

**D’RITE MANPOWER & PROMOTIONS CORPORATION,
PETITIONER, V. NATIONAL LABOR RELATIONS COMMISSION,
BENJAMIN T. SIGUA, JR., AND LAILANI B. ALCORIZA, RESPONDENTS.**

Ponente: TOLENTINO, A.G., J.

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TOLENTINO, A.G., J.:

Before this Court is a Petition for Certiorari under Rule 65 of the 1997 Rules of Civil Procedure, as amended, which seeks the nullification of the decision[1] dated April 30, 2013 and the resolution[2] dated June 14, 2013 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 02-000668-13, for allegedly having been rendered and issued, respectively, with grave abuse of discretion.

The relevant antecedents of the case are as follows:

On July 25, 2012, Benjamin T. Sigua, Jr. (Sigua) and Lailani Alcoriza (Alcoriza) filed a Complaint[3] for illegal dismissal with claims for backwages, separation pay and other money claims against D'Rite Manpower Promotions Corporation (D'Rite).

In their Position Paper,[4] Sigua and Alcoriza alleged that:

Sigua started working for D'Rite on July 22, 2011 until his contract ended on December 22, 2011; that he, however, continued to work for D'Rite until February 25, 2012; that he was asked to sign another contract for five (5) months; and that, on July 24, 2012, Sigua was informed by his supervisor that his contract ended. Sigua alleged that he worked for D'Rite from July 22, 2011 to July 24, 2012; that D'Rite did not return his cash bond of P220 per month and he was not paid his 13[th] month pay; and that D'Rite HR Manager, Mr. Tony Tingin, said during the 14 August 2012 hearing before the Labor Arbiter, that Sigua's contract with its client Nestle was for only one (1) year, which is the reason why Sigua's contract was terminated.

Alcoriza started working for D'Rite on September 29, 2006 as a refiller for Nestle ice cream products and was assigned at Robinsons Cainta; that she worked for almost a year on two contracts which ended sometime in September 2007; that she was asked to rest for a week until she was re-engaged as a reliever at Waltermart Quezon City; that, after two weeks, she was assigned at Robinson's Tutuban where she worked for one year and five months; that she was suddenly pulled out therefrom by her supervisor, Mr. Francis Manalad, who said that it is the company's policy that she should not overstay and said that she should rest again; and that, after a few days, she was assigned as a reliever in Puregold Tayuman for one week and then re-assigned to Puregold Bocobo where she worked for two months until she was assigned to the Eunilane branches in Kalayaan, Visayas Avenue, Philam Homes from September 2009 until July 2011. Alcoriza alleged that Eunilane then suffered losses which prompted Eunilane to re-shuffle its refillers; that Alcoriza joined other employees to ask Mr. Eugene Enciso, Eunilane's owner, that she be retained in the current branch until December; that Mr. Enciso called complainant's agency which directed Alcoriza to report immediately to the agency; that after explaining the events in Eunilane to her agency's representatives, Mr. Tony Tingin and Marlyn Mata, she was later asked to sign a resignation letter as a condition for the release of her cash bond amounting to P200 per month; and that she asked Mr. Tingin and Ms.

Mata if she will be re-hired but she failed to get a job despite multiple follow ups.

Sigua and Alcoriza averred that they are both regular and permanent employees of D'Rite; that the execution of contracts cannot defeat their right to security of tenure; and that they were not informed by D'Rite of any just cause for their dismissal nor were they allowed to explain their side. Hence, Sigua and Alcoriza alleged that they were illegally dismissed from employment; and that they are entitled to backwages, separation pay, 13[th] month pay, and moral and exemplary damages.

On the other hand, D'Rite, in its Position Paper,[5] alleged that:

Alcoriza is its employee; that on August 16, 2011, Alcoriza manifested her intention to resign and she signed a resignation letter addressed to its HRD manager, Dennis Lao; that D'Rite returned Alcoriza's cash bond in the amount of P4,800.00 and the proportionate 13th month pay; that Alcoriza executed a Quitclaim and Release; that Alcoriza was eventually given a clearance signed by Mr. Antonio Tingin, D'Rite's Chief Operation Officer.

Sigua is a contractual employee who was hired for a fixed period from February 23, 2012 to July 23, 2012; that D'Rite and Sigua entered into a Contract for Temporary Employment on February 22, 2012; that Sigua agreed to perform the services of a contractual employee; and that upon the expiration of the contract, Sigua filed the complaint for illegal dismissal.

