

**CONTINENTAL MARBLE CORP. AND FELIPE DAVID, PETITIONERS,
VS. NATIONAL LABOR RELATIONS COMMISSION (NLRC);
ARBITRATOR JOSE T. COLLADO AND RODITO NASAYAO,
RESPONDENTS.**

G.R. No. L-43825. May 09, 1988

Ponente: PADILLA, J.

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PADILLA, J.:

In this petition for mandamus, prohibition and certiorari with preliminary injunction, petitioners seek to annul and set aside the decision rendered by the respondent Arbitrator Jose T. Collado, dated 29 December 1975, in NLRC Case No. LR-6151, entitled: "Rodito Nasayao, complainant, versus Continental Marble Corp. and Felipe David, respondents", and the resolution issued by the respondent Commission, dated 7 May 1976, which dismissed herein petitioners' appeal from said decision.

In his complaint before the NLRC, herein private respondent Rodito Nasayao claimed that sometime in May 1974, he was appointed plant manager of the petitioner corporation, with an alleged compensation of P3,000.00, a month, or 25% of the monthly net income of the company, whichever is greater, and when the company failed to pay his salary for the months of May, June, and July 1974, Rodito Nasayao filed a complaint with the National Labor Relations Commission, Branch IV, for the recovery of said unpaid salaries. The case was docketed therein as NLRC Case no. LR-6151.

Answering, the herein petitioners denied that Rodito Nasayao was employed in the company as plant manager with a fixed monthly salary of P3,000.00. They claimed that the undertaking agreed upon by the parties was a joint venture, a sort of partnership, wherein Rodito Nasayao was to keep the machinery in good working condition and, in return, he would get the contracts from end-users for the installation of marble products, in which the company would not interfere. In addition, private respondent Nasayao was to receive an amount equivalent to 25% of the net profits that the petitioner corporation would realize, should there be any. Petitioners alleged that since there had been no profits during said period, private respondent was not entitled to any amount.

The case was submitted for voluntary arbitration and the parties selected the herein respondent Jose T. Collado as voluntary arbitrator. In the course of the proceedings, however, the herein petitioners challenged the arbitrator's capacity to try and decide the case fairly and judiciously and asked him to desist from further hearing the case. But, the respondent arbitrator refused. In due time, or on 29 December 1975, he rendered judgment in favor of the complainant, ordering the herein petitioners to pay Rodito Nasayao the amount of P9,000.00, within 10 days from notice[1].

Upon receipt of the decision, the herein petitioners appealed to the National Labor Relations Commission on grounds that the labor arbiter gravely abused his discretion in persisting to hear and decide the case notwithstanding petitioners' request for him to desist therefrom; and that the appealed decision is not supported by evidence[2].

On 18 March 1976, Rodito Nasayao filed a motion to dismiss the appeal on the ground that the decision of the voluntary arbitrator is final, unappealable, and immediately executory[3]; and, on 23 March 1976, he filed a motion for the issuance of a writ of execution[4].

Acting on the motions, the respondent Commission, in a resolution dated 7 May 1976, dismissed the appeal on the ground that the decision appealed from is final, unappealable and immediately executory, and ordered the herein petitioners to comply with the decision of the voluntary arbitrator within 10 days from receipt of the resolution[5].

The petitioners are before the Court in the present recourse. As prayed for, the Court issued a temporary restraining order, restraining herein respondents from enforcing and/or carrying out the questioned decision and resolution[6].

The issue for resolution is whether or not the private respondent Rodito Nasayao was employed as plant manager of petitioner Continental Marble Corporation with a monthly salary of P3,000.00 or 25% of its monthly income, whichever is greater, as claimed by said respondent, or entitled to receive only an amount equivalent to 25% of net profits, if any, that the company would realize, as contended by the petitioners.

The respondent arbitrator found that the agreement between the parties was for the petitioner company to pay the private respondent, Rodito Nasayao, a monthly salary of P3,000.00, and, consequently, ordered the company to pay Rodito Nasayao the amount of P9,000.00 covering a period of three (3) months, that is, May, June and July 1974.

