

DEL MONTE MOTOR WORKS, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND JAIME GOROSPE LLARENAS, RESPONDENTS.

Ponente: GARCIA, R. R. J.

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GARCIA, R. R. J.:

Before Us is a Petition for Certiorari[1] under Rule 65 of the Rules of Court assailing the Decision[2] dated February 28, 2014 of public respondent National Labor Relations Commission (NLRC), Fifth Division, which reversed and set aside the Decision[3] dated August 30, 2013 of the Labor Arbiter, and in its stead, ordered petitioner to pay private respondent his retirement pay differential; and the Resolution[4] dated April 30, 2014 denying the motion for reconsideration thereof.

THE FACTS

The instant petition stemmed from a complaint[5] for the recovery of retirement pay differential filed before the Arbitration Branch of the NLRC by herein private respondent Jaime Gorospe Llarenas against petitioner Del Monte Motor Works, Inc. It was alleged therein that private respondent began his employment with petitioner corporation sometime in 1990[6] as an upholsterer. He was later on re-assigned to maintenance/janitorial services until his mandatory retirement in January 31, 2013.[7]

Private respondent alleged that sometime in the last week of January 2013, petitioner corporation handed to him a check amounting to P130,000.00. When he inquired about the purpose of the check, he was informed that the same represents his retirement pay. Petitioner corporation, however, did not explain to him the breakdown and the details of the computation. He then sought the assistance of a counsel who told him that under the provisions of Republic Act No. 7641, he should have received a total of P256,555.80 computed on the basis of his daily wage of P495.76 multiplied by his twenty-three (23) years in the service. Private respondent sent a demand letter to petitioner corporation for the payment of the remaining P126,555.80 of his retirement pay. Petitioner corporation failed to heed the demand, hence, the filing of the complaint before the Arbitration Branch of the NLRC.[8]

In their traverse, petitioner corporation alleged that private respondent was originally employed by Fortunato San Juan, an independent contractor providing upholstery services to petitioner corporation. Private respondent was assigned at petitioner corporation's plant to perform upholstery of the latter's buses and trucks. When Fortunato San Juan ceased his business operations sometime in January 2010, private respondent asked that he be absorbed in the motor pool of petitioner corporation. Out of compassion, private respondent was hired as a janitor/helper in the plant. After having worked for three (3) years, private respondent reached the age of sixty-five (65) years which is the mandatory retirement age under the law. Due to his old age and health condition, private respondent was given the amount of P130,000.00 as financial assistance which is more than his actual retirement pay. Private respondent later on executed a Quitclaim and Release in favor of petitioner as proof of the peaceful severance of their employment relationship.[9]

In a Decision[10] dated August 30, 2013, the Labor Arbiter dismissed the complaint ratiocinating that private

respondent failed to establish by substantial evidence that he was employed by petitioner corporation since 1990 or for a period of twenty-three (23) years. A party alleging a fact must support his allegation with substantial evidence, failing which, his complaint for the payment of retirement benefits differential must be dismissed. The pertinent portions of the Decision read:

With the respondents' denial of an employer-employee relationship with the complainant prior to 2010, it is incumbent upon the complainant to prove that he was in fact hired by the respondents and was in their employ for 23 years.

x x x

An examination of the pieces of evidence presented by the complainant fails to establish his employment with the respondent prior to 2010. The submitted payslips cover periods in 2011, which employment period was not disputed by the respondents. No payslips or vouchers or any document was submitted which can be the basis for a logical inference that complainant was employed by the respondents for the years prior to 2010.

Accordingly, this Office is constrained to deny the complainant's claims for retirement pay differentials, as the amount of P130,000.00 he had admittedly received vis-à-vis the [established] period of actual employment, is more than that provided under the retirement law.

WHEREFORE, premises considered, judgment is hereby rendered dismissing the complaint for lack of merit.

SO ORDERED.[11]

Private respondent appealed before the NLRC which in a Decision[12] dated February 28, 2014 reversed and set aside the Decision of the Labor Arbiter. In finding private respondent entitled to his claim for retirement pay differential, the NLRC held that petitioner corporation admitted that private respondent had been assigned to work for them in 1990 by Fortunato San Juan, an independent contractor. Petitioner corporation, however, failed to present any iota of evidence to substantiate its claim that Fortunato San Juan is a legitimate job contractor. Hence, it is presumed that petitioner corporation is the employer of private respondent since 1990. The pertinent portions of the Decision read:

