

**PAOLO JUAN C. SAYO, PETITIONER, VS. NATIONAL LABOR
RELATIONS COMMISSION, GREGORIO A. GUIANAN, JR., DONALD
GUIANAN, SR., EUGENIO INFANTE JR., JOSE BALBALOSA, FELIPE
SERVANDO, CHA...**

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 set aside the Decision of the public respondent National Labor Relations Commission (NLRC) dated March 7, 2012[1] which dismissed petitioner's appeal and the Resolution dated June 6, 2012[2] which denied petitioner's Motion for Reconsideration in NLRC LAC Case No. 02-000551-12 entitled Gregorio Guianan, Jr., et. al. vs. JMSS Company, et.al.

Facts:

This case stemmed from consolidated complaints brought against JMSS Company/Michael James Sayo/Juan Paolo Sayo by herein respondents for illegal dismissal, non-payment of service incentive leave, 13[th] month pay, separation pay, moral and exemplary damages plus attorney's fees and docketed as NLRC NCR Case Nos. 02-02635-11 and 02-01864-11.[3]

In their position paper, complainants averred that they were employees of JMSS Company and that they were dismissed on different dates without just cause, to wit:

Name

Date hired

Date dismissed

Daily rate

1. Gregorio Guianan, Jr.

12/2005

1/31/2011

P550.00

2. Donald Guianan, Jr.

1/2005

1/29/2011

550.00

3. Eugenio Infante, Jr.

4/2005

1/29/2011

550.00

4. Jose Balbalosa

1/31/2006

1/29/2011

450.00

5. Felipe Servando

1/31/2009

1/29/2011

450.00

6. Charlie Morallos

1/31/2010

1/29/2011

450.00

7. Neopito Infante

1/31/2010

1/29/2011

500.00

8. Moises Banario

1/31/2005

1/29/2011

500.00

9. Norman Tejero

1/31/2010

1/29/2011

400.00

10. Cesar Evangelista

1/31/2010

1/29/2011

450.00

11. Marlon Basallote

1/31/2010

1/29/2011

500.00

12. Rex Pollente

1/03/2007

1/29/2011

275.00

13. Anthony Simulat

1/03/2007

1/29/2011

275.00

14. Ronilo Anagado

1/03/2007

1/29/2011

275.00

15. Armando Palacio

1/03/2007

1/29/2011

275.00

16. Romnick Panis

1/03/2007

1/29/2011

275.00

17. Jonathan Tabuena

1/03/2007

1/29/2011

275.00

18. Melvin Aquino

1/03/2007

1/29/2011

275.00

19. Matle Mancio

1/31/2010

1/29/2011

400.00

20. Tony Borbon

1/31/2010

1/29/2011

275.00

21. Nimrad Garay

1/31/2010

1/29/2011

450.00

22. Henaro Aton

1/31/2010

1/29/2011

450.00

23. Paterno P. Rivera

1/31/2010

1/29/2011

500.00

24. Donald Guianan

1/31/2010

1/29/2011

550.00

Further, complainants averred that the termination of their services were done by a mere posting of a notice on the wall in violation of the requirement of due process, thus, the dismissal was illegal. Some of the complainants orally demanded the full payment of their salary/wages, service incentive leave pay and 13[th] month pay to no avail, hence, they filed the complaint on February 1, 2011.[4]

On the other hand, respondents (herein petitioner) claimed that complainants were never their employees for the following reasons: First, complainants were not engaged by petitioners; Second, petitioners never paid complainants any wage, salary or compensation. Gregorio Guianan, one of the complainants would submit a quotation to respondents but they do not know how Guianan distributed or allotted the amount. Third, respondents never terminated complainants. Respondents merely informed Gregorio Guianan that the owner of the Vista Real property to be constructed requested that another group be assigned to perform the work. And fourth, complainants were never subjected to disciplinary action by respondents. It was Guianan who imposed disciplinary actions. It was also Guianan who dictated the means and methods to be applied in the performance of complainants' work. Thus, there is no basis for complainants' claim of illegal dismissal, monetary award and damages.[5]

