

**ROLANDO A. PESEBRE, JOEL L. OLESCO AND LUCKY S. SANTOS,
PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION,
YWA HUMAN RESOURCE CORPORATION, SAMSUNG ENGINEERING
CO., LTD., MS. ...**

Ponente: DICDICAN, J.

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DICDICAN, J.:

Before us is a Petition for Certiorari[1] filed by Rolando a. Pesebre, Joel L. Olesco and Lucky S. Santos (“petitioners”) pursuant to Rule 65 of the 1997 Revised Rules of Court seeking to reverse and set aside the Resolution[2] of the Third Division of the National Labor Relations Commission (“NLRC”) dated August 30, 2013 in NLRC NCR OFW(L) Case No. 01-00782-13(NLRC LAC No. 07-000648-13) as well as the Resolution[3] promulgated on October 21, 2013 denying the Motion for Reconsideration thereof.

The material and relevant facts of the case, as culled from the record, are as follows:

The herein petitioners are Overseas Filipino Workers who applied for employment abroad with YWA Human Resource Corporation.

YWA Human Resource Corporation (“YWA”) is a local manpower agency, duly registered, organized and existing under the laws of the Republic of the Philippines. It is represented by one its officers, Ms. Acela Q. Hollero and/or Acela C. Quibrantar (“private respondents”).

On the other hand, Samsung Engineering Co. Ltd (“private respondent Samsung”) is a foreign corporation not doing business in the Philippines which recruited the herein petitioners through private respondent YWA.

Sometime in June 2012, petitioners Pesebre and Santos applied to private respondent YWA for employment as a nurse based in Qatar. Petitioners' applications were processed and facilitated by private respondent YWA. Petitioners Pesebre and Santos underwent the usual interviews and submitted the documents needed for their application. Thereafter, their applications were granted and approved. They were hired by private respondent Samsung which was based in Qatar and immediately booked them for deployment after execution of their POEA-approved employment contracts. Their respective employment contracts provide:

“As for petitioner Pesebre:

Position: Nurse

Salary: 1,936.00 US Dollar per month

Contract Duration: 12 months

Deployment Date: September 19, 2012

“As for petitioner Santos:

Position: Nurse

Salary: 1,300.00 US Dollar per month

Contract Duration: 12 months

Deployment Date: September 26, 2012”

Both the petitioners were scheduled to go to the state of Qatar on September 19 and 26, 2012, respectively, with eight-hour duty and three- hour guaranteed overtime pay.

However, the petitioners noted that they were given an entry visa to Qatar with a stamped profession as 'foreman'. They questioned the category of 'foreman' but private respondent YWA told them to ignore and just put in the document the position of 'foreman' for working visa purposes. They were likewise assured that their work in Qatar will be as nurses. Petitioners also questioned the management of Samsung regarding their category as 'foreman' but they were just told to obey whatever is assigned to them.

Upon arrival in Qatar, petitioners started to assume their work but they were surprised that they were issued clothing materials for field workers and not for those assigned for a nurse. Without any option, petitioners Pesebre and Santos were assigned to work as foremen.

After working for three months with their position as 'foreman', petitioners Pesebre and Santos were surprised to receive a memorandum from the management informing them of their termination due to poor performance of work. Petitioners purportedly tried to question their termination but they were not allowed to refute the findings of poor performance by their employers. Consequently, they were sent back to the Philippines immediately.

As for petitioner Olesco, he applied to private respondent YWA to work at the United Arab Emirates as Piping Inspector QA/QC. Petitioner Olesco commenced working on June 15, 2012 with agreed basic salary of USD1,573 per month for an eight-hour duty and three-hour fixed overtime. Petitioner was later on transferred to Samsung Engineering DHT project in Qatar. However, on his first day of work, the QC department purportedly told petitioner Olesco that they cannot allow him to perform his duties as an inspector and he was offered the position of document controller and was told that his salary will be reduced to USD1,100. Petitioner Olesco expressed his disagreement and did not accept the offered position with the reduced salary and his refusal caused his termination.

Upon arrival in the Philippines, petitioners called and visited private respondents' office. They complained about the improper treatment they got from their foreign employers, the violation of their contract and their dismissal. At this juncture, petitioners filed their Complaint for illegal dismissal, payment of the unexpired portion of their respective contracts, damages and attorney's fees.

By reason of the filing by the herein petitioners of a complaint against the private respondents, proceedings were conducted by the Labor Arbiter. First, there was a mandatory conciliatory conference with the parties which was held by the Labor Arbiter. When no settlement was arrived at, the parties were directed to file their respective position papers which the parties filed in due time.

Eventually, on April 30, 2013, Labor Arbiter Napenas, Jr. promulgated a Decision in favor of the herein petitioners. The pertinent portion of the said Decision reads:

“WHEREFORE, premises considered, judgment is hereby rendered finding complainants to have been illegally dismissed. Accordingly, respondents are hereby ordered to jointly and severally pay complainants the following:

“a. Salary for the unexpired portion of their contract;

“xxx.

