

ASIAN CONSTRUCTION AND DEVELOPMENT CORPORATION, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND REYMOND P. ALCANTARA, RESPONDENTS.

Ponente: VILLON, J.

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VILLON, J.:

This is a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, as amended, assailing, on grounds of grave abuse of discretion amounting to lack or excess of jurisdiction, the decision[1] dated March 14, 2012 and resolution[2] dated May 29, 2012 of public respondent National Labor Relations Commission (NLRC), First Division, in NLRC LAC No. OFW (L) 01-000104-12. These issuances affirmed the November 15, 2011 decision[3] of Labor Arbiter (LA) Elias H. Salinas in NLRC NCR OFW Case No. (L) 06-08669-11 for refund of placement fee and payment of the salaries for the unexpired portion of the contract with claims for damages and attorney's fees.

Following are the factual and procedural antecedents of the case.

Private respondent Reymond P. Alcantara was employed by petitioner Asian Construction and Development Corporation in behalf of its foreign principal, SNC Lavalin International (Tunisia), Inc., to work as a “skilled carpenter” in Libya for a period of twenty-four (24) months, with a monthly salary of US \$400.00.[4] He was deployed on December 22, 2010. However, his employment was cut short due to the outbreak of the Libyan civil war which eventually ended the regime of Muammar Gaddafi. Upon the advice of the Philippine government,[5] private respondent was repatriated to the country on February 28, 2011.

It appears that the amounts of P3,400.00 and P16,041.67 were deducted by petitioner from private respondent's salary for the months of January and February 2011, respectively, by way of placement and other processing fees.[6] Thus, on June 3, 2011, private respondent instituted the instant case before the arbitration branch of the NLRC.[7]

On November 15, 2011, the LA dismissed the complaint on the ground that the cessation of private respondent's employment was caused by a fortuitous event without the fault of either party. Notwithstanding this finding, the LA still awarded financial assistance in favor of private respondent. Thus:

“As admitted by the complainant, he was repatriated to the Philippines of February 28, 2011 (sic) upon the advice of the Philippine Government due to the on-going war in Libya. Thus, his repatriation was brought about by a fortuitous event with no fault on the part of the employer and on the part of the complainant.

"Section 10, paragraph 5 of R.A. 8042 otherwise known as 'Migrant Workers and Overseas Filipinos Act of 1995' as amended by R.A. 10022 provides as follows:

'In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, or any unauthorized deductions from the migrant worker's salary, the worker shall be entitled to the full reimbursement of his placement fee and the deductions made with interest at twelve percent [12%] per annum, plus his salaries for the unexpired portion of his employment contract or for three [3] months for every

year of the unexpired term, whichever is less.'

"From the foregoing legal provision, it is clear that an overseas Filipino worker is only entitled to the full reimbursement of his placement where his employment is terminated without just, valid or authorized cause as defined by law or contract. In other words, a claim for refund of placement fee is only granted where there is a finding of illegal dismissal, which is not obtaining in the present case.

"Thus, we find no factual and legal basis to grant complainant's claim for refund or placement fee. However, considering that complainant had worked for barely two [2] months of his twenty four [24] months contract and his repatriation was not due to his fault, this Office finds the grant of financial assistance to the complainant in the amount equivalent to his one [1] month salary of US\$400.00 proper.

"While his claims for moral and exemplary damages are disallowed absent any proof that complainant is entitled thereto.

"WHEREFORE, premises considered, judgment is hereby rendered DISMISSING the complaint for utter lack of merit. Respondents Asian Construction & Development Corporation and/or SNC Lavalin International [Tunisia], Inc., are, however ordered to jointly and severally pay the peso equivalent of US\$400.00 at the time of actual payment by way of financial assistance.

All other claims are dismissed for lack of merit.

SO ORDERED.”[8]

Aggrieved, petitioner interposed an appeal[9] to the NLRC, which denied the same in the challenged March 14, 2012 decision, viz.:

“No less than the Supreme Court has ruled that financial assistance may be allowed as a measure of social justice in exceptional circumstances and as an equitable concession. However, it is allowed only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. In this case, both parties are mindful of the fact that complainant's overseas employment with a duration of twenty four [24] months was terminated due to a fortuitous event without any fault of either party. Complainant only worked for two [2] months yet the payment of PPA and placement fees were even deducted from his salaries for said months thereby leaving a meager amount for his family in the Philippines. We are mindful of many hapless citizens of this country who have sought foreign employment to earn a few dollars to ensure for their families a life worthy of human dignity and provide proper education and a decent future for their children. We are also aware of many Filipino workers seeking a better life in a foreign land, and investing hard-earned savings or even borrowed funds in pursuit of their dreams only to go back home empty-handed due to an event outside of their fault and control. Thus, we see no reason to reverse the Labor Arbiter's grant of financial assistance amounting to complainant's one month salary or US\$400.00.

