

S. L. TOLENTINO MARKETING, STANLEY KEVIN SHI AND KAREN GO SHI, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (SIXTH DIVISION), EMAIMA A. LANITON, NANCY O. SUMALPONG, ROV...

Ponente: SALAZAR-FERNANDO, J.

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SALAZAR-FERNANDO, J.:

Before this Court is a Petition for Certiorari under Rule 65 of the 1997 Revised Rules of Civil Procedure seeking to reverse and set aside the Decision[1] dated December 12, 2013 and the Resolution[2] dated January 29, 2014 of public respondent National Labor Relations Commission (NLRC) (Sixth Division) in NLRC LAC No. 09-002557-13; NLRC NCR No. 01-01105-13; NLRC NCR No. 01-00774-13, entitled “Emaima A. Laniton, Nancy O. Sumalpong, Rovelyn R. Lorca and Chita A. Dadores, Complainants-Appellants, versus S.L. Tolentino Marketing, Stanley Kevin Shi and Karen Go Shi, Respondents-Appellees.”, the dispositive portions of which read:

a) Decision dated December 12, 2013

“WHEREFORE, premises considered, the Decision dated June 17, 2013 is hereby REVERSED and another one is entered ordering respondents S.L. Tolentino Marketing and Stanley Kevin Shi to solidarily pay complainants their respective salary differentials including ECOLA, SILP, holiday pay and 13[th] month pay, as hereinabove instructed, plus attorney’s fees equivalent to 10% of the total monetary award.

SO ORDERED.”

b) Resolution dated January 29, 2014

“WHEREFORE, the instant motion for reconsideration is hereby DENIED for lack of merit.

SO ORDERED.”

The facts are:

Private respondents Emaima A. Laniton (Laniton for brevity), Nancy O. Sumalpong (Sumalpong for brevity), Rovelyn R. Lorca (Lorca for brevity), and Chita A. Dadores (Dadores for brevity) were hired, on various dates[3], as salesladies by petitioner S.L. Tolentino Marketing, a business entity engaged in selling cellphone casing and other cellphone accessories with address at Quiapo, Manila, owned and managed by petitioners Stanley Kevin Shi and Karen Go Shi.

On January 22, 2013, the private respondents filed two (2) separate complaints[4] with the Office of the Labor Arbiter. In the Complaint docketed as NCR-01-00774-13, the private respondents listed the following as their causes of action:

“Underpayment – Salary/Wages, Non-payment – Overtime Pay, Non-payment – Holiday Pay, Non-payment – Holiday Premium, Non-payment – Rest Day Premium, Non-payment – Service Incentive Leave, Non-payment

– Separation Pay, Non-payment – ECOLA, Non-payment – Service Charges, Illegal Deduction, Regularization, Moral and Exemplary Damages, Attorney's Fees, Other Causes of Action.”

On the other hand, in NCR-01-01105-13, private respondent Rovelyn R. Lorca (Lorca for brevity) and others enumerated the following as their causes of action:

“Underpayment – Salary/Wages, Non-payment – Overtime Pay, Non-payment – Holiday Pay, Non-payment – Holiday Premium, Non-payment Rest Day Premium, Non-payment Service Incentive Leave, Non-payment Separation Pay, Non-payment ECOLA, Illegal Deduction - LATE DEDUCTION, Regularization, Moral and Exemplary Damages, Attorney's Fees, Other Causes of Action – OTHER BENEFITS”

The parties failed to reach a settlement during the mandatory conciliation and mediation conference before the Labor Arbiter, thus they were required to submit their respective position papers.

In their Position Paper,[5] the private respondents alleged in essence that: they were required by the petitioners to work from 8:00 o'clock in the morning up to 7:00 o'clock in the evening, but they were not given overtime pay; they were also underpaid in their wages and 13th month pay and were not paid service incentive leave pay, holiday premium and rest day premium; and, the total amounts of their claims are as follows:

1. Private respondent Laniton P365,331.08;
2. Private respondent Sumalpong P291,123.64;
3. Private respondent Dadores P123,057.68, and
4. Private respondent Lorca P244,860.52.