“b. Moral and Exemplary damages in the amount of P10,000.00 each; and

“c. 10% of the total award as Attorney’s fees.

“All other claims are dismissed for lack of merit.

“SO ORDERED.”

Unsatisfied with the Labor Arbiter’s disposition, private respondents appealed from the former’s Decision to the NLRC. On August 30, 2013, the Third Division of the NLRC rendered the herein assailed Resolution which modified the findings of the Labor Arbiter. The decretal portion of the said NLRC Resolution reads:

“WHEREFORE, premises considered, the appeal is partly GRANTED and the Decision dated June 5, 2013 is MODIFIED ordering appellant to indemnify complainants-appellees in the form of nominal damages in the amount P30,000.00 pesos each. The Decision of the Labor Arbiter awarding complainants-appellees salaries for the unexpired portion of their contracts, moral and exemplary damages and attorney's fees is hereby ordered VACATED and SET ASIDE.

“SO ORDERED.”

Petitioners then filed a Motion for Reconsideration[4] of the said Resolution of the NLRC. On October 21, 2013, the NLRC issued the herein assailed Resolution denying petitioners' Motion for Reconsideration.

Unperturbed, petitioners filed the present petition before this Court assigning the acts of grave abuse of discretion purportedly committed by the NLRC, to wit:

I.

THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN HOLDING THAT PETITIONERS ARE ESTOPPED IN QUESTIONING THEIR TERMINATION CONSIDERING THAT THEY ACCEPTED THEIR PLANE TICKET AND THEIR NOTICE OF TERMINATION.

II.

THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN FINDING THAT PRIVATE RESPONDENTS HAVE VALID GROUND TO TERMINATE THE PETITIONERS' EMPLOYMENT CONTRACT.

After a careful and judicious scrutiny of the whole matter, together with the applicable laws and jurisprudence in the premises, we find the present petition to be meritorious.

Preliminarily, firmly-entrenched is the rule that when supported by substantial evidence, factual findings made by quasi-judicial and administrative bodies are accorded great respect and even finality by the courts. These findings are not infallible, though; when there is a showing that they were arrived at arbitrarily or in disregard of the evidence on record, they may be examined by the courts. Hence, when factual findings of the NLRC are contrary to those of the labor arbiter, the evidentiary facts may be reviewed by the appellate court.

In the case at bench, petitioners contended that the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it modified the findings of the Labor Arbiter that petitioners were illegally dismissed. The herein petitioners asserted that:

“Petitioners' receipt of the notice of termination and their plane ticket does not bar them from questioning the legality of their illegal termination.

“xxxx.

“The receipt of the notice of termination does not operate as an estoppel for the petitioners to question their illegal termination. Records of the instant case show that petitioners, upon their arrival in the Philippines, on December 2, 2012 and December 8, 2012 called and visited private respondent YWA and complained about the improper treatment they got from the foreign employer vis-a-vis the violation of their contract pertaining to the untimely and uncerecermonious dismissal they suffered.”

We rule in favor of the herein petitioners.

Well-settled is the rule that in a termination dispute, the burden of proof of the dismissal of an employee for a just and valid cause rests on the employer, such probative burden, is premised upon the fact that dismissal is already well established or undisputed.

Here, it is beyond cavil that the herein petitioners were terminated from their employment in Qatar by the private respondents. The NLRC in fact, emphasized that as per petitioners' employment contract, the herein private respondents exercised their right to terminate the employment of the herein petitioners. The NLRC Resolution dated August 30, 2013 reads:

“It is evident therefore that as per employment contract, respondent-appellant exercised their right to terminate the employment contracts of complainants-appellees and complied with the three (3) day notice prior to effectivity of the termination of the contracts and paid for the airfare of complainants-appellees back to the Philippines. Thus, the employment contract must bind both respondent-appellant and complainants-appellees and its validity and compliance cannot be left to the will of one of them, in this case respondent-appellant. Complainants-appellees are estopped from assailing the validity of the termination of their respective employment contracts. Their acts of accepting the notice of termination of employment contract without objection their execution of full and final settlement wherein they received amounts due them and the tickets for their trip to the Philippines are rendered conclusive upon complainants-appellees and cannot be disproved as against respondent-appellant who relied that the termination of employment contracts was in order.”

We do not agree with the foregoing.

Article 281 of the Labor Code of the Philippines provides that a probationary employee like a regular employee, enjoys a security of tenure. It is a settled rule that in probationary employment, an employee may also be terminated for failure to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of the engagement in addition to just or authorized causes of termination,. Thus, the services of an employee who has been engaged on probationary basis may be terminated for any of the following: (1) a just or (2) an authorized cause and (3) when he fails to qualify as a regular employee in accordance with reasonable standards prescribed by the employer.[5]

A careful examination of the record of the case revealed that private respondents anchored their contentions based on self-serving allegations. Accordingly, private respondents terminated petitioner Olesco's employment because he was incapable and has poor knowledge of welding hence, not qualified to become QA/QC Piping Inspector. Meanwhile, private respondents likewise claimed that petitioners Pesebre and Santos had unsatisfactory and poor work performance which resulted to the termination of their probationary employment. Indubitably, such self-serving and unsubstantiated declarations are insufficient to establish a case before quasi-judicial bodies. Well-entrenched is the rule that the quantum of evidence required to establish a fact in quasi-judicial bodies is substantial evidence. Substantial evidence is such amount of relevant evidence which a reasonable mind might

accept as adequate to support a conclusion, even if other equally reasonable minds might opine otherwise[6].

