CENTAUR INTERNATIONAL MANPOWER SERVICES, INC., PETITIONER, VS. HON. DANILO P. CRUZ, UNDERSECRETARY OF LABOR AND EMPLOYMENT AND HON. JENNIFER JARDIN-MANALILI, POEA ADMINISTRATOR,...

Ponente: VILLON, J.

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VILLON, J.:

On ground of grave abuse of discretion, this Petition for Certiorari and Prohibition with Prayer for Temporary Restraining Order and Injunction under Rule 65 of the 1997 Rules of Civil Procedure, as amended, seeks to reverse and set aside the following: a) the Order dated October 4, 2010[1] issued by respondent Administrator Jennifer Jardin-Manalili (or "respondent Manalili") of the Philippine Overseas Employment Administration (POEA) in POEA Case No. RV 08-07-1450; as well as the b) Order dated January 9, 2012[2] and c) Resolution dated January 29, 2013[3], both issued by respondent Undersecretary Danilo P. Cruz (or "respondent Cruz") of the Department of Labor and Employment (DOLE) in OS-POEA-0218-1119-2010.

Records show that a complaint for violation of Section 2 (e), (n), (q), (s) and (ee), Rule 1, Part VI of the 2002 POEA Rules and Regulations was motu propio initiated by the POEA against petitioner Centaur International Manpower Services, Inc (or "petitioner") based on the indorsement by the Licensing and Regulations Office (LRO) of the POEA.

As summarized by the DOLE, the facts of the case are as follows:

> "This case arose from a memorandum dated 28 May 2008 of Renegold Macarulay, Officer-in-Charge of the POEA Regional Extension Unit of Region IX, Zamboanga City, reporting the recruitment activities of Mr. Jesse Lim, representative of Dyncorp-Al-Taif-Technical Services.
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> "In the said Memorandum, Mr. Macarulay averred that sometime in the first week of November 2007, his office received information relative to the recruitment activities of a certain Jesse Lim representing Dyncorp and Al-Taif-Technical Services. On 15 November 2007, Mr. Lim caused the advertisement and publication in Zamboanga Today of the recruitment activity conducted by Dyncorp without any license or authority to do so. He also coordinated with the Regional Command of the CIDG and the Licensing and Regulation Branch of the POEA for possible apprehension and verification of Mr. Lim's recruitment activities. On 18 November 2007, together with 6 members of the CIDG, they went to the Grand Astoria Hotel where they found Mr. Lim giving lecture to more or less 400 male applicants regarding overseas employment. Thereafter, Mr. Lim was advised to secure a license to avoid future apprehension and arrest. Since there were no complainants or witnesses in the said activity and considering the armed bodyguards of Mr Lim, the latter eluded arrest. Hence, he and the CIDG decided to file illegal recruitment charges against Mr. Lim where a resolution dated 17 January 2008 was issued by the investigating officer, finding probable cause to file information for illegal recruitment against Mr. Lim.
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> "Mr. Macarulay further averred that on 25 April 2008, Mr. Lim accompanied twenty-five (25) applicants, majority of them are former members of the military, requesting his office to assist them in their Pre-Departure

Orientation Seminar (PDOS). However, he refused to conduct PDOS when Mr. Lim failed to present the necessary communication and documents from its recruitment agency, petitioner herein. Mr. Lim, without asking permission, used the office computer and downloaded the communications of petitioner's President, Engineer Paterno S. Santos, Jr. Thereafter, despite having informed petitioner over the phone that requests for PDOS shall be addressed to OWWA as the latter is the one authorized to conduct the same, two (2) of petitioner's applicants went again to his office for PDOS sometime in the 2nd week of May. He was also informed by the applicants that it was Mr. Lim who interviewed them and caused the preparation of their employment contracts, and that they have not met any other representative of the petitioner.

"Accordingly, Show Cause Order was issued to the petitioner and its covering surety for violation of Section 2 (e), (n), (q) and (ee) of Rule I, Part VI of the 2002 POEA Rules and Regulations Governing the Recruitment and Employment of Land-Based Overseas Workers.