The Labor Arbiter decided the case on October 28, 2011 finding that an employer-employee relationship existed between complainants and respondents. The Labor Arbiter ruled that respondents were engaged in the business of construction and sub-contracts their work or projects to complainant Guianan who was not a registered or licensed sub-contractor. Guianan was therefore a labor-only contractor. Under Article 106 of the Labor Code, a principal is allowed to engage the services of a contractor for the performance of a particular job, but the principal is liable to the contractor for the wages of the contractor's employees. The labor-only contractor becomes a mere agent and an employer-employee relationship exists between the principal and the employees of the supposed contractor. Complainants who were receiving less than the prevailing minimum wage of P405.00 per day were thus underpaid. However, their claim for overtime pay was not substantiated. With regard to their claim for holiday pay, complainants were entitled thereto because respondents failed to prove payment thereof. Complainants were also entitled to their service incentive leave and 13[th] month pay subject to the three years prescriptive period on money claims. However, complainants' claim that they were illegally dismissed lacked merit because they were the ones who ceased reporting for work and did not finish their work in Subic.[6]

Paolo Juan C. Sayo filed a partial appeal with motion to reduce bond.[7] In his Memorandum of Partial Appeal, Sayo averred that the Labor Arbiter erred in finding the existence of employer-employee relationship between JMSS and complainants. In the first place, it was Gregorio Guianan who hired the complainants. Guianan also paid complainants' salaries. Clearly, Guianan was an independent contractor thus, the complainants were Guianan's employees and not JMSS. In the absence of employer-employee relationship, the Labor Arbiter had no jurisdiction to hear and decide the complaint. Moreover, the Labor Arbiter erred in awarding payment of wage differential and holiday pay which were not included in the causes of action in the complaint. There was also no basis to pay service incentive leave pay and and 13[th] month pay due to the absence of employer-employee relationship.[8] Appellant however, did not post cash or surety bond.

On March 7, 2012, the NLRC rendered its Decision dismissing the appeal for non-perfection due to appellant's failure to post sufficient cash or surety bond as required in Section 4, Rule VI of the 2011 NLRC Revised Rules of Procedure.[9]

Petitioner Paolo Juan C. Sayo filed a Motion for Reconsideration of the said NLRC Decision reiterating his arguments in his Memorandum of Partial Appeal.[10]

The NLRC denied the motion in its Resolution dated June 6, 2012.[11]

Hence the present petition.

Stripped of non-essentials, the sole issue to be resolved in the present petition is whether or not the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing the case for non-perfection of the appeal due to petitioner's failure to post the required appeal bond.

There is no merit to the appeal.

It is well-entrenched in our jurisprudence that an appeal by the employer maybe perfected only upon compliance with certain requirements of the law and payment of the necessary appeal bond.

Article 223 of the Labor Code, as amended, provides:

“ART. 223. Appeal. — Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. Such appeal may be entertained only on any of the following grounds:

- (a) If there is prima facie evidence of abuse of discretion on the part of the Labor Arbiter;
- (b) If the decision, order or award was secured through fraud or coercion, including graft and corruption;
- (c) If made purely on questions of law; and
- (d) If serious errors in the finding of facts are raised which would cause grave or irreparable damage or injury to the appellant.

In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from.” (Emphasis and underscoring supplied)

Similarly, Sections 4(a) and 6 of Rule VI of the New Rules of Procedure of the NLRC, as amended, provide:

SECTION 4. REQUISITES FOR PERFECTION OF APPEAL. — (a) The Appeal shall be filed within the reglementary period as provided in Section 1 of this Rule; shall be verified by appellant himself in accordance with Section 4, Rule 7 of the Rules of Court, with proof of payment of the required appeal fee and the posting of a cash or surety bond as provided in Section 6 of this Rule; shall be accompanied by a memorandum of appeal in three (3) legibly typewritten copies which shall state the grounds relied upon and the arguments in support thereof; the relief prayed for; and a statement of the date when the appellant received the appealed decision, resolution or order and a certificate of non-forum shopping with proof of service on the other party of such appeal. A mere notice of appeal without complying with the other requisites aforesaid shall not stop the running of the period of perfecting an appeal.

SECTION 6. BOND. — In case the decision of the Labor Arbiter or the Regional Director involves a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond. The appeal bond shall either be in cash or surety in an amount equivalent to the monetary award, exclusive of damages and attorney's fees.

xxxx

No motion to reduce bond shall be entertained except on meritorious grounds and upon the posting of a bond in a reasonable amount in relation to the monetary award.

The filing of the motion to reduce bond without compliance with the requisites in the preceding paragraph shall not stop the running of the period to perfect an appeal. (Bold ours.)

