

JERLIE ANN T. BUQUIS, APPLE JOY JARANDILLA AND MA. LIZA BALICTAR, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (NLRC) FIRST DIVISION, KLG INTER-NATIONAL INC./WILLIAM TIE...

Ponente: CARANDANG, J.

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CARANDANG, J.:

This is a petition for certiorari under Rule 65 of the Rules of Court seeking to annul, reverse and set aside:

a) the Resolution[1] rendered by the public respondent NLRC dated September 20, 2012 which vacated and set aside the Decision[2] of the Commission dated April 16, 2012 and granted respondents' Motion for Reconsideration, the dispositive portion of which reads:

“WHEREFORE, premises considered, the instant Motion for Reconsideration filed by the respondents is GRANTED. The Decision of this Commission dated 16 April 2012 is hereby VACATED and SET ASIDE, and another one is entered affirming in toto the Decision of the Labor Arbiter dated 08 December 2011.”

b) the Resolution[3] of the public respondent NLRC dated January 4, 2013 denying petitioners' Motion for Reconsideration.

Antecedents:

A complaint for illegal dismissal, non-payment of service incentive leave and 13[th] month pay, moral and exemplary damages plus attorney's fees was filed by Jerlie Ann Buquis, Apple Joy Jarandilla and Ma. Liza Balictar against KLG International Inc. (hereinafter KLG) and/or William Tieng on May 12, 2011.[4] Complainants alleged in their Position Paper[5] that they were hired by respondent company and dismissed as follows:

Names Date employed Date dismissed Position Latest salary

Jerlie Ann Buquis 08/08/08 03/12/11 Sales Lady P404.00/day

Apple Joy Jarandilla 12/06/06 03/12/11 Sales Lady P404.00/day

Ma. Liza Balictar September 2008 02/28/11 Sales Lady P404.00/day

According to complainants, KLG is engaged in the business of exclusive distributorship of China products supplied by Supor Ltd and has some outlets in many department stores in Metro Manila. Buquis was assigned to different SM Department Stores, the last of which was in SM. Cubao. Her last contract was for five months to terminate on August 6, 2011. On February 23, 2011, her Supervisor Minerva Bactol approached her and told her that: “Di na namin ma renew ang kontrata mo sa amin, at di na kayo bumibenta kaya hanggang March 12, 2011 na lang kayo.”[6]

On the other hand, Apple Joy Jarandilla was assigned to major department stores where KLG has outlets. Her

contract would expire on June 12, 2011 but on March 12, 2011, she was summoned to the office of General Manager Tina Caraig where her Supervisor Mrs. Minerva told her: “Di na kailangan ang serbisyo mo, hindi na kayo bumibenta, kaya hanggang sa araw na ito ka na lang.”[7]

Likewise, Ma. Liza Balictar was assigned to the Kitchen Ware Department of different SM stores, the last of which was at SM North Edsa. Her contract was until June 2011 but on February 28, 2011, she was told by Minerva Bactol that: “Di namin kailangan ang serbisyo mo, at ang sabi ni Mrs. Caraig, our Manager, hindi na kayo bumibenta.”[8]

Complainants averred that their dismissal was illegal as it was done with undue haste without the requisite prior notice. They claim that they were already regular employees pursuant to Article 280 of the Labor Code, thus, they have the right to security of tenure.[9]

On the other hand, respondents alleged in the Position Paper[10] that complainants were associate members of Prestige Alliance Multi-Purpose Cooperative (Prestige); that Prestige's main objective is to provide independent and professional services; that Prestige assigns its members to a client who is in need of the services it provides; that respondent KLG and Prestige entered into a service agreement the duration of which depends on the amount of sales of KLG; KLG has the option of pre-terminating the service agreement if there is low sales turn-out; that in February 2011, KLG informed Prestige that it will pre-terminate its service agreement because of poor sales performance of their merchandisers, thus, Prestige pulled out Balictar on February 28, 2011, Jarandilla on March 12, 2011 and Buquis on March 18, 2011. Respondent KLG claimed that it has no employer-employee relationship with complainants and what was terminated was the service agreement between respondent KLG and Prestige.[11]