D'Rite averred that Alcoriza voluntarily resigned; and that Alcoriza was not coerced into signing the resignation letter. Likewise, D'Rite averred that Sigua's employment was on a fixed period; that he is a contractual employee; and that Sigua's employment contract expired and was not renewed. Hence D'rite contended that Sigua and Alcoriza were not illegally dismissed from employment.

After the parties submitted their respective pleadings to support their positions, Labor Arbiter Virginia T. Luyas-Azarraga rendered a decision[6] dated January 21, 2013 ruling in this manner, to wit:

“The main issue for resolution is whether complainants were illegally dismissed from the service.

It is the contention of complainant Benjamin T. Sigua, Jr. that he first entered into an employment contract with the respondents for a period of 5 months starting July 22, 2011. When this contract was terminated, he was made to sign again another 5 months contract. In support of this claim, complainant presented in evidence an Identification Card (ID) issued by respondent company and alleged 'pay slips'. Examination of the ID reveals that it is undated, therefore, the same cannot establish the duration of his employment. Likewise, as for the alleged 'payslips', the same are unsigned by someone who prepared the same. The authenticities (sic) of the evidence presented are (sic) questionable, therefore, they have no probative value.

In the case of *Rufina Patis Factory, et. al. v. Juan Alustain* (G.R. No. 146202, July 14, 2004), it was ruled that:

'It is also a basic rule in evidence that the burden of proof is on the part of the party who makes the allegations – et incumbit probation qui dicit non qui negat. If he claims a right granted by law, he has to prove his claim by competent evidence, relying on the strength of his evidence and not upon the weakness of that of his opponent.'

To controvert complainant's allegation, respondents adduced in evidence Contract For Temporary Employment executed between the respondent company and complainant Sigua, Jr. It is stated among others that the period of employment is from February 23, 2012 to July 23, 2012. Complainant was therefore hired for a fixed period. When this contract expired there is no illegal dismissal to speak of. The fixed contract merely expired.

Since complainant Benjamin T. Sigua, Jr. was not dismissed from the service, thus, his claim for separation pay has no basis.

As to the claim of complainant Lailani Alcoriza, the records show that she tendered her resignation on August 16,

2011. A day prior to her resignation, she received the refund of her cash bond and her proportionate 13[th] month pay. Upon resigning, she also sought clearance from the respondent company.

By asking the refund of cash bond, monies (sic) due here (sic) and seeking clearance from the company are clear manifestations that complainant wanted to terminate her employment with the respondents.

In the case of *Fernando Go v. CA and Moldex Products, Inc.*, (G.R. no. 158922, May, 2004), it was ruled that:

'If indeed the petitioner was forced into resigning from the respondent, he would not have sought to be cleared by the respondent and to be paid the monies (sic) due him. Resignation is the formal pronouncement of relinquishment of an office. The voluntary nature of the petitioner's acts has manifested itself clearly and belie his claim of constructive dismissal.'

Thus, on the basis of the foregoing, complainant's claim for separation pay has no basis.

WHEREFORE, PREMISES CONSIDERED, judgment is rendered dismissing the case for lack of merit.

SO ORDERED.”

Aggrieved, the petitioner interposed an appeal to the NLRC, which rendered the assailed decision reversing the Labor Arbiter's decision. The NLRC ruled:

“Issues (sic)

We resolve the basic issue of whether complainants Sigua and Alcoriza were illegally dismissed, and entitled to their money claims.

Our finding/ruling

We REVERSE.

A careful and judicious evaluation of the records reveal that Respondents did not dispute the evidence which were exhibited by Complainant Sigua to prove his claim of more than a year's employment with Respondents.

In fact, Complainant proved his claimed employment with respondents from July 22, 2011 up to July 24, 2012. He exhibited copies of his Identification Card which even if undated, was clearly issued by Respondent (p. 22, Records). He also exhibited copies of his payslips with Respondents covering the period January 1, 2012 up to July 31, 2012 (pp. 23-35, Records) to support his claim that he worked under a contract for the period July 22, 2011 up to December 22, 2011, and was made to continue working up to February 25, 2012 when he was asked again to sign another contract for another five (5) months (p. 11, Records).

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We rule therefore, that Complainant Sigua proved by substantial evidence and by his undisputed and repeated declaration in his pleadings that he rendered services or worked with Respondents from July 22, 2011 up to July 24, 2012. If this is not so, Respondents should have immediately stood up their defense and not merely cling on to their February to July 2012 contract. Complainant Sigua never disputed this last contract and he even admitted it, as it forms part of his claimed one-year plus services with Respondents.