The petitioners, on the other hand, alleged in their Position Paper[6] that: they have less than ten (10) employees and their business is classified as small/backyard enterprise; when the private respondents applied for employment, they were informed that they would receive wages equivalent to the prevailing rate within the area and they would be given additional remuneration for complete attendance and meal allowance; the private respondents were not underpaid because as of November 1, 2012, the basic rate of employees working in retail establishments employing less than fifteen (15) workers was P389.00, plus P30.00 ECOLA or a total of P419.00; the complainants themselves alleged that they received P385.00 as daily wages, but aside from that they were also given P200.00 per week consisting of P100.00 as meal allowance and P100.00 for complete attendance; as regards the claim of private respondents for overtime pay, there must be proof that they performed overtime work, otherwise, they could not avail of said benefit; and, with respect to their claims for holiday pay and service incentive leave pay, the private respondents are not entitled thereto because the petitioners are regularly employing less than ten (10) workers, thus they are not covered by the provisions of Articles 94 and 95 of the Labor Code, amended, on the payment of said benefits.

On June 17, 2013, the Labor Arbiter rendered a Decision[7] with the following disposition:

“WHEREFORE, a Decision is hereby rendered DISMISSING the case for lack of merit.
SO ORDERED.”

Aggrieved, the private respondents filed an Appeal Memorandum[8] with public respondent NLRC which subsequently rendered the assailed decision. Petitioners' Motion for Reconsideration[9] thereof was denied in a Resolution[10] dated January 29, 2014. Hence, this petition based on the following grounds:

I THE NLRC ACTED WITH GRAVE ABUSE OF DISCRETION WHEN IT FAILED TO DISMISS THE APPEAL DESPITE THE ABSENCE OF A PROPER VERIFICATION AND CERTIFICATION AGAINST FORUM SHOPPING AND LACK OF A SPECIAL POWER OF ATTORNEY AUTHORIZING ROSENDO A. MARTINEZ TO REPRESENT THE PRIVATE RESPONDENTS;

II THE NLRC ACTED WITH GRAVE ABUSE OF DISCRETION WHEN IT DECLARED PRIVATE RESPONDENTS ENTITLED TO SALARY DIFFERENTIALS INCLUDING EMERGENCY COST OF LIVING ALLOWANCES (sic); and

III THE NLRC ACTED WITH GRAVE ABUSE OF DISCRETION WHEN IT DECLARED PRIVATE RESPONDENTS ENTITLED TO HOLIDAY PAY, SERVICE INCENTIVE LEAVE PAY AND 13TH MONTH PAY.

The petition is partly meritorious.

The petitioners argue that: public respondent NLRC gravely abused its discretion when it gave due course to the appeal of the private respondents despite the fact that the verification and certification against forum shopping of the appeal memorandum was signed by Rosendo A. Martinez (Martinez for brevity) who was not duly authorized to do so; the purported representative, Martinez, failed to present any valid authorization or a special power of attorney authorizing him to represent the private respondents in their appeal; the requirement to submit a certificate of non-forum shopping must be strictly complied with and the lack of certification is generally not cured by mere amendment; the defective appeal did not toll the running of the period for perfecting an appeal, thus the decision of the Labor Arbiter is now final and executory; public respondent NLRC also abused its discretion when it declared that the private respondents are entitled to wage differential when, in fact, they were receiving more than the minimum daily wage for retail establishments pursuant to Wage Order No. NCR-17 which was P389.00, plus P30.00 ECOLA or a total of P419.00, as of November 1, 2012; the private respondents did not deny that they were receiving P200.00 as meal allowance and for perfect attendance on top of their P385.00 daily wage; it is not clear when the petitioners committed the alleged underpayment, nevertheless, public respondent NLRC relied heavily on the itemized computations of the private respondents in their position paper, the truth and veracity of which could not be ascertained; it is not for the petitioners to prove non-payment of monetary claims because of the private respondents' admission in their complaint with regard to the wages they received which were above the minimum wage fixed by law; thus, the burden now rests on the private respondents to prove non-payment; it would be unreasonable to require the petitioners to prove payment because of the prevailing practice in retail establishments where salaries and wages are handed over to the worker without the latter being required to acknowledge receipt thereof; under Articles 94 and 95 of the Labor Code, retail establishments regularly employing less than ten (10) workers are exempted from granting holiday pay and service incentive leave pay to its employees; in this case, the petitioners have only nine (9) workers, as admitted by the private respondents, thus public respondent NLRC abused its discretion when it awarded said benefits to the private respondents; and, after realizing that the petitioners were exempted from the operation of Articles 94 and 95, they contradicted their earlier allegation on the number of petitioners' employees and claimed in their reply that the petitioners had eleven (11) employees; and, anent their claim for 13[th] month pay, the same was not included as a cause of action in the complaint and was raised only for the first time in private respondents' position paper.