The Labor Arbiter ruled that there was no employer-employee relationship between complainants and respondent KLG. In the Decision dated December 8, 2011, the Labor Arbiter ratiocinated that KLG was merely an Indirect Employer under Article 107 of the Labor Code, whereas Prestige was the Direct Employer of complainants; that there was no illegal dismissal considering that the contract between Prestige and KLG was pre-terminated; that while KLG is not the direct employer, it may, however, be held liable for the payment of 13[th] month pay and service incentive leave from 2009, i.e, November 11, 2009 to March 2011 for complainant Jarandilla; June 17, 2009 to March 2011 for complainant Buquis and January 18, 2010 to March 2011 for Balictar.[12]

On appeal, the NLRC ruled that Prestige was a labor-only contractor because it failed to substantially prove that it is a legitimate job contractor. Citing the case of Coca-Cola Bottlers Philippines, Inc. vs. Agito, et., al,[13] the NLRC postulated that the complainants were the direct employees of KLG because Prestige was not able to prove that it has substantial capital, investment and tool to engage in job contracting and the burden of proof lies on the contractor, not the employee.[14]

On motion for reconsideration by the respondents, the NLRC reversed its earlier decision and the appealed decision of the Labor Arbiter was affirmed in toto.[15] The rationale of the NLRC in setting aside its decision dated April 16, 2011 is that Prestige presented a Certificate of Registration issued by the Department of Labor and Employment pursuant to Department Order No. 18-02 and signed by Regional Director Raymund G. Agravante, to wit:

CERTIFICATE OF REGISTRATION

Numbered: NCR-PFO-7491-121609-067

TIN: 232-669-227-000

Issued to

PRESTIGE ALLIANCE MULTIPURPOSE

COOPERATIVE

650 Unit 2 RMD Bldg. Boni Avenue, Mandaluyong City

for having complied with the requirements as provided for under the Labor Code, as amended, and its implementing Rules and having paid the registration fee in the amount of ONE HUNDRED PESOS (P100.00) per Official Receipt Number 8435906, dated December 16, 2009.

In witness whereof, and by authority vested in me by the Labor Code, as amended, and its Implementing Rules specially Department Order No. 18-02, Series of 2002 entitled Rules Implementing Articles 106 to 109 of Labor Code, as amended, I have hereunto set my hand and affixed the Official Seal of the National Capital Region, Department of Labor and Employment, Malate, Manila on this 16[th] day of December 2009.
xxxxx[16]

The NLRC reasoned that the said certificate supports the contention of respondent KLG that Prestige is in fact a legitimate job contractor and that the issuance by the DOLE of said certificate enjoys the presumption of regularity in the performance of an official duty.[17]

The motion for reconsideration filed by the complainants was denied in the Resolution[18] dated January 4, 2013, hence the present petition.

Issue/s:

The core issue in this petition is whether or not the public respondent NLRC gravely abused its discretion amounting to lack or excess of jurisdiction in holding that Prestige Alliance is a legitimate job contractor and therefore petitioners are not employees of private respondent KLG.

Petitioners asseverate that they could not be employees of Prestige because the latter did not yet exist in 2006 and the alleged service contract between KLG and Prestige was entered into in 2010. Petitioners point out that petitioner Jarandilla started working for KLG on December 6, 2006 at respondent's store in SM North and continued her employment until her dismissal on March 12, 2011; petitioner Buquis started in August 2008. Petitioners argue that even without considering the four-fold test, they should be considered as regular employees of KLG because they were already employed by the latter even before the cooperative/Prestige existed and even before KLG entered into the service contract agreement with Prestige. Moreover, petitioners maintain that it is not the service agreement but the law that determines whether or not a contractor is a legitimate job contractor and in the same manner, it is the law that determines whether the employment status of an employee is regular or not.[19]

Is the contention of petitioners correct?

The petition is meritorious.

As a rule, findings of fact of quasi-judicial tribunals are accorded with great respect even with finality when duly supported by substantial evidence. However, when it is extant in the records that the quasi-judicial tribunal disregarded material pieces of evidence, this Court will not hesitate to correct the findings of fact in keeping with the spirit of justice and fair play.