Having established that he worked from July 22, 2011 up to July 24, 2012 or for a period of more than one year, Complainant Sigua's employment is rendered regular or permanent by operation of law.

Article 280 of the Labor Code on Regular and Casual Employment provides that 'x x x any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to that activity in which he is employed and his employment shall continue while such activity exist.'

As regular employee, Complainant Sigua can only be dismissed for just or authorized causes. Expiration of an alleged contract is not one of these causes. Complainant Sigua, therefore, has to be declared illegally dismissed.

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We similarly rule for Complainant Alcoriza. She convincingly proved her claim that she started working in September 2006 under two contracts which ended in September 2007, was made to rest for a week and was reengaged.

She convincingly prove (sic) also her claim that as she signed a letter of resignation on August 16, 2011, she was told that she should rest and that she would be rehired, which she believed as it happened before or in 2009. When the promise did not materialize this time, she filed this case with Complainant Sigua on July 25, 2012.

Complainant Alcoriza alleged these in her Position Paper (pp. 12-14, Records) and in her Reply and Rejoinder (pp. 45 and 58, Records):

'On October 15, 2011, when she was asked to sign certain documents, it was explained to her that this was a pre-condition for the release of her cash bond, and she assured that she will be 're-hired' again. In fact, this was not the first time that the respondent asked her to sign such a document, in 2009 she was also asked to sign similar documents as a requisite for the release of her cash bond.

It was never her intention to resign, and only signed the said documents upon assurance that she be re-hired again. In fact, she made regular follow-ups on the respondents as to when, as in the past six years, she will be re-hired again.

According to Complainant Alcoriza, this is the practice of the Respondent Company, that to "withdraw" one's cashbond, one has to sign a resignation letter now attached to Respondents' Position Paper.

Respondents do not contest that Complainant Alcoriza was repeatedly rehired for the past six years. xxx.'

xxx xxx xxx

These general denials by Respondents compared to the documents exhibited by complainant to prove her afore-stated claims, reveal the more convincing stand of Complainant.

As exhibited by Complainant, Respondents issued two (2) certificates of employment, one dated November 23, 2007, the other dated January 11, 2010 (pp. 28-29, Records). They reveal the following alleged periods of employment of Complainant:

Period of employment Proof: Respondents' Certification dated:

- a) 'September 29, 2006 to present' - November 23, 2007
- b) 'July 16, 2009 up to present' - January 11, 2010

Yet, on '15[th] day of December 2009', Complainant Alcoriza was issued a Certificate of Recognition "(F)or being One of the Most Outstanding Merchandisers of the year assigned at Nestle Phils. xxx (p. 30, Records).'

If indeed, there is a gap in the employment of Complainant as appearing in the certificates of employment, how could Complainant's six (6) months service in the year 2009 qualify her as outstanding with the other employees/merchandisers of Respondents for 2009.

Complainant described the period from 2006 to 2010 as a period of work, rest and re-engagement, with a 2009 signing of resignation to withdraw the cash bond like her 2011 resignation. These need a lot of

explaining/clarification which Respondents opted to merely deny.

The 2011 resignation documents which were exhibited by Respondents point to the claim of complainant that they were in fact meant for the refund of her cash bond only. xxx

xxx xxx xxx

Hence, like Complainant Sigua, Complainant Alcoriza has to be declared illegally dismissed by Respondents who reneged on their promise and practice of asking Complainant Alcoriza to resign, to rest and to be rehired again. She is also entitled to separation pay and backwages which she prayed for, as well as attorney's fees.

The established practice of Respondent is a scheme designed to deprive complainant Alcoriza of her constitutionally protected right to security of tenure.

Finally, Respondent's admission of their failure to pay Complainant Sigua his proportionate 13th month pay (p. 52, Records), belies the dismissal of this claim.

WHEREFORE, premises considered, the appeal is hereby found with merit; the appealed decision is hereby REVERSED and SET ASIDE, and a new one promulgated declaring Complainant(s) to be illegally dismissed, and entitled to money claims.

xxx xxx xxx

SO ORDERED.”

D'Rite filed a motion for reconsideration of the above decision, which was denied by the NLRC in a resolution dated June 14, 2013.

