

**JOSELITO A. MARTINEZ, RAUL S. COQUILA, RODRIGO T. LAYSON,
SALVADOR L. RAPEZA, ELUETERIO T. ESCOLANO, JR., NELSON
LESTRADA, GERRY RETILBA, LEONILO BARILLA, BERNARBO B.
GALLARDO, ...**

Ponente: CARANDANG, J.

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CARANDANG, J.:

This is a petition for certiorari under Rule 65 of the Rules of Court seeking to annul and set aside, on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction, the public respondent's Decision dated April 3, 2012 which denied petitioners' appeal for lack of merit and affirmed the Labor Arbiter's Decision dated August 31, 2011 dismissing with prejudice the consolidated complaints of petitioners for lack of employer-employee relationship with herein private respondent.

The facts of the case:

Petitioners were sales route helpers of private respondent. They were part of the salesforce that regularly deliver or distribute and sell private respondent's products to its customers' outlets such as sari-sari store, restaurants, groceries, supermarkets and the like. They were recruited and assigned at the Coca-Cola Sales Office located in Roosevelt, Quezon City. They performed their job for several years until they were prevented by the guards to enter the Cosmos premises to perform their work. Thus, the filing of the instant case for illegal dismissal.

Petitioners assert that during the course of their employment, they were aboard Coca-Cola route trucks, accompanying the salesman or drivers of the latter in their regular duty of distributing Coca-Cola products from the Coca-Cola Sales Offices or plants to customers. They were under the supervision and control of the salesmen, while the latter were under the supervision and control of Coca-Cola Sales Supervisors. They performed also the handling, loading and unloading of Coca-Cola softdrinks to retailers and wholesalers, including the retrieval of empty bottles and its return thereof to the Coca-Cola plants or sales offices. Petitioners allege that they were required to report for work from 7:00 AM onwards, mostly up to the evening.

Petitioners recount that at the earlier part of their employment, they were either directly hired by private respondent or supplied by labor only contractors such as LIPPERCORN, INTERSERVE, ROMAC, ACES and PEERLESS, etc., to the company. Eventually, they were hired by private respondent's salesmen as fourthman, mainly due to their length of service, experience and familiarity with the job of route helpers.

Considering that the tasks they perform are desirable, indispensable and necessary to private respondent's main business, petitioners claim that they cannot be dismissed without just cause and due process, and thus, entitled to the salary benefits and privileges being enjoyed by private respondent's regular employees.

Private respondent counters that petitioners were not their employees. There is no employer-employee relationship between the parties, hence, the public respondent does not have jurisdiction over the case. Petitioners' names do not appear in their SAPR/3, a centralized information system, either as "active" or "withdrawn". No

identification cards were issued to petitioners. They were not in the payroll of private respondent. Records likewise reveal that private respondent was not the entity responsible for paying their SSS (Social Security System), Pag-ibig and Philhealth contributions and it was not responsible for withholding income taxes for petitioners. Thus, given that the records or documents of private respondent do not show that it hired, paid wages, dismissed or even exercised control over petitioners, it is clear that petitioners were not employees of private respondent.

As for petitioners Escolano, Lestrada, Retilba and Barilla, who were employees of private respondent supposedly by virtue of their employment with Interserve Manpower Management Services (Interserve), private respondent contends that it never engaged Interserve to provide any kind of service in the Roosevelt Sales Office. Private respondent posits that from 2006 to 2010, they outsourced its delivery and warehousing services by entering into valid contracting arrangement with legitimate independent contractors who are the real employers of these route helpers. Thus, even assuming that petitioners were indeed employees of a particular contractor engaged by private respondent, petitioners were not employees of private respondent by rather of that specific contractor.

On August 31, 2011, the Labor Arbiter rendered a Decision which dismissed with prejudice petitioners' complaints there being no employer-employee relationship between the parties. The Labor Arbiter declared that petitioners failed to present documentary evidence of regular employment available to all regular employees such as a regular employment contract or job offers, withholding tax certificates, SSS, Philhealth and Pag-ibig registration, payrolls, vouchers, and the like. Petitioners were hired by local manpower agencies and were occasionally assigned to private respondent by way of manpower services contracts of limited duration. Not being regular employees of private respondent, the Labor Arbiter ruled that petitioners could not have been illegally dismissed by private respondent and their money claims should be addressed to the local manpower agencies, who are their real and actual employers.

