

PICHEL SECURITY & DETECTIVE AGENCY, INC./SALVADOR S. PICHEL, PETITIONERS, VS. TONY B. TAPIRU, JAY D. BICLAR, NELSON M. OCENAR, TERENCE PAUL VARGAS AND THE NATIONAL LABOR RELATIO...

Ponente: REYES-CARPIO, A., J.

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REYES-CARPIO, A., J.:

This is a Petition for Certiorari,[1] filed under Rule 65 of the 1997 Rules of Civil Procedure, seeking the nullification of the Decision,[2] dated May 31, 2013, and Resolution,[3] dated July 31, 2013, issued by the National Labor Relations Commission (NLRC) in NLRC LAC No. 10-003021-12 (NLRC NCR Case No. 01-01370-12) entitled “Tony B. Tapiru, Jay D. Bicar, Nelson M. Ocenar and Jeremie Paul V. Vargas vs. Pichel Security and Detective Agency, Inc. and/or Mr. Salvador Pichel.”

The instant case stemmed from a Complaint filed by private respondents against petitioner Pichel Security and Detective Agency, Inc. and its president, Salvador S. Pichel, for constructive dismissal, underpayment of salary, non-payment of overtime pay, holiday pay, holiday premium, rest day premium, service incentive leave pay, 13[th] month pay, ECOLA and night shift differential pay, illegal deductions, moral and exemplary damages and attorney's fees.

Private respondents Tony Tapiru, Jay D. Bicar, Nelson M. Ocenar and Jeremie Paul Vargas were former employees employed by petitioner security agency on different dates, more particularly:

Name Period of Employment Salary/Day

TAPIRU 27 June 2010 to 21 January 2012 P283.00

BICLAR 22 September 2007 to 20 January 2012 P300.00

OCENAR November 2010 to 23 January 2012 P330.00

VARGAS June 2011 to 23 January 2012 P300.00

Private respondents alleged that they received their salaries twice a month. On the first payday of the month, they were given envelopes without any seal of petitioner agency, and with blank vouchers, which they had to sign. Their salaries for the second half of the month, meanwhile, were coursed through their ATM bank accounts. They also alleged that petitioner agency made deductions from their salaries as cash bond deposit but these were made without their consent.

Private respondents averred that they asked petitioner Salvador Pichel for salary adjustments and other benefits they were legally entitled to but petitioner failed to grant, prompting the former to seek redress from the Labor Extension Office. Despite earnest attempts, the parties failed to reach an amicable settlement.

According to private respondents, on separate occasions, they were asked to withdraw the complaint and their

refusal to do so caused petitioner to terminate their employment. This led them to file the complaint for illegal dismissal against petitioners.

Petitioners sought the dismissal of the complaint, claiming that private respondents had violated company rules as they went AWOL (absent without leave) and failed to give written explanations for the same. Petitioners also claimed that private respondents were engaged in forum-shopping as a similar action was already filed before the Quezon City DOLE Field Office which was still pending. Petitioners further denied the allegation of underpayment of wages and non-payment of other benefits.

After assessment of the arguments and evidence presented before it, the Labor Arbiter rendered a Decision,[4] dated September 7, 2012, ruling in this wise:

“WHEREFORE, premises considered, this case should be, as it is hereby DISMISSED for lack of merit.

SO ORDERED.”

Aggrieved, private respondents elevated the case to public respondent NLRC[5] which modified the ruling of the Labor Arbiter in the assailed Decision,[6] dated May 31, 2013.

As regards the finding of forum-shopping on the part of private respondents, the NLRC ruled that there would be no contradictory judgments in the instant situation as private respondents withdrew the complaint before the DOLE prior to initiating the action before the Labor Arbiter.

On the claim of constructive dismissal, however, the NLRC ruled that there was neither dismissal nor abandonment of work on the part of any of the parties. Consequently, the NLRC ordered the reinstatement of private respondents without backwages.

The NLRC further granted the money claims of private respondents, finding that the payrolls submitted by petitioners in evidence were unreliable as there were discrepancies in the signatures affixed thereon. The money claims, however, did not include overtime pay, premium pay for rest day and night shift differential pay, thus –

“WHEREFORE, the appeal is PARTIALLY GRANTED. The Labor Arbiter’s Decision dated 7 September 2012 is MODIFIED in that, respondent Pichel Security Agency Inc. is hereby ordered to reinstate complainants to their former positions without loss of seniority rights, but without any backwages.

Respondents are likewise ordered to pay complainants their monetary claims, as follows: a) salary differentials; b) 13[th] month pay; c) holiday pay; d) service incentive leave pay and e) unpaid salaries, subject to the three year prescriptive period for money claims. The Computation and Examination Unit of this Commission shall compute said monetary awards and which computation shall form part of this Decision.

The Decision of the Labor Arbiter in all other aspects is AFFIRMED.

SO ORDERED.”[7]

Petitioners sought reconsideration of the above-quoted ruling but the same was denied in the assailed Resolution,[8] dated July 31, 2013.