There is evidence that petitioners were already working with respondent KLG in 2006 and 2008 way before Prestige secured a certificate of registration with the DOLE in 2009. It is extant in the records that Apple Joy Jarandilla was already working with KLG since August 2008;[20] Buquis since October 2006;[21] Maria Liza Balictar since October 2008.[22]

Respondents' evidence consisted of the certificate of registration which was clearly issued on December 16,

2009[23]; SSS Employer Contribution Payment Form and SSS contributions from 2009 to 2011[24]; Member's Application Forms of Jarandilla (November 24, 2009),[25] Balictar (January 12, 2010)[26] and Buquis (June 6, 2009);[27] a Contract of Services purported to be effective August 2008, however, on close scrutiny, it is clearly manifest that the said contract was executed in 2009 as evidenced by the CTC issued on January 6, 2009 of Angeli Ancheta, Executive Director of Prestige and the Notarization dated August 3, 2009.[28]

The factual milieu in this case is similar to the case of *Almeda vs. Asahi Glass Philippines, Inc.*[29] In the said case, SASSI entered into a service contract agreement with respondent Asahi whereby it was agreed that SASSI will provide the latter with the necessary manpower for its operations. Petitioner Almeda and his companions were hired by SASSI to work for Asahi. They worked for Asahi for periods ranging from three to eleven years, until on December 1, 2002, Asahi terminated its service contract with SASSI which in turn, terminated the services of petitioners. For its defense, Asahi claimed that SASSI was a legitimate job contractor, therefore, petitioners were its employees. To buttress its claim that SASSI was a legitimate job contractor, Asahi presented a certificate of registration issued by the DOLE on January 3, 2003. With regard to the issue of legitimate job contracting, the Supreme Court declared in the said case that:

An important element of legitimate job contracting is that the contractor has substantial capital or investment, which respondent failed to prove. There is a dearth of evidence to prove that SSASI possessed substantial capital or investment when respondent began contractual relations with it more than a decade before 2003. Respondent's bare allegations, without supporting proof that SSASI had substantial capital or investment, do not sway this Court. The Court did not find a single financial statement or record to attest to the economic status and financial capacity of SSASI to venture into and sustain its own business independent from petitioner.[30]

In the same vein, We find no sufficient evidence presented by herein respondent that Prestige had substantial capital or investment when it entered into contractual relations with petitioners. We reiterate the Supreme Court ruling in the aforequoted case of *Almeda* that the bare assertions of respondent without supporting proof, even a single financial statement will not suffice to prove that Prestige is a legitimate job contractor.

More importantly, the Supreme Court in the said *Almeda* case disregarded the Certificate of Registration issued by the DOLE and derogated its evidentiary value, to wit:

The Certificate of Registration presented by respondent to buttress its position that SSASI is a duly registered job contractor is of little significance, considering that it were issued only on 3 January 2003. There is no further proof that prior to said date, SSASI had already registered with and had been recognized by the DOLE as a job contractor.

Verily, the Certificate of Registration of SSASI, instead of supporting respondent's case, only served to raise more doubts. The timing of the registration of SSASI is highly suspicious. It is important to note that SSASI was already providing respondent with workers, including petitioners, long before SSASI was registered with the DOLE as a job contractor. Some of the petitioners were hired by SSASI and made to work for respondent for 11 years. Petitioners were also dismissed from service only a month prior to the issuance of the Certificate of Registration of SSASI. Neither respondent nor SSASI exerted any effort to explain the reason for the belated registration with the DOLE by SSASI as a purported job contractor. It may be safely discerned from the surrounding circumstances that the Certificate of Registration of SSASI was merely secured in order to blanket the previous relations between SSASI and respondent with legality.

Moreover, the Certificate of Registration issued by the DOLE recognized that SSASI was a legitimate job contractor only as of the date of its issuance, 3 January 2003. There is no basis whatsoever to give the said Certificate any retroactive effect. The Certificate can only be used as reference by persons who would consider the services offered by SSASI subsequent to its issuance. Respondent, who entered into contractual relations

with SSASI way before the said Certificate, cannot claim that it relied thereon.

Hence, the status of SSASI as a job contractor previous to its registration with the DOLE on 3 January 2003 is still refutable. It can only be determined upon an evaluation of its activities as contractor prior to the issuance of its Certificate of Registration.[31]

In much the same manner, We do not give much weight on the evidentiary value of the Certificate of Registration issued by DOLE on December 1, 2009 presented by herein respondent for the same reason enunciated by the Supreme Court in the quoted case of Almeda.