Petitioners lodged an appeal, but it was denied for lack of merit in the public respondent's Decision promulgated on April 3, 2012. The public respondent ratiocinated that petitioners failed to establish that they were employees of private respondent and they were likewise unable to show substantiation that they were dismissed by private respondent. Other than mere allegations, no evidence was proffered by petitioners showing that they were dismissed from employment.

Hence, this petition. Petitioners raised the following issues for resolution, to wit:

I

WHETHER OR NOT THE PUBLIC RESPONDENT NLRC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN HOLDING THAT THERE IS NO EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN COCA-COLA AND THE PETITIONERS BY THRUSTING ASIDE OR IGNORING UNDISPUTED FACTS EVIDENCE, DECISIONS OF THIS HONORABLE COURT OF APPEALS, HONORABLE SUPREME COURT OR APPLICABLE JURISPRUDENCE AND CONSTITUTIONAL MANDATE.

II

WHETHER OR NOT TASK OR SEVICES BEING PERFORMED BY PETITIONERS AS ROUTE HELPERS, PAHINANTES, CARGADORES WHICH ARE DIRECTLY RELATED, NECESSARY, OR INDISPENSABLE TO THE MAIN BUSINESS OF COCA-COLA MAYBE CONTRACTED OUT.

III

WHETHER OR NOT THE PUBLIC RESPONDENT NLRC GRAVELY ABUSED ITS DISCRETION, AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN CONCLUDING THAT THE APPEAL OF SOME OF THE PETITIONERS WHO FAILED TO SIGN THEIR MEMORANDUM OF APPEAL

NAMELY JOSELITO MARTINEZ, GERRY RETILBA, ELEUTERIO T. ESCOLANO, JR., AND LUIS B. BALOBAR, JR. CANNOT BE CONSIDERED PERFECTED AND THIS SHOULD BE DROPPED OR EXCLUDED FROM THIS CASE.

IV

WHETHER OR NOT PETITIONERS ARE REGULAR EMPLOYEES OF COCA-COLA, ENTITLED TO SECURITY OF TENURE, PROTECTION TO LABOR AND SOCIAL JUSTICE OF THE CONSTITUTIONAL CLAUSES AND THUS SHOULD BE REINSTATED TO THEIR FORMER POSITION WITH FULL BACKWAGES FROM THE DATE THE SAME WERE WITHHELD FROM THEM, WITHOUT LOSS OF SENIORITY RIGHTS AND PRIVILEGES, BENEFITS DUE TO REGULAR EMPLOYEES OF COCA-COLA UNDER THE CBA AND LAW, ATTORNEY'S FEES AND DAMAGES.

The petition is bereft of merit.

Well established is the rule that the filing of a motion for reconsideration is a prerequisite to the filing of a special civil action for certiorari, subject to certain exceptions[1]. In this case, petitioners assert that they did not file a motion for reconsideration considering that: (1) they were denied due process; (2) the assailed decision was issued without jurisdiction or in excess of jurisdiction; and (3) the questions presented are purely legal or the questions involve are essentially judicial.

However, a perusal of the records reveal that none of the above exceptions cited by petitioners as their justification in not filing a motion for reconsideration is present in this case. Petitioners were obviously not denied due process of law as they actively participated in the proceedings below. The public respondent and the labor arbiter had jurisdiction to render the assailed decision. And the questions raised in the present petition pertain both to questions of fact and law. Consequently, the instant petition should be denied.

Jurisprudence is replete with decisions which reiterate that before filing a petition for certiorari in a higher court, the attention of the lower court should be first called to its supposed error and its correction should be sought. Failing this, the petition for certiorari should be denied. The reason for this is to afford the lower court the opportunity to correct any actual or fancied error attributed to it through a re-examination of the legal and factual aspects of the case.[2] Herein petitioners' disregard of this rule deprived the public respondent the right and the opportunity to rectify an error unwittingly committed or to vindicate itself of an act unfairly imputed.

Even if We allow the premature recourse to certiorari by the petitioners' without filing a motion for reconsideration and decide this case on the merits, the petition would still fail. Foremost, petitioners failed to discharge their burden in proving that there is employer-employee relationship between them and private respondent. Hence, the allegation that they were illegally dismissed from employment by private respondent has no leg to stand on.

