

EDILBERTO PADPAD, ET. AL., PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION, TOP RATE CONSTRUCTION & GENERAL SERVICES, INC. AND/OR ALFREDO HOCSON AND RAUL NELSON S. SAÑARES,...

Ponente: TOLENTINO, A.G., J.

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TOLENTINO, A.G., J.:

Challenged in this petition for certiorari[1] under Rule 65 of the Revised Rules of Court is the decision dated January 18, 2013[2] and the resolution dated February 20, 2013[3], for having been issued by the National Labor Relations Commission (NLRC) with grave abuse of discretion amounting to lack or excess of jurisdiction.

Culled from the records are the following facts:

The petitioners averred that they were hired as messengers, janitors, drivers and utility personnel by the private respondent Top Rate Construction & General Services, Inc. (Top Rate). They were immediately assigned to Banco Filipino Savings & Mortgage Bank (Banco Filipino). They alleged that they have rendered services from five (5) to twenty (20) years, to wit:

Names Year Hired

Years of Service

1. AGUILLOS, Emiliano

November, 1994

18

2. ANGELES, Angelito

March 1, 1996

15

3. AQUINO, Franklin

March 7, 1997

14

4. ASISTIO, Jose Ronie

February 10, 1998

13

5. BACUS, Jaime

May 13, 2002

9

6. BRIONES, Elmer

March 18, 1996

15

7. CANON, Jophar

February 16, 1995

16

8. CASTILLO, Luisito

April 16, 1992

19

9. CATINDOY, Rogelio

August 17, 1997

14

10. CATINDOY, Roger

May 16, 1992

19

11. CULUBONG, Randy

March 7, 1997

14

12. CUPIDO, Jr., Bernardo

July 16, 1993

18

13. DE MANUEL, Bernie

March 11, 1996

15

14. DE VILLA, Salvador

December 1, 1997

14

15. DOLDOL, Roy Van Sherwin

January 17, 2002

9

16. DUCUT, Miguel

March 18, 1992

19

17. ENRIQUEZ, Eleazer

March 7, 1997

14

18. GARDOSE, Ricardo

May 9, 1995

16

19. GONZALES, Emmanuel

February 1997

14

20. JABOL, Alejandro

September 27, 1999

12

21. LEONARDO, Henry

August 1, 1994

17

22. MALLAO, Rogelio

January 13, 1997

14

23. MEDINA, Noel

April 24, 2001

10

24. NOCETE, Claudio

June 22, 1999

11

25. ORETA, Eduardo

May 10, 1994

17

26. PADPAD, Edilberto

February 15, 1997

14

27. PAGUIO, Jeffrey

January 4, 2006

5

28. PALMA, Ignacio

November 3, 1996

15

29. QUIJANO, Jr., Manuel

April 19, 1994

17

30. RAMOS, Joeven

July 1, 1994

17

31. REYES, Gerardo

November 2, 1995

16

32. RONDAEL, Ariel

March 9, 1997

14

33. SANTIAGO, Ronald

November 2, 1993

18

34. TAN, Ronaldo

December 3, 1998

13

35. TOLENTINO, Allan

August 1, 1997

14

36. TORRES, Reynaldo

July 16, 1993

18[4]

On March 17, 2011, Banco Filipino declared a bank holiday. Soon thereafter, the Philippine Deposit Insurance Corporation (PDIC) took over Banco Filipino and placed it under receivership.

On March 21, 2011, the petitioners went at the office of Top Rate to inquire about the status of their employment. However, a Certification signed by private respondent Raul Nelson Sanares (Top Rate's Assistant Vice-President) was issued to them to the effect that they are contractual employees of Top Rate. The Certification was issued for employment purposes.

The petitioners alleged that they were regular employees considering that they have rendered service to Top Rate for so many years. They also rendered services necessary and desirable to the business of Top Rate. By operation of law, therefore, they argued that they are considered regular employees. As regular employees, the closure of Banco Filipino should not affect their status as regular employees.

The petitioners claimed that they were constructively dismissed when the private respondents Top Rate, Alfredo Hocson (Top Rate's President) and Sanares: (1) issued them the "Certification" which declared them to be contractual employees; (2) refused to pay their wages for the period March 11 to 17, 2011; (3) refused to pay their wages from March 17, 2011 up to the present; and (4) failed to ascertain their employment status.