Having admitted that appellant was employed by an independent contractor, DMMWI, while not the contractor itself, bears the burden of proving that Fortunato San Juan is an independent contractor who employed appellant in order for it to avoid liability. It is thus incumbent upon DMMWI to present sufficient proof that Mr. Fortunato San Juan has substantial capital, investment and tools in order to successfully impute liability to the latter. However, aside from bare allegations, DMMWI failed to present any iota of evidence to substantiate Mr. San Juan's status as a legitimate job contractor. It did not even submit a copy of its contract with Mr. San Juan, if any, for the latter to supply it manpower services. Hence, it can be legally presumed that DMMWI was the employer of appellant all along.

x x x

Hence, appellees did not really extend any "financial assistance" to appellant because the sum of P130,000.00 represents his retirement pay, and nothing else. Their claim of being compassionate therefore has no basis. The only logical explanation why appellees would give said considerable amount as "retirement pay" to appellant is because he rendered numerous years of service with them. Otherwise, there is no reason for them to give an employee who according to them was in their employ for only three (3) years (2010-2013) said huge amount.

x x x

WHEREFORE, premises considered, the instant appeal is hereby GRANTED. The assailed Decision of the Labor Arbiter denying appellant's claim for underpaid retirement benefits is REVERSED and SET ASIDE. Appellee Del Monte Motor Works, Inc. ("DMMWI") is ordered to pay appellant Jaime G. Llarenas the amount of One Hundred Twenty-Six Thousand Five Hundred Fifty-Five Pesos and 80/100 (P126,555.80)

representing his underpaid retirement benefits.

SO ORDERED.[13]

A Motion for Reconsideration[14] was forthwith filed by petitioner corporation but the same was denied in a Resolution[15] dated April 30, 2014.

Hence, the instant Petition for Certiorari in which petitioner corporation raised the lone ground for its allowance, to wit:

PUBLIC RESPONDENT NLRC HAS COMMITTED GRAVE ABUSE OF DISCRETION AS WELL AS SERIOUS AND PALPABLE ERROR IN RENDERING/ISSUING THE ASSAILED DECISION AND RESOLUTION.[16]

THE ISSUE

The pivotal issue is whether or not the NLRC committed grave abuse of discretion in ruling that private respondent is entitled to his claim for retirement pay differential.

THE COURT'S RULING

The petition lacks merit.

Petitioner corporation laments that the appeal before the NLRC should have been dismissed outright for failure of private respondent to serve a copy of his memorandum of appeal upon petitioner corporation's counsel of record in violation of the NLRC Rules of Procedure. Such failure to serve a copy of the appeal had allegedly deprived petitioner corporation of its right to due process considering that it was not given an opportunity to defend its cause and refute private respondent's position in his appeal. Petitioner corporation also maintains that private respondent failed to substantially prove his allegation that he worked for petitioner since 1990 so as to entitle him to his claim for retirement pay differential.

These fail to persuade.

The issue with regard to private respondent's failure to serve a copy of his memorandum of appeal to petitioner corporation's counsel of record had been thoroughly addressed by the NLRC in its Resolution dated April 30, 2014. The NLRC correctly held therein that a copy of the memorandum of appeal was sent by private respondent to petitioner corporation through its President, Atty. Narciso O. Morales, who is also impleaded in the case below. The NLRC also noted that based on the records, the address of petitioner corporation's counsel and Atty. Morales are one and the same. At any rate, the NLRC held that mere failure to serve a copy of the memorandum of appeal upon the opposing party is not a jurisdictional defect and does not bar the NLRC from entertaining an appeal.

Anent petitioner corporation's contention that they were denied due process when then were not given an opportunity to oppose private respondent's appeal, suffice it to state that a party who is able to avail itself of the opportunity to present its position cannot claim to have been denied due process. The essence of due process is simply an opportunity to be heard, or an opportunity to explain one's side or opportunity to seek a reconsideration of the action or ruling complained of[17]. This opportunity was not denied petitioner corporation considering that it was able to present its side of the controversy and defend its interest through the various pleadings filed before the Labor Arbiter. Petitioner corporation was also able to seasonably file a motion for reconsideration of the NLRC Decision dated February 28, 2014. In fact, the issues raised by petitioner corporation were extensively discussed by the NLRC, not only in its Decision dated February 28, 2014 but also in the Resolution dated April 30, 2014 denying the said motion for reconsideration.

On the issue whether private respondent is entitled to his claim for retirement pay differential, We hold that the

existence of an employment relationship between petitioner corporation and private respondent from 1990-2010 cannot be negated by simply alleging that the latter was actually an employee of one Fortunato San Juan, an independent contractor. The status of such independent contractor must be determined by the criteria set forth by statute and it is incumbent upon petitioner corporation to prove the same. Such burden of proof falls not upon private respondent but upon petitioner corporation who is invoking the supposed status of Fortunato San Juan as an independent job contractor[18].