Petitioners argue that the public respondent failed to consider the affidavits and documents submitted, i.e., payslips, SSS employment history, which could establish that they have been employed with private respondent for several years. They contend that the fact that their names cannot be found in the records of private respondent, as declared by Ms. Reyes and Ms. Sarah, is not an indication that petitioners are not employees of private respondent. When hired by the salesman as pulot boys or fourthmen, their services were not recorded but the management was fully aware of this practice by the salesman, who is under the control and supervision of the Sales Supervisors who are, in turn, under the control of the Head of the Sales Department. Further, petitioners claim that they were regular employees of private respondent for the task they performed as route helpers, pahinantes or cargadores are necessary and desirable in the main business of private respondent.

A review of the assailed decision reveals that the public respondent duly considered the documentary evidence

submitted by petitioners consisting of the following: (1) Employment History of petitioner Martinez from SSS; (2) Coco-Cola Bottlers Philippines, Inc. (CCBPI) ID of petitioner Escolano, Jr.; payslips of petitioner Escolano, Jr. issued by Romac Services; (3) various payslips of petitioner Valdez issued by CCBPI, Cornerstone Marketing Systems, Inc. and ACES, Inc.; (4) Employment History of petitioner Retilba from SSS; (5) CCBPI and Cosmos IDs of petitioner Barilla (6) payslips of petitioner Barilla issued by CCBPI; (7) Employment History of petitioner Layson from SSS; (8) Employment History of petitioner Barilla from SSS; (9) payslips of petitioner Barilla issued by Interserve; (10) Sinumpaang Salaysay of petitioners Valdez, Barilla, Martinez, Escolano, Conquilla, Letrada, Rapeza and witness Venancio Monterola. However, the public respondent did not consider these pieces of evidence adequate proof of the existence of employer-employee relationship between petitioners and private respondent.

We agree.

The elements to determine the existence of an employment relationship are: (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's conduct. The most important element is the employer's control of the employee's conduct, not only as to the result of the work to be done, but also as to the means and methods to accomplish it.[3]

The evidence adduced by petitioners are, indeed, not sufficient to prove employer-employee relationship. Even if we consider the evidence submitted by petitioners Martinez, Retilba, Escolano, Jr., and Bacobar, Jr., whose appeal was not perfected as ruled by public respondent, the same conclusion will be arrived at – petitioners failed to establish that they were regular employees of private respondent at the time of the alleged illegal dismissal.

Anent the presence of the element of control, petitioners' bare asseveration that they were under the control of the salesman is insufficient. It should be noted, first and foremost, that petitioners were not required to report for work at the private respondent's office at a specific time. They do not follow a definite work schedule or required to be at the office from 8 am to 5 pm daily. From their sworn statements, it was stated therein that they were just staying outside the gate of the private respondent's sales office waiting to be picked-up by the salesman. In other words, they were merely waiting at the gate hoping that the salesman will take them with them. Further, they were merely being paid with sampling or breakage allowance.

Petitioners did not present any regular contract of employment or job offer to show that they were hired or re-hired by private respondent. No evidence was adduced to show regularity of their work. Private respondent explained that it is their practice to extend a job offer to an applicant who qualifies for employment. Once signed by the applicant, the document will be kept and filed by CCBPI as part of its records. Once hired, the applicant will be issued an ID bearing his name, nickname, employee number, place of assignment and signature. At the back of the ID, the blood type, date of hire, SSS number and TIN number are also indicated. All CCBPI employees have the same ID including those who have been employed with CCBPI for a long period of time. In this case, petitioners failed to present any ID of this nature issued by CCBPI.

Although petitioners submitted payslips to show payment of wages, these payslips issued by CCBPI cover the years 1995, 1996 and 1997, which is way too far from the date when they were allegedly dismissed in December 2009.[4] They should have submitted more recent payslips to show that they are still connected with private respondent after the year 1997. Further, not all of the petitioners were able to submit payslips. Only petitioners' Escolano, Jr., Valdez and Barilla submitted their payslips.