In their Comment/Opposition to Petition for Certiorari with Motion to Admit,[11] the private respondents counter that: the assailed decision is now final and executory pursuant to the Rules of the NLRC, as the issues raised in the petition are too unsubstantial to require consideration; public respondent NLRC did not abuse its discretion in rendering the assailed decision and issuing the assailed resolution as the same were based on applicable laws and well-settled jurisprudence; while the petitioners contend that they are into retail business, the fact that they regularly engage in wholesale activities makes their business lose its character as a retail establishment, thus it is not exempt from the payment of minimum wage as fixed by law for the National Capital Region; the allegation that Martinez, who signed the verification and certification of the Appeal Memorandum, was not authorized by the private respondents is not correct because in their Comment/Opposition to petitioners' motion for

reconsideration filed with the public respondent NLRC, they confirmed the authority they granted him to represent them in the appeal; the issues raised by the petitioners in this petition had already been passed upon by public respondent NLRC in the assailed decision and resolution and there was no grave abuse of discretion on its part when it decided the case in favor of the private respondents; with respect to the factual issues, the resolution thereof is lodged with an administrative body of special competence and the court will not interfere in matters which are addressed to the sound discretion of government agencies entrusted with the regulation of activities coming under the special knowledge and training of such agencies; and, the evidence presented by the private respondents should be given more weight and where doubt exists, the same should be resolved in favor of labor.

The two (2) issues involved in this petition are: whether or not public respondent NLRC committed grave abuse of discretion when it gave due course to private respondents' appeal despite Martinez's lack of authority to sign the verification and certification of the Appeal Memorandum; and whether or not public respondent NLRC abused its discretion when it granted private respondents' monetary claims.

Section 4, Rule VI of the 2011 NLRC Rules of Procedure provides:

“SECTION 4. REQUISITES FOR PERFECTION OF APPEAL. - a) The appeal shall be:

(1) filed within the reglementary period provided in Section 1 of this Rule;

(2) verified by the appellant himself/herself in accordance with Section 4, Rule 7 of the Rules of Court, as amended;

X x x x x x x x

b) A mere notice of appeal without complying with the other requisites aforestated shall not stop the running of the period for perfecting an appeal.”

In this case, private respondents' appeal memorandum was seasonably filed, however, its certification and verification was signed by Martinez, purportedly as attorney-in-fact and in representation of the private respondents. The first paragraph of the Verification/Certification reads:

“I am the authorized representative of the complainants-appellants with Special Power of Attorney in the above-entitled case; have caused the preparation of the foregoing Appeal Memorandum; have read and understood the same and confirm that all the allegations therein contained are true and correct based on authentic records of the case.”

While the foregoing statement makes mention of a special power of attorney, for whatever reason, the same was not appended to the Appeal Memorandum. Indeed, the verification appears defective due to the lack of special power of attorney. Nonetheless, despite said defect, public respondents NLRC did not act with grave abuse of discretion when it gave due course to the appeal, decided it in favor of the private respondents and denied petitioners' motion for reconsideration, for the following reasons:

First, while paragraph (a)2, Section 4, Rule VI of the 2011 NLRC Rules of Procedure requires the appeal to be verified by the appellant himself/herself, it is silent on the effect of a defective verification. More specifically, there is no provision in the law mandating the outright dismissal of the appeal on the ground of defective verification. The only instance mentioned in 2011 NLRC Rules of Procedure where the running of the period to perfect an appeal is not tolled is the filing of a “mere notice of appeal without complying with the other requisites aforestated.” In this case, the appeal was filed within the reglementary period and it was not a mere notice of appeal, but an appeal memorandum;

