

MAY LYN TIBIO, PETITIONER, VS. DEPARTMENT OF LABOR AND EMPLOYMENT AND INNOVATIVE MANPOWER SERVICES, INC., RESPONDENTS.

Ponente: SALAZAR-FERNANDO, J.

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SALAZAR-FERNANDO, J.:

Before this Court is a Petition for Certiorari[1] under Rule 65 of the 1997 Revised Rules of Civil Procedure assailing the Order dated August 7, 2013[2] and the Resolution dated December 23, 2013[3] of the Department of Labor and Employment (DOLE) in OS-POEA-0031-0110-2013 (POEA Case No. DAE 09-08-1496) entitled "Innovative Manpower Services, Inc., Complainant, vs. Around the World Services (AWS)/Proactive HR Solutions and May Lyn Tibio, Respondents, May Lyn Tibio, Respondent-Petitioner.", the dispositive portions of which read:

Order dated August 7, 2013:

"WHEREFORE, the Appeal, herein treated as Petition for Review filed by May Lyn Tibio is hereby DISMISSED for lack of merit. Accordingly, the Order of the POEA Administrator dated 26 November 2012 is AFFIRMED.

SO ORDERED.[4]"

Resolution dated December 23, 2013:

"WHEREFORE, the Motion for Reconsideration filed by May Lyn Tibio, is hereby DENIED for lack of merit. Accordingly, our earlier Order dated August 7, 2013, STANDS.

No further pleading of similar nature shall hereinafter be entertained.

SO ORDERED.[5]"

The facts are:

On September 21, 2007, Around the World Services-Proactive HR Solutions (AWS for brevity) entered into an Association Agreement[6] with private respondent Innovative Manpower Services (IMS), whereby AWS, among others, undertook to pay the latter a recruitment fee for its services for every successfully deployed worker. On August 4, 2009, private respondent IMS filed a Complaint for Disqualification[7] against AWS and its Operations and Business Development Manager, petitioner May Lyn Tibio (Tibio for brevity), before the Philippine Overseas Employment Administration (POEA). It sought their permanent disqualification from participating in the overseas employment program of the government for their failure to observe their contractual obligation under the Association Agreement and for gross violation of laws, rules and regulations for overseas employment.[8] Private respondent IMS alleged that AWS violated its contractual obligation when it defaulted in its payment of its recruitment fees and such failure to pay its outstanding obligation is a ground for disqualification sanctioned under the POEA Rules and Regulations.[9] Moreover, AWS also committed several acts which showed its

disregard/lack of concern for the welfare and interest of the deployed migrant workers.[10] Meanwhile, petitioner Tibio was impleaded in the complaint as a party respondent for being the representative of AWS who assured private respondent IMS that AWS will honor its contractual obligations.[11] Thereafter, AWS and petitioner Tibio were summoned and directed to file their verified Answer/Explanation to the complaint. Despite notice and several opportunities to submit a responsive pleading, they still failed to file their answer.[12] On November 26, 2012, the POEA granted the prayer for disqualification and blacklisted both AWS and petitioner Tibio as foreign principals.[13] On January 7, 2013, petitioner Tibio filed a Notice with Memorandum of Appeal and assailed the POEA's order.[14] On August 7, 2013, public respondent DOLE affirmed the findings of the POEA and dismissed the appeal for lack of merit.[15] Aggrieved, petitioner Tibio moved for reconsideration[16] but her motion was denied.[17]

Hence, this petition based on the following grounds:[18]

I.

THE DOLE VIOLATED SECTION 14, ARTICLE VIII OF THE CONSTITUTION, THUS, GRAVELY ABUSED ITS DISCRETION, BY FAILING TO STATE CLEARLY AND DISTINCTLY IN ITS ASSAILED ORDER THE FACTUAL AND LEGAL BASIS OF ITS CONCLUSION THAT PETITIONER, WHO IS NOT THE FOREIGN PRINCIPAL, SHOULD BE HELD EQUALLY LIABLE WITH THE LATTER.

