

AISIS INTERNATIONAL MANPOWER SERVICES, INC. AND MI B. MIRAFLOR, PETITIONERS, VS. THE NATIONAL LABOR RELATIONS COMMISSION AND NELLY M. SABERDO, RESPONDENTS.

Ponente: DE LOS SANTOS, J.

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DE LOS SANTOS, J.:

Petitioners seek to nullify, allegedly for having been issued with grave abuse of discretion amounting to lack of jurisdiction, the Decision dated November 29, 2005 and the Resolution of February 28, 2006, rendered by public respondent NLRC.

Private respondent Nelly M. Saberdo was hired by petitioners as cleaning laborer to work in Riyadh, Kingdom of Saudi Arabia, under the Standard Employment Contract for Various Skills (pp. 72-74, rollo), which respondent and petitioners executed. The duration of the contract was for two (2) years (id). Respondent left for Saudi Arabia on October 25, 2003.

During her employment with her foreign employer, private respondent claimed she was “abused, maltreated, deceived, underfed and unpaid” of her salaries. On October 21, 2004, respondent was repatriated by her employer.

Thus, on November 8, 2004, respondent filed her complaint before the Regional Arbitration Branch of Legaspi City (pp. 75-76, rollo) for “non-payment of wages, vacation and sick leave, moral and exemplary damages and attorney’s fees” (id).

On February 21, 2005, the Labor Arbiter rendered his Decision, the dispositive portion of which reads:

“WHEREFORE, premises considered, judgment is hereby rendered declaring complainant to have been illegally dismissed from her employment. Consequently, respondents Aisis International Manpower, Inc. and its principal/employer abroad, Al Hanouf Group for Contracting/Sabah Mohamed Ali are hereby ordered jointly and severally, to pay complainant the total amount of TEN THOUSAND FIVE HUNDRED SIXTY SAUDI RIYAL (SR10,560.00) or its peso equivalent at the time of payment, representing complainant’s salaries for the unexpired portion of the contract, unpaid salaries, vacation and sick leave pay and attorney’s fees equivalent to ten (10%) percent of the total award plus TWO HUNDRED THOUSAND PESOS (P200,000.00), representing damages, as computed above.

“SO ORDERED.” (p. 35, rollo)

Not contented, petitioners appealed said judgment of the Labor Arbiter before public respondent NLRC (pp. 36-44, rollo), raising as grounds for the appeal, the following:

“I

“THAT THERE WAS PRIMA FACIE EVIDENCE OF GRAVE ABUSE OF DISCRETION ON THE PART OF THE HONORABLE LABOR ARBITER IN THE DECISION RENDERED.

“II

“THAT THERE ARE QUESTIONS OF LAW AND FACTS HEREIN RAISED WHICH IF CONSIDERED BASED ON EXISTING JURISPRUDENCE WOULD HAVE YIELDED DIFFERENTLY THE DECISION IN FAVOR OF RESPONDENT-APPELLANTS.

“III

“THAT THERE ARE SERIOUS ERROR OF FACTS WHICH, IF NOT CORRECTED WOULD CAUSE GRAVE AND IRREPARABLE INJURY TO RESPONDENT-APPELLANTS.

“IV

“THAT THERE WERE BLATANT ERRORS IN THE APPLICATION OF THE LAW AND/OR MISAPPLICATION OF THE ESTABLISHED PRINCIPLES OF LAW AND JURISPRUDENCE IN THE CASE SUBJECT OF APPEAL.” (p. 37, rollo)

On November 29, 2005, public respondent NLRC rendered its Decision (pp. 45-55, rollo) which dismissed petitioners’ appeal and affirmed the findings and conclusions of the Labor Arbiter.

Now the instant petition.

The grounds raised by the petitioners in support of their petition are:

“A.

“Failure to consider that the complaint should have been outrightly dismissed for lack of the required “certification of non-forum shopping”.

“B.

“In not dismissing the complaint, filed a quo, due to private respondent’s violation of the contractual stipulation in her employment contract as to the manner of the settlement of disputes.

“C.

“In holding that the private respondent had been illegally dismissed.

“D.

