

VIRGILIO D. BACUS, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, 8TH DIVISION, ALTERDEV SERVICES FOUNDATION, INC., AS REPRESENTED BY THE BOARD OF TRUSTEES, SALLY JOY R. B...

Ponente: CAMELLO, J.

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CAMELLO, J.:

This is a Petition for Certiorari[1] assailing the Resolutions dated July 30, 2010[2] and October 29, 2010[3] of public respondent National Labor Relations Commission (NLRC) which reversed the Decision[4] dated October 30, 2009 of the Labor Arbiter of NLRC-Regional Arbitration Branch XIII, Butuan City.

THE FACTS

The facts borne by the records of the case are as follows:

Alterdev Services Foundation, Inc., (ALTERDEV) is a non-government organization (NGO) engaged in a non-stock and non-profit services which include undertaking development initiative programs funded by donor organizations, both local and foreign.[5]

Upon the invitation of its then president Nielo Tingzon, Virgilio Bacus (Bacus) joined ALTERDEV on November 20, 2003 as its Executive Director.[6] He had to undergo a probationary period of three (3) months after which his performance was to be appraised to determine his qualification for the regular position of Executive Director.[7]

It appears that Bacus was given a good evaluation; an employment contract[8] was executed hiring him on January 25, 2005. It specifically states:

- “1. The EMPLOYEE shall assume the position of Executive Director categorized under the secretariat structure to bear the rank of ED-2, xxx;
2. The EMPLOYEE shall perform functions/tasks and meet the required competency and expected performance xxx;
3. That for and in consideration of services rendered, the EMPLOYER hereby agrees to provide the EMPLOYEE a package of remuneration xxx;
4. That this CONTRACT shall take effect retroactive the 1st day of January 2005 to the end of December 2005, but may be terminated by either of the contracting parties giving written notice at least thirty (30) days prior to termination date.”[9]

On October 16, 2006, Bacus’s employment with ALTERDEV was renewed.[10] A contract was also executed reiterating the provisions of his previous contract saved for the duration of his contract with ALTERDEV. It reads:

- “4. That this CONTRACT shall take effect retroactive the 1st day of January to the end of December 2008, but

may be terminated by either contracting parties giving written notice at least thirty (30) days prior to termination date.”

Under Bacus’s directorship, ALTERDEV was able to secure several projects funded by a) AECID/IPADE – Spain; b) PACAP-Australia; and c) HEIFER International.[11]

The project funded by AECID/IPADE – Spain costs P15,123,000.00 with local counterpart of P2,897,125.00 with a period implementation from November 2008 to November 2010. The two (2) projects funded by PACAP-Australia are: one for enhancing upland and low and farming system with a total cost of P2,999,940.00 with a project duration from January 2007 to December 2009, and the other one for livestock and social enterprise development with P4,117,800.00 with a project duration from year 2008 to year 2009. Lastly, the project funded by HEIFER International for upland diversified farming enhancement has a total project cost of P2,469,080.00 for a project duration of 3 years from 2007 to 2009.[12]

Bacus claimed that his efforts, unrelenting motivation, and the proper attitude towards work had generated hatred among the senior staff and employee of ALTERDEV who had gotten used to the comfortable set-up abetted by the laxity of the management under the previous project director. These disgruntled senior staff and employees united and sought for his removal through the intervention and support of the ALTERDEV’s Board of Trustees (BOT).[13] This clamor for his removal, according to him, has easily found its way to the BOT that on January 10, 2009, the BOT held a meeting where they discussed the termination of Bacus’s employment contract which had incidentally expired on December 31, 2008. No notice of termination or anything was served upon Bacus after the meeting, thus he continued reporting and performing his function just to be told that Tingzon has now the appointment letter as ALTERDEV’s Executive Director.[14] Subsequently, Bacus’s salary was reduced to P8,846.50 from P16,693.91 effective February 1, 2009. On February 13, 2009, he was finally served with a Memorandum[15] informing him that his employment had been terminated.