On the other hand, the private respondents averred that Top Rate is a legitimate job contractor, and it was duly issued a Certificate of Registration by the Department of Labor and Employment (DOLE).

As legitimate job contractor, it entered into a Service Agreement with Banco Filipino to provide janitorial, messengerial, maintenance and other services. Top Rate then entered into Contractual Employment Contracts with the petitioners, the term of which was co-terminus with the term of the service agreement between Top Rate and Banco Filipino.

On March 17, 2011, PDIC implemented the closure of Banco Filipino, and upon taking over the entire operations of the bank, the Service Agreement between Top Rate and Banco Filipino was immediately terminated. The termination of the Service Agreement led to the expiration of the petitioners' employment.[5]

In the decision dated January 18, 2013, the Labor Arbiter ruled that despite the length of service of the petitioners, they cannot be considered regular employees. The petitioners are project employees whose employment was co-terminus with Top Rate's service agreement with Banco Filipino. Thus, when Banco Filipino was closed by the PDIC and placed under receivership, PDIC terminated the service agreement. This also effectively terminated petitioners' employment with Top Rate. This, however, should not be construed as an illegal dismissal of petitioners much more a constructive one. Petitioners' contract simply ended. Consequently, as they are project employees, they are not entitled to separation pay.[6]

The dispositive portion of the Labor Arbiter's decision states:

"WHEREFORE, the above complaints for illegal dismissal is (sic) DISMISSED for lack of merit. Respondent Top Rate Construction and General Services, Inc. are, however, ordered to pay EACH complainant:

1. Wages equivalent to two days;
2. Proportionate 13th month pay for 2011; and
3. Proportionate Service Incentive leave pay for 2010 to March 17, 2011. Computed from the anniversary of their employment.

All in the total sum of Php168,963.65.

All other claims are dismissed for lack of merit. The computation hereto attached is made an integral part hereof.

SO ORDERED.”[7]

On appeal, the NLRC affirmed the decision of the Labor Arbiter, ruling that the petitioners are project employees and not regular employees based on Article 280 of the Labor Code. The finding that the petitioners are project employees finds support under Section 9 of Department Order No. 18-02 (series of 2002). The NLRC continued that the second paragraph of Article 280 of the Labor Code which states that an employee who has served for at least one year shall be considered a regular employee, relates to casual employee, not to project employees. Thus, even if the employees were repeatedly and successively re-hired on the basis of a contract of employment for more than one year, they cannot be considered regular employees because length of service is not the controlling determinant of the employment tenure of a project employee. The NLRC also ruled that there was no illegal dismissal as the sudden cessation of work was occasioned by the closure of Banco Filipino upon order of the Bangko Sentral ng Pilipinas.[8]

The petitioners filed a Motion for Reconsideration, which was denied in the resolution dated February 20, 2013.[9] Hence, this petition for certiorari.

The issue in this case is whether the NLRC committed grave abuse of discretion amounting to lack of jurisdiction in issuing the assailed decision and resolution.

THE PETITION MUST FAIL.

At the outset, the private respondents pointed out that only petitioner Ricardo Gardose (Gardose) signed the verification. The private respondents contend that, it follows then that the assailed decision and resolution are deemed final and executory as far as petitioner Allan Tolentino and the 11 petitioners he represents.

A perusal of the verification/certification against forum shopping[10] reveals that the same was only signed by Gardose. There are 36 petitioners, 23 of them are represented by petitioner Ricardo Gardose[11], while the 11 petitioners are represented by petitioner Allan Tolentino.[12]

This Court opts to disregard this procedural flaw. The verification requirement is deemed substantially complied with when, as in the present case, only one of the petitioners, who has sufficient knowledge and belief to swear to the truth of the allegations in the petition, signed the verification attached to it. Such verification is deemed sufficient assurance that the matters alleged in the petition have been made in good faith or are true and correct, not merely speculative.[13]

As to the certification against forum shopping, the same must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule.[14] Again, there was substantial compliance with the rule when only Gardose, for himself and for the 23 other petitioners he represents, signed the certification against forum shopping. This is because all the petitioners share a common interest and invoke a common cause of action. They all claim that they are regular employees and that they were illegally dismissed.