"In its sworn answer, petitioner denied conducting or participating in any recruitment activities in Zamboanga City. It also maintained that had it known such direct hiring being conducted, it would not allow it as this would prejudice its business' goodwill. Petitioner also denied having connection with Dyncorp of Mr Jesse Lim, and alleged that it had no knowledge of the article published in the 15 November 2007 issue of Zamboanga Today. It claimed that it was only in December 2007 that it was contacted byAl-Taif Services, Inc. when the latter requested for the supply of manpower for a project in Abu Dhabi, U.A.E. Petitioner further averred that it never committed any misrepresentation in connection with the recruitment and placement of workers, nor authorized its representatives to conduct any Pre-Departure Seminar in Zamboanga City or allowed anyone to conduct the same in said place. Further, all workers it recruited and deployed are propely documented in compliance with the POEA Rules and Regulations, and all their PDOS are being conducted through PASEI and at its Cebu branch and correspondingly covered by Special Recruitment Authority from the POEA."[4]

After due consideration of the parties' evidence, respondent Manalili issued the first assailed Order dated October 4, 2010. Pertinently, the Order states:

"The documents submitted in evidence clearly show that the respondent agency authorized Mr. Jesse Lim to act in its behalf. The report states that on 25 April 2008, Jesse Lim escorted twenty applicants from the respondent agency and requested POEA-Zamboanga City to conduct a Pre-Departure Orientation Seminar (PDOS) for them. To prove that the respondent agency authorized him to act in its behalf, Mr. Lim submitted to Mr. Macarulay the letter of Engr. Paterno P. Santos to POEA referring 19 of its applicants for PDOS. Engr. Santos is the respondent agency's president and the letter bears his signature.

"The respondent agency denied in its answer that it authorized Mr. Jesse Lim to recruit in its behalf. It never denied however that the signature appearing in the letter that Mr. Lim submitted to Mr. Macarulay is its president's signature. Besides, if the respondent agency did not really authorized Mr. Lim to recruit in its behalf, it should have actively participated in his prosecution to protect its interest. There is no evidence to show however that it even helped in filing a case against Mr. Lim to recruit in its behalf in Zamboanga City. Under these circumstances, we hold the respondent agency liable for violation of Section 2 (e) and (n) of Rule 1, Part VI of the 2002 POEA Rules and Regulations.

"We dismiss the charge of violation of Section 2 (q) of the same rules since there is no evidence that the workers that were subject of the report were deployed.

"The charge for violation of Section 2 (s) is also dismissed since no evidence was presented to indicate the orders, notices and other legal processes that were allegedly violated by the respondent.

"We also dismiss the charge for violation of Section 2 (ee) of the same rules because there is no evidence, that aside from those previously discussed, that the respondent agency violated other pertinent provisions of the code and other relevant laws, rules and regulations, guidelines and other issuances on the recruitment and

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placement of workers for overseas employment.

"WHEREFORE, premises considered, We find the respondent agency liable for violation of Section 2 (e) and (n) of Rule 1, Part VI of the 2002 POEA Rules.

This being the respondent agency's 1st violation of Section 2 (e) and (n), the penalty of suspension for a period of eight (8) months is hereby imposed or, in lieu thereof, payment of fine in the amount of P80,000.00.

The charge of violation of Section 2 (q), (s) and (ee) of the same rules are hereby dismissed for lack of merit.

Include the name of JESSE LIM in the POEA List of Person with Derogatory Record.

SO ORDERED."[5]

Petitioner's appeal to the DOLE was resolved in the assailed DOLE Order dated January 9, 2012 in this wise:

"WHEREFORE, the apeal herein treated as petition for review, filed by Centaur International Manpower Services, Inc., is hereby PARTIALLY GRANTED. Accordingly, the Order dated 04 October 2010 of the POEA Administrator is MODIFIED to the effect that the penalty of suspension of eight (8) months or in lieu thereof, the payment of fine of Eighty Thousand Pesos (P80,000.00) is reduced to four (4) months suspension or fine of Forty Thousand Pesos (P40,000.00).

All other pronouncements contained in the assailed Order not otherwise modified herein, STANDS.

SO ORDERED."

Petitioner's Motion for Reconsideration[6] was denied in the DOLE Resolution dated January 29, 2013, thus:

"WHEREFORE, the Motion for Reconsideration filed by Centaur International Manpower Services, Incorporated, is DENIED for lack of merit. Accordingly, our earlier Order dated 09 January 2012, STANDS.

No further pleadings of similar nature shall hereinafter be entertained.

SO RESOLVED."[7]

Hence, the present petition for certiorari anchored on a lone issue:

I. THE SECRETARY OF LABOR AND EMPLOYMENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN UPHOLDING THE POEA ADJUDICATION OFFICE'S DECISION FINDING THE PETITIONER LIABLE FOR VIOLATION OF SECTION 2 (E) AND (N) OF RULE 1, PART VI OF THE 2002 POEA RULES.

The petition is bereft of merit.