“The necessary import of the foregoing provisions is that in the case of an employer appealing the labor arbiter's decision to the NLRC, the posting of a cash or surety bond to perfect an appeal of a monetary judgment is not only mandatory but also jurisdictional, non-compliance with which has the effect of rendering the judgment final and executory.[12]

In the case of *Ong vs. Court of Appeals*,[13] the Supreme Court stressed:

“The intention of the lawmakers to make the bond an indispensable requisite for the perfection of an appeal by the employer is underscored by the provision that an appeal by the employer may be perfected only upon the posting of a cash or surety bond. The word "only" makes it perfectly clear that the lawmakers intended the posting of a cash or surety bond by the employer to be the exclusive means by which an employer's appeal may be perfected.”

In the case at bar, it is clear from the records that petitioner failed to post sufficient cash or surety bond when he filed his Memorandum of Partial Appeal with Motion to Reduce Bond. A close scrutiny of said Memorandum also reveals that petitioner failed to allege meritorious grounds to justify the reduction of the bond.

In the case of Nicol, et. al vs. Footjoy Industrial Corp.,¹⁴ the Supreme Court emphasized that appeal bonds maybe reduced in certain cases, however, there is a need for the petitioner to show meritorious grounds to justify the reduction of bond and to show that it has the intention to post the bond by posting even partially the required appeal bond, thus:

“xxx the bond requirement on appeals involving monetary awards has been and may be relaxed in meritorious cases. These cases include instances in which (1) there was substantial compliance with the Rules, (2) 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.

Conversely, the reduction of the bond is not warranted when no meritorious ground is shown to justify the same; the appellant absolutely failed to comply with the requirement of posting a bond, even if partial; or when circumstances show the employer's unwillingness to ensure the satisfaction of its workers' valid claims.”

Petitioner's failure to post the appeal bond without justifiable reason is fatal to his appeal. The NLRC did not commit grave abuse of discretion when it dismissed petitioner's appeal for failure to comply with the required posting of appeal bond.

Even granting that the appeal maybe treated on the merits, still, the issues raised by petitioner have all been threshed out in the decision rendered by the Labor Arbiter. The existence of employer-employee relationship was well-established.

JMSS is considered the direct employer of the private respondents because Gregorio Guanan is considered a labor-only contractor who is merely the agent or intermediary of JMSS. Under Article 106 of the Labor Code, labor-only contracting exists if two elements are present, namely: first, the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others; and second, the workers recruited and placed by such person are performing activities which are directly related to the principal business of the employer. There is no question that JMSS is engaged in the business of construction and the private respondents were performing construction activities directly related to JMSS' business.¹⁵ Moreover, the Labor Arbiter found that Gregorio Guanan is not a licensed sub-contractor from the Department of Labor and Employment, hence the complainants/private respondents are deemed employees of JMSS. Private respondents as employees of petitioner are entitled to their money claims, especially as petitioner failed to prove payment thereof.

We find no grave abuse of discretion on the part of the public respondent NLRC.

WHEREFORE, in view of the foregoing, the instant petition is hereby DISMISSED.

SO ORDERED.**C E R T I F I C A T I O N**

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Gonzales-Sison and Sorongon, JJ., concur.

[1] Rollo, at 33-38

[2] Ibid, at 40-42

[3] Ibid, at 116- 122

[4] Position Paper of Complainants, Rollo, at 123-132

[5] Reply to Complainants' Position Paper, Rollo, at 135-139

[6] Decision dated October 28, 2011, Rollo, at 145-153

[7] Rollo, at 156-173

[8]Ibid

[9] Ibid, at 33-37

[10] Ibid, at 43-63

[11] Ibid, at 40-41

[12] Bunagan v. Sentinel Watchman & Protective Agency, Inc., G.R. No. 144376, September 13, 2006, 501 SCRA 650, 657; Stolt-Nielsen Marine Services, Inc. v. NLRC, G.R. No. 147623, December 13, 2005, 477 SCRA 516, 530; Filipinas Systems, Inc. v. NLRC, 463 Phil. 813, 818-819 (2003)

[13] 438 SCRA 668

[14] G.R. No. 159372, July 27, 2007

[15] Coca-Cola Bottlers Philippines vs. Agito, et. al., G.R. No. 179546, February 13, 2009

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