

**ALEJANDRO R. SANTOS, JR., HENRY VILLANUEVA, FELIPE ARCADIO,
ARTEMEO DOLOR, DANIEL CALANSANAN, ANTONIO RACELES,
ALEXANDER MALDONADO, LORENZO BAGNI, SEVERINO LOPENA,
ALFONSO HUARD...**

Ponente: VIDAL, M.D., J.

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VIDAL, M.D., J.:

In this Petition for Certiorari under Rule 65 of the Revised Rules of Court, Petitioners ALEJANDRO R. SANTOS, Jr., HENRY VILLANUEVA, FELIPE ARCADIO, ARTEMEO DOLOR, DANIEL CALANSANAN, ANTONIO RACELES, ALEXANDER MALDONADO, MARIO MENDANA, RUBEN BARRANTA, LORENZO BAGNI, SEVERINO LOPENA, ALFONSO HUARDE, SERAFIN MARQUEZ,[1] VIRGILIO MOLERA, NUNELON MACATIGBAC, JESSIE REPONTE and ANTONIO FLORES (hereinafter Petitioners) are seeking the reversal of the NLRC Decision promulgated on 11 April 2003[2] in NLRC NCR CA NO. C.A. 029655-01 affirming with modification the Decision of the Labor Arbiter dated 27 August 2001 and its subsequent Order dated 20 October 2003[3] denying the Petitioner's Motion for Reconsideration of the aforesaid decision.

THE FACTS

In their complaint, Petitioners alleged that they were employees of Respondent National Power Corporation (hereinafter NPC) although under the guise of being contractual employees deployed by the manpower agency, Respondent Servicio Filipino, Inc. (hereinafter SFI).[4] The Petitioners reported for work at the NPC-Maintenance Engineering Center (MEC), Production Division, Barangay Buni, Muntinlupa City either as leadman, welder, helper, mason and carpenter.[5] They alleged that the tools and equipment in their workplace were owned by the NPC and that they were being supervised by the NPC supervisors.[6] Sometime in 1999, the Petitioners' employment were allegedly terminated by the NPC.

SFI, on the other hand, alleged in its Motion to Dismiss dated 9 September 1999[7] that: 1) on 21 May 1999, it entered into a Contract for the Supply of Manpower Services (Skilled, Semi-Skilled, Unskilled) and Clerical Support for the Overhauling, Rehabilitation, Maintenance and Office Requirements of MMRC Plants, Facilities and Regional Offices (Service Contract) with NPC; 2) in line with the said contract, SFI hired the Petitioners as masons, carpenters and lead helpers; 3) sometime in 1999, SFI was advised by the NPC of the suspension of their service contract; 4) consequently, SFI suspended the Petitioners' employment.

On the part of the NPC, it alleged in its Position Paper dated 26 August 1999,[8] that: 1) on 26 August 1994, SFI was awarded a contract by the NPC to supply manpower services for the overhauling, rehabilitation, maintenance and office requirement of its Metro Manila Regional Plants and Field Stations after a public bidding; 2) the contract was extended to 30 March 1999 after another public bidding; 3) under the said contract, SFI was required to supply labor, materials, supplies and work equipment; 4) SFI was also required to supervise the jobs related to overhauling, rehabilitation and maintenance of NPC plants and field stations; 5) the Petitioners were hired by SFI

as welders, pipefitters, mechanics or plant helpers; 6) the Petitioners only rendered service to NPC when there was a scheduled overhauling, rehabilitation or special projects on the plants; 7) upon the completion of the project for which the Petitioners were hired, NPC would advise the SFI of the termination of their services to NPC.

On 1 March 1999, Petitioners filed a complaint against SFI and NPC, *supra*, before NLRC-NCR Arbitration Branch, Quezon City for illegal dismissal with prayer for reinstatement with full backwages plus separation pay if reinstatement is no longer possible, payment of unpaid overtime work of 30 minutes per working day, payment of additional benefits, viz: 1) hazard pay, 2) incentive bonuses, 3) sick leave, 4) vacation leave, and refund of Petitioners' cash bond.

