ZIPPY INTERNATIONAL RESOURCES, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (SIXTH DIVISION) AND LEA B. DE OCAMPO, RESPONDENTS.

Ponente: TIJAM, J.

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TIJAM, J.:

This is a Petition for Certiorari with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction seeking to annul and set aside the Resolution[1] dated January 31, 2013 of the National Labor Relations Commission (NLRC) declaring private respondent Lea A. De Ocampo (Lea) as illegally dismissed from employment and increasing her claim for salary to 55,000 UAE Dirham, from 15,000 UAE Dirham as stated in its Decision[2] dated November 29, 2012.

The facts of the case are as follows:

Lea was hired as a Sales Staff by Liwa Trading Enterprises-LLC (Liwa, for brevity), through its local agent, Zippy International Resources, Inc. (Zippy, for short), for a duration of two (2) years and with a monthly salary of 2,500 UAE Dirham.[3]

Prior to Lea's deployment, she underwent a pre-employment medical examination and the remarks was "CXR – Suspect Residual Pulmonary Fibrosis (R) Upper Lobe". The physician placed "Pending" in her recommendation.[4] Lea also went through another medical examination with Dr. Aileen S. David-Wang of Manila Doctors Hospital.[5]

On June 12, 2009, Lea was deployed for United Arab Emirates (UAE). Upon her arrival in Abu Dhabi, UAE, Liwa subjected her to a medical examination where she was found to be suffering from the same illness, Pulmonary Tuberculosis.[6]

On August 20, 2009, Lea was repatriated to the Philippines pursuant to paragraph 14(c)[7] of her employment contract. Liwa shouldered all the expenses for her repatriation.

On June 17, 2011, Lea filed a Complaint for illegal dismissal and payment of salary for the unexpired portion of her contract against Zippy, Liwas and Anthony Meneses[8] before the Arbitration Branch of the NLRC.

Lea alleged that except for the medical results that she had a scar in her lungs, thus not fit to work, she met all the requirements for her deployment. Despite her medical condition, she was enticed into leaving the country because of the misrepresentation of the respondents that other Overseas Filipino Workers (OFWs) who had been deployed with failed medical condition were able to finish their contract and were even redeployed. However, she was completely astounded when she was again made to undergo medical examination in UAE by Liwa, and when the result was the same, she was advised to be repatriated immediately after processing all her documents.[9]

Lea contended that she was illegally terminated from work when she was repatriated before the expiration of her two-year contract of employment or one (1) month after her deployment. Lea asserted that respondents

misrepresented that she could work abroad despite her medical condition, as they only considered the amount that they will gain from her deployment abroad. She claimed that respondents are solidarily liable for her salaries for the unexpired portion of her contract and for the reimbursement of her placement fee with interest of 12% per annum. She further claimed entitlement to damages due to the utter disregard of her contract when she was summarily dismissed from employment, an act that constitutes oppression to labor. Her emotional distress sprung from the wrongful acts of the respondents when they misrepresented to her that she could work abroad despite her medical condition. She also asked for attorney's fees although she was represented by the Public Attorney's Office (PAO) claiming that since it is allowed under R.A. No. 9406, or the New PAO Law.[10]

In the position paper, Petitioner Zippy, together with Liwas and Anthony Meneses, contended that after Lea was declared unfit for work due to pulmonary tuberculosis and rejected to be deployed abroad, she subjected herself to another medical examination by Dr. Wang. Lea went back and pleaded for employment abroad insisting that she is "cleared for employment" as indicated in the medical certificate issued by Dr. Wang. After explaining to Lea the provisions of paragraph 14(c)[11] of her employment contract, her plea was granted and she was deployed, but was repatriated back due to medical reason. They were surprised to receive a copy of the summons and the complaint that had been filed by Lea against them before the Arbitration Branch of the NLRC.[12]

Petitioner Zippy, Liwas and Mr. Meneses contended that Lea's dismissal was due to illness, pulmonary tuberculosis, which is a ground for termination of the employment contract, hence, she is not entitled to salaries for the unexpired portion of her contract. They argued that the filing of the complaint for illegal dismissal on June 17, 2011 was a mere afterthought considering that Lea arrived in the Philippines as early as August 20, 2009. They claimed that the complaint was baseless and clearly unfounded and has besmirched the company's good name and goodwill that they had built and earned through the years of painstaking efforts. In bringing her unfounded suit, Lea acted in a wanton, malevolent and oppressive manner that would entitle them to payment of moral and exemplary damages. They claimed payment of attorney's fees as they were constrained to retain the services of counsel for a fee and incurred expenses of litigation.[13]

