

PHILIPPINE PIZZA, INC. PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND RONNIE G. TUMAMBING, RESPONDENTS.

Ponente: SABIO, JR., J.

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SABIO, JR., J.:

The rule is that factual findings of the Labor Arbiter, when affirmed by the NLRC are accorded great weight and respect when supported by substantial evidence, and devoid of any unfairness and arbitrariness (Security and Credit Investigation, Inc. vs. NLRC, 350 SCRA 357).

Challenged in this petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure is the September 7, 2005 resolution of the National Labor Relations Commission (NLRC), 2nd Division, in NLRC-NCR CA No. 041649-04 (NLRC NCR-00-07-08769-03) which affirmed the decision of the Labor Arbiter and its January 24, 2006 resolution denying petitioner's motion for reconsideration on its earlier decision.

Finding the Labor Arbiter's portrayal of antecedent facts graphic and instructive, we quote the same, thus:

“This treats of the complaint of Ronnie tumambing against respondents Pizza Hut Philippines, Inc. (Philippine Pizza, Inc.) and CBM Agency (Consolidated Building Maintenance, Inc.) for alleged illegal dismissal, non-payment of wages, service incentive leave pay, damages and attorney's fees.

He claims that he started working as a driver on August 14, 1997 and worked as such until his alleged termination on July 28, 2003 at which time he was receiving daily wage of P250.00.

He claims that his termination came about on July 28, 2003 when he was advised by his immediate superior, Arthur Kuntze that his services are no longer needed as top management decided to terminate him on account of a complaint against him for reckless driving; that he is a regular employee of respondent Pizza Hut and that his termination is illegal and is therefore entitle to reinstatement with full backwages; that his wage being only P250.00 hence, he is underpaid for P30.00; and, that he is also entitled to his 13th month pay as well as damages and attorney's fees as he was constrained to engage the services of counsel to protect and enforce his rights.

Respondent Pizza Hut contends that complainant is employed by respondent Consolidated Building Maintenance, Inc. (CBMI) an independent job contractor and was assigned as a delivery van driver at the Pizza Hut Warehouse; that it is the prerogative of his employer CBMI to request the transfer of its employees; that records from co-respondent CBMI shows that complainant was hired only in November 21, 2002; that on July 19, 2003, complainant was involved in a vehicular accident; that on July 28, 2003 complainant and Mr. Kuntze of respondent Pizza Hut met to discuss the incident and as a consequence, respondent CBMI being the employer ordered his reassignment on August 1, 2003; that complainant was validly transferred by CBMI since this is an acknowledged management prerogative; that he was never terminated by respondent Pizza Hut considering that he is not its employee but that of respondent CBMI.

Co-respondent CBMI also filed its separation position paper stating among others, that complainant was hired on November 21, 2002; that pursuant to a service contract between the respondents, complainant was assigned

as a driver of respondent Pizza Hut; that on July 19, 2003, complainant figured in a vehicular accident wherein he was found as the negligent party; that he was again involved in a near collision incident on July 26, 2003 and for which he was advised that he would be reassigned by his employer CBMI as warehouse personnel; that on July 29, 2003, complainant no longer reported for work; and despite written notice for him to make arrangement with CBMI for his new position, he failed to comply.

By way of reply, respondent Pizza Hut maintains that complainant was not its employee in the absence of any proof to substantiate his allegation that he was employed since August 14, 1997; that it does not exercise control over him; that respondent CBMI is not a labor-only contractor but is a legitimate independent labor contractor; that not being an employee of respondent, he does not enjoy security of tenure and is therefore not entitled to reinstatement.

Respondent CBMI also filed its reply reiterating its arguments raised in the position paper.

In his consolidated reply complainant maintains that he was initially hired by respondent Pizza Hut as early as December 8, 1995 as clearly shown in respondent Pizza Hut's Annex "A" and thereafter worked for seven (7) years; that respondent Pizza Hut adopted a scheme designed to frustrate his tenurial security by a service contract allegedly entered between the respondent; that he worked under the supervision of Pizza Hut's Warehouse Manager Arthur Kuntze and Pizza Hut Supervisors and that to his recollection, there were no CBMI supervisor assigned to Pizza Hut.

On January 29, 2004, respondent Pizza Hut filed its rejoinder which was adopted by co-respondent CBMI as its rejoinder."

(Rollo, pp. 145-148)

On the basis of the pleadings filed by the parties and the evidence adduced, the labor arbiter disposed of the case in this wise:

"WHEREFORE, the termination being illegal, respondent Pizza Hut Philippines, Inc. is hereby ordered to reinstate complainant with full backwages, which as of date now amounts to SEVENTY SIX THOUSAND EIGHT HUNDRED EIGHTY & 59/100 (P76,880.59) Pesos, inclusive of all benefits appurtenant thereto as indicated in the computation rendered by the Computation and Examination Unit of this Branch dated May 18, 2004 marked as Annex "A" hereof."

(Rollo, p. 150.)

In arriving at the decision, the Labor Arbiter ratiocinated in this manner:

"Since the status of employment of complainant has been put at issue as raised by respondent Pizza Hut, we find it imperative to resolve this issue before we dwell on the main issue of illegal dismissal.