The respondent Rodito Nasayao now contends that the judgment or award of the voluntary arbitrator is final, unappealable and immediately executory, and may not be reviewed by the Court. His contention is based upon the provisions of Art. 262 of the Labor Code, as amended.

The petitioners, upon the other hand, maintain that "where there is patent and manifest abuse of discretion, the rule on unappealability of awards of a voluntary arbitrator becomes flexible and it is the inherent power of the Courts to maintain the people's faith in the administration of justice".

The question of the finality and unappealability of a decision and/or award of a voluntary arbitrator had been laid to rest in *Oceanic Bic Division (FFW) vs. Romero*[7], and reiterated in *Mantrade/FMMC Division Employees and Workers Union vs. Bacungan*[8]. The Court therein ruled that it can review the decisions of voluntary arbitrators, thus -

"We agree with the petitioner that the decisions of voluntary arbitrators must be given the highest respect and as a general rule must be accorded a certain measure of finality. This is especially true where the arbitrator chosen by the parties enjoys the first rate credentials of Professor Florida Ruth Pineda Romero, Director of the U.P. Law Center and an academician of unquestioned expertise in the field of Labor Law. It is not correct, however, that this respect precludes the exercise of judicial review over their decisions. Article 262 of the Labor Code making voluntary arbitration awards final, inappealable, and executory except where the money claims exceed P100,000.00 or 40% of paid-up capital of the employer or where there is abuse of discretion or gross incompetence refers to appeals to the National Labor Relations Commission and not to judicial review.

"In spite of statutory provisions making 'final' the decisions of certain administrative agencies, we have taken cognizance of petitions questioning these decisions where want of jurisdiction, grave abuse of discretion, violation of due process, denial of substantial justice, or erroneous interpretation of the law were brought to our attention. There is no provision for appeal in the statute creating the Sandiganbayan but this has not precluded us from examining decisions of this special court brought to us in proper petitions. x x x"

The Court further said:

"A voluntary arbitrator by the nature of her functions acts in a quasi-judicial capacity. There is no reason why her decisions involving interpretation of law should be beyond this Court's review. Administrative officials are presumed to act in accordance with law and yet we do not hesitate to pass upon their work where a question of law is involved or where a showing of abuse of authority or discretion in their official acts is properly raised in petitions for certiorari".

The foregoing pronouncements find support in Section 29 of Republic Act No. 876, otherwise known as the Arbitration Law, which provides:

"Sec. 29. Appeals. - An appeal may be taken from an order made in a proceeding under this Act, or from a judgment entered upon an award through certiorari proceedings, but such appeals shall be limited to questions of law. The proceedings upon such an appeal, including the judgment thereon shall be governed by the Rules of Court in so far as they are applicable".

The private respondent, Rodito Nasayao, in his Answer to the petition[9], also claims that the case is premature for non-exhaustion of administrative remedies. He contends that the decision of the respondent Commission should have been first appealed by petitioners to the Secretary of Labor, and, if they are not satisfied with his decision, to appeal to the President of the Philippines, before resort is made to the Court.

The contention is without merit. The doctrine of exhaustion of administrative remedies cannot be invoked in this case, as contended. In the recent case of John Clement Consultants, Inc. versus National Labor Relations Commission[10], the Court said:

"As is well known, no law provides for an appeal from decisions of the National Labor Relations Commission; hence, there can be no review and reversal on appeal by higher authority of its factual or legal conclusions. When, however, it decides a case without or in excess of its jurisdiction, or with grave abuse of discretion, the party thereby adversely affected may obtain a review and nullification of that decision by this Court through the extraordinary writ of certiorari. Since, in this case, it appears that the Commission has indeed acted without jurisdiction and with grave abuse of discretion in taking cognizance of a belated appeal sought to be taken from a decision of Labor Arbiter and thereafter reversing it, the writ of certiorari will issue to undo those acts, and do justice to the aggrieved party".