After hearing, Labor Arbiter PATRICIO P. LIBO-ON rendered his decision dated 27 August 2001, the dispositive portion of which states:

WHEREFORE, premises considered, the complaint for illegal dismissal is dismissed for lack of merit.
SFI is ordered to pay complainants financial assistance in the amount of Ten Thousand (P10,000.00) Pesos each.[9]

Both the Petitioners and the SFI appealed the said decision to the NLRC, Q.C., which on 11 April 2003, promulgated its decision, the decretal portion of which reads:

WHEREFORE, the Labor Arbiter's decision dismissing the case for illegal dismissal is MODIFIED, in that the award of financial assistance is deleted for lack of legal basis.[10]

The Motion for Reconsideration of the aforesaid Order filed by the Petitioners was also denied by the NLRC per Order dated 20 October 2003, *supra*.

Hence, the Petitioners come now before Us alleging grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the NLRC in issuing the assailed decision and order.[11]

OUR RULING

The Petition is bereft of merit.

After a judicious study of the evidentiary records, We find that the NLRC did not commit grave abuse of discretion in affirming the Labor Arbiter's findings which are supported by the totality of the recorded evidence.

In substance, the Petitioners argue that they are employees of NPC although under the guise of being contractual employees under the manpower agency, SFI.[12] The Petitioners further contend that SFI merely serves as the paymaster for the NPC.[13]

The primary issue resolved by the Labor Arbiter in this case was whether or not an employer-employee relationship existed between the Petitioners and the NPC.[14]

Well-entrenched in labor law is the four-fold test used in determining the existence of an employer-employee relationship. This four-fold test involves the elements of an employer-employee relationship, which are as follows:

- the selection and engagement of the employee;
- the payment of wages;
- the power of dismissal; and

- the employer's power to control the employee with respect to the means and methods by which the work is to be accomplished.[15]

Applying the four-fold test, the Labor Arbiter found no employer-employee relationship existing between the Petitioners and the NPC. The Petitioners remained employees of SFI. Petitioners did not controvert the allegation that SFI selected and engaged their services as well as paid their wages. Further, Petitioners failed to substantiate their bare allegation that they were supervised by NPC, not SFI.

Evidently, the SFI is an independent contractor which undertook to provide manpower services, labor and equipment in support of the overhauling, rehabilitation and maintenance of NPC plants and field stations. The Petitioners failed to prove that SFI merely engaged in labor-only contracting. In *PAL vs. NLRC, et al.*[16] the Supreme Court compared labor-only contracting, which is prohibited, with job-contracting, which is permissible, as follows:

Prohibited labor-only contracting is defined in Article 106 of the Labor Code as follows:

“ART. 106. Contractor or subcontractor.—xxx

x x x x x x x x

“There is ‘labor-only’ contracting where 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 the workers recruited and placed by such persons are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.”

This definition covers any person who undertakes to supply workers to an employer, where such person:

“(1) Does not have substantial capital or investment in the form of tools, equipment, [machinery], work premises and other materials; and

“(2) The workers recruited and placed by such person are performing activities which are directly related to the principal business or operations of the employer in which workers are habitually employed.”

On the other hand, permissible job contracting requires the following conditions:

“(1) The contractor carries on an independent business and undertakes the contract work on his own account under his own responsibility according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of the work except as to the results thereof; and

“(2) The contractor has substantial capital or investment in the form of tools, equipment, [machinery], work premises, and other materials which are necessary in the conduct of his business.”

On the issue on whether or not the Petitioners are employees of NPC, the findings of the Labor Arbiter is relevant, thus:

NPC submit (sic) that from the foregoing, it can be gleaned that complainants are employees of SFI and not by it. It hastens to add that: the selection and engagement of the employees were made by SFI; the payment of their wages were made by SFI (evidenced by Annex “C”. respondent's NPC position paper showing that complainants were receiving salaries from SFI); the contract specifically state that the complainants are employees of SFI.