Aggrieved, Bacus filed for illegal dismissal, reinstatement, and payment of backwages, damages and other benefits,¹⁶ contending that his position as an Executive Director is necessary and desirable in the operation of ALTERDEV. He further argued that he is a regular employee notwithstanding the contract of employment he signed with ALTERDEV which cannot prevail against Section 5, Rule 1, Book VI of the Omnibus Rules Implementing the Labor Code specially since that contract of employment contains no provision that he was hired to work only for a specific project or undertaking.[17] He lamented that his dismissal as ALTERDEV’s regular employee is without just cause. It is illegal, thus he is entitled to reinstatement with full backwages. He also claimed that he is entitled to damages.[18]

ALTERDEV, for its part, argued that its life as a “cause oriented organization” is highly dependent on projects that it would undertake out of the funds from donor organization. It thrives on projects funded by donors. It is dependent on the implementation of its project hence, it only employs projects employees and employees with fixed-term contract.[19]

ALTERDEV admitted that Bacus’s duties and function as Executive Director is necessary in the operations of the organization.[20] It insisted, though, that its contract with him was founded on mutuality and voluntariness.[21] It further contended that the contract itself had served as the notice of Bacus’s employment termination on December 31, 2008.[22]

It added that Bacus’s contract period simply expired. His continued employment in January 2009 was the extension given by BOT purposely for the completion of the 2008 Annual Project and the Final production of the Banikauswagan Phase II Project terminal report which are vital and indispensable reports.[23]

Also, ALTERDEV claimed to have notified Bacus along with the other employees whose contracts had expired

after the one-month extension.[24]

It argued that Article 280 of the Labor Code does not proscribe or prohibit an employment contract with a fixed period. According to ALTERDEV, stipulation in employment contract providing for term employment or fixed period employment are valid when the period were agreed upon knowingly and voluntarily by parties without force, duress or improper pressure.[25] Bacus's two (2) contracts of employment were all limited to a fixed period, one (1) year for the first contract and two (2) years for the second/renewed contract.[26]

It is now the contention of ALTERDEV that there was no illegal dismissal of Bacus, his contract of employment simply expired.[27] The lack of notice of termination is of no consequence. Bacus' contract, just like any other contract with specific period for its duration, automatically terminates on the expiration of such period.[28] The 30-day period advance notice stated in the contract refers to in cases where either party decides to pre-terminate the employment contract.

On October 30, 2009, the Labor Arbiter rendered a decision[29] finding Bacus to have been illegally dismissed. The dispositive portion of the decision reads:

“WHEREFORE, premises, considered judgment is hereby rendered:

1. Declaring respondent guilty of illegally terminating the employment of complainant;
2. Ordering respondent to reinstate him on payroll, and to submit a report of compliance thereof to the Regional Arbitration Branch XIII, within ten (10) calendar days from receipt of this decision;
3. Ordering respondent to pay complainant the sum of One Hundred Forty Six Thousand Three Hundred Forty Eight Pesos & 04/100 (P146,348.04), representing backwages which is partially computed up to the date of this decision only;
4. Further, Ordering respondent to pay complainant moral and exemplary damages amounting to P500,000.00

Other claims are hereby ordered dismissed for lack of merit.”

The Labor Arbiter ratiocinated:

“Complainant, as Executive Director was without doubt, a regular employee of respondents as he was made to perform activities which are necessary and desirable as he is responsible in managing the day-to-day affairs of the foundation and provide guidance to programs/projects managed to be more effective and efficient in the course of project implementation. xxx as the records disclosed, complainant was to undergo a probationary status for (3) three months for his performance appraisal, after which he will become a regular employee xxx.

xxx

Thus, it is beyond question that complainant was a regular employee as defined under the first paragraph of Article 280 and not a contractual employee.

xxx

Being a regular employee, complainant's services cannot be terminated except for just or authorized cause as provided by law and subject to the requirements of due process. Xxx

In this instant case, the record is devoid of any showing that complainant's dismissal was for just cause under Article 282 of the Labor Code and that he was accorded [his] right to due process xxx. The expiration of employment contract, which is the reason for complainant's dismissal is unquestionably not among the just causes allowed under Article 282 of the Labor Code, the same being a null and void contract. Moreover, complainant was not given the required twin notices and the opportunity to be heard before his dismissal.

xxx this Branch cannot subscribe to respondents assertions that complainant was not a regular employee as his employment was dependent on a fixed term contract.