We also find no merit in the contention of Rodito Nasayao that only questions of law, and not findings of fact of a voluntary arbitrator may be reviewed by the Court, since the findings of fact of the voluntary arbitrator are conclusive upon the Court.

While the Court has accorded great respect for, and finality to, findings of fact of a voluntary arbitrator[11] and administrative agencies which have acquired expertise in their respective fields, like the Labor Department and the National Labor Relations Commission[12], their findings of fact and the conclusions drawn therefrom have to be supported by substantial evidence. In the instant case, the finding of the voluntary arbitrator that Rodito Nasayao was an employee of the petitioner corporation is not supported by the evidence or by the law.

On the other hand, we find the version of the petitioners to be more plausible and in accord with human nature and the ordinary course of things. As pointed out by the petitioners, it was illogical for them to hire the private respondent Rodito Nasayao as plant manager with a monthly salary of P3,000.00, an amount which they could ill-afford to pay, considering that the business was losing, at the time he was hired, and that they were about to close shop in a few months' time.

Besides, there is nothing in the record which would support the claim of Rodito Nasayao that he was an employee of the petitioner corporation. He was not included in the company payroll, nor in the list of company employees furnished the Social Security System.

Most of all, the element of control is lacking. In *Brotherhood Labor Unity Movement in the Philippines vs. Zamora*[13], the Court enumerated the factors in determining whether or not an employer-employee relationship exists, to wit:

"In determining the existence of an employer-employee relationship, the elements that are generally considered are the following: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee with respect to the means and methods by which the work is to be accomplished. It is the so-called 'control test' that is the most important element (*Investment Planning Corp. of the Phils. vs. The Social Security System*, 21 SCRA 924; *Mafinco Trading Corp. v. Ople*, supra, and *Rosario Brothers, Inc. v. Ople*, 131 SCRA 72)".

In the instant case, it appears that the petitioners had no control over the conduct of Rodito Nasayao in the performance of his work. He decided for himself on what was to be done and worked at his own pleasure. He was not subject to definite hours or conditions of work and, in turn, was compensated according to the results of his own effort. He had a free hand in running the company and its business, so much so, that the petitioner Felipe David did not know, until very much later, that Rodito Nasayao had collected old accounts receivables, not covered by their agreement, which he converted to his own personal use. It was only after Rodito Nasayao had abandoned the plant following discovery of his wrong-doings, that Felipe David assumed management of the plant.

Absent the power to control the employee with respect to the means and methods by which his work was to be accomplished, there was no employer-employee relationship between the parties. Hence, there is no basis for an award of unpaid salaries or wages to Rodito Nasayao.

WHEREFORE, the decision rendered by the respondent Jose T. Collado in NLRC Case No. LR-6151, entitled: "Rodito Nasayao, complainant, versus Continental Marble Corp. and Felipe David, respondents", on 29 December 1975, and the resolution issued by the respondent National Labor Relations Commission in said case on 7 May 1976, are REVERSED and SET ASIDE and another one entered DISMISSING private respondent's complaint. The temporary restraining order heretofore issued by the Court is made permanent. Without costs.

SO ORDERED.

Yap, C.J., (Chairman), Melencio-Herrera, Paras, and Sarmiento, JJ., concur.

[1] Rollo, p. 15

[2] Id., p. 23

[3] Id., p. 43

[4] Id., p. 47

[5] Id., p. 51

[6] Id., p. 55

[7] G.R. No. L-43890, July 16, 1984, 130 SCRA 392

[8] G.R. No. L-48437, Sept. 30, 1986, 144 SCRA 510

[9] Rollo, pp. 69, 76

[10] G.R. No. 72096, January 29, 1988

[11] Oceanic Bic Division (FFW) vs. Romero, *supra*

[12] Franklin Baker Company of the Philippines vs. Trajano, G.R. No. 75039, Jan. 28, 1988, and cases cited.

[13] G.R. No. L-48645, Jan. 7, 1987, 147 SCRA 49, 54. See also: Bautista vs. Inciong, G.R. No. 52824, March 16, 1988.

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