On January 19, 2012, the Labor Arbiter ruled that the complaint has not yet prescribed since it was filed within the prescriptive period of four (4) years and that Lea's termination from employment was illegal. The Labor Arbiter explained that the absence of a certification from a competent public health authority that the illness of Lea is not curable within a period of six months rendered her dismissal illegal. He expounded that a medical certificate issued by the company's physician is not an acceptable certificate for purposes of termination of employment. On this score, the Labor Arbiter awarded to Lea the salaries for the unexpired portion of her contract in the amount of P55,000.00 (2,500 UAE Dirham x 22 months). The dispositive portion of the Decision states:

> "WHEREFORE, premises considered, judgment is hereby rendered finding complainant to have been ILLEGALLY DISMISSED. Respondents are held jointly and solidarily liable to pay complainant's salary the unexpired portion of her contract to wit:
>
> 2,500 UAE DIRHAM X 22 MONTHS = P55,000.00
>
> UAE DIRHAM at its peso equivalent at the time of payment.
>
> SO ORDERED. "[14]

Not satisfied with the above ruling, Petitioner Zippy, Liwas and Mr. Meneses brought the case on appeal to the NLRC, and contended that the admission of Lea that she was afflicted with pulmonary tuberculosis is a substantial proof that she was validly dismissed from employment pursuant to paragraph 14(c) of the contract of employment. The case of ATCI Overseas Corp. vs. Court of Appeals[15] is not applicable since the OFWs involved in that case never admitted that they were suffering from any sickness and they worked for several

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months before their dismissal from employment. They further contended that the award of salaries equivalent to 22 months, assuming that Lea was illegally dismissed, was erroneous.

In its assailed Decision dated November 29, 2012, the NLRC sustained the Labor Arbiter's finding that Lea was illegally dismissed from employment. The NLRC however reduced the amount of salaries awarded by the Labor Arbiter from 55,000.00 to 15,000.00 UAE Dirham pursuant to R.A. No. 10022,[16] amending R.A. No. 8049. The dispositive of the Decision states:

> "WHEREFORE, premises considered, the appeal is partly granted. The salary awarded to complainant is reduced to 15,000.00 UAE Dirhams or its peso equivalent at the time of payment. All disquisitions not affected by the modification stays.
>
> SO ORDERED. [17]

Lea filed a motion for partial reconsideration contending that she is entitled to 55,000 UAE Dirham and not to 15,000 UAE Dirham.

On January 31, 2013, the NLRC issued its assailed Resolution[18] modifying the monetary award, increasing the same from 15,000 UAE Dirham to 50,000 UAE Dirham, in this wise:

> "WHEREFORE, premises considered, the motion for reconsideration is GRANTED. Our 29 November 2012 Decision is modified in that the award be increased to 55,000 UAE Dirhams or its peso equivalent at the time of payment. All disquisitions not affected by this modification stand.
>
> No further motion of similar nature shall be entertained.
>
> SO ORDERED."[19]

Hence, this recourse filed by petitioner Zippy ascribing grave abuse of discretion to the NLRC, to wit:

> THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT FOUND THAT PRIVATE RESPONDENT WAS ILLEGALLY DISMISSED AND IS ENTITLED TO HER MONETARY CLAIMS.

Petitioner points out that private respondent's admission that she was afflicted with pulmonary tuberculosis was more than a substantial proof that she was validly dismissed from employment as it was in accordance with paragraph 14(c) of the employment contract. Petitioner argued that it is not guilty of any misrepresentation since it warned private respondent that she may be repatriated back home if health authorities in UAE found out that she is not fit to work. It further argued that it previously deployed an OFW with lung cancer and the OFW was able to complete the contract since the foreign health authorities cleared the OFW to work. Assuming without admitting that Lea was illegally dismissed, she is entitled only to 15,000 UAE Dirham and not 5,000 UAE Dirham pursuant to R.A. No. 10022, amending R.A. No. 8042.

The issue for resolution is whether Lea was illegally dismissed from employment, if so, whether she is entitled to salaries for the unexpired portion of her employment contract in the total amount of 5,000 UAE Dirham.

The petition is bereft of merit.

Before We delve on the merits of the present controversy, We note that the Verification and Certification Of Non-Forum Shopping attached to the petition for certiorari was signed by Lea P. Arujado and she stated that she is the Vice-President and duly authorized representative of petitioner Zippy. However, there is no evidence to show that Lea P. Arujado had been duly authorized to sign the certification for and in behalf of petitioner Zippy. Hence, the petition is deemed not filed.

In Philippine Airlines, Inc vs. Flight Attendants and Stewards Association of the Philippines (FASAP), et al.,[20] it was held that only individuals vested with authority by a valid board resolution may sign the certificate of non-forum shopping in behalf of a corporation. Proof of such authority is required to be attached. The petition is subject to dismissal if a certification was submitted unaccompanied by proof of the signatory's authority.