Second, when the petitioners sought a reconsideration of the assailed decision, the private respondents filed a

verified Comment/Opposition to Motion for Reconsideration[12] wherein they affirmed and confirmed the authority of Martinez to represent them in the preparation of the appeal memorandum; and

Third, attached to private respondents' Comment/Opposition to Motion for Reconsideration are copies of special power of attorney executed by private respondents Sumalpong, Laniton and Dadores designating Martinez as their attorney-in-fact to, among others,: "represent, transact, sign all documents hereto appertaining and x x x."

Thus, whatever defect which may have attended the preparation of private respondents' appeal memorandum, the same is deemed to have been cured by their filing of a verified Comment/Opposition to Motion for Reconsideration and belated submission of copies of the special power of attorney. Besides, Section 10, Rule VII of the 2011 NLRC Rules of Procedure expressly provides:

"SECTION 10. TECHNICAL RULES NOT BINDING. - The rules of procedure and evidence prevailing in courts of law and equity shall not be controlling and the Commission shall use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, all in the interest of due process.

X x x x x x x x."

On the issue of lack of authority of Martinez to execute a certification of non-forum shopping which according to the petitioners could not be cured by amendment, suffice it to say that a certification against forum shopping is not required in perfecting an appeal from the decision of the Labor Arbiter to public respondent NLRC. What the 2011 NLRC Rules of Procedure requires is a verification by the appellant himself or herself, but not a certification against forum shopping. The reason being, an appeal to public respondent NLRC is not an initiatory pleading, but only a continuation of the proceedings initiated before the Labor Arbiter.

With respect to the award of holiday pay and service incentive leave pay to the private respondents, the same largely hinges on the number of workers the petitioners regularly employ. The petitioners insist that they have less than ten (10) employees, thus they are exempted from the payment of certain benefits under Articles 94 and 95 of the Labor Code, as amended. The private respondents disputed said contention alleging that, while they stated in the complaint that the petitioners have 9 employees, the same do not include the two helpers in the warehouse. Nonetheless, a reading of private respondent Laniton's Complaint/Request for Assistance[13] and Complaint[14] shows that the number of petitioners' employees stated therein is twelve (12). On the other hand, the Complaint[15] and Complaint/Request for Assistance signed by private respondent Lorca state that the petitioners have nine (9) employees. In view of said conflicting statements, there exists a reasonable doubt on the actual number of petitioners' employees. In case of doubt, such cases should be resolved in favor of labor, pursuant to the social justice policy of labor laws and the Constitution.[16] Besides, a reading of record shows that the private respondents, except for private respondent Lorca, made no categorical admission that the petitioners have less than ten (10) employees.

Even granting arguendo that the petitioners have less than ten (10) employees, the same would not automatically exempt them from the payment of monetary benefits under the Labor Code. Some legal requirements have to be complied with in order to avail of the benefits under Articles 94 and 95 of the Labor Code. In order that a retail/service establishment may be exempted from the coverage of the minimum wage law, it must be shown that the establishment is regularly employing not more than ten (10) workers and had applied for exemptions with and as determined by the appropriate Regional Board in accordance with the applicable rules and regulations issued by the Commission.[17] It is the petitioners who claim that the private respondents are not entitled to wage differential, payment of holiday pay and service incentive leave pay because they employ less than ten (10) workers, thus the burden of proving such exemption rests on them. In this case, the petitioners failed to show that

they applied for exemption with the Regional Wage Board, thus they failed to discharge said burden. Besides, they cannot rely on the alleged admission by private respondent Lorca on the actual number of their employees in view of the conflicting statement of private respondent Laniton in her complaint.