Hence, this petition, which relies on the sole ground –

THE HONORABLE NLRC (FIRST DIVISION GRAVELY ERRED IN MODIFYING THE LABOR ARBITER’S DECISION, AND ORDERING COMPLAINANTS (sic) (RESPONDENTS) REINSTATEMENT NOTWITHSTANDING THAT NO ILLEGAL DISMISSAL WAS COMMITTED BY PETITIONERS, AND IN GRANTING COMPLAINANTS (sic) (PETITIONERS) (sic) MONETARY CLAIMS.[9]

Petitioners claim that the assailed issuances of the NLRC are tainted with grave abuse of discretion, amounting to lack or excess of jurisdiction, thus, they must be declared void by this Court.

Grave abuse of discretion has been defined as the capricious and whimsical exercise of judgment, or the judgment, or the exercise of power in an arbitrary manner, where the abuse is so patent and gross as to amount to an evasion of positive duty.[10] In order to determine if the assailed Decision and Resolution were issued arbitrarily, this Court must break down the issues raised therein by petitioner, specifically: (1) forum-shopping; (2) illegal dismissal; and (3) propriety of monetary awards.

Forum-shopping –

Forum-shopping exists when the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in another.[11] *Litis pendentia* requires the concurrence of the following requisites: (1) identity of parties, or at least such parties as those representing the same interests in both actions; (2) identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; and (3) identity with respect to the two preceding particulars in the two cases, such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case.[12]

Petitioners reiterate that private respondents filed similar complaints for underpaid wages and unpaid benefits before the Department of Labor and Employment prior to instituting the action for illegal dismissal with money claims before the Labor Arbiter.

While there is no question that there is an identity of parties and causes of action in both cases, petitioners did not question the NLRC's finding that private respondents withdrew the complaint before the DOLE prior to initiating the action before the Labor Arbiter.

Note must be taken of the fact that basic purpose of the rule on forum-shopping is to avoid the promulgation of conflicting decisions by the respective tribunals rendering the same. Here, petitioners did not deny that the complaint before the DOLE was withdrawn by private respondents; therefore, there was no violation of the rule since the situation being prohibited would no longer arise. Hence, the NLRC was correct in finding that there was no forum-shopping.

Illegal dismissal –

The NLRC, in the assailed Decision, explained that private respondents failed to prove constructive dismissal, to wit:

“Under the circumstances, We find that complainants' bare allegations of constructive dismissal must fail. However, while there is no constructive dismissal to speak of, there is also no abandonment on the part of complainants that would justify their dismissal from employment.

x x x

It is the employer who has the burden of proof to show a deliberate and unjustified refusal of the employee to resume his employment without any intention of returning. It is therefore incumbent upon respondents to ascertain the complainant's interest or non-interest in the continuance of their employment. However, respondents failed to do so.

Clearly therefore, there was no dismissal, much less illegal, and there was also no abandonment of job to speak of. We find it therefore, proper to order that complainants be reinstated but without any backwages.”[13]

Petitioner insists that it would have been impossible to order the reinstatement of employees who were not found to have been dismissed in the first place. Be that as it may, a similar situation is found in *Exodus International*

Construction Corp. vs. Biscocho.[14] In the said case, the Supreme Court upheld the NLRC and the Labor Arbiter's finding that there was no evidence of dismissal or that the employees were prevented from returning to work. Similarly, the Supreme Court also found no abandonment on the part of the employees. In the same case, the Supreme Court also ordered the reinstatement of the employees, thus, giving basis for the NLRC's directive to reinstate private respondents in this case.

Reinstatement is generally defined as the act of restoring someone to a previous position. In this case, private respondents have not been working for petitioners since January 2012. A reinstatement would only mean that petitioners would have to give assignments to private respondents similar to those given to them prior to the institution of the instant action and the same has no implication as to the finding that there was no dismissal.

WHEREFORE, in view of the foregoing, the Petition for Certiorari is hereby DISMISSED. The Decision,[15] dated May 31, 2013 and Resolution,[16] dated July 31, 2013 issued by the National Labor Relations Commission (NLRC) in NLRC LAC No. 10-003021-12 (NLRC NCR Case No. 01-01370-12), are AFFIRMED.

SO ORDERED.

Carandang, R.D., Chairperson, and Barza, R.F., JJ., concur.

[*] Also referred to as Jeremie Paul Vargas

[1] Rollo, pp. 3-10

[2] Rollo, pp. 37-53

[3] Rollo, pp. 65-67

[4] Rollo, pp. 12-25

[5] See Notice and Memorandum of Appeal, Rollo, pp. 26-36

[6] Rollo, pp. 37-53

[7] Rollo, p. 52

[8] Rollo, pp. 65-67

[9] Rollo, p. 5

[10] Vinzons-Chato vs. HRET, G.R. Nos. 199149-201350, January 22, 2013

[11] Rallos vs. Cebu City, G.R. No. 202651, August 28, 2013

[12] Ibid.

[13] Rollo, pp. 47-48

[14] G.R. No. 166109, February 23, 2011

[15] Rollo, pp. 37-53

[16] Rollo, pp. 65-67

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