Certiorari is an extraordinary, prerogative remedy and is never issued as a matter of right. Accordingly, the party who seeks to avail of it must strictly observe the rule laid down by law.[21] Section 1, Rule 65 of the 1997 Rules of Civil Procedure in relation to Section 3, paragraph 3, Rule 46 of the same Rules, state:

> Section 1. Petition for certiorari. – When any tribunal, board or officer exercising quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.
>
> The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.
>
> Section 3, Rule 46. Contents and filing of petition; effect of non-compliance with requirements. – The petition shall contain the full names and actual addresses of all the petitioners and respondents, a concise statement of the matters involved, the factual background of the case, and the grounds relied upon for the relief prayed for.
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>
> The petitioner shall also submit with the petition a sworn certification that he has not heretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom.
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> xxx xxx xxx
>
> The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition. [Emphasis supplied].

Since petitioner did not comply with the mandatory requirement on certification of non-forum shopping, the petition clearly deserves outright dismissal.

Even brushing aside this procedural flaw, the petition still fails.

Contrary to Petitioner's argument, Lea's admission that she was afflicted with pulmonary tuberculosis was not a substantial ground for her to be dismissed from employment by Liwas. Petitioner failed to substantiate its position that Lea was repatriated in accordance with law. Petitioner merely relied upon Paragraph 14(c) of the employment contract which provides that either party may terminate the contract on the ground of illness, diseases or injury suffered by the employee and the cost of repatriation to be shouldered by the employer.

Article 284[22] of the Labor Code governs the termination of employment of an individual who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health or to the health of his co-employees.

To validly justify the termination of an employee under this ground, Section 8, Rule 1, Book VI of the Omnibus Rules Implementing the Labor Code provides for the following requisites:

> Sec. 8. Disease as a ground for dismissal – Where the employee suffers from a disease and his continued employment is prohibited by law or prejudicial to his health or to the health of his co-employees, the employer shall not terminate his employment unless there is a certification by competent public authority that the disease is of such nature or at such a stage that it cannot be cured within a period of six (6) months with proper medical treatment. If the disease or ailment can be cured within the period, the employer shall not terminate the employee but shall ask the employee to take a leave. The employer shall reinstate such employee to his former position immediately upon the restoration of his normal health." [Emphasis supplied].

In light of the above provisions of the law, We fully agree with the NLRC's pronouncement that Lea was illegally dismissed from employment when she was sent back to the Philippines 2 months after her deployment. Petitioner was not able to show sufficient evidence that the continued employment of Lea is either prohibited by law or is prejudicial to her or her co-employees. Also, petitioner did not present the required medical certificate from a competent public health authority that the illness suffered by Lea is of such nature or at such a stage that it cannot be cured within a period of 6 months with proper medical treatment.

In Wuerth Philippines, Inc vs. Rodante Ynson.[23] the Supreme Court stressed that the requirement of a medical certificate under Article 284 of the Labor Code cannot be dispensed with; otherwise, it would sanction the unilateral and arbitrary determination by the employer of the gravity or extent of the employee's illness and, thus, defeat the public policy on the protection of labor.

Suffice it to say, that in illegal dismissal cases, the employer is burdened to prove just cause for terminating the employment of its employees with clear and convincing evidence. Article 277[24] of the Labor Code puts on the employer the burden of proving that the dismissal was for a valid or authorized cause, whether the latter admits or does not admit the dismissal. The petitioners must not rely on the weakness of respondents' evidence, but must stand on the merits of their own defense.[25] For failure of the petitioner to discharge this burden, Lea's dismissal from employment was not justified, and, therefore, illegal.

Having established that Lea's termination was without a just and valid cause, she is thus entitled to her salaries for the unexpired portion of her contract of employment pursuant to the pronouncement in Serrano vs. Gallant Maritime Services, Inc. & Marlow Navigation Co., Inc.,[26] which declared as unconstitutional the clause in paragraph 5[27], Section 10 of R.A. No. 8042[28], limiting to 3 months the payment of salaries to illegally dismissed OFWs – "or for three months for every year of the unexpired term, whichever is less". Thus, the award of 55,000 UAE Dirham as salaries for the unexpired portion of Lea's employment contract, consisting of 22 months multiplied by her monthly salary rate of 2,500 UAE Dirham, is deemed proper.