Hence, D'Rite filed the instant Petition for Certiorari raising the following issues, to wit:

“a. Whether or not NLRC committed errors and grave abuse of discretion in misappreciating the practice of contractual employment by petitioner who is a bonafide service contractor accredited by the DOLE under D.O. No. 18 and 18-02?

b. Whether or not NLRC committed errors and grave abuse of discretion in ruling that both Sigua and Alcoriza became regular employees of petitioner?

c. Whether or not NLRC committed errors and grave abuse of discretion in not considering the Quitclaim and Release executed by Alcoriza to support her voluntary resignation?

d. Whether or not NLRC committed errors and grave abuse of discretion in awarding huge money claims to Sigua who served the company for less than a year and Alcoriza who voluntarily resigned from work, both of whom are contractual employees serving under a period covered by valid service agreements?”[7]

THE PETITION IS NOT MERITORIOUS.

The above issues, being inter-related, shall be discussed jointly. The issues that need to be resolved in the instant controversy are:

- 1) Whether or not D'Rite is a labor-only contractor;
- 2) Whether or not Sigua and Alcoriza are D'Rite's contractual employees; and
- 3) Whether or not D'Rite is liable for illegal dismissal.

At the outset, it must be stressed that if the factual findings of the NLRC and the Labor Arbiter are conflicting, as in this case, the reviewing court may delve into the records and examine for itself the questioned findings.[8]

D'Rite basically alleges that it is engaged in an independent business of providing services to its clients, such as the Merchandising Services Contract with Foodsource Enterprises, Inc.; that Sigua and Alcoriza are contractual employees who were employed for a definite period; that Sigua and Alcoriza knew that they were hired for a specific term or period; that employment contracts, which provide for a term or period, are valid; and that there is nothing illegal in D'Rite's practice of hiring workers on a contractual basis.

We are not persuaded by D'Rite's arguments.

In determining whether or not a "labor-only" contracting exists, Art. 106 of the Labor Code and Section 5 of the Rules Implementing Articles 106 to 109 of the Labor Code, as amended, provide the following criteria: (1) where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among other things; (2) the workers recruited and placed by such persons are performing activities which are directly related to the principal business of such employer; and (3) the contractor does not exercise the right to control the performance of the work of the contractual employee. In order that one is considered by law as a "labor-only" contractor, all three aforementioned criteria need not be present. If the contractor enters into an arrangement characterized by any one of the criteria provided, this would be a clear case of "labor-only contracting." [9]

Utilizing the above criteria, this Court made the following observations, to wit:

- a) "Substantial capital or investment" refers to capital stocks and subscribed capitalization in the case of corporations, tools or equipment, implements, machineries and work premises, actually and directly used by the contractor or subcontractor in the performance or completion of the job, work or service contracted out. [10] In the case at bench, D'Rite does not appear to have capital or investment since the employees it assigns or places use the client's equipment or premises. There is absolutely no showing that D'Rite used its own tools, equipment or premises in performing a particular work for its client;
- b) Sigua and Alcoriza performed work or activities as a merchandiser and refiller, respectively, which are directly related to the principal business of D'Rite's client; and
- c) The "right to control" refers to the prerogative of a party to determine, not only the end result sought to be achieved, but also the means and manner to be used to achieve this end. [11] In the case at bench, there is no showing that D'Rite contracted to perform for its client according to its own manner and method and without the control or direction from his client. What only appears on record is that D'Rite assigns manpower to its client. In the case of *Digital Telecommunications Philippines, Inc. vs. Digitel Employees Union*, [12] the Supreme Court ruled:

“In *PCI Automation Center, Inc. v. National Labor Relations Commission*, the Court made the following distinction: "the legitimate job contractor provides services while the labor-only contractor provides only manpower. The legitimate job contractor undertakes to perform a specific job for the principal employer while the labor-only contractor merely provides the personnel to work for the principal employer.” (Emphasis supplied.)

Verily, D'Rite fits the criteria that describe a labor only contractor. To be sure, the Supreme Court, in the case of *Escario, et al. vs. National Labor Relations Commission*, [13] held:

“There is labor-only contracting when the contractor or sub-contractor merely recruits, supplies or places workers to perform a job, work or service for a principal. In labor-only contracting, the following elements are present:

- (a) The person supplying workers to an employer does not have substantial capital or investment in the form of

tools, equipment, machineries, work premises, among others; and

(b) The workers recruited and placed by such person are performing activities which are directly related to the principal business of the employer.”

Further, it is worth noting that D'Rite's Merchandising Services Contract with its client provides that “[the] Contract shall be valid and effective from 01 May 2012 until 30 April 2013 and, on its expiration date, it shall be deemed automatically renewed for another six (6) months and for another six (6) months thereafter”. Yet, both Sigua and Alcoriza were already working for D'Rite's client prior to the effectivity of the said contract. What is more, despite the fact that the contract has a term of one year and extendible for six months and another six months thereafter, Sigua and Alcoriza were not hired for the entire duration or effectivity of the contract. To the mind of this Court, the execution of the Contract for Temporary Employment is merely a ploy or scheme adopted by D'Rite to circumvent labor laws in order to avoid the regularization of its employees and to escape the corresponding obligation of providing the benefits granted by law to regular employees. Thus, D'Rite's contention that Sigua and Alcoriza are mere contractual employees must fail.

