

KONGEN CONSTRUCTION & DEVELOPMENT CORPORATION, PETITIONER, VS. ARKIN S. ABAD, AND THE HONORABLE FIRST DIVISION OF THE NATIONAL LABOR RELATIONS COMMISSION, RESPONDENTS.

Ponente: DIMAAMPAO, J.

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DIMAAMPAO, J.:

This Petition for Certiorari[1] fulminates against the Decision[2] dated 12 October 2012 and Resolution[3] dated 04 January 2013 of the National Labor Relations Commission (NLRC) which affirmed on Appeal the Decision[4] of the Labor Arbiter finding merit in private respondent's Complaint for Illegal Dismissal, and denied the Motion for Reconsideration thereof, respectively in NLRC LAC NO. 07- 002200-12.

The diegesis of the case follows.

Petitioner Kongen Construction & Development Corporation (Kongen), a domestic corporation engaged in the business of construction of buildings and infrastructures,[5] employed private respondent Arkin Abad (Abad) as Site Supervisor Engineer. The parties signed an Employment Agreement[6] setting forth the following covenants:

“3.0 AGREEMENT

3.1 The First Party hereby appoints the Second Party and the Second Party hereby accepts the fulltime appointment as SITE SUPERVISOR ENGINEER.

4.0 TERMS AND CONDITIONS

4.1 The appointment of the Second Party, which is the rank of SITE SUPERVISOR ENGINEER will take effect on December 8, 2010 and shall perform his services under this agreement as a project-based employee.

4.2 The Second Party shall perform all duties and responsibilities necessary for the smooth and responsive operations of KONGEN CONST. DEVT. CORP., of the First Party and such other responsibilities, which the First Party may assign to the Second Party.

x x x x x”[7]

Abad was initially assigned to supervise Kongen's Stratford Residences until he was transferred to its Buddha Bar project in February 2011. Thereafter, he received a Letter[8] dated 25 August 2011 notifying him that his employment with Kongen would be terminated effective 25 September 2011. He was informed that the Buddha Bar project was about to end, and that his services were no longer needed.

Inevitably, Abad lodged with the Labor Arbiter a Complaint for Illegal Dismissal[9] with prayer for monetary claims. He asserted that he was a regular employee performing duties and responsibilities which were usually necessary and desirable in the ordinary course of business of Kongen. His employment contract did not state the specific project to which he would be assigned, or the definite period or duration of his engagement. He claimed that the severance of his employment was not based on any ground and was done without compliance with due

process of the law.

Kongen, for its part, contended that Abad was hired as a Site Supervisor for the Stratford Residences project until his eventual transfer to the Buddha Bar project. As a project-based employee, it was understood that his employment was dependent upon the project to which he would be assigned. Since the Buddha Bar project was about to be finished, he was informed that his services were no longer needed. Abad accepted the management's decision as manifested in his electronic mail dated 26 August 2011.[10]

Sieving through the divergent postulations of the parties, the Labor Arbiter rendered the 30 April 2012 Decision disposing—

“WHEREFORE, (petitioner) Kongen Construction and Development Corporation is hereby found guilty of illegal dismissal. It is ordered to pay complainant (Abad) the total sum of Php509,321.48 representing:

- 1. Backwages computed from the time of his dismissal up to (the) date hereof;
- Separation pay equivalent to one month wage for every year of service, it being understood that a fraction of six month being considered one full year;
- Wages from September 1 to 25, 2011;
- Holiday pay and proportionate 13th month pay for 2011; and
- Attorneys fees equivalent to ten (10%) percent of the total monetary award.

All other claims are dismissed for lack of merit. The computation hereto attached is made an integral part hereof.

SO ORDERED.”[11]

Aggrieved, Kongen filed an Appeal with Motion to Reduce Appeal Bond[12] before the NLRC. However, the labor tribunal gave short shrift to such entreaty via the assailed Decision,viz—

“WHEREFORE, premises considered, the motion to reduce appeal/supersedeas bond filed by (petitioner) Kongen Construction & Development Corporation is DENIED for lack of merit. The appeal of said (petitioner) is DISMISSED for non-perfection and lack of merit. The assailed Decision of Labor Arbiter Raymund M. Celino dated April 30, 2012 is AFFIRMED.

SO ORDERED.”[13]

Kongen moved for reconsideration but this was denied through the challenged Resolution.

Left with no recourse, Kongen (now, petitioner) seeks recourse before Us anchored on the following grounds:

I

THE HONORABLE FIRST DIVISION OF THE NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK OR EXCESS OF JURISDICTION AND/OR PATENT ERROR OF LAW WHEN IT DID NOT PASS UPON MERITORIOUS DEFENSE OF PETITIONERS IN THE ILLEGAL DISMISSAL CASE.

II

THE HONORABLE FIRST DIVISION OF THE NATIONAL LABOR RELATIONS COMMISSION GRAVELY ABUSED ITS DISCRETION, AMOUNTING TO LACK OR EXCESS OF JURISDICTION AND/OR COMMITTED PATENT ERROR OF LAW WHEN IT DENIED PETITIONER'S MOTION TO REDUCE BOND AND WHEN IT HELD THAT PETITIONERS APPEAL WAS NOT PERFECTED.

The Petition is meritless.

First off, We delve into the issue of whether or not the Appeal filed by petitioner before the NLRC was perfected.