For petitioner Escolano, Jr., his payslips[5] cover the years 1999 to 2003 but these were issued not by private respondent but by Romac Group. The ID submitted by petitioner Escolano, Jr., has an expiration date of May 15, 1997[6] which shows that his employment with private respondent ended in 1997. No other evidence was offered

to show that he was re-hired until his alleged dismissal in December 2009.

For petitioner Valdez, he submitted payslips[7] issued by CCBPI covering the years 1995, 1996, and 1997. He also presented payslips from ACES,[8] Inc. dated 1997 and from Cornerstone Marketing Systems[9], Inc. dated 2005. The payslips also indicate that ACES, Inc. and Cornerstone withheld from petitioner Valdez his contributions to SSS, Philhealth and Pag-ibig, proving that he is not a regular employee of private respondent at the time of the alleged illegal dismissal.

For petitioner Barilla, the payslips[10] presented only cover the years 1996 and 1997. In 1999, he was employed by another entity. Thus, if his employment with private respondent ended in 1997, his complaint for illegal dismissal filed in August 18, 2010 has long prescribed.

The Employment History[11] of petitioner Retilba as generated by the SSS shows that his employment with private respondent ended in 1998. So with petitioner Martinez whose Employment History[12] indicated that his employment by private respondent was terminated in 1992. By 1993, he was already employed by Diar/s Assistance, Inc. No other evidence was presented by Retilba and Martinez to prove that they were regular employees of private respondent prior to their dismissal in December 2009.

We likewise agree with the observation made by public respondent that while some of the petitioners mentioned that they were supplied by labor-only contractors such as LIPPERCORN, INTERSERVE, ROMAC, ACES and PEERLESS, etc., the subject was not further expounded. Hence, there is simply no way to connect petitioners with private respondent at the time of the alleged illegal dismissal.

The cases cited by petitioners are not at fours with the instant case. They involve different factual settings, hence, the principles enunciated therein cannot be applied in this case.

The case of Agito[13] is not applicable considering that the respondents therein were employees of Interserve, which was declared to be a labor-contractor by the Supreme Court; hence, CCBPI was deemed to be the true employer of respondents. In this case, however, Interserve was not even engaged by CCBPI as a service contractor for its Roosevelt Sales Office at the time material to the case, i.e., 2006-2010.

The case of Magsalin[14], on the other hand, involved sales route helpers which were directly hired by CCBPI. Respondent workers were initially hired for a limited period of five (5) months and after the lapse of said period, they were employed by the company on a day-to-day basis. Respondents therein were direct hires whose regularization was circumvented by limiting the term of employment on a day-to-day basis. As opposed to this case, there was no evidence presented by petitioners that they were direct hires by CCBPI for such period of time. Hence, there is no way to establish their regularization with CCBPI.

In the case of Pacquing vs. CCBPI,[15] there was no issue as to whether complainants therein were employed by CCBPI. What needed to be resolved was whether or not they were regular employees of CCBPI. In this case, CCBPI denies that they employed herein petitioners. CCBPI asserts that there is no employer-employee relationship between the parties.

In sum, for failure of petitioners to convincingly and substantially establish that they are employees of private respondent CCBPI, they could not have been illegally dismissed by private respondent. Perforce, the instant complaint for illegal dismissal must be dismissed.

WHEREFORE, premises considered, the instant petition is DENIED. Finding no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent, the assailed Decision dated April 3, 2012 is hereby AFFIRMED.

SO ORDERED.

Gonzales-Sison and Sorongon, JJ., concur.

[1] Nov Ateknika Land Corporation vs. Philippine National Bank, G.R. No. 194104, March 13, 2013.

[2] Ibid.

[3] Lirio vs. Genovia, G.R. No. 169757, November 23, 2011.

[4] Except petitioner Conquilla who was allegedly dismissed in December 2007.

[5] Rollo, 137-140.

[6] Rollo, p. 136.

[7] Rollo, pp. 141-143.

[8] Rollo, pp. 145-146.

[9] Rollo, p. 144.

[10] Rollo, pp. 149-152, 154-158.

[11] Rollo, p. 147.

[12] Rollo, p. 135.

[13] Coca-Cola Bottlers Phils., Inc. vs. Agito, G.R. No. 179546, February 13, 2009.

[14] Magsalin vs. National Organization of Working Men (N.O.W>M), et al., G.R. No. 148492, May 9, 2003.

[15] G.R. No. 157966, January 31, 2008.

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