At bar, we find that complainant is a regular employee of respondent Pizza Hut. This finds basis in the respondent Pizza Hut's own Annex "A" stating that complainant started working with respondent from December 8, 1995 up to the present. This document also supports complainant's stand that on November 21, 2002, he was required, along with his co-employees to sign a contract of employment with respondent CBMI, to defeat and to circumvent the law on security of tenure. And, closely perusing the employment contract one can readily see that the same is pro-forma for, even the date of effectivity reflects two (2) different dates. Moreover, respondent Pizza Hut's Annex "F" of its Comment (Reply) is a spurious as its Annex "A" for the obvious reason that while the contract of Services between the respondents was purportedly entered into on June 16, 2003, they stipulated that the "Contract shall be effective force (sic) for a period of one (1) year commencing on November 21, 2002 and ending on November 22, 2003. x x x x." Indeed, these are significant indicators that put at issue the relationship of the respondents.

Coming now to the illegal dismissal issue.

We are not impressed by the arguments of the respondents that the complainant was not terminated but is merely being reassigned as respondents miserably failed to discharged their burden of proof.

As borne out by the records, the communications sent to complainant on his alleged reassignment were made only after the case is already pending consideration by this Office.

Verily, we find this as attempt of the respondents to disentangle themselves from the web that they have woven.”

(Rollo, pp. 148-150)

No convinced, petitioner appealed to public respondent NLRC anchored on the following grounds, namely:

“GROUNDS

THERE IS PRIMA FACIE EVIDENCE OF GRAVE ABUSE OF DISCRETION ON THE PART OF THE HONORABLE LABOR ARBITER.

THERE ARE SERIOUS ERRORS IN THE FINDINGS OF FACTS WHICH WOULD CAUSE GRAVE OR IRREPARABLE DAMAGE OR INJURY TO THE RESPONDENT PPI.”

(Rollo, p. 152)

In affirming the Labor Arbiter's decision and ordering the dismissal of petitioner's appeal, public respondent NLRC asseverated, thus:

“Issue: whether or not the complainant was a regular employee of respondent PHPI.

One of the documents adduced in evidence by PHPI is a “Personnel Data Sheet” (records, p. 45) accomplished by the complainant, in which he was compelled to declare under penalties of perjury, that the answers given above are true and correct.” In this document, the complainant stated that he was employed by PHPI from December 8, 1995 up to the “present”. The word “present” obviously refers to November 21, 2002, which is the date he executed the document. Based on this document, it may indeed be concluded that the complainant's transfer from PHPI to CBMI was fictitious, and that he was an employee of PHPI from December 8, 1995 to July 28, 2003.

Besides, even on the assumption that the complainant was indeed hired by CBMI and seconded to PHPI, the result would be the same. It is settled that the contractor has the burden of proving that he has substantial capital or investment (Guarin vs. NLRC, 178 SCRA 267). In the instant case, CBMI did not submit even a single piece of evidence to show that it had substantial capital or investment. On the other hand, PHPI adduced in evidence the Articles of Incorporation (records, pp. 91-99) of CBMI showing that the latter has a paid-up capital of only P5,000.00, which is paltry, and does not even comply with the capitalization requirements provided in the Corporation Code. Likewise, the uncontroverted fact that the delivery van driven by the complainant was owned by PHPI supports a conclusion that CBMI did not have a substantial investment in its own business. Equally noteworthy is the fact that the person who supervised the complainant (Arthur Kuntze) was a PHPI employee. Considering, further that the complaint's job of ferrying supplies from PHPI's warehouse to its outlets is inarguably an activity that is necessary in its food business, it could only be concluded that CBMI was a labor-only contractor. It follows that, in contemplation of law, it was a mere agent of PHPI, and that an employer-employee relationship existed between the latter and the complainant.”

(Rollo, pp. 50-51)

Aggrieved with the denial of its motion for reconsideration, petitioner now comes to Us via this instant petition

with the following submissions, to wit:

“GROUNDS RELIED ON FOR THE PETITION

THE HONORABLE PUBLIC RESPONDENT NATIONAL LABOR RELATIONS COMMISSION (NLRC) COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN AFFIRMING THE DECISION, DATED MAY 20, 2004, ISSUED BY THE LABOR ARBITER A QUO AS CONTAINED IN ITS RESOLUTION ISSUED ON SEPTEMBER 7, 2005.

THE HONORABLE PUBLIC RESPONDENT NATIONAL LABOR RELATIONS COMMISSION FURTHER COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN HOLDING THAT THERE WAS NO PALPABLE OR PATENT ERRORS IN THEIR PREVIOUS FINDINGS AND CONCLUSIONS, THUS, DENYING THE PETITIONER'S MOTION FOR RECONSIDERATION IN ITS RESOLUTION OF JANUARY 24, 2006.”

(Rollo, p. 12)

Petition denied.

Resort to a judicial review of the decisions of the National Labor Relations commission in a petition for certiorari is confined to issues of want or excess of jurisdiction and grave abuse of discretion (Prudential Bank and Trust, Co. vs. Reyes, 352 SCRA 316) and an act of a court or tribunal may be considered to have been done in grave abuse of discretion when the same was performed in a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction (Maglasang, Jr. vs. Dadole 343 SCRA 472). Sadly, there is no such showing in the case at bench.

Besides, what petitioner would have us do is to review the findings of fact of both the Labor Arbiter and the National Labor Relations Commission. Sadly jurisprudence on the matter preclude us from doing so. Factual issues are beyond the scope of certiorari because they do not involve jurisdictional issue (Ongpauco vs. CA, 447 SCRA 395).

WHEREFORE, foregoing premises considered, the petition is hereby DENIED DUE COURSE and ordered DISMISSED. With costs to petitioner.

SO ORDERED.

Asuncion-Vicente and Villon, JJ., concur.

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