While it is ruled that fixed term employment, even for functions or activities that are necessary or desirable to an employer's trade or business is licit and lawful where the fixed period of employment was agreed upon knowingly and voluntarily by the parties without any force, duress or improper pressure being brought to bear upon the employee and absent any circumstance vitiating his consent and where both the employer and the employee dealt with each other on more or less equal terms with no moral dominance whatsoever being exercised by the employer upon the employee, xxx the repeated rehiring and the continuing need for complainant's service are sufficient evidence of the necessity and indispensability of such services to the employer's trade or business. xxx. Hence, the employee should be considered regular. xxx. It was held that the fixed term or period that was agreed upon should be set aside on the justification that the same was for the purpose merely of circumventing the employee's right to security of tenure. xxx

Respondents' allegation that complainant was hired for a specific project on contractual basis does not deserve credit inasmuch as it smacks of untruthfulness and borders of dubiety. Respondents claim that complainant was hired specifically for the Banikauswagan Project which started from January 1, 2002 up to January 31, 2005 for its phase 1, and from January 1, 2006 to up December 31, 2008 for Phase II. However, the records reveal otherwise. First of all complainant started his employment with respondent on November 20, 2003, when the Banikauswagan Project was already ongoing and nowhere in the contracts of employment he signed that he was hired only for that specific project. Secondly, if respondent is telling the truth that his contract is co-terminus with this project, they should have terminated him effective December 31, 2008 when the project ceased and not continue to hire him afterwards. It was more than a month later that he was informed of his termination retroactive to December 31, 2008. Instead of giving him thirty (30) days prior notice as stated in the contract, it was instead a retroactive termination notice which indicates clear bad faith on the part of respondents. Thirdly, while the Banikauswagan Project was ongoing, respondent failed to mention that other projects with various funding organizations came along to which they could have placed complainant considering he is a regular employee. Clearly, the employment contracts were intended to circumvent complainant's security of tenure which should be set aside for being a sham, null and void from the very start.

xxx.

On appeal, the NLRC reversed the October 30, 2009 Decision of the Labor Arbiter and dismissed the complaint for lack of merit in its July 30, 2010 Resolution.[30] It said:

"xxx, the very nature of the business undertakings of alterdev as an NGO is dictated to a large extent by the availability of the project or the fund of each donor. As such, the free will of management to conduct its own business affairs in the most efficient manner, avoiding unnecessary operational expenses on idle period or due to lack of funding from donors and thereby maximizing NGO's operational capabilities cannot be denied. Xxx. Simply put, the intention to hire complainant for a fixed period of employment co-terminus with the funded project is not to circumvent his tenurial security but simply dictated by the nature of the business of Alterdev as an NGO, xxx.

xxx

xxx. He knew very well the status of his employment as a fixed-term contractual employee when his employment contract was subsequently renewed for a fixed term of two (2) years assigned at the Banikauswagan Project Phase II, which was subsequently extended for one (1) month to complete the project. He knew very well the status of his employment as he himself, in his capacity as Executive Director, hired his workers for the project under fixed-term employment contracts similar to his employment contract. He knew that his employment will cease upon the expiration of his contract unless it is renewed. To be sure, other than his bare and naked assertions, complainant did not proffer any evidence to refute the due execution and validity

of his latest contract of employment with Alterdev.

xxx

Neither can We equate as illegal or improper the non-renewal of the contract of employment of complainant. At the expiration of the period stipulated in the contract, complainant's employment was deemed terminated and the notice or memorandum informing him of the non-renewal of his contract is not a sine qua non before complainant may be deemed to have ceased in the employ of Alterdev. The notice or memorandum is a mere reminder of the impending expiration of his contract. It is not a notice of termination. There being no showing on record that Alterdev acted in bad faith in the non-renewal of complainant's employment contract, We cannot, therefore, substitute our own judgment with that of the Alterdev in the exercise of its management prerogative."

The ensuing Motion for Reconsideration was also denied by the NLRC on October 29, 2010.[31] Dismayed, Bacus filed this instant Petition raising the following:

THE PUBLIC RESPONDENT HONORABLE NATIONAL LABOR RELATIONS COMMISSION, EIGHT DIVISION, HAS COMMITTED A SERIOUS ERROR AND A GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION IN SEVERAL INSTANCES;

I

IN REVERSING THE DECISION OF THE HONORABLE EXECUTIVE LABOR ARBITER AS APPEALED FROM PRINCIPALLY ON THE BASIS OF SUCH A BASELESS AND ERRONEOUS RULING THAT THE EMPLOYMENT OF PETITIONER IN THE PRIVATE RESPONDENT ALTERDEV SERVICES FOUNDATION, INC., (ALTERDEV) IS CONTRACTUAL IN NATURE;

