ROLDAN L. NOMO, JASON M. DELA CRUZ, MICHAEL M. BARIT, MARIA THERESA PONADO, PRECILLA G. GAUPO, APOLONIA M. CASTILLO, MARIE JUNE H. DE LEON, DANNY D. AÑONUEVO, TIMOTHY JUN BOTIS,...

Ponente: INTING, S.B., J.

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INTING, S.B., J.:

This is a Petition for Certiorari[1] under Rule 65 of the 1997 Rules of Civil Procedure filed by the Petitioners which seeks to reverse and set aside the November 29, 2011 Resolution[2] and July 31, 2012 Decision[3] of the National Labor Relations Commission (NLRC) in NLRC LAC No. 10-002798-11 NLRC Case Nos. RAB-IV-01-00066-11-L, RAB-IV-01-00067-11-L and RAB-IV-03-00368-11-L.

Petitioners allege that they were regular employees of Respondent Toyota Boshoku Philippines Corporation (Toyota Boshoku, for brevity) which is a corporation engaged in the production and installation of Toyota car accessories, seats and parts. San Roque Human Resources Corporation (SRHRC, for brevity) is an employment agency engaged in the recruitment of workers for diffferent employers. Mr. Mamoru Matsunaga is the President of Toyota Boshoku while Mr. Fedin Estiva is the owner of SRHRC.

The facts:

The petition stems from the Complaints[4] filed with the NLRC for illegal dismissal, regularization, money claims (service incentive leave), damages and attorney's fees, by Petitioners against Toyota Boshoku, SRHRC and Respondents Matsunaga and Estiva in their official capacities.

Petitioners in their Position Papers[5] allege: that they were directly hired by Toyota Boshoku on different dates as sewers, cutting operators, foam operators, door trimmers and seat assemblers; that majority of them were employed at Toyota Boshoku for less than a year; that subsequent to the end of their contracts of employment with Toyota Boshoku they were transferred to SRHRC and were made to believe that their employment with Toyota Boshoku will be continued and that eventually they will be regularized; that they worked inside the premises of Toyota Boshoku and that the means and method of their work were supervised and controlled by Toyota Boshoku without any intervention coming from SRHRC ; that all their tools, materials, equipment and facilities were owned by Toyota Boshoku and they were bound to observe the company's policies and also rendered overtime work upon the request of Toyota Boshoku's supervisor; that SRHRC failed to show that it has substantial capital or investment which relates to the job performed by them; that based on its primary and secondary purpose, SRHRC has an authorized capital stock amounting to Php 1,000,000.00 only with paid-up capital of Php62,500.00; that SRHRC is merely a Recruting and Manpower Agency which provided Toyota Boshoku with workers who performed tasks directly related to the principal's business; that Petitioners were illegally terminated from their employment because of the contract termination between SRHRC and Toyota Boshoku.

SRHRC, on the other hand, claims[6]: that it is duly registered with the Department of Labor and Employment

(DOLE); that it is primarily organized to engage in the business of general services such as but not limited to janitorial, clerical, messengerial and other related services; that it had substantial capitalization and manpower to operate as a distinct and independent business of providing work and services for its own account and under its responsibility and according to its own manner, method and control; that it entered into a Manpower Service Contract with Toyota Boshoku; that SRHRC hired the Petitioners as contractual workers; that Petitioners were assigned by SRHRC to Toyota Boshoku as sewers, warehouseman and production operators; that Petitioners' salaries were derived from, paid and received by Petitioners from SRHRC conformably to the terms of the Job Contract/ Agreement for Contractual Employee and the aforesaid Manpower Service Contract; that as employer of Petitioners it paid and remitted its contributions required under existing laws such as SSS, Philhealth, Pag-Ibig; that it had sole authority where Petitioners were to be deployed and it had a staff to monitor whether Petitioners were complying with Toyota Boshoku's Rules and Regulations; that after the termination of their contractual employment, the Petitioners were advised by SRHRC to report to its head office but the former refused and did not report back to work.

On the other hand, Toyota Boshoku claims[7]: that Petitioners are employees of SRHRC; that Toyota Boshoku has an existing Manpower Service Agreement[8] with SRHRC; that Petitioners were deployed to their company under the direction and control of the coordinators of SRHRC; that Petitioners were formerly under a fixed-contract agreement with Toyota Boshoku and that thereafter Petitioners were hired by Toyota Boshoku as agency workers of SRHRC.

Petitioners contend that they were regular employees of Toyota Boshoku which illegally dismissed them.