Jurisprudence teaches Us that the requirement of a cash or surety bond for the perfection of an appeal from the Labor Arbiter's monetary award is not only mandatory but jurisdictional as well, and non-compliance therewith is fatal and has the effect of rendering the award final and executory.[14] This requirement is intended to assure the workers that if they prevail in the case, they will receive the money judgment in their favor upon the dismissal of the employer's appeal. It is intended to discourage employers from using an appeal to delay or evade their obligation to satisfy their employees' just and lawful claims.[15]

In any case, there is a catena of cases relaxing the rule on posting of appeal bond. The bond requirement on appeals involving monetary awards had been and could be relaxed in meritorious cases such as: (1) there was substantial compliance with the Rules; (2) the surrounding facts and circumstances constitute meritorious grounds to reduce the bond; (3) a liberal interpretation of the requirement of an appeal bond would serve the desired objective of resolving controversies on the merits; or (4) the appellants, at the very least, exhibited their willingness and/or good faith by posting a partial bond during the reglementary period.[16]

There is nothing on record that would bolster petitioner's avowal that it was financially incapable of posting the requisite bond. It did not bother to present any documentary evidence to show that it was suffering from financial reverses. We find puerile its disputation that the Labor Arbiter's judgment was issued arbitrarily so that the award of P509,321.48 and the bond to be posted in the same amount was too burdensome.[17] Petitioner ought to be reminded that the exercise of the authority to reduce the appeal bond is not a matter of right on the part of the movant but lies within the sound discretion of the NLRC upon showing of meritorious grounds.[18]

With the foregoing discourse, We discern no plausible reason to depart from the ratiocination of the NLRC—

“In the case at bar, We find bereft of substantial basis (petitioner) company's argument that complainant's monetary award of P509,321.48 is too burdensome. (Petitioner) company unjustifiably failed to present proof, such as its audited financial statements, to show that it is not financially capable of posting the required appeal bond. Given that (petitioner) company is engaged in the business of construction of buildings and infrastructures, he has not shown that he had difficulty raising the amount of appeal bond, or was unable to raise the amount specified in the award of the Labor Arbiter.

A substantial monetary award, even if it runs into millions, does not necessarily give the employer-appellant a “meritorious case” and does not automatically warrant a reduction of the appeal bond. (Ramirez vs. Court of Appeals, supra)”[19]

Petitioner asserts that the resolution of this case should not be made to rest on a stringent application of the rules of procedure to justify the insufficient filing of the appeal bond.

This assertion holds no water.

While the requirement of an appeal bond in perfecting appeals had been relaxed in a number of cases, there is no compelling reason to liberally construe the rules in the case at bench. The NLRC committed no grave abuse of discretion in declaring that petitioner failed to perfect its Appeal for its failure to post the full amount of the requisite bond.

Be that as it may, even if We resolve this controversy on the merits, the Petition still falls through. We are congruent with the well-reasoned disquisition of the labor tribunals that the dismissal of Abad (now, private respondent) was tainted with illegality.

Petitioner's stance that private respondent is a project employee does not pass judicial muster.

The principal test for determining whether particular employees are properly characterized as project employees is: whether or not the project employees were assigned to carry out a specific project or undertaking, the duration of which were specified at the time the employees were engaged for that project. Predetermination of the duration or period of project employment is essential in resolving whether one is a project employee or not.[20]

The Employment Contract speaks volumes as it provided that private respondent was employed on a “fulltime appointment” and “shall perform duties and responsibilities necessary for the smooth and responsive operations”[21] of petitioner's business. It made no mention of any undertaking for which private respondent was assigned to. Neither did the Employment Contract determine the duration of the specific engagement, particularly that of the Stratford Residences project or the Buddha Bar project, to which private respondent were posted. We certainly refuse to budge on petitioner's posture that private respondent was employed for a specific undertaking.

In all, We find and so hold that private respondent is a regular employee entitled to security of tenure. Petitioner cannot summarily dismiss him without cause. Corollarily, there lies no compelling justification to diverge from the award of the monetary claims.

WHEREFORE, the Petition for Certiorari is hereby DISMISSED.

SO ORDERED.

Ybañez, and Paredes*, JJ; concur.

* Vice Justice Carmelita S. Manahan, per Office Order No. 149-14-RSF dated 21 April 2014.

[1] Rollo, pp. 3-32.

[2] Id., pp. 34-50.

[3] Id., pp. 52-53.

[4] Id., pp. 54-60.

[5] Id., p. 55.

[6] Rollo, pp. 100-101.

[7] Id., p. 100.

[8] Id., p. 106.

[9] Id., pp. 107-109.

[10] Rollo, p. 103.

[11] Id., pp. 59-60.

[12] Id., pp. 140-162.

[13] Rollo, p. 49.

[14] See *Stolt-Nielsen Marine Services, Inc. v. National Labor Relations Commission*, 477 SCRA 516, 530 (13 December 2005).

[15] Accessories Specialist Inc. v. Alabanza, 559 SCRA 550, 562 (23 July 2008).

[16] See Lopez v. Quezon City Sports Club, Inc., 576 SCRA 188, 199 (19 January 2009).

[17] Rollo, p. 159.

[18] See Stout-Nielsen Marine Services, Inc. v. National Labor Relations Commission, 477 SCRA 516, 532 (13 December 2005).

[19] Rollo, p. 42.

[20] Hanjin Engineering and Construction Co. Ltd v. Court of Appeals, 487 SCRA 78, 103 (10 April 2006).

[21] Rollo, p. 100.

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