II

IN RULING THAT PETITIONER IS A PROJECT EMPLOYEE WITH A FIXED TERM ON CONTRACTUAL BASIS PERFORMING A SPECIFIC PROJECT, THE BANIKAUSWAGAN PROJECT OF PRIVATE RESPONDENT ALTERDEV, WHICH IS AN ISSUE NOT ON APPEAL, AS THE SAME IS DENIED AS TO HAVE BEEN RAISED BY PRIVATE RESPONDENTS IN THEIR APPEAL MEMORANDUM;

III

THAT EVEN IF THE PUBLIC RESPONDENT HONORABLE NLRC, 8TH DIVISION, HAS MEANT THAT PETITIONER WAS AN EMPLOYEE FOR A FIXED TERM AND NOT A PROJECT EMPLOYEE ON CONTRACTUAL BASIS, STILL IT HAS COMMITTED A SERIOUS ERROR AND A GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION IN IGNORING THE PROVISION OF ARTICLE 280 OF THE LABOR CODE, AS AMENDED, WHICH IS REFERRED TO IN THE DECISION AS APPEALED FROM;

IV

IN IGNORING THE BAD FAITH RESORTED TO BY PRIVATE RESPONDENTS BOARD OF TRUSTEES OF THE ALTERDEV IN SEVERAL INSTANCES IN THEIR TERMINATION OF PETITIONER FROM EMPLOYMENT;

V

IN REVERSING THE DECISION OF THE HONORABLE EXECUTIVE LABOR AS APPEALED FROM DESPITE OF THE GLARING ABSENCE OF ANY PALPABLE OR PATENT ERROR THEREOF.

Stripped of rhetoric, the issues to be resolved here are:

- Whether or not NLRC committed grave abuse of discretion when it found that Bacus is a project employee or that his employment been fixed for a specific project/undertaking which completion or termination has been determined at the time of his engagement; and
- Whether or not NLRC committed grave abuse of discretion when it found Bacus was not illegally dismissed by ALTERDEV.

These issues call for the application of the following provision of the Labor Code:

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.

The Supreme Court, in *Leyte Geothermal Power Progressive Employees Union-ALU-TUCP v. Philippine National Oil Company-Energy Development Corporation*,^[32] expounded that this provision contemplates four (4) kinds of employees: (a) regular employees or those who have been "engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer"; (b) project employees or those "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"; (c) seasonal employees or those who work or perform services which are seasonal in nature, and the employment is for the duration of the season; and (d) casual employees or those who are not regular, project, or seasonal employees. The High Court in this case went on to recognize a fifth a kind of employee - the fixed-term employee. *Brent School, Inc. v. Zamora*,^[33] the leading case on fixed-term employment, has laid down the guidelines for sustaining the validity of a contract of a fixed-term employment, to wit: "stipulations in employment contracts providing for term employment or fixed period employment are valid when the period were agreed upon knowingly and voluntarily by the parties without force, duress or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent, or where 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 over the latter."

Bacus contends that he is a regular employee, not a mere project employee, of ALTERDEV as such he can only be dismissed with just cause.

ALTERDEV, on the other hand, maintains that its survival is highly dependent on the implementation of funded projects and programs, that as such it employs project employees and employees with fixed-term contracts. Bacus, during his renewed two-year contract, was discharging functions and duties connected with the regular operations of the organization. During this period, Bacus's compensation was drawn from earnings of the Banikauswagan Project Phase II funded by ICCO-Netherlands. Bacus's employment came to end due to expiration of his contract of employment and end of the Banikauswagan Project Phase II.

In resolving the first issue, this Court is constrained to review the contract of employment executed by the parties in October 2006 mindful of the ruling of Supreme Court in the case of *Culili v. Eastern Telecommunications*

Philippines, Inc.,[34] which affirmed the power of this Court to review, even on a Petition for certiorari under Rule 65, the evidence on record when necessary to resolve factual issues, and not limiting to the issue of grave abuse of discretion.[35]

The contract of employment of Bacus pertinently reads:

- “1. The EMPLOYEE shall assume the position of Executive Director categorized under the secretariat structure to bear the rank of ED-2, xxx;
2. The EMPLOYEE shall perform functions/tasks and meet the required competency and expected performance xxx;
3. That for and in consideration of services rendered, the EMPLOYER hereby agrees to provide the EMPLOYEE a package of remuneration xxx;
4. That this CONTRACT shall take effect retroactive the 1st day of January to the end of December 2008, but may be terminated by either contracting parties giving written notice at least thirty (30) days prior to termination date.”