The insistence of the petitioner that R.A. No. 10022,[29] should be applied to compute the salaries of Lea deserves scant consideration. While R.A. No. 10022 reinstated the clause in paragraph 5, Section 10 of R.A. No. 8042 which was struck down as constitutionally infirm, We emphasize that Lea's cause of action accrued on August 20, 2009 when she was repatriated to the Philippines, or after the promulgation of the Serrano ruling and before the effectivity of R.A. No. 10022 on March 8, 2010. Thus, to give retroactive application to the amendment introduced by R.A. No. 10022 – restoring the provision of R.A. No. 8042 that was declared unconstitutional – is not only a violation of R.A. No. 10022 as there is no express declaration of retroactivity in the law, but will result in an impairment of a right that had accrued to the employee by virtue of the Serrano ruling – entitlement to salaries of the unexpired portion of the employment contract.[30]

In the recent case of Sameer Overseas Placement Agency, Inc. vs. Joy C. Cabiles,[31] the Supreme Court even

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declared as unconstitutional the clause "or for three (3) months for every year of the unexpired term, whichever is less" in Section 7 of R.A. No. 10022 amending Section 10 of R.A. No. 8042 since it violates the constitutional rights to equal protection and due process.

All told, the NLRC acted without grave abuse of discretion in declaring that Lea De Ocampo was illegally terminated from employment and that she is entitled to 55,000 UAE Dirham as salaries for the unexpired portion of her contract of employment.

WHEREFORE, the foregoing considered, the petition is DISMISSED. The assailed January 31, 2013 Resolution of the NLRC is AFFIRMED.

SO ORDERED.

Baltazar-Padilla, and Reyes-Carpio, JJ., concur.

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[1] Rollo, pp. 17-20.

[2] Id., pp. 76-84.

[3] Id., p. 40 (Overseas Filipino Worker Information).

[4] Id., pp. 46, (Annex "4" of Respondents' Reply).

[5] Id., p. 22 (Respondents' Position Paper); p. 49, (Item No. 4, Reply for the Complainant).

[6] Id., p. 30 (Complainant's Position Paper); p. 23, (Respondents' Position Paper).

[7] Paragraph 14(c) . - Termination due to illness: Either party may terminate the contract on the ground of illness, diseases or injury suffered by the employee. The employer shall shoulder the cost of repatriation.

[8] Referred to collectively as Respondents. Only Petitioner Zippy International Resources, Inc. brought the instant petition for certiorari.

[9] Id., p. 30 (Position Paper of Complainant)

[10] Id., pp. 32-36.

[11] See note 7.

[12] Rollo, p. 23, (Position Paper of Respondents).

[13] Id., pp. 24-25.

[14] Id., p. 64.

[15] G.R. No. 143949, August 1, 2001.

[16] AN ACT AMENDING REPUBLIC ACT NO. 8042, OTHERWISE KNOWN AS THE MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995, AS AMENDED, FURTHER IMPROVING THE STANDARD OF PROTECTION AND PROMOTION OF THE WELFARE OF MIGRANT WORKERS, THEIR FAMILIES AND OVERSEAS FILIPINOS IN DISTRESS, AND FOR OTHER PURPOSES.

Section 7. Section 10 of Republic Act No. 8042, as amended, is hereby amended to read as follows:

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In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, or any unauthorized deductions from the migrant worker's salary, the worker shall be entitled to the full reimbursement of his placement fee and the deductions made with interest at twelve percent (12%) per annum, plus his salaries for the unexpired portion of his employment contract or for three (3) months for every year of the unexpired term, whichever is less.

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[17] Id., p. 83.

[18] Id., pp. 17-20.

[19] Id., p. 19.

[20] G.R. No. 143088, January 24, 2006.

[21] Eagle Ridge Golf and Country Club vs. Court of Appeals,, et al., G.R. No. 178989, March 18, 2010.

[22] Art. 284. Disease as a 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 prejudicial to his health as well as the health of his co-employees: x x x.

[23] G.R. No. 175932, February 15, 2012, citing Triple Eight Integrated Services, Inc. vs. NLRC, G.R. No. 129584, December 3, 1998.

[24] ART. 277. MISCELLANEOUS PROVISIONS

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(b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordacne with the company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the workers to contest the validity or legality of his dismissal by filing a complaint with the regional arbitration branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer. [Emphasis supplied].

[25] AFI International Trading Corporation (Zamboanga Buying Station), et al. vs. Dennis G. Lorenzo, et al., G.R. No. 173256, October 9, 2007.

[26] G.R. No. 167614, March 24, 2009.

[27] Section 10, par. 5. – In case of termination of overseas employment without just cause, valid or authorized cause as defined by law or contract, the worker shall be entitled to the full reimbursement of his placement fee with interest at twelve (12%) percent per annum, plus his salaries for the unexpired portion of his employment contract or for three (3) months for every year of the unexpired term, whichever is less. [Emphasis supplied].

[28] Migrant Workers and Overseas Filipinos Act of 1995.

[29] Enacted on March 8, 2010.

[30] Pert/CPM Manpower Exponent Co., Inc vs. Armando A. Vinuya, et al., G.R. No. 197528, September 5, 2012.

[31] G.R. No. 170139, August 5, 2014.

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