

MAKATI SPORTS CLUB, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (NLRC) AND ROMULO GONZALES, RESPONDENTS.

Ponente: DE LOS SANTOS, J.

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DE LOS SANTOS, J.:

Assailed in the instant petition are the –

- Decision rendered by the National Labor Relations Commission (NLRC) on December 23, 2003 (pp. 14-21, rollo) which reversed and set aside the judgment issued by the Labor Arbiter; and the
- Resolution (pp. 23-26, rollo) of the NLRC which denied petitioner’s motion for reconsideration.

Private respondent was hired by the petitioner sometime in March 2000 with a daily salary of P250.00 per day which the former received on a weekly basis. He performed various job assignments, such as being a waiter in different outlets of the sports club, gym attendant, pool attendant and locker attendant. On a regular schedule, respondent would work from 6:00 o’clock in the morning to 8:00 o’clock in the evening.

On September 18, 2002, respondent was no longer allowed to enter the premises of petitioner. He was only escorted by a guard inside petitioner’s premises upon his request to retrieve his personal belongings (p. 52, rollo).

Thus, on October 9, 2002, respondent filed a complaint for illegal dismissal, non-payment of holiday pay and 13th month pay against petitioner. After the parties’ submission of position papers, the Labor Arbiter rendered his Decision, the dispositive portion of which reads:

“WHEREFORE, premises considered, judgment is hereby rendered DISMISSING the complaint for illegal dismissal for lack of merit. Respondent Makati Sports Club is ordered to pay complainant Romulo Gonzales his 13th month pay in the amount of P6,500.00 for the year 2001 proportionate to the actual period of his employment.

“All other claims are DISMISSED for lack of merit.

“SO ORDERED.” (p. 37 rollo)

Said Decision of the Labor Arbiter was appealed by private respondent to the National Labor Relations Commission (NLRC), which reversed the above-quoted ruling, the salient portions of which are hereunder quoted:

“WHEREFORE, the assailed decision of 21 March 2003 is REVERSED and SET ASIDE. Accordingly, respondent Makati Sports Club is ordered to immediately reinstate the complainant Romulo Gonzales to his former position without loss of other benefits and to pay him his full backwages from the time he was illegally dismissed up to the time of his reinstatement, whether actual or in the payroll, as well as his proportionate 13th month pay for the years 2001 and 2002, the computations of which are as follows:

A) Backwages

a. Basic Salary - from Sept. 18, 2002

to Dec. 11, 2003 = 14.77

$P250 \times 26 \times 14.77$

P96, 005.00

b. 13th Mo. Pay P96,005 / 12

8, 000.42

c. SILP P 250 x 5 x 14.77 / 12

1,538.54

P105, 543.96

d. ECOLA

From Sept. 18, 2002 to Dec. 11, 2003 = 14.10

$P30 \times 26 \times 14.10$

P10,998.00

P116,541.96

B) Unpaid 13th Mo. Pay for the year 2001

6,500.00

C) Proportionate 13th Mo. Pay

for the year from Jan. 1, 2002

to Sept. 17, 2002

4,620.00

GRAND TOTAL

P127,661.96

“SO ORDERED.” (pp. 20-21, rollo)

Petitioner’s subsequent motion for reconsideration was denied in the Resolution (pp. 23-26, rollo) of May 12, 2005.

Hence, this recourse.

The sole issue raised in the instant petition is:

“RESPONDENT NLRC GROSSLY ERRED WHEN IT RULED THAT RESPONDENT GONZALES IS A REGULAR EMPLOYEE.” (p. 7, rollo)

Petitioner further contends that “respondent NLRC grossly erred when it ruled that respondent Gonzales is a regular employee. Such gross error is tantamount to grave abuse of discretion.”

This contention is bereft of merit.

The term “grave abuse of discretion” has a technical and settled meaning. It implies a capricious and whimsical exercise of power amounting to lack or excess of jurisdiction, or the exercise of power in an arbitrary or despotic manner by reason of passion or personal hostility (*Jaro vs. CA*, 377 SCRA 282). It is emphasized that “the writ of certiorari dealt with in Rule 65 of the Rules of Court is a prerogative writ, never demandable as a matter of right, never issued except in the exercise of judicial discretion” (*German Machineries Corp. vs. Endaya*, 444 SCRA 374; *Balindong vs. Dacalos*, 441 SCRA 607), and that mere errors of judgment committed in the exercise of jurisdiction is not correctible by a writ of certiorari. Its sole office is the corrections of errors of jurisdiction (*Katon vs. Palanca, Jr.*, 437 SCRA 565), not errors of procedure or mistakes in the findings or conclusions of the forum rendering the decision. Therefore, “gross error” is not tantamount to grave abuse of discretion, as erroneously claimed by petitioner.

Assiduously going over the assailed decision of the NLRC, there is no error committed by public respondent. In fact, this Court subscribes to well-founded conclusion of the NLRC when it says:

“There is no denying that complainant-appellant performs the usual functions as a waiter which undisputedly is necessary and desirable in the usual business of respondent company. On record, it is established that he suffered work from June, 2000 until his dismissal on September 18, 2002 or for a period of more than two (2) years.

“The law is clear on this point. Article 280 is more determinative and succinctly provides as follows: “x x x. 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” (Emphasis Ours)

“From a simple reading of this provision, complainant-appellant became a regular employee as of June, 2001. Respondent-appellee clings to their own theory that since complainant-appellant is only an “on call” waiter or his activity is seasonal in character, they can easily brush aside the latter’s security of tenure.

“We disagree with the respondents’ supposition for being too anemic if not totally unfounded. By operation of law, complainant-appellant is deemed to be a regular employee after he completed his one year service which he did. Nomenclature of “on call waiter” is beside the point.

“Precisely, the clear and unambiguous language of the last sentence of Art. 280 of the Labor Code admits of no exception. What the law excludes, it does not include.

“Hence, it is a foregone conclusion that a regular employee, like the complainant-appellant, may not be dismissed from service for want of just or authorized cause and due process. Otherwise, his dismissal is illegal.

“In fine, We hold that complainant-appellant before he attained his regular status was a casual employee and not a project employee whose term is dictated by a specific undertaking or seasonal in nature or is for a specific period. On the contrary, respondents impress that the appellant was hired for “specific projects/functions/parties wherein

everytime a specific project is accomplished, the employment ceases.” Thus, respondents conclude that appellant is only a project employee.

“Again, We disagree. There is no single piece of evidence to prove this bare argument. Besides, even if it is true, respondents should have reported the cessation of the appellant’s services to the Department of Labor and Employment everytime his employment is terminated. But none is proffered by respondents-appellees. This is a fatal error to the cause of the appellees.” (p. 17-19, rollo)

WHEREFORE, the petition is DISMISSED for lack of merit. The assailed Decision of the NLRC is AFFIRMED in toto.

SO ORDERED.

Lampas-Peralta and Dimaranan-Vidal, JJ., concur.

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