In *Murillo vs. Sun Valley Realty, Inc.*[18] where the respondents claim that petitioners therein are not entitled to service incentive leave pay inasmuch as establishment employing less than ten (10) employees are exempted by the Labor Code and the Implementing Rules from paying service incentive leave pay, the Supreme Court held:

“.....the clear policy of the Labor Code is to include all establishments, except a few classes, under the coverage of the provision granting service incentive leave to workers. Private respondents' claim is that they fell within the exception. Hence, it was incumbent upon them to prove that they belonged to a class excepted by law from the general rule. Specifically, it was the duty of respondents, not of petitioners, to prove that there were less than ten (10) employees in the company. Having failed to discharge its task, private respondents must be deemed to be covered by the general rule, notwithstanding the failure of petitioners to allege the exact number of employees of the corporation. In other words, petitioners must be deemed entitled to service incentive leave.”

Anent petitioners' contention that the private respondents admitted that they were receiving P385.00 as daily wage, the record shows that the same is inaccurate, if not outright erroneous. In their Position Paper[19] and Joint Affidavit,[20] the private respondents clearly alleged that only private respondent Laniton received a P385.00 daily wage and only for the period November 2012 up to December 2012, while private respondents Sumalpong, Dadores and Lorca received P250.00, P195.00 and P215.00, respectively, as their daily wages. Moreover, there is no evidence whatsoever showing that aside from the said daily wage the private respondents were paid P200.00 additional remuneration per week for meal allowance and for perfect attendance, as alleged by the petitioners. Thus, public respondent NLRC did not err in granting the private respondents' claim for underpayment.

On the award of 13th month pay to the private respondents, public respondent NLRC gravely erred in granting the same for the reason that it was not included as one of the causes of action in the complaint. Section 12 (c), Rule V of the 2011 NLRC Rules of Procedure provides that:

“(c)

The position papers of the parties shall cover only those claims and causes of action stated in the complaint or amended complaint, accompanied by all supporting documents, including the affidavits of witnesses, which shall take the place of their direct testimony, excluding those that may have been amicably settled.”

The claim for 13th month pay should have been denied since the complaints do not appear to have been amended to include the same as a cause of action, even if the same was discussed in the position paper. While the complaints include “Other causes of action,” this could not be deemed to include 13th month pay because the claim for 13th month pay listed in the complaints was left unchecked by the private respondents. Besides, if this Court would sustain the argument that 13th month pay would fall under “other causes of action,” then the complainant would not have to specify his or her causes of action anymore and all he/she had to do is to state one cause of action and state “all other causes of action.” Said procedure would be grossly unfair to the opposing party.

All told, except for the award of 13th month pay to the private respondents, the assailed decision of public respondent NLRC is supported by substantial evidence and not tainted with grave abuse of discretion.

WHEREFORE, the assailed Decision dated December 12, 2013 and Resolution dated January 29, 2014 of public respondent NLRC in NLRC LAC No. 09-002557-13; NLRC NCR No. 01-01105-13; NLRC NCR No. 01-00774-13 are hereby **AFFIRMED** with **MODIFICATION** in that the award of 13th month pay to the private

respondents is DELETED.

In all other respects, the assailed decision STANDS.

SO ORDERED.

Gonzales-Sison, M., and Cruz, R. A., JJ., concur.

[1] Rollo, pp. 18-27

[2] Rollo, pp. 100-101

[3] Emaima A. Laniton was hired in February 2004, Nancy O. Sumalpong, in 2004, Chita A. Dadores, in May 2012, and Rovelyn R. Lorca, in August 2011.

[4] Rollo, pp. 31-35

[5] Rollo, pp. 36-45

[6] Rollo, pp. 51-56

[7] Rollo, pp. 62-68

[8] Rollo, pp. 69-80

[9] Rollo, pp. 85-92

[10] Rollo, pp. 100-101

[11] Rollo, pp. 103-114

[12] Rollo, pp. 115-119

[13] Rollo, p. 31

[14] Rollo, pp. 32-33

[15] Rollo, p. 34

[16] Century Canning Corporation v. Ramil, G.R. No. 171630, August 8, 2010, 627 SCRA 192, 202.

[17] See C. Planas Commercial vs. NLRC, G.R. No. 144619, November 11, 2005

[18] No. L-67272, June 30, 1988, 163 SCRA 271.

[19] Supra.

[20] Rollo, pp. 48-50

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