II.

THE DOLE GROSSLY DISREGARDED THE LAW AND JURISPRUDENCE, NAY, GRAVELY ABUSED ITS DISCRETION BY BRINGING PETITIONER WITHIN THE COVERAGE OF THE POEA RULES SANCTIONING FOREIGN PRINCIPALS EVEN IF SHE WAS NOT COVERED THEREIN BEING NOT THE FOREIGN PRINCIPAL AND BEING ITS MERE EMPLOYEE.

The petition is without merit.

The main thrust of a petition for certiorari under Rule 65 of the 1997 Revised Rules of Court is only the correction of errors of jurisdiction including the commission of grave abuse of discretion amounting to lack or excess of jurisdiction.[19] Thus, as a rule, only jurisdictional questions or matters of grave abuse of discretion which are equivalent to lack of jurisdiction may be raised in such petition.[20] In this case, a careful reading of the petition shows that the pivotal question raised by petitioner Tibio in her petition ultimately presents a factual issue. As defined by jurisprudence, an issue is a factual issue when its determination necessitates an evaluation of proof and not only a consideration of the applicable statutory and case laws.[21] Here, the question of whether or not petitioner Tibio is a mere employee who acted on behalf of her foreign principal AWS and therefore she should not be covered by the POEA Rules and Regulations imposing disciplinary action[22] on erring foreign principal/employer is essentially a factual issue because it necessarily requires an appraisal and evaluation of available evidence attesting to that fact. Such factual issue cannot be addressed or is outside the ambit of a petition for certiorari since said remedy is limited to issues of jurisdiction and grave abuse of discretion.[23]

For a petition for certiorari to prosper, the following requisites must concur:

(a) The writ is directed against a tribunal, board, or officer exercising judicial or quasi-judicial functions;

(b) Such tribunal, board, or officer has acted without or in excess of 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.[24]

Part of the duty of petitioner Tibio is to prove her allegation that the assailed order of the DOLE in holding her equally liable with AWS was issued with grave abuse of discretion amounting to lack or excess of

jurisdiction.[25] Grave abuse of discretion is present "when there is a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, such as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law".[26] In other words, the tribunal or administrative body must have issued the assailed decision, order or resolution in a capricious or despotic manner.[27] Here, an evaluation of the assailed order of the DOLE suggests that the findings thereof are rooted from the available records of the case which established the default on the part of AWS in the fulfillment of its contractual obligation with private respondent IMS. At the same time, the DOLE cannot be faulted from affirming the POEA's findings, holding petitioner Tibio equally liable with AWS as her allegation that she was a mere employee of the latter was never established because she failed to file an answer in support of her statements. This was discussed in the assailed order of the DOLE, to wit:

"xxx It was evident from the Summons sent by the POEA that the respondent-petitioner's failure to submit an answer will be considered as a waiver on her part to controvert the allegations stated in the Complaint. Despite the aforementioned warning, the respondent-petitioner still failed to submit her answer. During the entire process, the respondent-petitioner opted to send correspondences on behalf of respondent AWS making it appear that she was not a part of the Complaint when it was unmistakable that she was also included as a respondent as early as the first pleading was filed by the complainant.

More so, the POEA sent notices which the respondent-petitioner repeatedly acknowledged in writing and through electronic mail. As the respondent-petitioner took no action, despite an additional opportunity to submit an answer by virtue of a request to submit at a later date and a subsequently scheduled clarificatory hearing, the POEA rendered a decision against her. The respondent-petitioner slept on her right to fully traverse the issue filed against her from the time the complaint was filed until the decision was rendered. Hence, by her own shortcomings, the respondent-petitioner cannot now claim denial of due process of law. Xxx"

Jurisprudence is clear that a petition for certiorari is not available for the correction of errors in procedure or mistakes in the conclusion of law or fact[28] allegedly committed by a quasi-judicial agency. At most, such alleged error in the appreciation of fact only amounts to an error of judgment and not an error of jurisdiction cognizable by a petition for certiorari.[29]

From the foregoing, petitioner Tibio is not successful in demonstrating that the assailed order of the DOLE is tainted with grave abuse of discretion. Hence, the petition cannot be granted.