Evidently, private respondents failed to prove by substantial evidence that there is a just cause for the termination of the petitioners' services. Moreover, the private respondents have not even deigned to show such reasonable standards the petitioners' failure to measure up alongside which would have justified petitioners' dismissal from employment.

Indeed, in the case of *Athena International Manpower Services, Inc. v. Villanos*,[7] the Supreme Court exhaustively explained that:

“Records show that upon his repatriation from Taiwan, respondent immediately went to petitioner’s office and confronted its representative, Lorenza Ching, about the assignment given to him which was contrary to the agreed position of caretaker, for which he specifically applied. He demanded that he be reimbursed the P30,000 he paid as downpayment. When refused, he lodged a complaint with the POEA. He also immediately filed a complaint for illegal dismissal before Labor Arbiter Cresencio R. Iniego, upon his arrival in his hometown, indicating that respondent did not voluntarily resign, but was forced to resign, which was tantamount to a dismissal.

“Petitioner did not refute respondent’s contentions regarding these incidents. Further, it failed to prove the legality of the dismissal, despite the fact that the burden of proof lies on the employment and recruitment agency. Thus, the presumption stands to the effect that respondent was illegally dismissed by his employer.

“Even assuming respondent was a mere probationary employee as claimed by petitioner, respondent could only be terminated for a pertinent and just cause, such as when he fails to qualify as a regular employee in accordance with reasonable standards of employment made known to him by his employer at the time of his engagement.

“Here, it appears that the petitioner failed to prove that, at the time of respondent’s engagement, the employer’s reasonable standards for the job were made known to respondent. Moreover, in this case, respondent was assigned to a job different from the one he applied and was hired for.”

In this score, the Supreme Court’s ruling in the case of *Servidad v. NLRC, et al.*[8] is instructive, to wit:

“If the nature of the job did actually necessitate at least one year for the employee to acquire the requisite training and experience, still, the same could not be a valid probationary employment as it falls short of the requirement of Article 281 of the Labor Code. It was not brought to light that the petitioner was duly informed at the start of his employment, of the reasonable standards under which he could qualify as a regular employee. The rudiments of due process demand that an employee should be apprised beforehand of the conditions of his employment and the basis for his advancement.”

Relatively, in *Hacienda v. Villegas*[9], the dismissal of the employee was declared illegal by the Supreme Court because the employer did not prove that the employee was properly apprised of the standards of the job and specify the reasonable standards by which respondent’s alleged poor performance was evaluated, much less to prove that such standards were made known to him at the start of his employment.

Withal, in the present case, the herein private respondents failed to prove that the herein petitioners were properly apprised of the standards of their jobs and specify the reasonable standards by which petitioners' poor performance were evaluated. In truth, the herein petitioners were assigned to a job different from the one they applied and was hired for. Considering the foregoing, the NLRC gravely abused its discretion amounting to lack or excess in jurisdiction when it ruled that the herein petitioners were estopped from questioning their dismissal from employment by mere acceptance of the notices of termination and their plane tickets without sufficient basis.

It is a well-settled doctrine that, if doubt exists between the evidence presented by the employer and the employee,

the scales of justice must be tilted in favor of the employee. It is a time-honored rule that, in controversies between and laborer and his master, doubts reasonably arising from the evidence of interpretation of agreements and writings should be resolved in the former's favor.

All told, in all cases involving employees engaged on probationary basis, the employer shall make known to its employees the standards under which they will qualify as regular employees at the time of their engagement. Thus, we find substantial evidence in the record of the case to support the findings of the Labor Arbiter that the herein petitioners were illegally terminated.

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us GRANTING the instant petition. The Decision of the Labor Arbiter dated April 30, 2013 in NLRC NCR Case No. OFW-(L)01-00782-13 is hereby REINSTATED.

SO ORDERED.

Elbinias and Paredes, JJ., concur.

[1] Rollo, pages 3–18.

[2] Id., pp. 21-32.

[3] Id., pp. 34-36.

[4] Id., pp. 34-48.

[5] Carvajal v. Luzon Development Bank, G.R. No. 186169, August 1, 2012

[6] Vertudes v. Buenaflor, G.R. No. 153166, December 16, 2005.

[7] G.R. No. 151303, April 15, 2005.

[8] G.R. No. 128682 March 18, 1999.

[9] G.R. No. 186243, April 11, 2011.

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