Violation under Section 2 (e) and (n) of Part VI, Rule I of the 2002 POEA Rules and Regulations Governing the Recruitment and Employment of Land-Based Overseas Workers, for which petitioner was charged, consist of:

"(e) Engaging in act/s of misrepresentation in connection with recruitment and placement of workers, such as furnishing or publishing any false notice, information or document in relation to recruitment and employment;
x x x x x
(n) Appointing or designating agents, representatives or employees without prior approval from the Administration;"

Petitioner however, asserts that it was not aware of, nor did it have any participation in the recruitment of workers in Zamboanga City, neither did it have knowledge of any direct hiring conducted by Al-Taif Technical Services, Inc or Jesse Lim in said place; denied any knowledge of or acquaintance with Jesse Lim or involvement in his activities as the latter was not an employee, officer or agent of the company. Hence, Jesse Lim could not have

secured the signature of Engr Paterno P. Santos, Jr. in the letter allegedy containing the request for the conduct of PDOS to some of the recruits.

We are not persuaded.

There was no competent proof to substantiate petitioner's claim of not having authorized Jesse Lim to conduct recruitment activities in Zamboanga City or to specifically request for the conduct of PDOS to some male recruits. Petitioner's negative averments unsubstantiated by clear and convincing proof deserves no weight in law.[8] Denial is an intrinsically weak defense which must be buttressed with strong evidence of non-culpability to merit credibility.[9] Too, petitioner's allegations are self-serving and do not merit any evidentiary value.

This Court hereby quotes with approval, the ruling of respondent Cruz, to wit:

> "Petitioner cannot evade liability by merely denying that it did not authorize Mr. Lim to conduct recruitment activity on its behalf in Zamboanga City. His acts would appear as having mandate from petitioner. He was allowed to canvass applicants and advertise Dyncorp Al Taif's job openings in the 15 November 2007 Zamboanga Today edition. He was caught on the spot by Mr. Macarulay and the CIDG conducting lecture before more or less 400 applicants for overseas employment at the Grand Astoria Hotel on 18 November 2007 despite the absence of authority to do so from the POEA. Further, on 25 April 2008, Mr. Lim accompanies (sic) 25 applicants to the POEA Regional Extension Unit in Zamboanga City and requested M. Macarulay to assist them in the conduct of PDOS.
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> x x x x x
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> "It is thus clear that the act of Mr. Jesse Lim in offering information to the public is a form of 'canvassing or advertising' for employment abroad within the above definition of recruitment and placement. Petitioner, in giving apparent authority to Mr. Jesse Lim as agent to engage in recruitment activity in Zamboanga City without prior authority from the POEA, and allowing him to cause the publication and advertisement of Al Taif's job openings in the local newspaper and prior to the latter's POEA accreditation as its foreign principal, clearly committed the charged violations of Section 2 (e) and (n) of Rule 1, Part VI of the 2002 POEA Rules and Regulations. While it may be true that Mr. Lim is not accredited with the POEA as petitioner's authorized agent, still petitioner cannot evade liability considering that it accorded him apparent authority to act for and on its behalf when it allowed him to engage in recruitment activities. In fact, when Mr. Lim accompanied the 25 applicants of the petitioner on 28 April 2008 to the POEA Regional Extension Unit in Zamboanga City to request for the conduct of PDOS and to prove that he is petitioner's authorized agent, he presented the letter of petitioner's President, Engr. Paterno P. Santos, Jr. bearing the latter's signature, referring its applicants for PDOS. While petitioner's counsel denied during the preliminary conference its connection to Mr. Lim, it did not, however, question the authenticity of the signature of its President despite having been previously furnished with a copy of the complaint and the evidence attached to it including the subject letter.
>
> "Indubitably, petitioner gave false information and deceived the POEA, the public and its applicants by publishing false information for the purpose of recruitment and placement without any accreditation yet of the foreign principal accredited to participate in the overseas employment program of the government and by allowing Mr. Lim to act as its agent even without prior authority from the POEA."[10]

Petitioner assails the authenticity of the letter presented by Jesse Lim requesting the conduct of PDOS to some male recruits contending that the same being merely a facsimile from an unknown source, it is not a competent evidence to prove that the signature of Engr. Santos Jr. as appearing therein is genuine. Petitioner further insists that the Rules on Electronic Evidence was not complied with to prove the authenticity of document upon which Mr. Macarulay had depended.

As a general rule, forgery is not presumed.[11] It must be proved by clear, positive and convincing evidence by

the party alleging forgery.[12] In this case, petitioner did not endeavor to support with evidence its allegation that the signature of Engr. Santos, Jr in the questioned document was falsified.

As regards compliance with the Rules on Electronic Evidence, settled is the rule that hearings and resolutions of labor disputes are not governed by the strict and technical rules of evidence and procedure observed in the regular courts of law. It may apply only by analogy or in a suppletory character when there is a need to attain substantial justice and an expeditious, practical and convenient solution to a labor problem.[13]

This Court is likewise unconvinced of petitioner's stance of denial of due process allegedly for not being accorded with the opportunity to refute the authenticity of the letter authorizing Jesse Lim to conduct recruitment activities on its behalf.