To conclude on the basis of these provisions that Bacus’s employment ends at the same time the Banikauswagan Project Phase II does is unwarranted. There is nothing in the cited provisions that says that Bacus’s employment is dependent on this project. In fact, nothing at all was said about projects and/or programs in the contract. Clearly, Bacus is not a project employee.

Is his contract, then, a valid fixed-term contract of employment under the Brent[36] doctrine?

It is Bacus’s contention that NLRC’s reliance on the Brent doctrine is unjustified. He asserts that it misinterpreted Supreme Court’s statement in the Brent case which says that “under the Civil Code, therefore, and as a general proposition, fixed-term employment contracts are not limited, as they are under the present Labor Code, to those by nature seasonal or for specific projects with pre-determined dates of completion; they also include those to which the parties by free choice have assigned a specific date of termination.” Bacus adds that Brent should not be interpreted as to have obliterated the required pre-determined specific project under Article 280 of the Labor Code.

We do not agree.

In a recent case of Universal Robina Sugar Milling Corporation v. Acido,[37] the Supreme Court had again the occasion to affirm the Brent ruling when it said:

Interestingly, the Labor Code does not mention another employment arrangement – contractual or fixed term employment (or employment for a term) – which, if not for the fixed term, should fall under the category of regular employment in view of the nature of the employee’s engagement, which is to perform an activity usually necessary or desirable in the employer’s business.

In *Brent School, Inc. v. Zamora*, the Court, for the first time, recognized and resolved the anomaly created by a narrow and literal interpretation of Article 280 of the Labor Code that appears to restrict the employee’s right to freely stipulate with his employer on the duration of his engagement. In this case, the Court upheld the validity of the fixed-term employment agreed upon by the employer, Brent School, Inc., and the employee, Dorotio Alegre, declaring that the restrictive clause in Article 280 “should be construed to refer to the substantive evil that the Code itself x x x singled out: agreements entered into precisely to circumvent security of tenure. It should have no application to instances where [the] fixed period of employment was agreed upon knowingly and voluntarily by the parties x x x absent any x x x circumstances vitiating [the employee’s] consent, or where [the facts satisfactorily show] that the employer and [the] employee dealt with each other on

more or less equal terms[.]” The indispensability or desirability of the activity performed by the employee will not preclude the parties from entering into an otherwise valid fixed term employment agreement; a definite period of employment does not essentially contradict the nature of the employees duties as necessary and desirable to the usual business or trade of the employer.

Clearly, pre-determined project is not sine quo non to having a valid fixed-term contract of employment. This kind of contract only necessitate that the fixed period employment was agreed upon knowingly and voluntarily by the parties without force, duress or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent, or where the facts 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 over the latter. That being said, the next question to be resolved is: Does the contract covering Bacus’s employment which purports to be a fixed-term contract, consistent with the Brent requisities for a fixed-term contract?

We answer in the negative.

It must be stressed that Bacus joined ALTERDEV on November 20, 2003 in an agreed three (3) month probationary period where a performance appraisal will be conducted by ALTERDEV after this period to determine whether or not Bacus is qualified for the regular position of Executive Director. It seemed that Bacus did an excellent job in this three (3) months stint because after the lapsed of the period he was retained as its Executive Director.

Suprisingly, Bacus was made to sign a contract of employment on a fixed-term on January 25, 2005, eleven (11) months after the three (3) month probationary period has expired.

Article 281 of the Labor Code provides:

“xxx. 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.

Bacus who was allowed to perform as ALTERDEV’s Executive Director after his probationary period has expired has already acquired permanent status. To require him to sign an employment contract with fixed-term after he has become a regular employee would only mean one thing – ALTERDEV wanted to preclude him from acquiring tenurial security. This is the very substantive evil – agreements entered to circumvent security of tenure - which the law in Article 280 of the Labor Code specifically intends to prevent.