“In the award of unconscionable monetary claims to the private respondent, without basis in law or in fact.” (p. 8, petition; p. 9, rollo)

Petitioners raised for the first time in their motion for reconsideration of public respondent’s decision, the issue of lack of certification of non-forum shopping; that respondent’s complaint below should have been dismissed for lack of the required certification of non-forum shopping.

This argument is untenable. The issue of forum shopping should be invoked at the first opportunity, in this case, in petitioners’ position paper filed before the Labor Arbiter, otherwise, petitioners are barred from raising it in their appeal before the NLRC (*Young vs. Keng Seng*, 398 SCRA 629). In the case at bar, petitioners raised the issue of forum shopping only in their motion for reconsideration of the decision of the NLRC. Besides, it is well-settled that the application of technical rules of procedure may be relaxed in labor cases to serve the demands of substantial justice (*Havtor Mgmt. Phils. Inc. vs. NLRC*, 372 SCRA 271).

Petitioners claim that respondent did not comply with the contractual stipulation on a “mandatory pre-requisite of a pre-litigation amicable settlement procedure with the participation of the Labor Attache’”. It bears stressing that

respondent was repatriated by her foreign employer to the Philippines, thus, there was no opportunity to seek the intervention of the Labor Attache´ for pre-litigation settlement. It would be the height of injustice to require respondent to go back to the Kingdom of Saudi Arabia to file her complaint before the Labor Attache´.

On the issue of illegal dismissal, there is no question respondent was illegally dismissed. Respondent's employment contract was pre-terminated as she was repatriated to the Philippines by her employer before the expiration of the contract. In termination cases, the burden of proof to show that the dismissal of an employee is for a just and legal cause rests upon the employer (*Paguio Transport Corp. vs. NLRC*, G.R. No. 119500, August 28, 1998). Thus, this Court concurs with the findings and conclusions reached by public respondent when it said:

“Moreover, it is worthy to reiterate here that in illegal dismissal cases, it is the employer who has the burden of proof to show that the dismissal of the complainant was for just or authorized cause. In this case, complainant's contract was for two (2) years or to end on October 25, 2005. However, after one (1) year, or on October 21, 2004, complainant was sent back to the Philippines. On these facts alone, there is already a presumption that complainant was illegally dismissed because her contract period was not followed. It is now the obligation of respondents to prove by means of substantial evidence that the termination of complainant's contract before its original period was because complainant freely and voluntarily quit her job. However, respondents have not presented any evidence to support their claim that complainant voluntarily quit her job. Hence, because of that and complainant's assertion of maltreatment, the only logical conclusion is that respondents failed to overcome the burden of proof. Therefore, complainant was constructively dismissed.

“Third, it is very hard (sic) to believe and it is contrary to ordinary human experience that a jobless married Filipina, who did everything just to have work abroad, will just quit her job if indeed she was not maltreated. As a matter of fact, complainant at the time she was sent home, was still hoping that she might stay for another year in her job, as stipulated in her contract.

“Fourth, this Branch also finds complainant legally correct that respondent Noemi Miraflor, who was miles away from Saudi Arabia where complainant worked, cannot possibly have personal knowledge of what really happened to complainant. Hence, respondent Miraflor is not in a position to say that complainant's foreign employer had committed no act or omission that cause complainant's dismissal nor declare that complainant freely and voluntarily quit her job.” (p. 51-52, rollo)

As to respondent's money claims, petitioners aver that the former “cannot validly claim for her alleged unpaid salaries for twelve (12) months as she had received all her lawful salaries from foreign employer.” Yet no evidence was presented that respondent received her salaries from her foreign employer. The High Court said:

“As a general rule, one who pleads payment has the burden of proving it, and even where the plaintiff must allege non-payment, the general rule is that the burden rests on the defendant to prove payment, rather than on plaintiff to prove non-payment”. (*Sevillana vs. I.T. Corp.*, 356 SCRA 451)

All told, it is emphasized that judicial review of the decisions of the NLRC by way of a special civil action for certiorari under Rule 65, of the 1997 Rules of Civil Procedure, is confined only to issues of want or excess of jurisdiction and grave abuse of discretion on the part of the tribunal rendering them. In the absence of want or excess of jurisdiction and grave abuse of discretion, the petition must fail.

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

SO ORDERED.

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

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