WHEREFORE, premises considered, the petition is DENIED. The Order dated August 7, 2013 and the Resolution dated December 23, 2013 of the Department of Labor and Employment in OS-POEA-0031-0110-2013 (POEA Case No. DAE 09-08-1496) are hereby AFFIRMED.

SO ORDERED.

Garcia, and Bueser, JJ., concur.

[1] Rollo, pp. 3-33

[2] Rollo, pp. 37-43

[3] Rollo, pp. 45-47

[4] Rollo, pp. 42-43

[5] Rollo, p. 47

[6] Rollo, pp. 98-105

[7] Rollo, pp. 48-59

[8] Violation of Sections 1(a) and 1(b) of Rule II, Part VII of the 2002 POEA Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers, which states that:

RULE II

Disciplinary Actions Against Principals/Employers

Section 1. Grounds for Disciplinary Action Against Foreign Principals/Employers. —

- a. Default on its contractual obligations to the migrant worker and/or to its Philippine agent;
- b. Gross violation of laws, rules and regulations on overseas employment;
- c. Gross negligence leading to serious injury or illness or death of the worker;
- d. Grave misconduct;
- e. Conviction of an offense involving moral turpitude;
- f. Any other case analogous to the foregoing.

[9] Rollo, pp. 49-54

[10] Rollo, pp. 54-55

[11] Rollo, pp. 49, 54

[12] Rollo, pp. 38-39, 63

[13] Rollo, pp. 60-64

[14] Rollo, pp. 65-90

[15] Supra, footnote 2

[16] Rollo, pp. 143-168

[17] Supra, footnote 3

[18] Rollo, pp. 4-6

[19] Batangas Laguna Tayabas Bus company, Inc., et al. vs. Benjamin M. Bitanga (G. R. No. 137934, August 10, 2001)

[20] Spouses Rudy S. Ampeloquio, Sr. and Lagrimas Obnamia vs. Court of Appeals, et al. (G. R. No. 124243, June 15, 2000)

[21] Chiang Kai Shek College, et al. vs. Court of Appeals, et al. (G. R. No. 152988, August 24, 2004)

[22] Supra, footnote 8

[23] The case of Negros Oriental Electric Cooperative 1 (NORECO 1), represented by Atty. Sunny R.A. Madamba, as General Manager vs. The Secretary of the Department of Labor and Employment (DOLE), et al. (G.

R. No. 143616, May 9, 2001), states:

"xxx Factual issues are not a proper subject for certiorari which is limited to the issue of jurisdiction and grave abuse of discretion. xxx"

[24] Spouses Antonio and Fe Yusay vs. Court of Appeals, et al. (G. R. No. 156684, April 6, 2011)

[25] Ricardo C. Duco vs. Commission on Election, et al. (G. R. No. 183366, August 19, 2009)

[26] Ricardo C. Duco vs. Commission on Election, et al. (G. R. No. 183366, August 19, 2009)

[27] Ricardo C. Duco vs. Commission on Election, et al. (G. R. No. 183366, August 19, 2009)

[28] La Campana Development Corporation vs. Lalaine See, et al. (G. R. No. 149195, June 26, 2006);
Commission of Internal Revenue, et al. vs. Court of Appeals, et al. (G. R. No. 119322, June 4, 1996)

[29] In the case of Laguna Autoparts Manufacturing Corporation vs. Office of the Secretary of the Department of Labor and Employment, it was held that:

"xxx It should be stressed that certiorari will issue only to correct errors of jurisdiction and not to correct errors of judgment or mistakes in the tribunal's findings and conclusions. xxx"

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