In the Service/Engagement Agreements[32] executed by and between herein petitioners and respondent Prestige, petitioners agreed to the following condition to wit:

“I am an associate member of this cooperative and I do not have any employer-employee relationship between the CLIENT and me nor there is such a relationship with Prestige Alliance. I am not entitled to become an employee of our CLIENT nor of Prestige Alliance nor are they under any obligation to appoint me as such once this Service Engagement is terminated or extended or renewed, as the case maybe, without prior written agreement with Prestige Alliance.”[33]

It is extant in the said agreements that, except for Ma. Liza Balictar, petitioners signed the same on November 24, 2009 and June 11, 2009 prior to the issuance of the Certificate of Registration of Prestige. Even if said agreements were signed after the issuance of the Certificate of Registration, these cannot be held against herein petitioners in the light of Our finding that Prestige Alliance is not a legitimate labor contractor. The said agreements would only confirm the fact that petitioners were already engaged and rendering services to Prestige's client/s on said dates.

We come now to the issue regarding the status of petitioners.

Article 280 of the Labor Code, as amended, bestows upon the petitioners the status of regular employees of herein respondent, thus:

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 be considered as regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists. (*Italics Ours*)

Respondent never denied that petitioners worked as Roving Merchandisers/Sales Ladies in its different outlets with different malls; that petitioners worked continuously for more than a year before their services were terminated. Under Article 280 of the Labor Code, they are considered regular employees of respondent KLG.

Petitioners are entitled to security of tenure as regular employees, hence they cannot be terminated without due process and without cause. Respondent failed to show that the termination of herein petitioners was for causes allowed under the law or that respondent observed the mandatory requirement of the notice and hearing. There is no gainsaying that the petitioners were not afforded procedural due process.

Security of tenure is guaranteed under the Constitution as a measure of social justice.[34] The Labor Code also proscribes termination of regular employees without just or authorized cause, thus:

Article 279. SECURITY OF TENURE.

In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement, without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

Respondent's averment that it is the service contract which was terminated and not the services of petitioners does not hold water. We find that Prestige was a labor-only contractor for want of sufficient evidence to show that it was a legitimate job contractor, therefore, petitioners are considered as regular employees of respondent KLG notwithstanding the fact that it was Prestige which terminated the services of petitioners. The termination of petitioners without just or authorized cause and in violation of the procedural due process render such termination illegal. Hence, petitioners are entitled to reinstatement and backwages from the time of their separation from service up to the time of their actual reinstatement and to other monetary claims.

We find that the NLRC Decision dated April 16, 2012 is more in keeping with the spirit and substance of the law and should be reinstated.

WHEREFORE, in view of the foregoing, the assailed Resolutions dated September 20, 2012 and January 4, 2013 of the NLRC are hereby REVERSED and SET ASIDE and the NLRC Decision dated April 16, 2012 is hereby REINSTATED.

SO ORDERED.

Barza, and Reyes-Carpio, JJ., concur.

[1] Rollo, at 29-37

[2] Ibid, at 42-55

[3] Ibid, at 39-40

[4] Ibid, at 66-68

[5] Ibid, at 69-81

[6] Ibid, at 70

[7] ibid

[8] ibid

[9] Ibid, at 71

[10] Ibid, at 76-83

[11] Ibid, at 77-80

[12] Ibid, at 57-65

[13] GR No. 179546, February 13, 2009

[14] Rollo at 41-55 (Decision dated April 16, 2011)

[15] Ibid, at 29-37

[16] Ibid, at 31

[17] Ibid, at 31-32

[18] Ibid, at 39

[19]

[20] Annex B-B-2 of Complainants' Reply (Rollo, at 99)

[21] Annex C ibid (Rollo, at 100)

[22] Annex E ibid (Rollo, at 102

[23] Rollo, at 204

[24] Ibid, at 209-402

[25] Ibid, at 109

[26] Ibid, at 110

[27] Ibid, at 108

[28] Ibid, at 120-126

[29] G.R. No. 177785, September 3, 2008

[30] ibid

[31] Almeda vs. Asahi, supra

[32] Rollo, at 84-89

[33] ibid

[34] Art. XIII, Sec. 3, 1987 Constitution

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