saying that, if at all, this was purely personal to Ms. Canilang, will not alter the fact that at the time complainant started applying with petitioner, she was still petitioner's Liaison Officer with whom complainant dealt at its office.[13]

Zareiko filed this petition claiming that the Secretary of Labor and Employment committed grave abuse of discretion in disregarding its evidence, and in adopting the self-serving allegations of Comia which was not supported by substantial evidence.[14]

The petition lacks merit.

Generally, factual findings of labor officials, who are deemed to have acquired expertise in matters within their jurisdiction, are accorded not only respect but even finality by the courts when supported by substantial evidence, i.e., the amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[15] But these findings are not infallible. When there is a showing that they were arrived at arbitrarily or in disregard of the evidence on record, they may be examined by the courts.[16] In this case, We find no showing of arbitrariness on the part of POEA and DOLE. Hence, We follow the general rule.

We stress that both the POEA and DOLE found Zareiko liable for: (1) engaging in acts of misrepresentation in connection with recruitment and placement of workers; (2) deploying workers whose employment and travel documents were not processed by the POEA; and (3) collecting fees from a worker without issuing the appropriate receipts.[17]

On the first violation, it is undisputed that when Comia applied as beautician/manicurist with Zareiko for overseas employment in September 2007, she was assured of work in the UAE. Zareiko then referred her to a certain Mr. Amro, representative of Amro Ladies Salon in Dubai, UAE. However, POEA records show that Amro Ladies Salon, which is accredited with Zareiko, had no approved job order for either a beautician or manicurist.[18] Thus, by informing Comia that it has job openings for beauticians and manicurists, despite the absence of an approved job order, Zareiko misrepresented that it has a valid overseas employment for Comia.

On the second violation, Comia attested that she was deployed to Dubai on January 18, 2008 and worked in Amro Ladies Salon as a manicurist and helper until she was repatriated on April 5, 2008. As evidence, Comia submitted photocopies of her passport to the POEA. More importantly, a Certification from the POEA showed that she was not included in the Administration's database of deployed overseas workers.[19] Indubitably, her deployment was not processed by the POEA.

Zareiko's argument that it is not liable for deploying Comia, because she was not its bona fide applicant, is specious. The November 14, 2007 Withdrawal of Application is rendered worthless by the fact that Comia was able to leave on January 18, 2008 and work for Amro Ladies Salon, the employer referred to her by Zareiko. This confirms Comia's statement that she initially withdrew her application but was later persuaded to accept the employment when Zareiko informed her that she had to pay if she would not push through with the contract.

Anent its failure to issue appropriate receipts, Zareiko's defense that it did not receive any money from Comia cannot be given credence. Although the only evidence presented was Comia's sworn statement, this is sufficient evidence to prove Zareiko's liability.[20] Credibility of witnesses is determined by the conformity of their testimonies to human knowledge, observation and experience.[21] Here, Comia attested that she paid Zareiko P16,000.00 as placement fee and P2,600.00 for medical examination. We find this statement to be credible, considering that Comia was deployed and Zareiko found work for her in Dubai, albeit without proper documentation. It is highly unlikely for Zareiko, an employment agency, to deploy and find work for an applicant who has not paid her fees.

Finally, We underscore the settled rule that in a petition for certiorari under Rule 65 of the Rules of Court, the petitioner must establish that the respondent court or tribunal acted with grave abuse of discretion amounting to lack or excess of jurisdiction.[22] The abuse of discretion must be so patent and gross as to amount to an evasion of a 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 and hostility.[23] Furthermore, the use of a petition for certiorari is restricted only to truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void.[24] This is not the case here.

FOR THESE REASONS, the Petition is DISMISSED.

SO ORDERED.

Reyes, Jr., (Chairperson) and Inting, JJ., concur.

[1] Rollo, pp. 22-23, 25. As narrated in the July 18, 2011 POEA Order.

[2] *Id.*, pp. 23- 24.

[3] *Ibid.*

[4] Rule 1. Section 2. Grounds for imposition of administrative sanctions:

x x x

b. Charging or accepting directly or indirectly any amount greater than that of specified in the schedule of allowable fees prescribed by the Secretary, or making a worker pay any amount greater than that actually received by him as a loan or advance;

x x x

d. Collecting any fee from a worker without issuing the appropriate receipt clearly showing the amount paid and the purpose for which payment was made;

e. Engaging in acts of misrepresentation in connection with recruitment and placement of workers, such as furnishing or publishing any false notice, information or document in relation to recruitment or employment;

x x x

p. Deploying workers whose employment and travel documents were not processed by the Administration or those agencies authorized by it;

xxx

[5] Rollo, p. 71.

[6] Id., p. 24. As narrated in the July 18, 2011 POEA Order.