Striking down a similar contractual agreement, the Supreme Court in Universal Robina Sugar Milling Corporation ruled:

xxx, where the circumstances evidently show that the employer imposed the period precisely to preclude the employee from acquiring tenurial security, the law and this Court will not hesitate to strike down or disregard the period as contrary to public policy, morals, etc. In such a case, the general restrictive rule under Article 280 of the Labor Code will apply and the employee shall be deemed regular.

We now resolve the issue on whether or not the dismissal is with just cause.

We rule in Bacus’s favor.

It is now being settled that Bacus was a regular employee having completed the probationary period and allowed to work after its expiration, he may be dismissed only for just or authorized causes under Articles 282,[38]

283[39] and 284[40] of the Labor Code, as amended. It is uncontroverted that Bacus's dismissal is premised exclusively on the alleged expiration of the contract. We have already ruled that the contractual provision that says so is without doubt illegal. Bacus is therefore entitled to the reliefs prayed for.

FOR THESE REASONS, the instant petition is GRANTED. The assailed Resolutions are SET ASIDE. The October 30, 2009 Decision of the Executive Labor Arbiter, Branch XIII, Butuan City is SUSTAINED and REINSTATED.

SO ORDERED.

Inting and Perez, JJ., concur

[1] Rollo, pp. 9-41.

[2] Id., pp. 53-58.

[3] Id., pp. 60-61 .

[4] Id., pp. 152-163.

[5] Id., pp. 697, 702.

[6] Id., p. 747.

[7] Ibid.,

[8] Id., pp. 725-726.

[9] Id., p. 725.

[10] Id., pp. 728-729.

[11] Id., p. 748.

[12] Ibid.,

[13] Id., pp. 748-749.

[14] Id., p. 749.

[15] Id., p. 290.

[16] Id., p. 75.

[17] Id., p. 750.

[18] Id., p. 752.

[19] Id., pp. 697-698.

[20] Id., p. 706.

[21] Ibid.,

[22] Id., p. 708.

[23] Id., pp. 707-708.

[24] Id., p. 708.

[25] Id., pp. 710-711.

[26] Id., p. 712.

[27] Id., p. 715.

[28] Ibid.,

[29] Supra at note no. 4.

[30] Supra at note no. 2

[31] Supra at note no. 3.

[32] G.R. No. 170351, March 30, 2011

[33] 260 Phil. 747

[34] G.R. No. 165381, February 9, 2011

[35] The power of the Court of Appeals to review NLRC decisions via Rule 65 or Petition for Certiorari has been settled as early as in our decision in *St. Martin Funeral Home v. National Labor Relations Commission*. This Court held that the proper vehicle for such review was a Special Civil Action for Certiorari under Rule 65 of the Rules of Court, and that this action should be filed in the Court of Appeals in strict observance of the doctrine of the hierarchy of courts. Moreover, it is already settled that under Section 9 of Batas Pambansa Blg. 129, as amended by Republic Act No. 7902[10] (An Act Expanding the Jurisdiction of the Court of Appeals, amending for the purpose of Section Nine of Batas Pambansa Blg. 129 as amended, known as the Judiciary Reorganization Act of 1980), the Court of Appeals — pursuant to the exercise of its original jurisdiction over Petitions for Certiorari — is specifically given the power to pass upon the evidence, if and when necessary, to resolve factual issues.

While it is true that factual findings made by quasi-judicial and administrative tribunals, if supported by substantial evidence, are accorded great respect and even finality by the courts, this general rule admits of exceptions. When there is a showing that a palpable and demonstrable mistake that needs rectification has been committed or when the factual findings were arrived at arbitrarily or in disregard of the evidence on record, these findings may be examined by the courts.

In the case at bench, the Court of Appeals found itself unable to completely sustain the findings of the NLRC thus, it was compelled to review the facts and evidence and not limit itself to the issue of grave abuse of discretion.

[36] Supra at No. 33

[37] G.R. No. 186439, January 15, 2014

[38] ARTICLE 282. Termination by employer. - An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and

(e) Other causes analogous to the foregoing.

[39] ARTICLE 283. Closure of establishment and reduction of personnel. - The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of his Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

[40] ARTICLE 284. Disease as ground for termination. - An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: Provided, That he is paid separation pay equivalent to at least one (1) month salary or to one-half (1/2) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.

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