In *Philips Semiconductors (Phils.), Inc. vs. Eloisa Fadriquela*[14], the Supreme Court held:

“The two kinds of regular employees under the law are (1) those engaged to perform activities which are necessary or desirable in the usual business or trade of the employer; and (2) those casual employees who have rendered at least one year of service, whether continuous or broken, with respect to the activities in which they are employed. The primary standard to determine a regular employment is the reasonable connection between the particular activity performed by the employee in relation to the business or trade of the employer. The test is whether the former is usually necessary or desirable in the usual business or trade of the employer. If the employee has been performing the job for at least one year, even if the performance is not continuous or merely intermittent, the law deems the repeated and continuing need for its performance as sufficient evidence of the necessity, if not indispensability of that activity to the business of the employer. Hence, the employment is also considered regular, but only with respect to such activity and while such activity exists.”

In the instant case, Sigua and Alcoriza both performed work that are usually necessary and desirable in the business of 'D'Rite's clients and they both worked for more than a year. Thus, there is no doubt to our minds that Sigua and Alcoriza are regular employees. With regard to Alcoriza, D'Rite even issued a Certification[15] dated January 11, 2010 recognizing Alcoriza as its regular employee. Hence, D'Rite is estopped from claiming that Alcoriza is a mere contractual employee. It is well-settled that, through estoppel, an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying on it.[16]

Moreover, D'Rite's claim that Alcoriza resigned from her job deserves scant consideration. Suffice it to state that resignation is inconsistent with the filing of a complaint for illegal dismissal.[17] Moreover, Alcoriza's resignation letter and release and quitclaim cannot be given evidentiary weight since she merely executed said documents to recover the cash bond from D'Rite.

All told, this Court finds that Sigua and Alcoriza were victims of the prohibited practice of labor only contracting. Accordingly, D'Rite should be held liable for the valid claims of Sigua and Alcoriza. D'Rite's liability, as a labor only contractor, was discussed by the Supreme Court in the case of *Vigilla vs. Philippine College of Criminology, Inc.*[18] where it held:

“xxx in labor-only contracting, the statute creates an employer-employee relationship for a comprehensive purpose: to prevent a circumvention of labor laws. The contractor is considered merely an agent of the principal employer and the latter is responsible to the employees of the labor-only contractor as if such employees had been directly employed by the principal employer. The principal employer therefore becomes

solidarily liable with the labor-only contractor for all the rightful claims of the employees.”

In view of the above findings, no grave abuse of discretion, which is defined as the capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction, can be imputed against the NLRC.

WHEREFORE, premises considered, the instant Petition for Certiorari is DISMISSED. The decision dated April 30, 2013 of the public respondent National Labor Relations Commission is AFFIRMED.

SO ORDERED.

Rosario and Barrios,[*] JJ., concur.

[*] Vice Justice Leoncia R. Dimagiba, per Office Order No. 199-14-ABR dated May 9, 2014.

[1] Rollo pp. 23-35

[2] Rollo pp. 37-38

[3] Rollo pp. 124-126

[4] Rollo pp. 48-59

[5] Rollo pp. 69-74

[6] Rollo pp. 100-106

[7] Rollo pp. 8-9

[8] Agabon vs. National Labor Relations Commission, G.R. NO. 158693, November 17, 2004

[9] Aboitiz Haulers, Inc. vs. Dimapatoi, G.R. NO. 148619, September 19, 2006

[10] Coca-Cola bottlers, Philippines, Inc. vs. Dela Cruz, G.R. NO. 184977, December 7, 2009

[11] Coca-Cola bottlers, Philippines, Inc. vs. Dela Cruz, G.R. NO. 184977, December 7, 2009

[12] G.R. Nos. 184903, October 10, 2012

[13] G.R. No. 124055, June 8, 2000

[14] G.R. No. 141717, April 14, 2004

[15] Rollo p. 67

[16] Spouses Rubin and Portia Hojas vs. Philippine Amanah Bank, G.R. No. 193453, June 05, 2013

[17] Blue Angel Manpower and Security Services, Inc. vs. Court of Appeals, G.R. NO. 161196, July 28, 2008

[18] G.R. No. 200094, June 10, 2013

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