On August 10, 2011, the Labor Arbiter rendered a Decision[9], the pertinent portion of which provides:

> “xxx xxx xxx
>
> After a careful evaluation of all the evidence adduced by the parties, both testimonial under oath and documentary, this Office so holds that respondent San Roque is a legitimate independent contractor as defined by law and settled jurisprudence.
>
> xxx xxx xxx
>
> It is also an undeniable fact based on record that respondent San Roque is a substantially capitalized business. Contrary to the allegation of complainants that there is no proof of substantial capital, the Audited Financial Statement adduced shows that as of December 31, 2010, San Roque has Gross Income of P19,781,478.03 and with a total assets of P2,485,118.34.
>
> xxx xxx xxx
>
> Complainants alleged that they work under the control and supervision of the supervisors of Toyota Boshoku but this serious allegation remains merely as such-an allegation. No evidence was presented other than their self-serving affidavits that they were subject to control by supervisors of Respondent Toyota Boshoku. However, such allegations are insufficient to entitle them to the relief's (sic) prayed for. xxx xxx xxx
>
> What negates further complainants' argument on control is the fact that the work performances of complainants are in fact evaluated by Respondent San Roque as reflected in their individual “Workers Performance Rating Report.” Indeed, by applying the four-fold test used in determining employer-employee relationship, the status of respondent San Roque as the true employer of complainants is clearly established.
>
> xxx xxx xxx
>
> WHEREFORE, premises considered, the complaints filed by complainants are hereby dismissed for lack of merit.

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SO ORDERED."

Petitioners then filed an Appeal Memorandum[10] which was dismissed by the NLRC in its Decision[11] dated November 29, 2011 for having been filed out of time. The dispositive portion of which provides:

"WHEREFORE, premises considered, the appeal is hereby, DISMISSED for being filed out of time.

SO ORDERED."

Consequently, Petitioners filed a Motion for Reconsideration[12] which was granted by the NLRC in a Decision[13] dated July 31, 2012 wherein the Petitioners' appeal was given due course on the ground that it was filed within the reglementary period. However, the NLRC decided[14] against the Petitioners. The pertinent portion of the Decision provides, to wit:

"xxx xxx

The appeal is without merit.

xxx xxx

Records however, show that SRHRC is a duly registered contractor with the Department of Labor and Employment xxx xxx. The issuance of such registration certificate to SRHRC gives rise to the presumption that it is a legitimate job contractor and has complied with the requirements set forth in Department Order No. 18-02. In addition, SRHRC was also able to establish that it has substantial capital and manpower to conduct a business independent from that of its principal, respondent TBPC. xxx

It was also able to present proof that it entered into individual contracts of employment with complainant-appellants, paid them their salaries, and remitted monthly contributions to respective government authorities on their behalf.

xxx xxx It is undisputed that work performance of appellants are monitored by SRHRC through their Workers Performance Rating Report.

Moreover, respondent SRHRC was able to submit evidence, through its audited financial statements for 2010, to substantiate its claim of substantial capitalization. Against this overwhelming evidence. Appellants' contention takes the lower side of the scale of evidence.

Having admitted to have been employed by SRHRC and the latter was able to establish that it is an individual contractor, appellants are employees of SRHRC.

xxx xxx xxx

Even if TBPC admitted having initially hired appellants, their contract with TBPC was for a fixed term employment. Having established that SRHRC is a legitimate contractor, appellants' contract with the latter is separate and distinct from their previous contract with TBPC.

In view of the foregoing, appellants' prayer that they be declared regular employees of TBPC has no leg to stand on and therefore fails.

WHEREFORE, premises considered, complainants' appeal is DENIED for lack of merit. Consequently, the assailed Decision is AFFIRMED en toto.

SO ORDERED."

Hence, the instant petition.

The Issue:

> WHETHER OR NOT THE PUBLIC RESPONDENT HAS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN AFFIRMING THE DECISION OF THE LABOR ARBITER DATED AUGUST 10, 2011 AND RULING THAT THE PETITIONERS ARE NOT REGULAR EMPLOYEES OF PRIVATE RESPONDENT TOYOTA BOSHOKU.

The Ruling:

The petition is bereft of merit.

Department of Labor and Employment (DOLE) Department Order No. 10, Series of 1997, defines "job contracting" and "labor-only contracting" as follows:

> Sec. 8. Job contracting. — There is job contracting permissible under the Code if the following conditions are met:
>
> 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, machineries, work premises, and other materials which are necessary in the conduct of his business.

Sec. 9. Labor-only contracting. — (a) Any person who undertakes to supply workers to an employer shall be deemed to be engaged in labor-only contracting where such person:

> 1) Does not have substantial capital or investment in the form of tools, equipment, machineries, work premises and other materials; and 2) The workers recruited and placed by such persons are performing activities which are directly related to the principal business or operations of the employer in which workers are habitually employed.

(b) Labor-only contracting as defined herein is hereby prohibited and the person acting as contractor shall be considered merely as an agent or intermediary 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.