We likewise cannot agree that petitioner Gardose's authority does not extend to the filing of the instant petition. On the contrary, petitioner Gardose is authorized to file the instant petition, as provided for in the Special Power

of Attorney, to wit:

“1. To sign the Verification/Certification for Non-Forum Shopping in connection with the Labor Cases and other pleadings to be filed against Top Rate Construction & General Services and Banco Filipino xxx;

xxx xxx xxx

4. And to perform other acts appurtenant to the above purposes.”[15]

Going now to the merits of the case, the petitioners themselves admit that Top Rate is an independent job contractor.[16] In any case, We defer to the following factual findings of the Labor Arbiter, as affirmed by the NLRC, to wit:

“Respondents have shown that Top Rate has been issued a Certificate of Registration xxx by the DOLE. This Certificate certifies that Top Rate has complied with the requirements to engage in legitimate job contracting as provided under the Labor Code and its implementing Rules.

“The Office gives deference to the DOLE on the matter of issuance of this kind of Certificate (of Registration) as it is primarily the government agency tasked to determine the check the applicant's compliance with the Labor Code. There is that strong presumption that in the issuance of such Certificate, the DOLE has properly and regularly performed its task in accordance with its mandate. In the absence of any evidence that would muddle such presumption, regularity in the performance of such government function must stand.

Top Rate has also shown that, as a construction and manpower firm, it previously engaged in other construction and service agreements. Thus, it entered into agreements with the Banco Filipino Savings & Mortgage Bank, Inc, Pilar Development Corporation, BF Citi Land Corporation, Good Shepherd Realty Corporation, Top Management Programs Corporation, BF Citi Realty Corporation and Trading Corporation and BF Homes, Incorporated. It has been engaged in legitimate business as an independent job contractor for the last 35 years.

Finally, Top Rate has shown that it has substantial capitalization. As of December 31, 2010, it has an authorized capital stock of P50,000,000.00 out of which P38,000,000.00 has been subscribed and paid up. This is apparent from its General Information Sheet xxx filed with the Securities and Exchange Commission.”[17]

The DOLE certificate having been issued by a public officer, it carries with it the presumption that it was issued in the regular performance of official duty.[18]

The petitioners argue that they are regular employees of Top Rate being an independent job contractor. The petitioners have been in the company for more than five (5), and at most twenty (20) years. Their respective work in Banco Filipino as janitors, messengers and utility men are directly, necessary and desirable to their business. The petitioners continue that they cannot be considered as project employees for they have been working with the private respondents for a long period of time, an indication that they are regular employees.[19]

On the other hand, private respondents claim that it is a legitimate job contractor. They further argue that the petitioners are not entitled to separation pay because their contractual employment merely expired with the cancellation of to Top Rate's service agreement with Banco Filipino.[20]

We rule against the petitioners. Article 280 of the Labor Code provides:

“ART. 280. Regular and Casual Employment. — The provisions of written agreement to the contrary notwithstanding and regardless of the oral argument of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of

the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.

An employment shall be deemed to be casual if it is not covered by the preceding paragraph; Provided, That, any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.”

Article 280 of the Labor Code comprehends three kinds of employees: (a) regular employees or those whose work is necessary or desirable to the usual business of the employer; (b) project employees or those whose employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season; and, (c) casual employees or those who are neither regular nor project employees.[21]

Moreover, Section 9 of Department Order No. 18-02[22] states:

“SECTION 9. Contract Between Contractor or Subcontractor and Contractual Employee. — Notwithstanding oral or written stipulations to the contrary, the contract between the contractor or subcontractor and the contractual employee, which shall be in writing, shall include the following terms and conditions:

- (a) The specific description of the job; work or service to be performed by the contractual employee;
- (b) The place of work and terms and conditions of employment, including a statement of the wage rate applicable to the individual contractual employee; and
- (c) The term or duration of employment, which shall be coextensive with the contract of the principal and subcontractor, or with the specific phase for which the contractual employee is engaged, as the case may be.”

Undeniably, the petitioners are all project employees as per Article 280 of the Labor Code and the Department Order No. 18-02. Each of the petitioners was given a specific job (either as driver, messenger, utility personnel or janitor), and was assigned to Banco Filipino. The duration of their employment was co-extensive with the service agreement between Top Rate and Banco Filipino. This is extant from the following findings of the Labor Arbiter:

“The records show that complainants were hired as co-terminus employees. Their employment contracts clearly provided the position or job they were hired for. They also uniformly stated that complainants were to be assigned at Banco Filipino Savings & Mortgage bank. The term of employment was specifically and clearly made co-terminus with the Service Agreement between Top Rate and Banco Filipino. Thus, their contracts provide:

'Ang kontratang ito any nasasakupan ng mga batas at alituntunin ng tanggapan at mawawalang bisa pagkatapos ng kontrata ng Top Rate Construction & General Services, Inc. at Banco Filipino Savings & Mortgage Bank sa petsang isinaad ng kontrata or sa anumang araw na tapusin ng Banco Filipino Savings & Mortgage Bank ang kontrata ng Top Rate Construction & General Services, Inc.'”[23]

The petitioners aver that the private respondents cannot automatically terminate their employment by reason of the closure of the Banco Filipino as they have the right to security of tenure.[24]

The contention lacks merit. When the PDIC implemented the closure of Banco Filipino, the Service Agreement between Banco Filipino and Top Rate necessarily ceased to become effective. As a necessary consequence, petitioners' respective employment was validly terminated pursuant to Section 10 of Department Order No. 18-02, viz:

“SECTION 10. Effect of Termination of Contractual Employment. — In cases of termination of employment

prior to the expiration of the contract between the principal and the contractor or subcontractor; the right of the contractual employee to separation pay or other related benefits shall be governed by the applicable laws and jurisprudence on termination of employment.

Where the termination results from the expiration of the contract between the principal and the contractor or subcontractor, or from the completion of the phase of the job, work or service for which the contractual employee is engaged, the latter shall not be entitled to separation pay. However, this shall be without prejudice to completion bonuses or other emoluments, including retirement pay as may be provided by law or in the contract between the principal and the contractor or subcontractor.”

As succinctly held by the NLRC:

“There is no illegal dismissal as the sudden cessation of work was occasioned by the closure of Banco Filipino upon order of the Bangko Sentral ng Pilipinas. The Respondents should not be blamed for the complainants' separation from work since they have no hand in the bank's closure. That being so, the Complainants being project employees, are not entitled to separation pay and backwages.”[25]

Accordingly, the petitioners knew that their employment shall cease to become effective the moment Banco Filipino puts an end to the Service Agreement. As correctly held by the Labor Arbiter, viz:

“The Office also notes that complainants, not only knew of the co-terminus nature of their employment, but also consented and did not pose any objection. This is apparent from the fact that for years, they have been serving under such status. It is noted that on a regular basis, they executed employment contracts with Top Rate which clearly provide that they are co-terminus employees and each time, they signed the same without any objection.

It thus appears that complainants' period of employment as well as their status as co-terminus employees, were agreed upon knowingly and voluntarily by the parties, without any force, duress or improper pressure being brought to bear upon the employees. In *Caramol vs. National Labor Relations Commission xxx* and *Salinas, Jr. vs National Labor Relations Commission xxx*, the Supreme Court held that in the absence of any circumstance vitiating the consent of an employee who has knowingly consented to being engaged as a project employee, the employment contract should be upheld.”[26]

The petitioners further contend that it was unlawful for the private respondents to terminate their employment without any notice or compliance with the required due process under the law.[27] The contention lacks merit. As project employees, petitioners' termination is governed by Section 1 (c) and Section 2 (III), Rule XXIII (Termination of Employment), Book V of the Omnibus Rules Implementing the Labor Code. Section 1 (c), Rule XXIII, Book V of the Omnibus Rules Implementing the Labor Code states:

“Section 1. Security of tenure. — (a) In cases of regular employment, the employer shall not terminate the services of an employee except for just or authorized causes as provided by law, and subject to the requirements of due process.

xxx xxx xxx

(c) In cases of project employment or employment covered by legitimate contracting or sub-contracting arrangements, no employee shall be dismissed prior to the completion of the project or phase thereof for which the employee was engaged, or prior to the expiration of the contract between the principal and contractor, unless the dismissal is for just or authorized cause subject to the requirements of due process or prior notice, or is brought about by the completion of the phase of the project or contract for which the employee was engaged.”

Based on the above provision, the requirements of just or authorized cause and prior notice apply only in case the

employee is dismissed prior to the completion of the project or phase thereof where the employee was engaged.[28] The said requirements find no application, as in this case, when the dismissal from employment was brought about by the necessary termination of the contract between Banco Filipino and Top Rate.