From the foregoing, it is clear that complainants are not employees of NPC. Besides, it is elementary rule of evidence that the party making the affirmative allegations has the burden of proving the same.

The complainants have not refuted the fact that: it was SFI which selected and hired their services; they were reporting to SFI; they receive their salaries from SFI; and, SFI has control and supervision over them.

The allegations made by complainants that they were working under the control and supervision of NPC,

however, as to how, or in what manner this control and supervision is seen or manifested, no evidence or proof were presented.

In the case of *Sonza vs. ABS-CBN*,^[17] the High Court reiterated the basic principle that [t]he existence of an employer-employee relationship is a question of fact. Appellate courts accord the factual findings of the Labor Arbiter and the NLRC not only respect but also finality when supported by substantial evidence. Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

Furthermore, the evidence on the record shows that the work of the employees was merely suspended. We quote with approval the decision of the Labor Arbiter as affirmed by the NLRC:

The examination of the records again show that the fact of dismissal was not established. What is apparent from the records is that the contract of SFI with NPC was terminated in 1999. The complainants being employed specifically pursuant to the fulfillment of its obligation under said contract necessarily were out of work effective the termination of the contract. Despite this fact, it could not be said that automatically the services of complainants were terminated.

SFI as a service contractor is dependent on NPC, its client, as to when the contract will expire that, when NPC did not renew its contract, it had no option but to pull out its employees. This does not automatically sever the employment relationship between complainants and SFI but merely “suspends” it. Art. 286 of the Labor Code, recognizes this, that in cases where the employment relationship is merely suspended, it gives, in this case, SFI at least six (6) months from the suspension of the employment relationship within which to find them employment elsewhere. Should they be not found another detail by then, they can be considered as constructively terminated.

Again, the records show that the instant case was filed before the six (6) month period to elapsed (sic). In effect, the filing of the complaint is premature. Besides, they were contracted specifically to work specifically to work for the NPC project. As such then, their employment is deemed terminated at the end of the contract, with NPC.^[18]

Anent the award of P10,000.00 made by the Labor Arbiter in favor of the Petitioners representing financial assistance, We agree with the NLRC that such an award has no basis in law.

The essence of a special civil action for Certiorari is to keep in check a tribunal, board or officer acting without jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction.^[19] Indeed, We find herein no such lack or excess of jurisdiction correctable by Certiorari.

WHEREFORE, premises considered, the instant Petition is DENIED.

SO ORDERED.

Reyes, and Lampas Peralta, JJ., concur.

[1] In its Decision promulgated on 11 April 2003, the NLRC noted that Petitioners SEVERINO LOPENA, ALFONSO HUARDE and SERAFIN MARQUEZ did not appeal the decision of the Labor Arbiter dated 27 August 2001.

[2] Rollo, pp. 25-34

[3] Id., p. 39

[4] Id., p. 47

[5] Id., p. 47

[6] Id., p. 48

[7] Id., pp. 68-73

[8] Id., pp. 55-66

[9] Id, p. 25

[10] Id., p. 33

[11] Id., p. 17

[12] Id., p. 18

[13] Ibid.

[14] Id., p. 28

[15] “Brotherhood” Labor Unity Movement of the Philippines, et al. vs. Zamora, G.R. No. 48645, Jan. 7. 1987, cited in Azucena, The Labor Code with Comments and Cases, Volume One, pp. 137-138.

[16] G.R. No. 125792. November 9, 1998

[17] G.R. No. 138051. June 10, 2004

[18] Rollo, pp. 32-33

[19] Section 1, Rule 65, 1997 Rules of Civil Procedure; Heirs of Hinog vs. Hon. Achilles Melicor, G.R. No. 140954, April 12, 2005.

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