(c) For cases not falling under this Article, the Secretary of Labor shall determine through appropriate orders whether or not the contracting out of labor is permissible in the light of the circumstances of each case and after considering the operating needs of the employer and the rights of the workers involved. In such case, he may prescribe conditions and restrictions to insure the protection and welfare of the workers.[15]

Anent the first condition for permissible job contracting, as correctly observed by the NLRC and the Labor Arbiter, SRHRC sufficiently established that it carries an independent business as a legitimate job contractor as shown by its Registration Certificate issued by the DOLE and that it undertakes the contract work on its own account free from the control of Toyota Boshoku as evident by the fact that SRHRC monitors Petitioners' work performance through the Workers' Performance Rating Report[16].

Anent the second condition for permissible job contracting, SRHRC also established that it had substantial capital or investment as shown in its audited financial statements[17] contrary to the Petitioners' claim that the former failed to show that it had substantial capital.

Considering that the two aforesaid conditions were met in the present case, there should be no question that SRHRC is a legitimate job contractor. Thus, it was therefore the lawful employer of the Petitioners, not Toyota Boshoku who is the principal in the Manpower Service Contract[18] entered into by SRHRC.

Moreover, a regular employment, whether it is one or not, is aptly gauged from the concurrence, or the non-concurrence, of the following factors — a) the manner of selection and engagement of the putative employee, b) the mode of payment of wages, c) the presence or absence of the power of dismissal; and d) the presence or absence of the power to control the conduct of the putative employee or the power to control the employee with respect to the means or methods by which his work is to be accomplished. The control test assumes primacy in the overall consideration. Under this test, an employment relation obtains where work is performed or services are rendered under the control and supervision of the party contracting for the service, not only as to the result of the work but also as to the manner and details of the performance desired. It is undisputed and as also shown by the Contracts of Employment[19] that SRHRC hired the Petitioners, paid their wages and it had the power to dismiss them. The method by which the Petitioners' work were accomplished were, as aforementioned, also controlled and monitored by SRHRC through the Workers Performance Rating Report conducted by the latter. Thus, again, Petitioners' claim that they are regular employees of Toyota Boshoku must fail.

WE also agree with the rulings of the NLRC and the Labor Arbiter that even assuming Toyota Boshoku admits having initially hired the Petitioners before they were hired by San Roque, Petitioners were hired under a fixed-term employment which is not illegal per se as ruled in the case of Brent School Inc. vs. Dimache[20], to wit:

> Accordingly, and since the entire purpose behind the development of legislation culminating in the present Article 280 of the Labor Code clearly appears to have been, as already observed, to prevent circumvention of the employee's right to be secure in his tenure, the clause in said article indiscriminately and completely ruling out all written or oral agreements conflicting with the concept of regular employment as defined therein should be construed to refer to the substantive evil that the Code itself has singled out: agreements entered into precisely to circumvent security of tenure. It should have no application to instances where a fixed period of employment was agreed upon knowingly and voluntarily by the parties, without any force, duress or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent, or where it satisfactorily appears that the employer and employee dealt with each other on more or less equal terms with no moral dominance whatever being exercised by the former over the latter.

A careful review of the records will show that Petitioners were not in any manner forced or compelled by Toyota Boshoku to enter into a fixed-term contract. Thus, again assuming Toyota admits having hired the Petitioners, their employment was for a fixed-period voluntarily entered by them and hence, not prohibited under the law. Further, fixed period of employment negates regular employment.

Petitioners cannot also argue that they were illegally dismissed because SRHRC sufficiently established that they abandoned their work by refusing to return to work as requested by the latter.

Thus, in view of the foregoing, We find that the NLRC did not commit grave abuse of discretion in ruling that Petitioners are not regular employees of Toyota Boshoku.

WHEREFORE, the petition is DISMISSED. The November 29, 2011 Resolution[21] and July 31, 2012 Decision[22] of the NLRC in NLRC LAC No. 10-002798-11 NLRC Case Nos. RAB-IV-01-00066-11-L, RAB-IV-01-00067-11-L and RAB-IV-03-00368-11-L are hereby AFFIRMED.

SO ORDERED.

Reyes, Jr., (Chairperson) and Lopez, JJ., concur.

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[1]Rollo, pp. 3-24

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[2] Rollo, pp. 760-763

[3] Rollo, pp. 737-749

[4] Rollo, pp. 131-134

[5] Rollo, pp. 44-66, 131-157

[6] Rollo, pp. 340-351

[7] Rollo, pp. 242-250 & 272-280

[8] Rollo, pp. 254

[9] Rollo, pp. 678-689

[10]Rollo, pp. 690-733

[11] Supra note 2

[12] Rollo, pp. 750-753

[13] Supra note 3

[14] Ibid.

[15] San Miguel Corp. Semillano, G.R. No. 164257. July 5, 2010 Citing San Miguel Corp. vs. Aballa, G.R. No. 149011, June 28, 2005

[16] Rollo, pp. 294-298

[17] Rollo, pp. 293

[18] Rollo,pp. 283-284

[19] Rollo, pp. 257-260

[20] G.R. No. 48494. February 5, 1990

[21] Rollo, pp. 760-763

[22] Rollo, pp. 737-749

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