Moreover, the fact that the petitioners have been working for several years already would not necessarily mean that they are regular employees. Regardless of the length of their service, as we have clearly discussed, the petitioners are project employees, who were assigned to a specific undertaking, the duration of which was co-extensive with the Service Agreement between Top Rate and Banco Filipino. The length of service of a project employee is not the controlling test of employment tenure but whether or not the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee.[29]

Petitioners belatedly raise that if they were indeed project employees, the private respondents failed to file termination reports pursuant to Policy Instructions No. 20, as superseded by DOLE Department Order No. 19. Again, the petitioners argument failed to persuade us.

DOLE Policy Instructions No. 20[30], as superseded by DOLE Department Order No. 19-93[31], applies only in the construction industry, and not in the case at bar where the petitioners worked either as messengers, janitors, drivers and utility personnel, and assigned to Banco Filipino, which is a banking institution.

To emphasize, the rights and obligations of Top Rate, as a legitimate job contractor, and the petitioners, as project employees, are properly governed by Article 280 of the Labor Code, Department Order No. 18-02 and Section 1 (c) and Section 2 (III), Rule XXIII (Termination of Employment), Book V of the Omnibus Rules Implementing the Labor Code Thus, when the termination of employment was a result of the expiration of the contract, the petitioners' right to security of tenure was not violated, hence, there was no illegal dismissal to speak of.

It must also be mentioned that factual findings of labor officials who are deemed to have acquired expertise in matters within their respective jurisdictions are generally accorded not only respect, but even finality. It is a well-entrenched rule that findings of facts of the NLRC, affirming those of the Labor Arbiter, are accorded respect and due consideration when supported by substantial evidence.[32] Here, the factual findings of both the Labor Arbiter and the NLRC, as supported by substantial evidence, should be accorded respect.

On a final note, it must be stressed that a writ of certiorari is a remedy to correct errors of jurisdiction, for which reason it must clearly show that the public respondent has no jurisdiction to issue an order or to render a decision. Rule 65 of the Rules of Court has instituted the petition for certiorari to correct acts of any tribunal, board or officer exercising judicial or quasi-judicial functions with grave abuse of discretion amounting to lack or excess of jurisdiction. This remedy serves as a check on acts, either of excess or passivity, that constitute grave abuse of discretion of a judicial or quasi-judicial function.[33] In this case, we find that the NLRC did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed decision and resolution.

WHEREFORE, premises considered, the petition is DISMISSED for lack of merit. The assailed decision dated January 25, 2013 and the resolution dated February 20, 2013 are AFFIRMED.

SO ORDERED.

Rosario and Dimagiba, JJ., concur.

[1] Rollo, p. 3-14

[2] Rollo, pp. 66-75

- [3] Rollo, pp. 78-83
- [4] Rollo, pp. 5-6
- [5] Rollo, pp. 24-28
- [6] Rollo, pp. 32-37
- [7] Rollo, pp. 39-40
- [8] Rollo, pp. 72-74
- [9] Rollo, pp. 76-83
- [10] Rollo, p. 15
- [11] Rollo, p. 17
- [12] Rollo, p. 18
- [13] Iglesia ni Cristo v. Ponferrada, G.R. No. 168943, October 27, 2006.
- [14] Nellie Vda. De Formoso v. Philippine National Bank, G.R. No. 154704, June 1, 2011
- [15] Rollo, p. 16
- [16] Rollo, pp. 8, 53
- [17] Rollo, pp. 28-30
- [18] Gallego v. Bayer Philippines, Inc., G.R. No. 179807, July 31, 2009.
- [19] Rollo, pp. 8-9
- [20] Rollo, pp. 146-147
- [21] Pangilinan v. General Milling Corporation, G.R. No. 149329, July 12, 2004.
- [22] Rules Implementing Articles 106 to 109 of the Labor Code, as amended.
- [23] Rollo, pp. 32-33
- [24] Rollo, p. 13
- [25] Rollo, p. 74
- [26] Rollo, pp. 34-35
- [27] Rollo, p. 12
- [28] See D.M. Consunji, Inc. v. Gobres, G.R. No. 169170, August 9, 2010.
- [29] D.M. Consunji, Inc. v. National Labor Relations Commission, G.R. No. 116572, December 18, 2000.
- [30] Stabilizing Employer-Employee Relations in the Construction Industry
- [31] Guidelines Governing the Employment of Workers in the Construction Industry
- [32] Julie's Bakeshop v. Arnaiz, G.R. No. 173882, February 15, 2012.
- [33] AGG Trucking and/or Alex Ang Gaied v. Yuag, G.R. No. 195033, October 12, 2011

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