In fine, we rule that complainant is not entitled to the reliefs prayed for in his Position Paper. However, we find, for purposes of equitable concession and social justice, that the grant of financial assistance in the amount equivalent to his one [1] month salary of US\$400.00 is proper.

WHEREFORE, premises considered, the instant appeal is hereby DISMISSED for lack of merit, and the appealed Decision is hereby AFFIRMED in toto.

SO ORDERED.”[10]

Petitioner's motion for reconsideration[11] of the above decision was likewise denied in the assailed May 29, 2012 resolution.

Hence the present recourse, petitioner raising a lone issue, to wit:

WHETHER OR NOT RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION IN AFFIRMING THE AWARD OF FINANCIAL ASSISTANCE TO PRIVATE RESPONDENT DESPITE LACK OF FACTUAL AND LEGAL BASIS THEREFOR[12]

Petitioner asserts that the jurisprudence cited by the NLRC in affirming the decision of the LA, as enunciated in *Zenco Sales, Inc. v. NLRC*[13] and *Jesus B. Lopez v. NLRC*,[14] are not applicable in the instant case considering that in those cases the Supreme Court awarded separation pay by way of financial assistance for long years of service to legally dismissed employees, which circumstances are different from those obtaining here. Too, petitioner contends that the case of *People v. Carol M. Dela Piedra*,[15] which involved an illegal recruitment case, cannot be invoked to support the award of financial assistance to private respondent; and that since private respondent was not the only overseas worker that the company had to repatriate from Libya, such an award would set a bad precedent that could result in the depletion of petitioner's financial resources..

There is merit in the petition.

The law, in protecting the rights of the laborer, authorizes neither oppression nor self-destruction of the employer. While the Constitution is committed to the policy of social justice and the protection of the working class, it should not be supposed that every labor dispute will be automatically decided in favor of labor. Management also has its own rights, which, as such, are entitled to respect and enforcement in the interest of simple fair play.[16] The constitutional policy of providing full protection to labor is not intended to oppress or destroy management.[17]

In the case at bar, We find that the position of the LA and the NLRC, in awarding financial assistance to private respondent, is not supported by applicable jurisprudential doctrine.

In *Rolando Aparente, Sr. v. NLRC*,[18] an employee who was validly dismissed for serious misconduct or willful disobedience was awarded separation pay by way of financial assistance equivalent to one-half ($\frac{1}{2}$) month's pay for every year of service, due to his eighteen (18) years of service with his employer. Similarly, in *Rosendo Piñero v. NLRC*,[19] one who was dismissed due to an illegal strike was awarded financial assistance equivalent to one-half ($\frac{1}{2}$) month's pay for each of his twenty-nine (29) years with his employer. Then, in *Eastern Shipping Lines, Inc. v. Dioscoro D. Sedan*,[20] financial assistance was given to an employee, who unfortunately was deemed not entitled to retirement benefits, owing to almost twenty-four (24) years of service. Finally, in *Loida V. Malabago v. NLRC*,[21] separation pay, in the form of financial assistance, was granted to an employee of over five (5) years who was terminated for violating a provision of the company's manual.

In light of all the foregoing, it appears that financial assistance to a validly dismissed employee is awarded based on his years of service with the employer. Thus, it is longevity and, to a certain extent, loyalty, which are the common denominators for the grant of what the Supreme Court refers to as an "equitable concession." [22] In the case at bar, private respondent had only been employed for two months. He never even had to dig deep into his pockets, nor did he invest a substantial amount of money in pursuit of his chosen occupation. Instead, it was petitioner who initially shouldered his placement and other processing fees, subject to reimbursement through salary deductions. Unfortunately, due to the escalating violence and disorder in Libya, private respondent was repatriated to the Philippines for his own safety and protection, an action which had the imprimatur of the Philippine government itself. Under these circumstances, We find no sufficient justification to sustain the grant of financial assistance in private respondent's favor.