Verily, job contracting is permissible only if the following conditions are met: 1) the contractor carries an independent business and undertakes the contract of 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 the business.[19]

Here, other than the self-serving certification from petitioner corporation's own agent, no scintilla of evidence was offered by petitioner corporation to prove that Fortunato San Juan has complied with the criteria set forth above in order to consider him as a legitimate job contractor. Not even a written contract or agreement was shown to prove such independent job contracting arrangement between petitioner corporation and Fortunato San Juan. Consequently, petitioner corporation must be deemed the employer of private respondent since 1990 and thus responsible for the payment of the correct retirement benefits due the latter.

In the case of *Alps Transportation v. Rodriguez*[20], the Supreme Court held that since petitioner Alps Transportation raised the defense that it is Contact Tours, an independent contractor, who is liable for the claims of the employee, it behooves upon petitioner itself to prove the status of a legitimate job contracting. Petitioner's failure to overcome the said burden makes it liable to the employee in the same manner and to the same extent as if the employee was directly employed by petitioner. We quote:

As to who should bear the burden of satisfying respondent's lawful claims, petitioners submit that since Rodriguez was an employee of Contact Tours, the latter is liable for the settlement of his claims.

We do not agree.

"The presumption is that a contractor is a labor-only contractor unless he overcomes the burden of proving that it has substantial capital, investment, tools, and the like." While ALPS Transportation is not the contractor itself, since it is invoking Contact Tours' status as a legitimate job contractor in order to avoid liability, it bears the burden of proving that Contact Tours is an independent contractor.

It is thus incumbent upon ALPS Transportation to present sufficient proof that Contact Tours has substantial capital, investment and tools in order to successfully impute liability to the latter. However, aside from making bare assertions and offering the Kasunduan between Rodriguez and Contact Tours in evidence, ALPS Transportation has failed to present any proof to substantiate the former's status as a legitimate job contractor. Hence, the legal presumption that Contact Tours is a labor-only contractor has not been overcome.

As a labor-only contractor, therefore, Contact Tours is deemed to be an agent of ALPS Transportation. Thus, the latter is responsible to Contact Tours' employees in the same manner and to the same extent as if they were directly employed by the bus company. (Emphasis supplied)

In fine, it bears to stress that for a writ of certiorari to issue, it is a condition sine qua non that there be grave abuse of discretion. By grave abuse of discretion is meant such capricious and whimsical exercise of judgment that is equivalent to an excess or a lack of jurisdiction; an abuse so patent and so gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law; or an arbitrary or despotic exercise of power

as a result of passion or hostility.[21] We find neither lack of jurisdiction nor grave abuse of discretion in this case.

WHEREFORE, premises considered, the instant Petition for Certiorari is hereby DISMISSED.

SO ORDERED.

Dimagiba, L. R., and Sempio Diy, M. E., JJ., concur.

[1] Rollo, pp. 3-17.

[2] Rollo, pp. 22-32.

[3] Rollo, pp. 124-129.

[4] Rollo, pp. 33-40.

[5] Complaint for Underpayment of Retirement Benefits, Rollo, pp. 83-84.

[6] Complaint, Rollo, pp. 85-92; Memorandum of Appeal, Rollo, pp. 130-143 (Prior to 1990 or in 1985, private respondent was working for petitioner corporation on a pakyaw basis. It was only in 1990 when he was hired as a regular worker by petitioner corporation).

[7] Complaint, Rollo, pp. 85-92; Verified Position Paper for the Complainant, Rollo, pp. 53-66; Memorandum of Appeal, Rollo, pp. 130-143.

[8] Id.

[9] Respondents' Position Paper, Rollo, pp. 43-48; Reply, Rollo, pp. 94-97.

[10] Supra at Note 3.

[11] Rollo, p. 120.

[12] Supra at Note 2.

[13] Rollo, 28-32.

[14] Rollo, pp. 152-157.

[15] Supra at Note 4.

[16] Rollo, p. 6.

[17] *Vivo v. PAGCOR*, G.R. No. 187854, November 12, 2013; *PGBI v. COMELEC*, G.R. No. 190529, April 29, 2010.

[18] *Coca Cola Bottlers Phil. v. Agito, et al.*, G.R. No. 179546, February 13, 2009.

[19] *Manila Water Co., Inc. v. Pena*, G.R. No. 158255, July 8, 2004; *Escario v. NLRC*, G.R. No. 124055, June 8, 2000; *Ponce, et al. v. NLRC, et al.*, G.R. No. 124643, July 30, 1998.

[20] G.R. No. 186732, June 13, 2013.

[21] *Coca-Cola Bottlers Phils., Inc. v. Daniel*, G.R. No. 156893, June 21, 2005

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