[7] Id., p. 39. N.B. No reason was stated in the Withdrawal of Application.

[8] Id., p. 40.

[9] Referring to Sections 2(d), (e) and (p), Rule I, Part VI of the Rules and Regulations Governing the Recruitment and Employment of Land-Based Overseas Workers. The POEA held:

The complainant was able to establish, by her testimony, her application with the respondent agency. She applied as a beautician for overseas employment with the respondent agency at its registered office and was told that she was hired. The respondent agency referred her for medical examination. She paid PHP2,600.00 as medical fee to Ms. Lheslie S. Canilang, the Liaison Officer to the Embassy of the respondent agency. All her transactions with Mr. Kaleed, the manager of the respondent agency, and Mr. Amro, the employer, occurred inside the premises of the respondent agency. She signed an employment contract in the Office of the respondent agency. She worked as a manicurist and then as a helper in a salon. She also identified its Liaison Officer Lheslie Canilang as the staff of the respondent agency who accompanied her to the airport on January 18, 2008, the date of her flight to Dubai, UAE. If the complainant withdrew her application as shown in the Affidavit of Withdrawal of Application dated November 14, 2007, then why would its liaison officer accompany her to the airport. This Administration, however, does not have any record of the deployment of the complainant to Dubai, UAE.

Verification with our records shows that Amro Ladies Saloon, represented by Mohamed Ali Amiro as Managing Director, is accredited with the respondent agency. However, it had no approved job order for either beautician or manicurist. Clearly, the respondent agency violated Section 2(e) and (p) by deploying the complainant without proper documentation. [Rollo, p. 26.]

N.B. Zareiko was exonerated of Section 2(b), i.e. charging or accepting directly or indirectly any amount greater than that of specified in the schedule of allowable fees prescribed by the Secretary, or making a worker pay any amount greater than that actually received by him as a loan or advance. [Id., p. 26.]

[10] Rollo, p. 26.

[11] Id., p. 45. Memorandum of Appeal.

[12] Id., p. 48.

[13] Id., pp. 30-31.

[14] Id., p. 9.

[15] See Stolt--Nielsen Transportation Group, Inc. and Chung Gai Ship Management v. Sulpecio Medequillo, Jr., G.R. No. 177498, January 18, 2012 citing Prince Transport, Inc. v. Garcia, G.R. No. 167291, 12 January 2011, 639 SCRA 312, 324 citing Philippine Veterans Bank v. National Labor Relations Commission, G.R. No. 188882, 30 March 2010, 617 SCRA 204.

[16] Id., citing Faeldonia v. Tong Yak Groceries, G.R. No. 182499, 2 October 2009, 602 SCRA 677, 684. CA-G.R. SP No. 127400

[17] Referring to Sections 2(e), (p) and (d), Rule I, Part VI of the POEA Rules, respectively.

[18] Rollo, p. 26. July 18, 2011 POEA Order.

[19] Ibid.

[20] In illegal recruitment, mere failure of the complainant to present written receipts for money paid for acts constituting recruitment activities is not fatal to the prosecution, provided the payment can be proved by clear and convincing testimonies of credible witnesses. [cf. Delia D. Romero v. People of the Philippines, G.R. No. 171644, November 23, 2011 citing People v. Alvarez, G.R. No. 142981, August 20, 2002, 387 SCRA 448, 464-465, citing People v. Ong, G.R. No. 119594, January 18, 2000, 322 SCRA 38, 54; People v. Saley, G.R. No. 121179, July 2, 1998, 291 SCRA 715; People v. Señorón, G.R. No. 119160, January 30, 1997, 267 SCRA 278, 284; People v. Pabalan, G.R. Nos. 115350 and 117819- 21, September 30, 1996, 262 SCRA 574, 587.]

[21] Ricardo Medina, Jr. v. People of the Philippines, G.R. No. 161308, January 15, 2014.

[22] Section 1, Rule 65 of the Rules of Court.

[23] Eric U. Yu v. Hon. Judge Agnes Reyes-Carpio, G.R. No. 189207, June 15, 2011 citing Beluso v. Commission on Elections, G.R. No. 180711, June 22, 2010, 621 SCRA 450, 456-457; citing De Vera v. De Vera, G.R. No. 172832, April 7, 2009, 584 SCRA 506, 514-15; Fajardo v. Court of Appeals, G.R. No. 157707, October 29, 2008, 570 SCRA 156, 163; 2 Jose Y. Feria & Maria Concepcion S. Noche, Civil Procedure Annotated 463 (2001).

[24] Id., citing J.L. Bernardo Construction v. Court of Appeals, G.R. No. 105827, January 31, 2000, 324 SCRA 24, 34.

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