We deeply sympathize with private respondent for the events which led to the premature termination of his employment abroad. Nevertheless, law and jurisprudence must still prevail. Equity, which has been aptly described as "justice outside legality," should be applied only in the absence of, and never against, statutory law.

Aequetas nunguam contravenit legis.[23] Equity never counteracts the laws. Petitioner and private respondent are both part of the collateral damage caused by the Libyan civil war. On one hand, private respondent had to be repatriated after working for only two months. On the other hand, petitioner had to incur expenses in ensuring the safety of its overseas workers and to suffer the predicament of losing its clients based in Libya.

Social justice — or any justice for that matter — is for the deserving, whether he be a millionaire in his mansion or a pauper in his hovel. It is true that, in case of reasonable doubt, We are called upon to tilt the balance in favor of the poor, to whom the Constitution fittingly extends its sympathy and compassion. But never is it justified to prefer the poor simply because they are poor, or to reject the rich simply because they are rich, for justice must always be served, for poor and rich alike, according to the mandate of the law.[24] Courts and labor adjudicatory officials must be most judicious and circumspect in awarding separation pay or financial assistance as the constitutional policy to provide full protection to labor is not meant to be an instrument to oppress the employers. The commitment of the High Court to the cause of labor should not embarrass us from sustaining the employers when they are right,[25] as in this case.

In conclusion, it may not be trite to stress that writ of certiorari is an extraordinary prerogative writ that is never demandable as a matter of right. To warrant the issuance thereof, the abuse of discretion must have been so gross or grave, as when there was such capricious and whimsical exercise of judgment equivalent to lack of jurisdiction; or the exercise of power was done in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility. The abuse must have been committed in a manner so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[26] Applying this definition, We find grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the NLRC when it affirmed the decision of the LA.

WHEREFORE, in light of all the foregoing, the petition is GRANTED. The assailed decision dated March 14, 2012 and resolution dated May 29, 2012 of public respondent National Labor Relations Commission (NLRC) in NLRC LAC No. OFW (L) 01-000104-12 are hereby ANNULLED and SET ASIDE. The award of financial assistance in favor of private respondent Reymond P. Alcantara in NLRC NCR OFW Case No. (L) 06-08669-11 is hereby DELETED.

SO ORDERED.

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

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

[1] Rollo, pp. 20-26.

[2] Rollo, pp. 27-28.

[3] Rollo, pp. 29-33.

[4] Rollo, pp. 78-88.

[5] Statement of the Labor and Employment Secretary on the situation and possible assistance for OFWs in Libya, February 22, 2011 [on-line]; available from <http://www.gov.ph/2011/02/22/statement-of-the-labor-and-employment-secretary-on-the-situation-of-ofws-in-libya-a-february-22-2011/>; 22 February 2011; Internet; 5 December 2013.

[6] Rollo, pp. 89-90.

- [7] Rollo, pp. 91-92.
- [8] Rollo, pp. 31-33.
- [9] Rollo, pp. 36-43.
- [10] Rollo, pp. 24-25.
- [11] Rollo, pp. 49-55.
- [12] Rollo, p. 9.
- [13] G.R. No. 111110, August 2, 1994.
- [14] G.R. No. 167385, December 13, 2005.
- [15] G.R. No. 121777, January 24, 2001.
- [16] Philippine Long Distance Telephone Co. v. Eusebio M. Honrado, G.R. No. 189366, December 8, 2010.
- [17] Best Wear Garments v. Adelaida B. De Lemos, G.R. No. 191281, December 5, 2012.
- [18] G.R. No. 117652, April 27, 2000.
- [19] G.R. No. 149610, August 20, 2004.
- [20] G.R. No. 159354, April 7, 2006.
- [21] G.R. No. 165465, September 13, 2006.
- [22] Eastern Shipping Lines v. Dopsclrp D. Sedan, G.R. No. 159354, April 7, 2006.
- [23] Heirs of Rosa Dumaliang and Cirila Dumaliang v. Damiano Serban, G.R. No. 155133, February 21, 2007.
- [24] Rafael Gelos v. Court of Appeals, G.R. No. 86186, May 8, 1992.
- [25] Central Philippines Bandag Retreaders, Inc. v. Prudencio J. Diasnes, G.R. No. 163607, July 14, 2008.
- [26] Ebrencio F. Indoyon, Jr. v. Court of Appeals, G.R. No. 193706, March 12, 2013.

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