In administrative cases, the requirement of notice and hearing does not connote full adversarial proceedings. Due process is fulfilled when the parties were given reasonable opportunity to be heard and to submit evidence in support of their arguments.[14] So long as the party is given the opportunity to advocate his cause or defend his interest in due course, it cannot be said that there was denial of due process.[15] We find respondent Cruz's ratiocination to be tenable, thus:

> "Corrolary, petitioner further contended that it was not given an opportunity to refute the letter authorizing Jesse Lim to conduct recruitment activities on its behalf as there was no hearing called for such purpose. At the risk of sounding repetitious, it is a well settled rule that in an administrative cases, the requirement of notice and hearing does not connote full adversarial proceedings.[16]
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> "The petitioner likewise averred that it was denied of its right to due process. Again, x x x, petitioner was given the opportunity to be heard and present its evidence to support its allegations. Petitioner had every chance to rebut the allegations against it during the preliminary conference where counsel for the petitioner denied any connection with Jesse Lim but made no denial on the signature of its president appearing in the letter despite having been previously furnished with a copy of the complaint and the evidence attached to it including the subject letter. Petitioner even admitted that they were able to secure pertinent documents relative to the case during the initial hearing.
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> "As to the allegation that no hearing was conducted for the purpose of authenticating the signature appearing in the letter, again, petitioner has every right, and was not even deprived of the same, to voluntarily submit counter-evidence to prove its claim that the signature of its president in the letter was forged. The petitioner is very much aware of the significance of the said letter, thus, it is expected that it should have exerted all its effort to impugn the authenticity of the signature and present evidence to sustain its contentions. The apparent authority given to Jesse Lim to engage in recruitment activities as evidence by the letter was never disputed by the petitioner. It was incumbent upon the petitioner to prove the contrary in order to be free from any liability but it undeniably failed to do so.[17]

Therefore, there was nothing erroneous nor grave abuse of discretion when respondent Cruz ruled that:

> "We cannot likewise sustain petitioner's contention that it was denied its right to due process due to the absence of clarificatory hearing, where it could have challenged the signature of its President in the letter submitted by Mr. Lim. Records show that during the 02 September 2008 scheduled preliminary conference, counsel for petitioner appeared and manifested that it will file the affidavit to the Chief Executive of Al Taif. Petitioner was also served with a copy of the complaint and other evidence attached thereto, including the contested letter, and was given the opportunity to examine them. Thus, in this case where petitioner actively participated in the proceedings, the allegation of denial of its right to be heard is untenable."[18]

Too, that grave abuse of discretion was committed by respondent Cruz in upholding the POEA's decision is not tenable. An act of a court or tribunal can only be considered as with grave abuse of discretion when such act is

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done in a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." The abuse of discretion must be so patent and gross as to amount to an "evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility[19], which is not obtaining in the case at bar.

In sum, the herein assailed Orders were not tainted with capriciousness or any semblance of whimsicality. The factual findings were carefully considered based on the parties' evidence and the legal conclusions are in accord with the prevailing law and jurisprudence. This Court has no option but to dismiss the petition.

WHEREFORE, premises considered, the instant Petition for Certiorari is DISMISSED for lack of merit. The assailed Order dated October 4, 2010 in POEA Case No. RV 08-07-1450; as well as the Order dated January 9, 2012 and the Resolution dated January 29, 2013 in OS-POEA-0218-1119-2010 are hereby AFFIRMED.

SO ORDERED.

[]]Sadang, M.Q.C., and Corales P. B., JJ., concur.

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[*] Vice Justice Florito S. Macalino per Office Order No. No. 469-14-ABR dated Nov. 14, 2014

[1] Rollo, pp. 50-56

[2] Rollo, pp. 93-100

[3] Rollo, pp. 114-118

[4] Rollo, pp. 94-96

[5] Rollo, pp. 55-56

[6] Rollo, pp. 102-112

[7] Rollo, pp. 117-118

[8] People vs Constantino y Binayug, GR No. 199684, March 12, 2014

[9] People vs Barcela, GR No. 208760, April 23, 2014

[10] Rollo, pp. 98-99

[11] Veloso vs Court of Appeals, 260 SCRA 593

[12] Garcia vs Sandiganbayan,GR No. 197204, March 26, 2014

[13] Sime Darby Employees, Inc vs NLRC, GR No. 148021, December 6, 2006

[14] Heirs of Falame v. Baguio, AC NO. 6878, March 7, 2008

[15] Demaala vs Sandiganbyan, GR No. 173523, February 19, 2014

[16] Pontejos vs Desierto, et al., GR No. 148600, 07 July 2009

[17] Memorandum (Public Respondent), Rollo, pp. 406-407

[18] Rollo, p. 99

[19] Yu vs Judge Reyes-Carpio, 652 SCRA 341

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